

# **Decriminalising consensual same-sex acts in the Commonwealth**

*A comparative study of promoting equality for LGBTI people in a  
postcolonial context*

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# Abstract

In 2023, 32 out of 56 Commonwealth countries still criminalise consensual same-sex acts, whilst Western states' international engagement on the decriminalisation of same-sex acts often results in a strong anticolonial backlash. This thesis critically examines the discourses and strategies used across different decriminalisation contexts. Building on a decolonial approach to the 'boomerang effect' part of the 'spiral model' of human rights compliance (Risse, Ropp and Sikkink, 2013; Waites, 2019), this research uniquely focuses on the decriminalisation processes in five Commonwealth countries – Belize, Mozambique, Nauru, Cyprus and Sri Lanka – thereby broadening the analysis to different postcolonial contexts and capturing human rights claims strategies outside legal challenges. The research uses mixed methods, including a media analysis and semi-structured interviews carried out in 2018-2021 with local and international activists, judges, lawyers and human rights advocates. The data collected shows that, whilst activists are successful in harnessing 'boomerang effects' to claim their human rights, Commonwealth governments are less receptive to international pressure for human rights compliance and less likely to initiate the decriminalisation process given the hybridity of sociocultural contexts. This unhelpfully impacts the social resources and structures available to activists and the narratives used for rights-claiming processes. The thesis proposes recentring discourses around the local experiences of LGBTI individuals, to prevent the rigidification of negative narratives which further obstruct the 'spiral model' of human rights compliance. The research also questions the role of the Commonwealth itself which, the thesis argues, should be reformed to improve the contextualising of, and advocating for, LGBTI rights in postcolonial societies. Overall, this research contributes to studies decolonising the 'boomerang effect' of transnational advocacy by bringing to the fore the testimonies of both grassroots and international human rights advocates, to inform strategies to better advocate for the decriminalisation of same-sex acts in the context of international relations.

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# **Declaration**

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for a degree or other qualification at this University or elsewhere. All sources are acknowledged as references.

# Chapter 1. Introduction

During the last decade, a number of countries including Mozambique, Vanuatu, the Seychelles, Nauru, Belize, Trinidad and Tobago, India, Botswana, Antigua and Barbuda, Saint Kitts and Nevis, Singapore and Barbados have decriminalised consensual private same-sex acts, whether as a result of a court case brought against their governments or through proactive reform of their laws. All of these recent instances of decriminalisation took place in the Commonwealth, a political association of 56 states that were under British influence.<sup>1</sup> Although this wave of decriminalisation clearly marks a positive trend and a stepping stone towards the possible recognition of same-sex relations, 32 out of 56 Commonwealth countries still criminalise consensual same-sex acts, which represents half of the countries still criminalising same-sex acts around the world. These striking figures immediately prompt two questions: why do so many countries still criminalise same-sex acts, and why do so many of these countries belong to the Commonwealth?

First thoughts naturally point towards British colonialism as a common factor responsible for the prevalence of the criminalisation of private, consensual same-sex acts in Commonwealth states as almost all of the countries pertaining to the Commonwealth were colonised by the British Empire.<sup>2</sup> In fact, Theresa May, former United Kingdom (UK) Prime Minister regretted at the 2018 Commonwealth Summit that 'these laws were often put in place by [her] own country. They were wrong then, and they are wrong now', she stated in front of an audience of civil society organisations from the Commonwealth (May, 2018). One might think that recognising the colonial legacy of these laws would prompt countries to reform them in an attempt to reject this colonial inheritance. However, it appears that most Commonwealth countries which are still criminalising same-sex acts are unchanged by, if not resistant to, such declarations. Indeed, when former UK Prime Minister David Cameron announced in 2011 that the UK would withhold aid from Commonwealth countries where consensual same-sex acts are illegal, his public statement triggered a strong backlash, notably from the Ugandan presidential adviser, who at the time publicly condemned the UK 'ex-colonial' and 'bullying mentality' (BBC News, 2011). Worse, local activists and organisations promoting the rights of sexual minorities in Africa urged Western states to refrain from such public condemnations as they undermined their work on the ground and put sexual minorities in a position of vulnerability in those countries (African social justice activists, 2011). As such, the international engagement with Commonwealth states on the issue of the (de)criminalisation of same-sex acts, especially looking at a postcolonial context, remains extremely difficult.

Nevertheless, if we look more broadly at several instances of decriminalisation, there are successful examples of international engagement. For instance, Albania, Russia, Georgia and

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<sup>1</sup> Exceptions include Mozambique, Rwanda and Gabon, which were, respectively, former Portuguese, Belgian and French colonies; Cameroon, which only had part of its territory colonised by the British Empire; and Namibia, Samoa and Papua New Guinea, which were all colonised by former British colonies as opposed to the British Empire itself.

<sup>2</sup> See above.

Azerbaijan were forced to decriminalise same-sex acts to gain membership with the Council of Europe (Hildebrandt, 2014, p.244). Similarly, the Seychelles, which is a Commonwealth country, committed to the decriminalisation of same-sex acts in response to recommendations during its Universal Periodic Review (UPR), a United Nations (UN) process assessing states' record on human rights. It is therefore important to look at the role of international institutions, processes and discourses, to unravel what works in effectively driving the decriminalisation process in specific countries. Domestic factors also play an essential part in contributing to the decriminalisation of same-sex acts in any given country. Indeed, a number of individuals have successfully challenged their states on the criminalisation of private, consensual same-sex acts in court. This was indeed the case in Trinidad and Tobago, Belize, Cyprus and the UK.

Looking at the specific issue of the decriminalisation of same-sex acts is important in several regards. First, laws criminalising specific same-sex acts are often used to prosecute individuals who identify as Lesbian, Gay, Bisexual, Trans or Intersex (LGBTI),<sup>3</sup> thereby *de jure* extending the criminalisation of acts to identities. Second, it has been demonstrated that the mere existence of the laws is conducive to abuse, extortion and blackmailing by authorities, even in cases where they are not enforced by the authorities (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015). There is therefore a need for academic research to isolate factors of success (or failure) in advocating for the decriminalisation of same-sex acts internationally.

This research aims at unravelling the dynamics which are effective in triggering the decriminalisation of same-sex acts in Commonwealth countries, in the sense that they actually enhance states' compliance with human rights, by moving away from explaining why states are promoting or resisting LGBTI rights to understand why countries radically change their position by going down the path of decriminalisation and how they are achieving this. Furthermore, discussing decriminalisation processes pave the way to further research on the impact of different decriminalisation processes to understand how they empower/disempower LGBTI communities to articulate their own narratives and demands within their local contexts. This is important to inform future decriminalisation strategies. As such, this research provides a comparative study by exploring the decriminalisation processes in five Commonwealth countries. A secondary aim of this research is to bridge the gap between academia, policy and practice and provide experts and state officials willing to progress human rights for LGBTI people with concrete examples on how to do so via their bilateral or multilateral interactions when dealing with criminalising postcolonial states. Ultimately, this research should positively contribute to making the case for decriminalising same-sex acts globally, and to the analysis of social movements and strategies to make them available and accessible to others (Santos, 2002). This is important in the context of the remaining 66 countries still criminalising same-sex acts whilst some Commonwealth countries are furthering the criminalisation of same-sex acts, including in Nigeria or Uganda (Gerber, 2014).

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<sup>3</sup> See section 1.2 for a discussion on terminology

## 1.1 Nature and scope of the research

The key objective of this research is to unravel both the reasons and circumstances under which Commonwealth states decriminalise same-sex acts, to fill the gap in understanding effective ways of advocating for change, identifying factors for further decriminalisation in the Commonwealth and beyond. My research questions are therefore:

- Why and under which circumstances Commonwealth states decide to decriminalise same-sex acts?
- How pro-LGBTI rights states successfully argue for the decriminalisation of same-sex acts in criminalising Commonwealth countries?
- Which advocacy strategy or narrative is likely to be compelling to argue for the decriminalisation of same-sex acts in postcolonial societies?

To answer these questions, I needed a theoretical framework which would allow me to capture the human rights change process, including taking into account both domestic and international factors at play. Risse, Ropp and Sikkink (1999) developed the five-phase 'spiral model', originally looking at how authoritarian states internalise human rights norms and practices, leading these countries to democratisation. Although the authors primarily apply this model with regard to authoritarian regimes and civil rights, it is also applicable to sexual minority rights. According to the authors, when states move from human rights commitment – as they accept the validity of human rights by signing up to and/or ratifying international human rights treaties – to compliance – as they sustain behaviours and practices that conform to international human rights norms – the following pattern applies: during the first stage of the 'spiral model', domestic civil society organisations bring the attention of the international community to the state violating human rights; the second phase of the model is reached when the state denies the violation of human rights when being called out by the international community; in the third stage, the state makes tactical concessions by paying lip service to human rights language and potentially adopt some human rights policies to appease criticisms from both the domestic civil society and international community; in the fourth stage, the state completely internalise human rights norms and practices, which ultimately leads to the fifth stage, a human rights-consistent behaviour.

The five-phase 'spiral model' is underpinned by social influence mechanisms (dynamics of coercion, incentives, persuasion and discourse, and capacity-building) which, combined and sequenced over time, should gradually lead states from human rights commitment to compliance (Goodman and Jinks, as cited in Risse, Ropp and Sikkink, 2013). In particular, the model demonstrates the power of combined domestic mobilisation and international pressure. In fact, Keck and Sikkink (1998) have named the 'boomerang effect' the process by which domestic and transnational social movements join forces to bring pressure 'from above' and 'from below' to drive human rights change conceptualised as the 'spiral model' (p.18). In other words, the 'boomerang effect' describes the causal relationships between various state and non-state actors and associated processes. 'When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out

international allies to try to bring pressure on their states from outside' (p.12). Whilst transnational networks and international pressure are key players in driving change, they cannot lead to transformational change if the domestic civil society is inexistent. As Beth Simmons observes (as cited in Risse, Ropp and Sikkink, 2013, p.44): 'external norms and even external political pressure cannot be expected to sustain significant rights improvement unless there are fundamental changes in the domestic institutions of accountability and governance.' Risse, Ropp and Sikkink (1999) also argue through their five-phase 'spiral model' that, from the moment states start denying human rights violations, they are already recognising the human rights regime as the legitimate regime. This highlights the power of discourse, but if we look at the case of Uganda condemning the UK's 'ex-colonial' and 'bullying mentality' (BBC News, 2011) and the current country's record on the issue of LGBTI rights, no human rights progress for LGBTI people can be observed. In fact, Uganda enacted the Anti-homosexual Act in 2014. Risse, Ropp and Sikkink (2013) still argue that human rights commitments initially adopted for instrumental reasons commit states to comply with human rights *a fortiori* by raising expectations with the civil society and the new generation of citizens. However, the five-phase 'spiral model' does not explain why some countries are impermeable to human rights change or why we observe setbacks in some others. For instance, in Nauru where consensual same-sex acts in private were decriminalised in 2016, there was no improvements in terms of LGBTI rights following decriminalisation; the country even voted against the mandate of the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity (see case study at Appendix A). These examples clearly contradict the existence of a 'spiral model', or at least shed some light on inhibiting factors to the fulfilment of the 'spiral model'.

Also, Risse, Ropp and Sikkink (2013) have refined and narrowed the scope and conditions for the 'spiral model' to operate effectively, including reflected on interactions between social mechanisms which overlap or counteract each other. They found that the regime type of the state matters – democratic states being more likely to move from commitment to compliance than authoritarian regimes – as well as the state's capability to enforce the rules in its entire territory. Similarly, decentralised states were deemed less likely to ensure compliance with human rights than centralised states. When thinking about the decriminalisation of same-sex acts, this specific condition resonates strongly. For instance, the UK is a decentralised country, and England and Wales decriminalised first (1967), whilst Scotland and Northern Ireland did so many years later (1981 and 1982 respectively) after pressure from the European Court of Human Rights (ECtHR). In the case of Nigeria, we can also observe discrepancies in the treatment of same-sex acts due to decentralisation; some provinces of Northern Nigeria have adopted sharia law and thus the death penalty for consensual same-sex acts whilst the Criminal Code applying to the southern part of the country 'only' provides for a maximum sentence of 14 years imprisonment. Risse, Ropp and Sikkink (2013) also discussed two other factors influencing states' movement from commitment to compliance: states' material and social vulnerability. Indeed, the more economically powerful a state is, the less it is receptive to external pressure, although authors have discovered cases where economically powerful states are weak to resistance (e.g., United States) and weak states are powerful to resistance (e.g., Tunisia). This is because the second factor, social vulnerability, is at play, where states that care about their human rights reputation will be more sensitive to international pressure and comply. It is important, therefore, that empirical analysis identifying micro-level factors

and mechanisms are taken into account to refine the understanding and robustness of macro-level mechanism-based explanations of change (Hedström and Ylikoski, 2010; Risse, Ropp and Sikkink, 2013). Given the tensions between local and international lobbying for change in the Commonwealth, and the prevalence of human rights discourses in the advocacy for the decriminalisation of same-sex acts, this model felt both comprehensive and nuanced enough. However, my theoretical framework also had to take into account both the diversity of local experiences in fighting for the decriminalisation of same-sex acts in different contexts, as well as the postcolonial dynamics existing in the Commonwealth, an inherently colonial setting. In this regard, decolonial approaches move away from focusing on nation-states as the centre of analysis by placing personal narratives and subjective standpoints at the heart of the research to hint at different, intersectional experiences of queerness (Gill, Purru and Lin, 2012). A decolonial approach has already been applied by Waites (2019) in relation to the 'boomerang effect', the latter being the only analytical element of the wider 'spiral model' looking at local experiences and agency through the prism of activism. Conveniently, Waites (2019) takes a decolonial approach to the 'boomerang effect' in the context of the decriminalisation of same-sex acts in Commonwealth countries, providing a helpful starting point for my own research. Waites is doing so by particularly looking at how human rights are articulated in different sociocultural contexts shaped by power, but also how social structures and resources are accessed in rights-claiming processes, and how rights-claimants are changed through these rights-claiming processes in return. This new critical model is therefore helpful in analysing the fight for and against LGBTI rights in postcolonial contexts, bringing a sociological outlook to capture the diversity of queer individuals' experiences as well as their own agency including in using and successfully navigating power structures and process established by the Global North, whilst taking into account tensions, redefinitions and resistances enabled by global power relations shaped by colonialisms. Specifically, this research demonstrates the successful use of 'transnational strategies to invoke human rights as defined in the UN system' (p.396) by postcolonial actors, revealing successful 'boomerang effects' in these diverse postcolonial contexts whilst eliciting the consequences of such an outcome for claimants. However, the model has only been tested in two legal cases of decriminalisation of same-sex acts, therefore excluding other cases of decriminalisation, especially through law reform. In addition, the two studies were focused on the Caribbean region – namely Belize and Trinidad and Tobago – thereby omitting other regions of the Commonwealth where local factors may have impacted on the results. There is therefore clear value in adding to existing evidence by applying this model to different contexts and decriminalisation processes.

I decided to take a comparative study analysis of five Commonwealth states spanning different continents, different decriminalisation processes and which have overall been less studied. These are Mozambique, Nauru, Cyprus, Belize and Sri Lanka. I began by conducting a thematic analysis of media documents to provide insights into the way the decriminalisation of same-sex acts is portrayed in national and international media in these countries. This analysis also provided context to the interviews I conducted between 2018-2021<sup>4</sup> with 16

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<sup>4</sup> The research will therefore not discuss key developments that occurred after this timeframe, e.g., decriminalisation of same-sex acts in Singapore.

individuals who have fought or are fighting for the decriminalisation of same-sex acts in the Commonwealth, including local and international activists, judges, lawyers and human rights advocates. The interviews were crucial to understand the different realities they navigate, what prompts, in their view, states to decriminalise same-sex acts, and which discourses are effective in this regard.

## 1.2 Navigating a terminological minefield

Definitions and attached meanings are incredibly important in any research, but even more so in research where terminologies are contested and reclaimed, and as the research covers different historical and local contexts. Indeed, human rights, sexuality, decriminalisation and the Commonwealth are all sociohistorical constructs, with varying understandings and interpretations. As there are as many sexualities and identities as there are contexts (Tamale, 2011; Weeks, 2018), there are as many terms employed to express non-conforming sexualities, gender identities or expressions and/or sex characteristics. These include lesbian, gay, bisexual, transgender and intersex often abbreviated to 'LGBTI', supplemented by other letters or a '+' to capture the diversity of experiences such as, *inter alia*, queer, questioning, pansexual, asexual, hijra, meti, lala, motsoalle, skesana, mithli, kawein, kuchu, travesti, muxé, fa'afafine, fakaleiti, hamjensgara or Two-Spirit (OHCHR, 2019). This, added to the fact that sexuality and gender are performative, in the sense that a person's sexuality or gender is ever-evolving (Butler, 1990) and constantly shaped and transformed by culture, religion and the law (Tamale, 2014) means no single word will adequately capture this diversity of experience or travel well across contexts. For instance, same-sex sexual acts and relationships have always existed in African societies but homosexual identity and the concept of sexual orientation is a Western social construct with little relevance in an African context (Long et al., 2003). There is also no available translation for 'sexuality' in Chichewa, the official language of Malawi, and Malawians associate 'homosexuality' with non-consensual anal sex between men thereby focusing on specific same-sex sexual practices rather than wider same-sex intimacy, identities or relationships (Msosa, 2016). This is particularly relevant when discussing sexuality within a human rights framework, where legal definitions can narrow the interpretation of sexuality to the right to privacy rather than self-expression (Sperti, 2017). Nevertheless, the acronyms 'LGBT' or 'LGBTI' have particular global resonance, including being actively used by UN agencies or Commonwealth organisations working on LGBTI issues, and interview participants to this research. Since this research is looking at transnational dynamics and aims at capturing commonalities (perceived or real) of experiences or actions, these acronyms will be heavily used throughout, including to reflect language used by different interview participants. That said, it is important to note that these terminologies have imperialistic undertones as conceived in and propagated by the West, and will often be inadequate to reflect the realities in certain contexts.

Following the above, (de)criminalisation is not immune to inadequate conceptual framings either. Indeed, the criminalisation of same-sex acts in most cases applies to consensual same-sex acts between men, which can lead to the experiences of LGBTI women to be overlooked. Also, it has been argued that the criminalisation of same-sex acts between women was not pursued to maintain the invisibility of lesbianism or even not deemed necessary as it was 'possible for men to socially control in a patriarchal context without turning to law' (Lennox and

Waites, 2013, p.16). Nevertheless, 41 states still criminalise women through specific provision or neutral language, including in Nigeria, the Solomon Islands or Sri Lanka for instance, (Gerber, 2014; Lennox and Waites, 2013; Human Dignity Trust, 2022) so the decriminalisation of same-sex acts needs to be considered in relation to the full spectrum of individuals impacted. In addition, it has been indeed demonstrated that the criminalisation of same-sex acts between men has been deployed to stigmatise not only men, but also women and gender non-conforming individuals regardless of the letter of the law (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015). This constitutes a further call to look at the impact of decriminalisation holistically, with the view to fully capture other connected stigmatisation and marginalisation. Furthermore, the decriminalisation of homosexuality is often used to refer to the legalisation of consensual private same-sex acts or the absence of penalties assigned to private same-sex acts, according to the Western conceptualisation of the law, which does not reflect non-Western countries' penal experience concerning same-sex intimacy. For instance, the 1858 Ottoman Penal Code decriminalised same-sex acts in private as monetary punishment was no longer assigned to private same-sex displays but it imposed a three-month to one-year imprisonment for public displays, thereby reinforcing the criminalisation of homosexuality in the public sphere (Ozsoy, 2021). Similarly, consensual same-sex acts in private between men were legalised in England and Wales in 1967, although it remained a crime in other circumstances, for instance when it took place in a public place or when one of the partners was aged between 16 and 20 at the moment of the act. Understanding the type of decriminalisation pursued and how effective it is in leading to the end of stigma and discrimination against all LGBTI individuals will be important to assess whether any country has fully achieved decriminalisation.

Finally, attempts to explain global structural inequalities meant that the global capitalist system is often conceptually divided between the wealthy West benefitting from colonialism (European nations and the United States), compared to the East (Braff and Nelson, 2022) or separates countries into the core (Global North) and the periphery (Global South) based on their economic participation (Wallerstein, 1974). As ever, whilst these distinctions are helpful in marking an imbalance of power, they erase nuanced dynamics of (re)appropriation of power which defy any simplistic binary categorisation (Braff and Nelson, 2022). Nevertheless, these terms are often used in the context of postcolonialism to signal structural power imbalance, including by the interview participants. Overall, these terms are used in context and according to specific references – academic, interview or otherwise – rather than imposed through this research. This is particularly important as they are often used interchangeably, sometimes without intent or clear definition behind them, and with varying degrees of interpretation.

### **1.3 Structure of this research**

Chapter 2 provides a literature review covering the sociohistorical context and consequences of the criminalisation of same-sex acts in the Commonwealth. The origins and spread of the laws criminalising same-sex acts in the Commonwealth can be explained through the codification efforts of English colonisers, unravelling dynamics of social and legal control. Since then, colonialism has permeated social relations and structures, blending with pre-existing social relations and institutions, which in turn confuses the social picture in which individuals and communities operate as well as undermines the discourses used to



decriminalise same-sex acts with anticolonial narratives. Thus, the literature review invites us to apply a postcolonial framework to human rights claims for decriminalisation in order to capture the power relations and tensions at play.

Chapter 3 looks at the decriminalisation trends and processes, including as part of international human rights and the Commonwealth. I show that most cases of decriminalisation result from broader reforms of countries' criminal laws although, recently, court challenges have been increasingly used to bring about decriminalisation, especially in Commonwealth countries. Consequently, LGBTI rights progress often rests on individual applicants seeking redress in both domestic and international courts. The Commonwealth as an inherently colonial organisation also fails to address the issue of non-compliance with LGBTI rights, which leaves civil society organisations to push for these issues to be added to the Commonwealth agenda, leaving them at risk of facing domestic or international backlash and violence. I argue that the Commonwealth could play a better role in enabling the articulation of human rights from multiple local, postcolonial contexts, and broaden the articulation of human rights claims.

As discussed above, I build on a decolonial approach to the 'boomerang effect' (Waites, 2019) to explain what pushes states to move from human rights commitments to compliance. Chapter 4 discusses in detail the design and methods used for this research, including the rationale for selecting the five countries of study. The chapter also reflects on the process used for both the thematic analysis of documents and interviews, research limitations and mitigations against these, as well as my positionality as a researcher.

Chapter 5 provides a media analysis for the five countries of study. I find that domestic litigation is more extensively covered by the media than legislative reform, impacting public awareness (or lack thereof) of the issues facing LGBTI individuals in their societies. This is compounded by the international media treatment of the decriminalisation of same-sex acts, which positions the decriminalisation process in a geopolitical context, giving the impression that the decriminalisation of same-sex act is a tick-box exercise, rather than resulting from domestic advocacy or local considerations. This fuels anti-LGBTI sentiment based on anti-imperialist resistance as it emphasises a transnational perspective skewed by a Western outlook. Nevertheless, domestic civil societies are successful in seeking to obtain international recognition and legitimacy by holding states accountable to their commitment to human rights. Thus, I argue focusing on creating a space for local narratives that centre the voices of activists and members of the community on the issue of the decriminalisation of same-sex acts is key. Compellingly, it would emphasise the compatibility of human rights within diverse contexts by clearly articulating them from the ground up.

Chapters 6 to 9 cover the analysis of interviews. In chapter 6, I identify a pattern of decriminalisation in the Commonwealth, where states let decriminalisation be adjudicated by the courts and rely on activism from individuals affected by the law to avoid the political cost of siding with a controversial moral issue. Looking at the recent decriminalisation processes in postcolonial societies, interviews conducted highlighted two main paths to decriminalisation, either high profile legal challenges, or quiet legislative reform where social discourses and discussions on LGBTI equality or recognition of LGBTI identities are absent. This observation

contrasts with other historical examples of legislative reforms where a public debate about the decriminalisation of same-sex acts was harnessed, and has a consequence in relation to the (in)visibility of LGBTI individuals in society, often perpetuating a sense of othering and a reinforcement of heteronormativity. Nevertheless, it is unanimously agreed that any path to decriminalisation is worth pursuing given the importance of providing human dignity to LGBTI individuals. I highlight the absence of a third decriminalisation process by which national legislators engage with their constituents on the need for decriminalisation through meaningful participation and deliberation, which *de facto* exhaust opportunities for minority rights' claims.

Chapter 7 shows that the internationalisation of the issue of same-sex acts responds to different motivations from stakeholders who want to either maintain or assert their power/narrative in an interconnected world. Motivations from foreign actors on both sides of the argument are therefore similar in the sense that they rely on, *inter alia*, domestic factors, economic and political gains in a context of global coloniality, where older colonial forms of domination perdure in the current world. States are using the opportunity for human rights change as a way to consolidate or shift their position internationally whilst activists welcome the spotlight provided by international exposure as it helps amplify their case for decriminalisation. In particular, benefits from transnational LGBTI activism have been articulated through interviews, as it provides new opportunities for action, allows for judicial dialogue between similar common law jurisdictions or enables domestic and transnational social movements to join forces to bring pressure 'from above' and 'from below' to drive human rights change. Whilst transnational funding and support may come with the strings of coloniality attached, it is nevertheless opening routes for redress.

Chapter 8 discusses the distinctive impact of different types of colonialism, and how it shapes the political, cultural, legal, and social approach to LGBTI rights. Crucially, since colonialism is part of the social fabric and societies have embraced the criminal laws after independence, I find it is impossible to decriminalise same-sex acts without challenging a complex nexus of beliefs and systems which form part of individual and communities' identities. Indeed, the relationship of LGBTI citizens and the state in postcolonial societies is shaped by past and present legal and social violence which impacts the way advocacy operates on the ground. As such, activism in postcolonial societies will most likely bring about risks of violence and backlash, but prevails on the basis of a desire to alleviate the suffering of other LGBTI individuals enduring stigma and discrimination. Importantly, LGBTI activists will know how to leverage space and time to pragmatically seize any opportunity for change, according to their local circumstances. I conclude the chapter by identifying the key factors required for successful activism.

The last interview chapter, chapter 9, shows that, across the different contexts, interview participants' narrative in favour of the decriminalisation of same-sex acts tends to focus on universally agreed principles, such as non-violence. Activists uphold these narratives and layer them with other targeted arguments that have a chance of succeeding within local contexts of states' social vulnerability or economic dependency, whilst narratives against the decriminalisation of same-sex acts predominantly place LGBTI individuals as deviants threatening the *status quo*. These narratives are overlapping, interconnecting and conflicting, and actors will switch from one another depending on the relevance and effectiveness at any

given time. However, attention must be paid to the relevance of any narrative when switching audiences, taking into account the usual pitfalls of transnationalism such as the imposition of Western terminologies unfit to local experiences and subsequent reinforcement of structures of powers given the complexity of postcolonial realities. Moreover, the influence of powerful social, often religious, actors, backed by economic imperatives means the plurality of local queer experiences are minimised or suppressed and dynamics of coloniality reinforced. The chapter concludes with lessons learnt from successful and unsuccessful narratives.

Finally, chapter 10 offers concluding remarks on the impact postcoloniality has on states' social and material vulnerability to pressure for human rights claims, including on the effectiveness of the narratives and strategies employed in regard to the decriminalisation of same-sex acts in the Commonwealth. In particular, postcolonial states are less receptive to international pressure for human rights compliance given anticolonial narratives resonate strongly in postcolonial societies. Also, whilst the research shows patterns of movement from human rights commitment to compliance including through the 'boomerang effect' in the five countries of study, these are shaped, delayed or hindered by powerful anticolonial narratives. I am therefore making the case for states to take leadership in bringing about the decriminalisation of same-sex acts in their countries, and the Commonwealth to play a better role at contextualising human rights for LGBTI individuals to facilitate human rights compliance in postcolonial societies. Indeed, effective strategies will need to include local queer experiences rather than only rely on the universality of human rights to successfully bring about change, especially beyond decriminalisation. Recommendations are made to academics, elected officials and activists from both the Global North and Global South in this regard.

## **Chapter 2. Literature review: causes and consequences of the enduring criminalisation of same-sex acts in the Commonwealth**

This research aims to unravel the dynamics which are effective in triggering the decriminalisation of same-sex acts in Commonwealth countries. To do so, it is important to first understand the rationale for the criminalisation of same-sex acts, and the way sexual acts and sexual identity have been legally and socially constructed in the Commonwealth. This chapter provides a literature review discussing the origins of the criminalisation of same-sex acts in Commonwealth countries and explore why these countries choose to retain these laws, before looking more closely at postcolonial dynamics favouring resistance to the decriminalisation of same-sex acts. Looking at levers for the decriminalisation of same-sex acts, existing literature points to the role of human rights mechanisms, the courts and transnational activism as the main enablers for decriminalisation whilst anticolonial narratives are the main inhibiting factor to the decriminalisation of same-sex acts in postcolonial societies. Given the number of factors at play, this chapter will consider a wide range of literature cutting across different disciplines, including studies focusing on (homo)sexuality in the context of colonialism, politics, international relations, human rights and the law.

### **2.1 Criminalisation of same-sex acts: origins, rationale and export**

Understanding the means by which (homo)sexual acts and (homo)sexual identity have been legally and socially constructed is paramount to understanding the prevalence of the laws criminalising same-sex acts in Commonwealth countries. Unravelling the origins of these laws leads us to focus on England at the beginning of medieval times, where sodomy was criminalised on the basis of being an offence against God. As a long-established offence, the criminalisation of same-sex acts was then exported to Commonwealth countries in the 19<sup>th</sup> century through the codification efforts of English colonisers, which confirms the British Empire's responsibility in regard to the criminalisation of same-sex acts in many Commonwealth countries.

#### **2.1.1 From religious taboo to social and legal control**

Before looking at the legal construction and subsequent criminalisation of same-sex acts, it is important to understand the social construct surrounding sex and sexuality. To do so, we need to refer back to the origins of the Old Testament, as the text underpins most of the Judeo-Christian tradition of Western societies. Indeed, a reading of the Old Testament reveals that conducts such as same-sex sexual acts, cross-dressing and bestiality were depicted as the most dangerous and alienating types of deviant behaviours. Christie Davies (1982) explains that the strong condemnation of such conducts is due to the fact that they break down pre-defined 'natural' categories, along binary and opposing social constructs. In this regard, same-sex sexual acts and cross-dressing infringe on the distinction between men and women, whilst bestiality blurs the distinction between the realm of humans and animals. The author further argues that a view of the world based on dichotomies provided communities with a strong

sense of preservation and survival, which meant that strict and binary social categories were perceived as paramount for social conservation. To support this argument, the author is drawing on examples provided by the Jews and the Parsees who were able to survive threats to their community and exile because of the maintenance of strict social boundaries (Davies, 1982, pp. 1036-1038; Dhalla, 1914, pp. 323-25, 367-369). Whilst it is observed that same-sex acts were clearly considered as transgressive and deviant in religious and social norms, it is not until the 12<sup>th</sup> century that researchers observe a stronger condemnation of these behaviours.

Indeed, fast-forwarding to the Middle Ages and the construction of nation-states, transgressive conducts such as same-sex sexual acts became the *bête noire* of powers when their territorial identity and integrity were threatened. For instance, in an attempt to protect the kingdom of Jerusalem against Muslim and other schismatic attacks, the Latin Church published four canons in 1120 condemning sodomy; the first canon stating that '[i]f any adult shall be proved to have defiled himself voluntarily by sodomitical vice, whether actively (*faciens*) or passively (*patiens*), let him be burnt' (as cited in Bailey 1955, p.96). Several authors have observed a tightening of religious, legal and national boundaries during the 13<sup>th</sup> century coinciding with an increased intolerance towards same-sex acts (Heer, 1962; Strayer, 1964; Boswell, 1980; Davies, 1982). Davies (1982) further observes that the clergy and the armed forces have played an important role in crystallising and reinforcing these boundaries in their own institutions as they were large, centralised and bureaucratic organisations willing to maintain their power and subsequently their hierarchical order. Consequently, the 13<sup>th</sup> century is marked by the crystallisation of same-sex acts as the most extreme anti-social behaviour in law. As Boswell (1980, p.295) observes: 'during the 200 years from 1150 to 1350 homosexual behavior appears to have changed from being the personal preference of a prosperous minority satirized and celebrated in popular verse to a dangerous anti-social and severely sinful aberration.'

It is then expected that the first reference to sodomy in English law is found during medieval times, where, in the Fleta and Britton treatises, this specific sexual act was treated as an offence against God. In these two texts, sodomy was defined alongside other disgraced sexual acts such as bestiality, but also specific races and religions, which were neither European nor Christian (Human Rights Watch, 2008). Also, in a catch-all condemnation, the Fleta treatise states: '[t]hose who have connections with Jews and Jewesses or are guilty of bestiality or sodomy shall be buried alive in the ground, provided they be taken in the act and convicted by lawful and open testimony' (as cited in Moran, 1996, p.213). Whilst in the Britton treatise, it was required that 'sorcerers, sorceresses, renegades, sodomists, and heretics publicly convicted' shall be burned (as cited in Bailey, 1955, p.86). Conflating offences related to race, religion and specific sexual acts is revealing of the context in which these treatises were written, where Christian precepts prevented sexual practices to be performed for any other purpose than procreation whilst anyone who was not Christian was perceived as an outcast. Furthermore, as mentioned above, sodomy was seen as corrupting the social purity and morality of European societies by blurring strict and rigid social boundaries. It is also for this reason that sodomy was never clearly defined legally, as an extensive description of the act would imply knowledge of the sin itself and 'contaminate' others (Human Rights Watch, 2008). In other words, the act of sodomy was perceived as 'injurious to the whole community' (Brown,

1952, p.142). In fact, Brown (1952) demonstrated a direct correlation between the severity of punishment for homosexuality with the belief that homosexual behaviour was harming the community. When the English monarchy separated from the Catholic Church, criminal matters were to be adjudicated in secular courts rather than ecclesiastic courts. Also, the 1533 Buggery Act was enacted to continue the criminalisation of sodomy via state law, providing the death penalty in case of offence. In this context, the enduring criminalisation of sodomy results in the willingness to take over the jurisdiction of ecclesiastic courts rather than a desire to follow religious principles and/or maintain social boundaries (Hyde, 1970, p.39; Johnson, 2019, p.3). This attitude towards buggery is later confirmed when Mary I *de jure* decriminalised same-sex acts by introducing an Act in 1553 to re-establish the jurisdiction of ecclesiastic courts. However, buggery was re-established as an offence to be adjudicated by criminal courts in 1562.

The criminalisation of buggery endured centuries of political and legal change, until the 1861 Offence Against the Person Act dropped the death penalty and replaced the sentence to a minimum ten-year imprisonment. Whilst buggery was then defined as any form of anal penetration, prosecution for 'attempted buggery' could also be tried, thereby criminalising more cases of same-sex acts (Waites, 2013; Weeks, 2018). In 1885, the Criminal Law Amendment Act introduced the act of 'gross indecency' which opened up the interpretation to encompass any sexual behaviour between men rather than specific same-sex sexual acts (Waites, 2013). In fact, 'attempted buggery' and 'indecent assault' were used to broaden the scope of criminalisation in the 19<sup>th</sup> century (Cocks, 2003). Since then, it has been widely documented that, whilst the laws often criminalise specific same-sex sexual acts rather than sexual identity, they are used to prosecute any individual perceived or identifying as LGBTI, thereby *de facto* extending the criminalisation of acts to identities (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015; Human Rights Council, 2017). It is then in the context of a well-established offence that has never been challenged and reflects a 'punitive tradition' of law (West and Wöelke 1997, p.197) that we need to understand its spread to Commonwealth countries.

### **2.1.2 Colonialism and export of laws criminalising same-sex acts**

The criminalisation of same-sex acts was exported to Commonwealth countries, as many other criminal laws, through the codification efforts of English colonisers. The first Criminal Code ever enacted in the British Empire (including England itself) was the Indian Penal Code 1862, which was drafted in 1837 by Thomas Babington Macaulay. Macaulay was a British politician and historian who believed that assimilationist colonial policies would help modernise India (Kadish, 1978). This is particularly relevant as Friedland (1990) observed that Codes reflect the philosophy of their drafters; the fact that the Indian Penal Code 1862 was drafted by an English member of parliament at the time of the British administration of India thus cannot be overlooked. The Indian Penal Code 1862 was then transposed to many countries which were either part of India at the time (Pakistan, Bangladesh) or which were administered from India (Singapore, Malaysia and Brunei via the Straights Settlement Law 1871). The Indian Penal Code 1862 was also adopted by countries later colonised by the British Empire (Sri Lanka via its Penal Code of 1885, Myanmar via its Penal Code of 1861, enacted 1886). Subsequently, two lawyers were mandated in the 1870's by the British authorities to draft a

Criminal Code: Robert Wright, at the request of the British Colonial Office and James Fitzjames Stephen, at the request of the Lord Chancellor's Office. Both authors had different views on how criminal codes should be drafted and on the interaction of morality and the law in particular. Wright was more liberal and followed John Stuart Mill's principle of enforcing the law only to prevent harm to others (Mill, 1859) and as such provided for a maximum two-year sentence for consensual buggery (Wright, 1877), whilst Stephen required a minimum sentence of 10 years, with penal servitude for life (Stephen, 1878). Wright's Criminal Code was introduced in Belize's Criminal Code 1888, Tobago through the Sexual Offences Act 1986 and Saint Lucia in its Criminal Code 1920. Meanwhile, Stephen's Code was reviewed and enacted in the Australian state of Queensland in 1901. The Queensland Criminal Code (1901) was then adopted in Northern Nigeria in 1904, Kenya, Uganda, Tanzania and Malawi, in 1930, Zambia in 1931, as well as Cyprus via the Criminal Code Order of 1928 and Israel/Palestine via the Palestine Criminal Code Ordinance of 1936. Stephen's Code was also a reference point for the criminal codes of New Zealand (1893) and Canada (1892) although these laws were technically adopted by self-governing countries through domestic-led parliamentary processes. The reason why these Criminal Codes travelled far and wide is simple: codifying criminal laws took a great amount of time and effort (Friedland, 1990) and the mere fact that these Codes were available meant they were easily adopted by pragmatic and inexperienced colonial judicial officers (Han and O'Mahoney, 2018).

In 2008, research published by Human Rights Watch retraced the history of criminalisation of same-sex acts in the Commonwealth, which has been quickly covered above. The report also highlights the rather persisting legacy of Britain's sodomy laws in its former colonies, especially when compared to other colonial powers such as France or Germany. Since then, a small body of the literature has looked specifically at the criminalisation of homosexuality in the context and result of British colonisation. Han and O'Mahoney (2018) have investigated further the claims that the British Empire was indeed the reason why so many countries still criminalise same-sex acts today. They found that the British Empire exported the criminalisation of same-sex acts to its colonies either by imposition or influence, or because countries choose to imitate English-inspired Criminal Codes (Canada, Australia, New Zealand). However, they also found that some former British colonies have adopted laws criminalising same-sex acts only after their independence from the British Empire (e.g., Sudan), and that responsibility could not be attributed to the British Empire for these cases. It cannot be denied, however, that British colonialism played a significant role in shaping the political and cultural institutions of the countries taking the decision to criminalise same-sex acts after their independence. Interestingly, whilst the two authors have confirmed that the British Empire was responsible for the criminalisation of same-sex acts in most Commonwealth countries, they debunked the claim that former British colonies are slower to decriminalise same-sex acts compared to other foreign colonies. In fact, they found that former Spanish colonies took particularly more time to decriminalise same-sex acts after independence from the Spanish Monarchy. This observation leads the authors to conclude that 'the stickiness of repressive institutions is relatively constant and not a product of a particular type of colonialism' (2018, p.41). Time will need to confirm that conclusion however, as 32 out of 66 countries still criminalising same-sex acts are part of the Commonwealth. In addition, some research does show that the relatively loose regulation of sexuality by Portuguese colonial authorities explains the decriminalisation and more tolerant social

attitudes in Mozambique when compared to neighbouring countries formerly ruled by the British Empire (Gomes da Costa Santos and Waites, 2019). In addition, whilst confirming that the criminalisation of homosexual acts in Commonwealth countries is most certainly a legacy of the British Empire is already an important finding in itself, it does not assess the factors leading to decriminalisation thereby missing a qualitative element of the analysis that may be beneficial to inform activism in that space. As such, this research aims at filling that gap by assessing the decriminalisation processes in five Commonwealth countries.

Finally, with the view to untangle the effect of colonialism on the criminalisation of same-sex acts in Commonwealth countries, some research explored the state of acceptance towards same-sex acts and same-sex relations in different countries prior to British colonisation. Most found evidence of practice and tolerance towards homosexual conducts before colonisation, often reported through the colonisers' prism. For instance, accounts from Portuguese and Dutch colonisers reported the 'sinful' acceptance of same-sex conducts in Sri Lanka. In 1547, the Portuguese wrote to the Governor of Goa stating that 'the sin of sodomy is so prevalent in this kingdom of Cota that it almost frightens us to live here' (Perniola, 2017, p.239). This type of research contributes to positioning the criminalisation of same-sex acts as a colonial export and helps bust the myth that acceptance of homosexual relations is a Western cultural trait, thereby opposing some anti-colonial rhetoric centring criminalisation of homosexuality as a way to protect a country's culture against the Western agenda. However, this needs to be nuanced against other research conducted on precolonial societies, where social attitudes may not have been so accepting (Gomes da Costa Santos and Waites, 2019). Nonetheless, even if precolonial homophobia existed in these countries, it does not undermine the British Empire's responsibility in regard to the current criminalisation of same-sex acts in many Commonwealth countries. The mere fact that the British Empire exported these laws to its colonies, whether by imposition or influence, means that it has a moral responsibility for their current existence, regardless of whether existing states consciously retain these laws. That said, it is also a matter of fact that many Commonwealth states criminalising same-sex acts choose to retain this alien legacy and that they have their share of responsibility for not reforming these laws.

### **2.1.3 Rationales for the (de)criminalisation of same-sex acts**

In 1954, after a rise in arrests and prosecutions under the Criminal Law Amendment Act 1885 and a series of high-profile trials including the one of Alan Turing, the UK Government decided to set up a committee to look at the offence of prostitution and homosexual behaviour. The committee published its conclusions in a report known as the Wolfenden report (1957, p.25, para.62), recommending that 'homosexual behaviour between consenting adults in private should no longer be a criminal offence.' The report paved the way to the decriminalisation of same-sex acts in England and Wales 10 years later and is often celebrated for this accomplishment. However, looking at the arguments supporting the decriminalisation in the report and the wider context surrounding the publication of the report, a more nuanced analysis is needed.

The Wolfenden report examines three arguments against the decriminalisation of consensual same-sex acts in private: that it will cause the demoralisation and decay of society, weaken



family life and heterosexual marriage, and increase cases of paedophilia. Whilst the report found no substantive evidence supporting any of these claims, the mere fact that these assumptions were actively and extensively considered by the committee *de facto* gave some validity to such assumptions towards homosexuality. Similarly, whilst the committee refutes the idea of homosexuality being considered a disease, it still explored at length medical evidence in relation to homosexuality as a 'condition' (Moran, 1996, p.115). Furthermore, whilst the report imputes the increased visibility of homosexual behaviours to both sexuality matters being more freely discussed in the public domain, and an increase in police activity and reporting (1957, p.19, para.42-43), it is still perceived as a problem to tackle. Consequently, Waites (2013, p.152) remarks that: '[t]he Wolfenden committee was thus not created with a 'permissive' intent, but was a product of increasing social anxieties concerning the increasing incidence and public visibility of homosexuality and prostitution.' Indeed, the recommendation to legalise consensual same-sex acts in private is motivated by making the visibility of homosexual behaviour invisible. It is not surprising to see then that the Wolfenden report (1957, p.24, para.61) advocates for a shift from the collective regulation of homosexual behaviours to an individual regulation, rather than advocating for permissiveness: 'to emphasise the personal and private nature of moral and immoral conduct is to emphasise the personal and private responsibility of the individual for his own actions.' It is then expected that the decriminalisation of consensual same-sex acts in private will lead to a decrease in public homosexual behaviours. Waites (2013, p.147) concludes that albeit reaching the conclusion of decriminalisation, 'the Wolfenden report's assertion of a realm of individual privacy entailed complex governing processes seeking containment of homosexuality, including through moral and medical regulation.' Interestingly, the Church of England Moral Welfare Council published its interim report (1954, p.21) three years prior to the publication of the Wolfenden report, arguing in favour of the decriminalisation of consensual same-sex acts because 'it is not the function of the state and the law to constitute themselves the guardians of *private* morality, and that to deal with *sin as such* belongs to the province of the Church.' Arguing for the decriminalisation of same-sex acts is therefore arguing for the secularisation of criminal law, in an attempt by the Church to reclaim its authority in policing private morality (Grimley, 2009, p.739). The Wolfenden report (1957, p.24, para.6) defends that line of argument by concluding: '[u]nless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of a sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business.'

Also, when considering the criminalisation of certain forms of sexual acts, and in this instance, private consensual same-sex acts, it is important to look at the rationale for doing so and consider arguments on whether morals should be legally enforced upon society. Indeed, on the back of the publication of the Wolfenden report (1957), the place of law in regulating morality and consequently sexuality, was debated by Professor Hart and Lord Devlin. As a legal moralist, Lord Devlin argued that social attitudes should inform and shape the laws of society. In relation to same-sex acts, Lord Devlin (1965, p.17) declared:

We should ask ourselves in the first instance whether, looking at it calmly and dispassionately, we regard it as a vice so abominable that its mere presence is

an offense. If that is the genuine feeling of the society in which we live, I do not see how society can be denied the right to eradicate it.

Lord Devlin's argument is that any given society has a right to protect itself against acts perceived by the majority of its members as immoral and offensive to maintain its social order. However, Professor Hart (1963) opposed Lord Devlin's argument and, in line with the legal positivist tradition where laws are socially constructed rather than emanating from any kind of natural moral norms, took the view that laws should refrain from interfering with individual freedom. His argument follows the 'do no harm principle' developed by John Stuart Mill who famously stated: 'the only purpose for which power can be rightfully exercised over any member of a civilized community is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant' (Mill, 1859, p.223). According to Professor Hart, engaging in consensual sexual practices with a person of the same sex in private is a matter of personal choice and individual freedom, and thus does not constitute a justification for the law to intervene in the private lives of citizens. Most court cases related to the decriminalisation of consensual, private same-sex acts around the world have come to similar conclusions in their rulings and demonstrated that morals were indeed not a proportionate aim to justify state intervention.

In *Lawrence v Texas* (2003), it was stated that the role of the court is to define liberty of all, not to mandate the state's moral code. In his dissenting opinion, Justice Scalia argued that since the courts are not democratically elected, they cannot contravene society's decision on what is morally acceptable. In his opinion, the fact that Texas has chosen to criminalise same-sex acts 'is well within the range of traditional democratic action, and its hand should not be stayed through the invention of a brand-new 'constitutional right' by a Court that is impatient of democratic change' (*Lawrence v Texas*, 2003, Scalia dissenting). This supports Lord Devlin's statement above, in the sense that if it is the 'genuine feeling of the society' that consensual same-sex acts are wrong, the courts should defend that social stance, and uphold traditions. The problem with the argument that the law should reflect social norms is the assumption that society is a homogenous entity where morals are agreed by consensus of the majority. It is unreasonable to think that individuals from the same society will all have similar views in regard to private behaviour morality. Case in point, some Anglicans supported Hart's position on this debate, as they feared that Devlin's argument that the law should reflect the morality of the majority would undermine the Church's position in the context of what they saw as a society becoming increasingly secular (Grimley, 2009, p.736). Interestingly, a study on morality policy shows that opponents to gay rights in the United States used rational and procedural arguments to campaign against gay rights rather than exposing arguments based on their own private behaviour morality (Mucciaroni, 2011). This clearly indicates the weakness and unrelatability of arguments based on private behaviour morality.

Whilst most cases related to the decriminalisation of consensual same-sex acts centred their arguments on the individual's right to privacy in regard to their sexual conduct and the role of the law in regulating sexual acts, they also engaged with sexual identity, by developing a legal definition for homosexual identities. In *Dudgeon v United Kingdom* (1981), the ECtHR defines for the first-time homosexuality as an 'essentially private manifestation of human personality' rather than a sexual practice produced by culture (para.60). Legally, defining sexual

orientation as part of being human was a clever attempt at preventing sexual orientation to be perceived as an illegitimate ground of discrimination. Indeed, if homosexuality was defined as being part of culture, and that laws can shape morals and culture, this could be perceived as encouragement to regulate private matters (Sperti, 2017). However, legally conflating a sexual act and sexual identity also has its limits. As a start, it does not capture the complexity of sexualities experienced. Indeed, if homosexuality is defined as inherent to being human, one has to move away from analysing sexuality as a socio-historical product, which is by definition context dependent and constantly evolving.

Judith Butler (1990) has argued that sexuality and gender are performative and, as such, a person's sexuality is fragmented, fluid and dynamic. The legal definition, albeit securing rights for sexual minorities, narrows the definition of sexuality which should encompass the variety of realities experienced, and prevent different sexual minorities from redefining the term according to their own relevant contexts. For the purpose of this research, which is focusing on dynamics contributing to a specific legal process, being the decriminalisation of consensual private same-sex acts, I will retain this legal, essentialist definition whilst understanding the implications for sexual minorities fighting for their recognition around the world. Sexual practices need to be differentiated from sexual identities, and reframed in their context to be meaningful. As discussed above, same-sex acts and relationships have always existed in different sociohistorical contexts but the concept of sexual orientation itself is a Western social construct which does not travel or translate easily across non-Western societies (see, for instance, Long et al., 2003; Msosa, 2016). Also, sexual and gender identities do not have the same associated meaning everywhere, are often interlinked, sometimes conflated, and often produced as a reaction to other discourses. With this in mind, we will now look at the rationale for Commonwealth countries to retain criminalising laws.

## **2.2 Postcolonial resistance to decriminalisation**

The previous section shows how the laws criminalising same-sex acts spread to Commonwealth countries. Whilst it is clear that the British Empire is responsible for the criminalisation of same-sex acts in the Commonwealth, reasons as to why these countries choose to retain these laws post-independence still need exploring. This section first problematise the Commonwealth before discussing the rationale for resisting the decriminalisation of same-sex acts in a postcolonial context. Since colonialism has permeated social relations and structures, blending with pre-existing social relations and institutions, it is important to analyse the coloniality of power when considering current criminalisation of same-sex acts in Commonwealth countries.

### **2.2.1 Problematizing the Commonwealth**

In a thesis considering postcolonial and decolonial approaches to the decriminalisation of same-sex acts in a Commonwealth context, one needs to acknowledge the inherently complex and paradoxical history of the Commonwealth itself. Indeed, Torrent (2012, p.349) explains the dilemma:

[T]he Commonwealth can mean two very different things: an imperial construction, intended to secure, expand and ultimately save Britain's global role and ensure the white Dominions' political autonomy and regional security; and an actor in its own right, whose very objective is the end of colonial forms of domination throughout the world, beyond the Commonwealth itself.

As such, whilst an institution clearly rooted in a new imperial project aimed at "reinforc[ing] cooperation across the white empire of settlement" (Torrent, 2012, p.349), the Commonwealth nonetheless enabled discourses of resistance and decolonisation throughout its history and evolution as a political association – from the admission of the Irish Free State in Commonwealth meetings in 1922 clearly opening a path to resisting British dominance, to non-white state membership in 1947-1949 (India, Pakistan and Ceylon) or first African state membership in 1957 (Ghana) which ultimately led to African states representing more than a third of the Commonwealth's total membership. By 1964, states newly independent from the British rule had a clear majority in the Commonwealth of Nations and, from 1990, membership was granted to states that were not under British rule (e.g., Mozambique, Rwanda and Gabon). The Commonwealth history is not only marked by the opening of its membership, but also by its institutional development, which allowed South-South cooperation with the creation of the Commonwealth Fund for Technical Cooperation in 1971 and the Commonwealth Youth Programme in 1973, and broadly enabling civil society and professional associations to closer contacts with government officials since 1965 via the creation of the Commonwealth Foundation (see Torrent, 2012). Whilst it cannot be denied that the institutionalisation of the Commonwealth in the backdrop of decolonisation processes in formerly colonised countries could be analysed as an attempt 'to retain links forged in oppression' (Ahmed, 2018, p.369) and to maintain the coloniality of power, it is undeniable that it is also 'a place both for healing and for forging new ties' (Ahmed, 2018, p.369). Indeed, '[t]he Commonwealth has proven to be a space where activists and radical thinkers can push for decolonial agendas with success' (Ahmed, 2018, p.370), providing a platform for human rights and LGBTI activists to connect, challenge their governments and exchange best practice, including through transnational activism (see section 3.3 below).

The inherent and uncomfortable duality of the Commonwealth as an institution is clear, and the adoption of a decolonial framework in this thesis works to question its positionality, bringing critical awareness of its limitations, functions, and overall significance. Ahmed (2018, p.370) argues that the Commonwealth will 'never be an emancipatory institution in and of itself unless the status quo is willing not only to acknowledge and regret its past, but also to work to dismantle it.' The question remains how this can be successfully done, bearing in mind the sociocultural context in which the institution operates within, in its postcolonial complexity and diversity. Research on social attitudes regarding the (de)criminalisation of same-sex acts in postcolonial contexts further sheds a light on the difficulties of undertaking such dismantlement.

## **2.2.2 Decriminalising same-sex acts in a postcolonial context**

Many United States-based studies have looked at understanding what shapes social attitudes towards homosexuality, however findings point towards different, sometimes opposite

directions. First, a number of studies have shown that sociodemographic characteristics, such as religion, gender, political affiliation, age, income and education shape social attitudes towards homosexuality. Indeed, a literal reading of the Bible and conservative protestant affiliation are associated with less favourable views towards homosexuality (Burdette, Ellison and Hill 2005; Tuntiya, 2005; Olson, Cadge and Harrison, 2006), whilst individuals identifying as politically liberal (Hill, Moulton and Burdette, 2004), who are women, young or who have higher education and income levels are more likely to hold favourable views towards homosexuality (Herek, 2002; Andersen and Fetner, 2008; Ohlander, Batalova and Treas, 2005). Further studies have shown that the belief that homosexuality is either innate or a choice affects individuals' likelihood to hold more or less favourable views towards it. Indeed, individuals who believe that homosexuality results from genetic or natural factors are more likely to hold favourable views towards homosexuality than individuals who believe that homosexuality is a (controllable) choice (Whitehead, 2010). One would assume that making the case for homosexuality as being natural (disregarding the caveats around sexuality as being performative for the purpose of the argument) would help change social attitudes. However, Boysen and Vogel (2007) have argued that a natural explanation of homosexuality actually polarises existing beliefs whilst the analysis provided by Davies (1982) on taboos against homosexuality (see above) shows that individuals will resist scientific evidence to mark symbolic and cultural boundaries, rejecting homosexuality against natural factors. In addition, Whitehead and Baker (2012) demonstrated that what individuals consider as an acceptable source of knowledge and as moral authority is crucial to understanding whether people will hold negative views against homosexuality, even after controlling for sociodemographic factors. This means that social attitudes can be resistant to scientific evidence if it is not seen as the authoritative source of knowledge. Therefore, specific understanding of the factors underpinning social attitudes towards homosexuality in Commonwealth countries is required to refine these accounts.

Culture and religion are often put forward to justify any resistance to decriminalisation of same-sex acts, especially in the Commonwealth. However, rationales based on culture and religion are not based on solid grounds. For instance, and to a degree, most religions promote compassion, acceptance and understanding of others regardless of who people are. Someone invoking religion as grounds to discriminate against LGBTI people and/or support the criminalisation of same-sex acts would therefore choose a selective interpretation of religious texts. Arguments based on cultural grounds would suffer the same treatment, that of a selective interpretation. For instance, analysing social attitudes towards homosexuality in Malawi, Msosa (2016) demonstrates that the Malawian humanist philosophy promotes inclusion and compassion, whilst a transgender woman, Tiwonge Chimbalanga, 'coexisted with her local community until the law said she was a criminal' (Msosa, 2016). Consequently, if cultural and religious matters may be used as a justification for negative social attitudes towards same-sex acts, they do not support the criminalisation of same-sex acts. If a religion or culture was to reject homosexuality, something that would be difficult to support given anecdotal evidence of same-sex acts practice and even social tolerance towards it, the criminalisation of same-sex acts cannot be justified in any case, as clearly it is a colonial import. For instance, in Malawi, sanction for same-sex acts was only introduced with colonial penal laws (Msosa, 2016). Moreover, language does not necessarily travel, nor have similar meaning or interpretation depending on the context. According to Msosa, 2016:

The meaning of homosexuality or LGBT or LGBTIQ depends on the (mis)interpretation according to each individual's localized imagination. As such, the meanings of homosexuality vary for different Malawians. Most Malawians associate homosexuality with non-consensual anal sex involving at least one adult male. It is rarely associated with consensual conduct, love or non-sexual activities.

Language and meaning associated with it are therefore important factors, shaping attitudes towards same-sex acts in particular or homosexuality more broadly. In this context, queerness is 'an assemblage that is spatially and temporally contingent' (Puar, 2007, p.204) that needs explaining to understand the context surrounding specific social attitudes and discourses.

Postcolonial studies have participated in unravelling the inherent subjectivity, spatiality and temporality of the law. The former President of the International Court of Justice, Mohammed Bedjaoui (1985) stated that international laws set up during colonial times 'consisted of a set of rules with a geographical basis (it was a European law), a religious-ethical inspiration (it was a Christian law), an economic motivation (it was a mercantilist law) and political aims (it was an imperialist law)' (p.154). In most Commonwealth countries, the criminalisation of homosexuality was never a goal in itself but part of the adoption of an extensive 'package' of codified criminal laws. The reason for codifying criminal laws originated from a 'Eurocentric enterprise' (Nunn, 1997), an intent to modernise countries which were colonised by the British Empire. As mentioned above, Macaulay drafted the Indian Penal Code with the view that the British Empire should modernise India. On the issue of Indian education (1835, para.34), he noted:

We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population.

This statement showcases a specific colonial mindset, focusing on bringing modernity to colonised countries using the 'Western nomenclature' as a reference. The reference point of Macaulay's Indian Penal Code was also the Western nomenclature, it was in fact European laws. Whilst he considered the local context and sensitivities, he did not amend his draft Penal Code in any substantial way as to undermine the European-influenced legal framework (Kadish, 1978). The attempt to codify and clarify customary law through a Western legal framework was particularly discussed by Spivak. She developed the concept of 'legal Orientalism', the attempt by colonisers to incorporate Hindu law into the Western legal framework (Spivak, 1988, p.281). The direct consequence of reframing personal and customary laws through a European lens meant that these laws were not considered legitimate if they were not institutionalised after a Western model (Davies, 2002).

Postcolonial studies have also shown how the legacy of colonialism in former colonised countries forever changed the cultural, legal and political makeup of these countries. Indeed, colonialism was not just simply about the modernisation of colonised countries, 'it was also about ideological and racial domination, Eurocentrism as 'truth', and the essential marginalisation of most of the globe' (Roy, 2008, p.323). As a result, it is not only legal institutions which have been affected by colonialism, but educational and political structures as well, and these dominant social structures remain in place. This is partially because the elites of former colonised countries are educated in the West, and/or have been socialised in legal, educational and political institutions established from the West and are therefore maintaining institutions and processes inherited from colonial times (Ngugi wa Thiong'o, 1986; 1993). Of course, these social structures are not static and have evolved through the years after the independence of countries formerly colonised, but they are not rid of the colonial legacy. Bhabha developed the concept of 'hybridity', where identities and ideas have cross-fertilised as a result of colonialism, thereby blurring the picture pre/post colonisation and coloniser/colonised (Bhabha, 1994; Spivak, 1988). Consequently, it is an impossible task to dismantle the colonial legacy. For this reason, Davies (2002, p.278) pointed out:

[D]ecolonisation does not result in a return to a pre-colonial state, but rather movement into a "postcolonial" state, where the effects of colonialism have become an inextricable part of the culture and of its legal, educational, and political institutions, and where the colonial state still serves as a reference point in local discourse.

Indeed, the decolonisation process was based on the idea and creation of the nation-state, following and maintaining borders set by imperialist powers. More than legal, cultural, political and social structures were inherited from the colonial powers, new discourses based on the construction of 'Otherness' were developed. In this manner, discourses are systems of meaning that perpetuate dominant social systems by continuously (re)asserting power. By constructing the 'Other' as uncivilised, colonial empires have firmed up their power and reinforced the legitimacy of their own structures. However, by constructing the image of Otherness, the West is also a prisoner of its own image, which is used by the colonised Orient to reassert their difference (Said, 1995). Helpful conclusions can be drawn from postcolonial studies and applied to the subject matter we are interested in, which is what effectively works in driving the decriminalisation process in Commonwealth countries. Firstly, in the same way that decolonisation cannot lead to the return to a pre-colonial state, the decriminalisation of same-sex acts will not lead to a state of pre-criminalisation, where social attitudes towards homosexual acts and relations were, potentially, more understanding. Secondly, colonisation has shaped the dominant legal, political and educational institutions in colonised countries but colonialism has permeated social relations and structures, blending with pre-existing social relations and institutions, giving a completely new picture in which people operate. Focusing on the colonality of power as form of domination based on racial social classification and asymmetric knowledge production (Quijano, 2007) will therefore be a requirement for any research looking at the decriminalisation of same-sex acts in Commonwealth countries.

### **2.2.3 Instrumentalisation of same-sex narratives and international positioning**

Whilst it is helpful to look at social attitudes and the postcolonial context in which Commonwealth countries operate, it is also important to look at states' positioning on the issue of homosexuality and underlying power dynamics. Existing studies have found that pro-LGBTI rights discourses have often increased resistance to struggles for sexual equality, and more generally, produced uneven results in regard to achieving progress for LGBT people's rights (Hepple, 2012; Kahlina, 2015). Also, there is value in isolating factors of success (or failure) in promoting LGBTI rights in the sense that they actually enhance or prevent states' compliance with human rights. In addition, as we will see below, some countries have been receptive to international pressure and have changed their position by going down the path of decriminalisation as a result of it. This begs the question: what are the effective conditions for the decriminalisation of same-sex acts in Commonwealth countries which would lead to change?

As mentioned above, it was not only the laws that were exported but homophobia as well. Also, it is important to frame heterosexism and homophobia as 'socially produced forms of discrimination located within relations of inequality' (Murray, 2009, p.3). As such, Murray investigated global homophobia as a transnational political phenomenon which has been 'produced through a complex nexus of gendered, classed, and raced inequalities which are in turn tied to long-term local and transnational political and economic relations of inequality' (Murray, 2009, p.3-4). Weiss and Bosia (2013) also analysed homophobia as a transnational political phenomenon and its relation with colonialism, nationalism, sexism and racism. Indeed, studies have found that the politicisation of homophobia as a transnational phenomenon is being used for states' global (re)positioning (Kahlina and Ristivojevic, 2015; Weiss and Bosia, 2013). Pro-LGBTI rights states on the other end, use national homonormativity or 'homonationalism' to legitimise their national sovereignty and expand their power, as demonstrated by Puar (2007; 2013) in the case of the US expanding its imperialism via its war on terror. These analyses are particularly helpful to understand homophobia as a tool and understand the (re)appropriation of homophobic arguments and discourses as cultural and anti-West. Indeed, many studies have demonstrated that homophobia is rooted in the perception that homosexuality is a colonial attack on African masculinity (see for example, Morrell, 2001). However, it has been evidenced that right-wing Christian organisations from America are resourcing religious organisations in Africa to extend prejudice (Fagan and Msosa, 2016). Whilst these studies are useful in understanding why states position themselves in favour or against LGBTI rights, they do not look at the means by which states are trying to achieve their goals and whether they are successful in effectively promoting or delegitimising LGBTI rights in their undertaking (aside or on top of securing their position in international relations). In addition, these analyses disregard the problem of gross human rights violations against LGBTI people.

A postcolonial analysis is also relevant when considering the production of knowledge in relation to sexuality. The marginalisation of gender and sexuality in the study of international relations (Steans, 2013) means that there are few studies which are actually looking at what works in promoting the rights of LGBTI people in the context of international relations. In fact, heteronormativity is still prevalent in international relations, which undermines our understanding of the impact of violence on individuals with a minority sexual orientation or gender identity. For instance, both sexual and gender-based violence monitoring fail to



account for individuals who fall outside a binary definition of gender (Steans, 2013; Hagen, 2016;). In fact, progress and struggles in regard to LGBTI rights are often presented and analysed along Western and non-Western lines in international relations studies, which leads to an oversimplification and misleading construction of homosexuality, generally only treated as opposed to heterosexuality, in the same way that modernity is opposed to tradition, the Global South to the North, etc. This affects the ways these subjects are treated in research of same-sex practices and even scientific studies around HIV/AIDS (Nyeck and Epprecht, 2013). Consequently, it is important to decentralise sexual identity studies (Kulpa and Mizielinska, 2011) and frame the process of decriminalisation of same-sex acts and associated strategies in a postcolonial context.

Understanding that colonisation is not only about modernity but also an imperialist project has wide implications for promoting human rights as well. Several authors have unravelled the imperialist project of human rights, rejecting their universalism by (re)contextualising their Western origins. For instance, promoting new human rights contributes to (re)legitimate the human rights system by incorporating claims from vulnerable groups (Otto, 1997, p.13), which ultimately protects the interests of the elites of all nation-states from, for example, the erosion of sovereign power by the recognition of universal indigenous rights, and the reduction of male, heterosexual privilege by the inclusion of women's, children's and sexuality rights in the category of fundamental human rights. Similarly, Rajagopal (2003) warns us against accepting the human rights discourse as the sole discourse of resistance, when it enabled nation-building through the process of etatisation. Otto further argues that cultural relativists are trying to reverse the order imposed by universality to be on the dominant side of the system rather than actually try to change the system: '[i]n short, arguments of cultural difference and of universality, while important in themselves, are being used to serve a variety of macroeconomic, social, and political interests' (Otto, 1997, p.13). This is useful in the context of the strong backlash from some African countries in response to the UK and the United States' human rights discourses. However, saying that does not mean that human rights are not helpful to decriminalise same-sex acts and promote rights and social recognition of LGBTI people. In fact, cases involving sexual orientation as a ground of discrimination have a clear trend, they have evolved from the individual's right to privacy, to freedom of expression, to equality and non-discrimination (Sperti, 2017), which means the human rights framework is more relevant than ever for securing rights for sexual minorities. Also, Angela Harris (1994, p.744) observes that '[f]or people of color, as well as for other oppressed groups, modern concepts of truth, justice, and objectivity have always been both indispensable and inadequate.' Similarly, as we will see below, the means to promote decriminalisation are sometimes inadequate, in the sense that they are reinforcing power mechanisms already at play, but nevertheless indispensable to achieve decriminalisation and human rights advances for people with a minority sexual orientation. As such, when using a human rights framework for this research, we are recognising its usefulness and applicability whilst understanding its imperfections and constraints. This is why referring to postcolonial studies is crucial in this research, to remind ourselves of universalists and imperialist pretensions at play and understand the dynamics favouring the resistance to decriminalisation. In light and despite of this, we are going to next consider the factors influencing the decriminalisation of same-sex acts in the Commonwealth.

## **2.3 Levers for transformative change: the ‘spiral model’ in context**

Different research from a wide range of disciplines have looked at potential factors favouring the decriminalisation of same-sex acts. Looking at our topic of interest, it is important to specifically explore the role of human rights mechanisms and the courts, the power of transnational activism, as well as the resonance of anticolonial narratives when considering the decriminalisation of same-sex acts in postcolonial societies. Taken together, they contextualise the application of the ‘spiral model’ when looking at the decriminalisation of same-sex acts in postcolonial societies.

### **2.3.1 International human rights and the courts**

In sociology, mechanism-based explanations have become increasingly popular to explain the causes of a specific outcome, including by determining the actions and relations of specific agents (Hedström and Ylikoski, 2010). Human rights research is no exception and has taken advantage of the mapping of causal effects to explain human rights change, including elucidating what drives states to move from human rights commitment to compliance. As discussed above (see section 1.1) the ‘spiral model’ developed by Risse, Ropp and Sikkink (1999, p.20; 2013) explains how states are moving from human rights commitment to compliance. The five-phase ‘spiral model’ is underpinned by social influence mechanisms that enable international human rights norms to be internalised in states’ domestic practice. These include dynamics of coercion (e.g., via military force or legal enforcement), sanctions and incentives (e.g., gaining or losing membership to an international organisation, aid conditionality), persuasion and discourse (e.g., diplomatic lobbying, campaigns), and capacity-building (e.g., providing financial aid needed to support the implementation of human rights). In the context of sexual politics, previous studies found that ‘transnational campaigns against private wrongs such as violence against women rely on a combination of logics of persuasion and institutionalization, with limited availability of coercion and incentives’ (Brysk in Risse, Ropp and Sikkink, 2013, p.259). However, Ayoub (2017) found that both the EU requiring states to decriminalise homosexuality as a condition for membership and the influence of transnationally embedded LGBT organisations were particularly efficient in moving new adopter states to comply with LGBT rights. This shows that mechanisms of sanctions and incentives can be as effective as mechanisms of persuasion and discourse although the latter have been found particularly prevalent in influencing the international diffusion of LGBT rights specifically (Kollman and Waites, 2009; Holzhaecker, 2012; Ayoub, 2017).

Dynamics of coercion cannot be excluded, however, as ‘the more human rights standards are subjected to international and regional judicialization and thus increasingly involve domestic, regional, or international courts, the more legal enforcement mechanisms come into play’ (Risse, Ropp and Sikkink, 2013, p.13). The human rights regime has considerably developed and is ever expanding, and LGBTI rights is no exception to that movement. International human rights law now clearly encompasses the protection of LGBTI people’s rights since the promulgation of the Yogyakarta Principles in 2006. Sexual orientation and gender identity are increasingly covered by UN human rights mechanisms such as the UPR process, treaty bodies conclusions, and Special Procedures recommendations (see following chapter). In

fact, a new UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity has been appointed by the Human Rights Council in 2016. However, there were already two attempts from a coalition of states to block the UN Independent Expert mandate less than six months after the mandate's creation and LGBTI rights language is difficult to secure, if only ever debated in international fora. Nevertheless, there are some successful accounts of international human rights mechanisms leading to better state compliance with human rights, as the Seychelles committed to the decriminalisation of same-sex acts in response to five recommendations during its UPR. In the same way, in its second UPR (2012), Sri Lanka rejected member states' recommendations to decriminalise same-sex acts whilst five years after, at its third UPR (2017), the country accepted all six recommendations to combat discrimination against LGBTI people and noted the seven recommendations to decriminalise same-sex conducts. Thus, international human rights law and state socialisation through international fora must be considered when looking at states' movement from commitment to compliance in relation to the decriminalisation of same-sex acts.

That said, human rights change could not take place without judicial challenges, and in the case of LGBTI rights and the decriminalisation of same-sex acts, court rulings were needed to provide legislative reforms for social movements and demands of sexual minorities. Some studies have demonstrated the power of international and national courts as agents of change, allowing human rights claims (Langford, 2009). Indeed, Sperti (2017, p.4) states: 'both the rise of constitutional adjudication and the reality of transjudicial dialogue have contributed to the circulation of legal arguments among constitutional and supreme courts in cases concerning the recognition of gay and lesbian rights.' The role of courts as agents of change is especially powerful when judgments are binding, such as in the case of the ECtHR whose decisions are binding on member states. Indeed, Helfer and Voeten (2014) found that judgements from the ECtHR against one country substantially increased the probability of policy change in other European countries. Outside Europe, research also confirms successful human rights claims in the context of judicial challenges, including when decisions are binding on states. For instance, Hennida (2015) found that the indigenous Sarayaku's strategy to develop transnational advocacy networks was successful in winning court cases against multinational oil companies. Waites (2019) also recognises such strategy in court cases brought and won by activists in Belize and Trinidad and Tobago on the issue of the criminalisation of same-sex acts.

This does not mean that legal recourses and victories are necessarily the only route to decriminalisation and LGBTI rights improvement. Indeed, courts are never isolated from social, cultural and political context and, as such, 'when courts - especially constitutional and supreme courts - meet LGBT movements' demands, they usually at the same time endorse (and strengthen) socially accepted notions of sex, marriage and family in their judgments' (Sperti, 2017, p.29). This is why Hodson (2011) argues for NGOs' involvement in litigation to harness a public debate about social changes and challenge heteronormative understandings of human rights. In other words, civil society organisations can insert 'vitality and dynamism' in the interpretation of human rights '[b]y demanding that the [c]ourt re-imagines social and legal norms' (p.139) although this is not an easy task. We have already seen that by legally defining concepts such as sexual orientation, it *de facto* and *de jure* constrains future

interpretations of sexuality. We have also seen that, in addition to legal, political and social structures, discourses and concepts such as homophobia were exported and have also permeated the social fabric of Commonwealth countries. Some authors have demonstrated the limits of the law in actually eradicating discrimination against LGBTI people socially (Bamforth, 1997). This is why Reddy (2006, p.157), when discussing the process of decriminalisation in South Africa, concludes: '[l]egal victories are thus critical and important in reinforcing citizenship, but these victories do not immediately and simultaneously eradicate the persistent threat of homophobia. In this one important sense, queer identities cannot escape the political.' It is therefore important to look at other factors leading to the decriminalisation of same-sex acts, especially when looking at countries which have decriminalised through the reform of their laws and without the pressure from a legal challenge.

### **2.3.2 The power of transnational activism**

Keck and Sikkink (1998) calls the 'boomerang effect' the process by which domestic and transnational social movements join forces to bring pressure 'from above' and 'from below' to drive states from human rights commitment to compliance (p.18). In this regard, the existence and activity of transnational networks are crucial in enabling human rights claims in general, and LGBTI claims specifically (Waites, 2019). Santos (2002) calls alliances made between movements and struggles around the world 'subaltern cosmopolitanism' (p.459). These cosmopolitan movements that transcend national boundaries are crucial to negotiate and navigate global, national and local time-spaces. Also, for Lennox and Waites (2013, p.34), a key question is to understand whether LGBTI rights movements 'should seek to entice national elites to obtain international recognition and legitimacy, or whether it would be more effective to emphasise the domestic value of human rights, and seek to emphasise the compatibility of human rights with diverse nationalisms.' The answer is probably both if we follow the analysis of the 'boomerang effect' (see section 1.1.1), although Hennida (2015) warns us that 'the pressure 'from above' and 'from below' must be balanced' (p.57). Indeed, if the pressure 'from above' is too strong compared to the pressure 'from below', the state responding to the pressure can be perceived as a result of foreign interference. This finding is extremely relevant when thinking about the 'boomerang effect' in postcolonial contexts (Waites, 2019).

Securing international transnational recognition and legitimacy is not easy and achieved through 'the communicative processes of identification with the Other, clear causal narratives of injustice and redress, and "branding" of locations and victims' (Brysk in Risse, Ropp and Sikkink, 2013, p.260). The utility and ability of LGBTI rights movements to connect their struggles with wider issues, whether that is HIV/AIDs, human rights, or social justice more broadly has been covered in research on both domestic and transnational activism. Lennox and Waites (2013) postulate that LGBTI movements that work for social justice in states of the Global South might encourage more progressive attitudes towards LGBTI issues amongst state leaders. The Sri Lanka case study presented in Appendix A of this research shows how LGBTI organisations worked on rebuilding the country after both the civil war and a devastating tsunami. However, it is unclear to what extent this work is repaid in the context of structural inequalities at play. Nevertheless, Brysk (in Risse, Ropp and Sikkink, 2013) argues

that new rights claims are persuasive especially when framed with established and universal values whilst explaining or managing outstanding, wider social issues.

In addition to researching and analysing different collective strategies underpinning LGBTI rights movements, one needs to focus on individual activism since most recent cases of decriminalisation of same-sex acts resulted from legal challenges brought by individuals against their governments. It is thus important to look at research relating to the personal journey of claimants, so lessons can be learnt about the process and implications of strategic litigation. Looking at the personal experience of claimants bringing a sexual orientation discrimination challenge to the ECtHR, Johnson (2016, p.175) found that 'the personal experience underlying much of the litigation in Strasbourg is one of acute suffering.' Indeed, in addition to the experience of discrimination motivating the individual to take legal action, the long and consuming process of being a claimant in a case as well as the repercussions for the claimant and their family of being in the public eye have to be taken into account. Bringing a legal challenge to the state is therefore no small undertaking, and does affect both the applicant and their family in the process. In this regard, Hodson (2011) and Johnson (2016) discuss how civil society organisations can support applicants in their claim, which may feel instrumental, albeit necessary. In this regard, taking a decolonial approach to the 'boomerang effect' (Waites, 2019) is particularly helpful as it takes into account how human rights are articulated in different sociocultural contexts shaped by power, but also how social structures and resources are accessed in rights-claiming processes, and how rights-claimants are changed through these rights-claiming processes, bringing to life the specific challenges and needs of postcolonial actors.

### **2.3.3 Shaping public narratives and attitudes**

Some research is looking at economic, political, cultural and social factors favouring the decriminalisation of same-sex acts. Han and O'Mahoney (2018) found that countries with a British legal origin are significantly more likely to have laws criminalising same-sex acts, even after controlling for measures of modernity, religion, wealth, democracy, inequality and ratification to human rights treaties. However, all of these factors most definitely contribute to the likelihood of decriminalisation. Achim Hildebrandt (2014) for instance, finds that economic prosperity and the availability of contraception paved the way to the decriminalisation of same-sex acts in Europe. Some authors, however, argue that the wave of decriminalisation is due to a more general global trend moving towards social acceptance of homosexuality (Frank, Camp and Boutcher, 2010). Their main argument is that the recent decriminalisation of same-sex acts in certain countries was too prompt to be led by domestic-only factors. However, as Han and O'Mahoney (2018) pointed out, this analysis does not account for domestic variations, and does not explain why certain countries are still immune to this global trend.

Sociology research considers the opportunities available to activists, identifying factors that either enhance or inhibit prospects for successful collective action, and the effectiveness of specific strategies in achieving the outcome intended (Meyer and Minkoff, 2004). In relation to human rights' compliance, processes of litigation and political mobilisation are particularly consistent with the 'spiral model' (Risse, Ropp and Sikkink, 2013), as described above. However, analysing these processes, especially how domestic agents using human rights

successfully access international opportunities for rights claims, obfuscates the social context and power relations at play (Waites, 2019).

Looking at discourses and narratives employed in favour of collective action, and assessing whether they are effective in driving change is another route to understanding change processes in different contexts. Literature about social movements explain how narratives and counter-narratives are generated, contested, reproduced, adapted or replaced during activism (Benford and Snow, 2000). These “framing contests” (Ryan, 1991) between activists, their opponents, bystanders and the media, are also shaped by the social, economic and cultural opportunities and constraints, and the different audiences targeted (Benford and Snow, 2000). Of note, these framing contests take place within complex, transnational and multi-organisational arenas (McAdam, McCarthy and Zald, 1996) that activists, by choice or necessity, take into account (Evans, 1997). In relation to our topic of interest, the decriminalisation of same-sex acts in the Commonwealth, research found that narratives by opponents capitalise on wider inequalities and conflicts over social change, political power and global status (McKay and Angotti, 2016), which end up corrupting the human rights discourse used by LGBT activists (Baisley, 2015). This narrative has particular resonance in postcolonial societies, contravenes LGBTI activists’ discourse and reduces the efficacy or availability of opportunities for change in these contexts.

Understanding what works in promoting the rights of people with a minority sexual orientation is not only vital for people directly affected by laws criminalising same-sex acts but also a crucial contribution supporting the work of LGBTI activists around the world. Moreover, foreign governments are also interested in this work. In 2016, the UK All Party Parliamentary Group on Global LGBT+ Rights published a report advising on the most effective ways for the UK to engage on LGBT+ rights internationally. The report recommends adopting a quiet diplomatic engagement ‘behind the scenes’ over blunt public condemnation, as the UK Government harshly learnt in 2011 (see introduction). It also recommends the use of (Western) public censure, targeted travel bans and re-allocation of aid (rather than blanket cuts) only in critical times where major setbacks are observed, and provided there is a support from the local civil society for these interventions, especially since they can be disproportionately affected by them (Hepple, 2012). In this regard, the report mentions the importance of capitalising on the local civil society organisations, as they are best placed to influence decision-makers in their societies and contribute to national conversations and processes for equal rights. Local organisations are indeed best placed to understand the power dynamics at local or national level. For instance, at time of elections, anti-LGBTI or anti-colonial narratives may be used to gather votes, polarise voters or distract from other issues within a given country (Lennox and Waites 2013). This coincides with other findings, including from Hennida (2015) which, as discussed above, warns against the pressure ‘from above’ being too strong compared to the pressure ‘from below’. Brysk (in Risse, Ropp and Sikkink, 2013) ultimately concludes that ‘the pathway to compliance depends upon the complex architecture of power relations between state and civil society, and that sometimes it is easier to secure policy change across borders than within them’ (p.274).

As such, the importance of micro-dynamics shaped by socioeconomic contexts and relations of power should be taken into account when explaining change at macro-level. Indeed,

although Risse, Ropp and Sikkink refined the scope and conditions of their initial (1999) conceptualisation of the 'spiral model' of human rights change to explain why social influence mechanisms are ineffective in some circumstances, they focused on why some states 'got "stuck" somewhere in the process or even experienced backlash' (2013, p.11). As a result, they reassessed the conditions by which states are willing or able to comply with human rights. They found that the more economically powerful a state is, the less receptive to external pressure (conceptualised as 'material vulnerability'), and the more states care about their human rights reputation the more sensitive to international pressure they will be (conceptualised as 'social vulnerability'). Risse, Ropp and Sikkink (2013) also analysed that regime type, the degree of both (limited) statehood and centralisation of compliance decisions also affects compliance processes. Whilst this is a significant improvement of the 'spiral model', it is still overly focused on states' motivations and behaviours which could omit important micro-level factors and mechanisms that would, in turn, contribute to the understanding and robustness of macro-level mechanism-based explanations of change (Hedström and Ylikoski, 2010; Risse, Ropp and Sikkink, 2013). Taking a decolonial approach to the 'boomerang effect' parts of the broader 'spiral model' of human rights compliance (Waites, 2019) is therefore an attractive analytical framework to assess social influence mechanisms at play and as experienced or instigated by postcolonial actors, and address the limitations of the 'spiral model'.

## **Summary**

This chapter shows that there is a strong consensus regarding the criminalisation of same-sex acts in the Commonwealth being a legacy of British colonialism. However, looking at the postcolonial context, there are many dynamics at play preventing the decriminalisation of same-sex acts to take place in some Commonwealth countries. The review of existing literature clarifies the origins and spread of the laws criminalising same-sex acts, unravelling dynamics of social and legal control. It also explains why these laws are perduring in a context of postcolonialism. In addition, it gives us a useful postcolonial framework, which we can apply to human rights claims for decriminalisation, but there needs to be empirical evidence to test that framework, with the view to provide concrete recommendations to drive effective change in Commonwealth countries, and beyond. This is crucially important in a context where factors successfully leading to the decriminalisation of same-sex acts are multiple, sometimes conflicting, with examples showing even immediate detrimental effects of some of the strategies encouraging the decriminalisation process. In this regard, decolonising the 'boomerang effect' (Waites, 2019) allows us to reassess social relations and activism in a context of perduring and entangled asymmetries of power, adding nuance and refinement to the 'spiral model' developed by Risse, Roppe and Sikkink (2013), moving away from overly focusing on nation-states' behaviours and further centring the experiences of queer citizens in their local contexts. Indeed, there is a lack of evidence in regard to what strategies actually work in decriminalising same-sex acts, and which are actually empowering sexual minorities and LGBTI activists to drive change in their own societies. It is therefore important to add to the existing evidence so LGBTI rights activists and governments understand which method to adopt to successfully decriminalise same-sex acts in their countries. Taking a decolonial approach the 'boomerang effect' also allows us to reimagine the Commonwealth as an institution through radical structural change, at both the conceptual and practical level.

## Chapter 3. Decriminalisation of same-sex acts in context

In 2022, 66 out of the 193 United Nations (UN) member states still criminalise private consensual same-sex acts between adults (Human Dignity Trust, 2022). This includes six UN member states which impose the death penalty as a sanction to these acts, and another five states which make death penalty a possible punishment (Mendos, 2019; Human Rights Watch, 2019). Looking at a regional level, the list of criminalising states includes 32 countries from Africa, 22 from Asia, six countries in the American continent and six countries in the Pacific region (Human Dignity Trust, 2022). In contrast, all European countries have decriminalised same-sex acts. Some countries that do not have laws criminalising same-sex acts should still be added to the list as they criminalise same-sex acts in practice (e.g., Egypt where authorities enforce criminal laws prohibiting ‘indecent’, ‘scandalous’ or ‘debauchery’ acts against LGBTI individuals) or criminalise same-sex acts at local levels (e.g., some semi-autonomous provinces of Indonesia through sharia law). Legal sanctions against same-sex acts differ in scope and nature, with the offence varying from either defining a specific type of sex act, or sexuality with persons of the same-sex more broadly. Indeed, offences include ‘carnal knowledge against the order of nature’, ‘gross indecency’, ‘buggery’ and ‘sodomy’, whilst associated sentences either provide for fines, imprisonment ranging from short-term to lifetime, or as mentioned above, death penalty (Reid, 2015; Human Rights Watch 2019; Mendos, 2019). Although an offence may differ from one country to another, all definitions are vague enough to be open to interpretation and implementation by authorities, and used to harass or prosecute individuals because of their perceived or actual sexuality or gender identity (Human Rights Council, 2011b, para.40). In fact, it has been observed that laws criminalising specific same-sex acts are often used to prosecute individuals who identify as LGBTI, thereby *de jure* extending the criminalisation of acts to identities. It has also been demonstrated that the mere existence of the laws is conducive to abuse, extortion and blackmailing from authorities, even though they are not enforced (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015). Looking at countries which have already decriminalised same-sex acts, identifying patterns and lessons learnt, is therefore an important exercise in order to bring about change in the remaining 66 countries which still criminalise consensual same-sex acts in private. This chapter will first provide an overview of the decriminalisation of same-sex acts around the world, before analysing the international human rights regime in relation to the decriminalisation of same-sex acts, and then looking more closely at the processes of decriminalisation in Commonwealth countries specifically.

### 3.1 Decriminalisation of same-sex acts around the world

When retracing the timeline of the decriminalisation of same-sex acts around the world, patterns emerge based on the geography and process of decriminalisation. Indeed, whilst all European countries and most countries in the Americas have decriminalised same-sex acts, most cases of criminalisation take place in Africa and the Middle East. In parallel, we can observe that most cases of decriminalisation result from broader reforms of countries’ criminal laws, although recently, court challenges have been increasingly used to bring about reform.



It is also clear that countries belonging to the Commonwealth are likely to still criminalise same-sex acts, as well as feature the most recent cases of decriminalisation. Looking at countries which have decriminalised reveals that contributing factors such as international organisation membership, human rights mechanisms and domestic mobilisation, are at play.

### 3.1.1 Different paths to decriminalisation

Out of the 126 UN member states where same-sex acts are legal, it is estimated that around 33 countries never criminalised same-sex acts in the first place,<sup>5</sup> whilst the remaining 93 countries decriminalised either through legislative reforms or as a result of legal challenges brought against them. The first cases of decriminalisation were in Western Europe, when the Kingdom of France (which included Andorra and Haiti) enacted a new penal code in 1791, *de jure* decriminalising consensual same-sex acts in its territory. Further cases of decriminalisation then followed in Monaco (1793), Luxembourg (1794) and Belgium (1795). In the 19<sup>th</sup> century, a few more European countries decriminalised same-sex acts, namely the Netherlands, Portugal, San Marino, Italy and the Vatican, but the majority of cases of decriminalisation took place in Central and Latin America. Indeed, during the 19<sup>th</sup> century, no less than 10 countries decriminalised same-sex acts in the region, including the Dominican Republic, El Salvador, Brazil, Bolivia, Argentina, Suriname, Guatemala, Mexico, Paraguay and Honduras. In Asia, the Ottoman Empire decriminalised consensual same-sex acts in private throughout its whole territory as part of the Tanzimat Reforms in 1858 (Hussain, 2011), although it imposed imprisonment for public displays of same-sex intimacy, thereby reinforcing the criminalisation of homosexuality in the public sphere (Ozsoy, 2021). Japan also decriminalised same-sex acts in 1880 although some authors argue that the country never really criminalised same-sex acts due to the short timeframe of criminalisation.<sup>6</sup> The number of UN member states criminalising same-sex acts dropped by almost half between 1969-2019, decriminalisation mainly taking place in Europe, the Americas and Oceania, whilst countries in Asia and Africa saw a slower decline of criminalisation during that period (Mendos, 2019, p.178).

Overall, cases of decriminalisation of same-sex acts around the globe were often the result of broader, sweeping reforms of countries' penal code or sexual offence laws, although in some cases, countries have decriminalised as a condition to access membership of some international organisations or from pressure from other multilateral fora. For example, Albania, Russia, Georgia and Azerbaijan were forced to decriminalise to gain membership to the Council of Europe (Hildebrandt, 2014, p.244). Other states committed to decriminalise same-sex acts as a result of the UPR process (see below) – these include Mauritius, Nauru, Palau, Sao Tome and Principe, and the Seychelles (Human Rights Council, 2011b). Similarly, same-

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<sup>5</sup> It is difficult to estimate which countries never criminalised same-sex acts. For a country-by-country legal history in relation to the (de)criminalisation of same-sex acts, see Mendos L.R. (2019). *State-Sponsored Homophobia 2019*. Geneva: ILGA World.

<sup>6</sup> Japan only criminalised same-sex acts during the Meiji restoration period (1873-1881). See Arai, Y. (2014) 'Is Japan Ready to Legalize Same-Sex Marriage?', Cornell Law School LL.M. Student Research Papers. Paper 4, 127

sex acts were decriminalised in all the United Kingdom's overseas territories through a 2000 Order in Council imposed by the UK Government, as the territories entered the jurisdiction of the ECtHR. That said, many court cases have also led to the decriminalisation of same-sex acts in countries, and increasingly so in recent years. For instance, the UK, Cyprus, South Africa, Belize, India, Trinidad and Tobago, Botswana, Antigua and Barbuda, Saint Kitts and Nevis, Singapore and Barbados have all decriminalised same-sex acts as a result of a legal challenge being brought against their governments. However, this does not mean that other factors were not at play. For instance, in the case of Cyprus, gaining membership to the European Union (EU) played a role in favour of the decriminalisation of same-sex acts (Kamenou et al., 2019; see also Cyprus case study in Appendix A). It is therefore important to further explore disparities in terms of the geography of (de)criminalisation and type of decriminalisation.

### 3.1.2 Regional disparities

Disparities between different regions of the world in relation to the likelihood of same-sex acts having been decriminalised can be detected. Whilst all 46 countries of the Council of Europe have already decriminalised same-sex acts as a condition of membership to the international organisation, 32 out of 54 countries still criminalise same-sex acts in Africa. Whilst recent decriminalisations of same-sex acts include African countries such as Mozambique in 2014, the Seychelles in 2016, Angola and Botswana in 2019, it is also the continent of recent criminalisation, such as Chad in 2017 and Gabon in 2019. In addition, many African countries have adopted tougher legislation on same-sex acts in recent years. Overall, there is a prevalent narrative that LGBTI-related matters are against 'African values' and imposed by the West (Ibrahim, 2015), although this claim has been debunked since then with evidence of existence of homosexuality in the Global South including Africa (Dlamini, 2006). Consequently, according to a European Parliament briefing on LGBTI issues in Africa (2019, p.1), EU institutions and member states face a difficult mission in promoting LGBTI rights as:

[...] their actions and declarations in this area risk reinforcing the perception that the EU is trying to impose non-African values on Africa, all the more so since the notion of sexual orientation and gender identity as grounds for discrimination is contested by African countries in the multilateral arena.

In Asia, 22 out of the 42 countries that still criminalise same-sex acts are mainly located in the Middle East. Of the Asian countries that have decriminalised same-sex acts, many have done so through legislative reforms, except for India, which decriminalised in 2018 as a consequence of the *Navtej Singh Johar v Union of India* ruling, and Nepal, where the Supreme Court clarified in *Sunil Babu Pant v Nepal Government* (2008) that same-sex intercourse could not be constructed as unnatural. In Singapore, the ruling in *Tan Seng Kee v Attorney General and other appeals* (2022) fell short in striking down the law in the context of the Government's 2007 political statement not to enforce the law.

In the American continent, six countries still criminalise same-sex acts, which are all Caribbean countries and all part of the Commonwealth. The most recent cases related to the decriminalisation of same-sex acts resulted from a series of legal challenges brought against

governments: *Orozco v Attorney General (Commonwealth Lawyers Association and others, interested parties)* (2016), *Jason Jones v AG of Trinidad and Tobago* (2018), *David and another v Attorney General of Antigua and Barbuda* (2022), *Jeffers and another v Attorney General of St. Christopher And Nevis* (2022).

In the Pacific, six out of 14 countries still criminalise same-sex acts, and are also all part of the Commonwealth. Out of the countries which have decriminalised, all but Fiji have decriminalised through legislative reform. In Australia, the decriminalisation of same-sex acts took place between 1975 and 1997 across the eight provinces of the country, as the federal parliament has no power in relation to criminal law. However, a case brought against the UN Human Rights Committee led the federal state to introduce the Human Rights (Sexual Conduct) Act 1994 to uphold the principle in Australian law (Carbery, 2014).

### **3.1.3 Different routes to decriminalisation, different impact**

Whilst it is helpful to identify patterns of decriminalisation of same-sex acts around the world, it is a meaningless exercise if we do not look at the impact which the decriminalisation has had on the lives of LGBTI people. Indeed, it is important to distinguish the parameters for effective decriminalisation as different countries have taken different routes to the decriminalisation of same-sex acts. When looking at court cases, some rulings were based on the right to privacy whilst others were based on the right to equality. According to the Human Dignity Trust (2015, p.23), 'the choice of right in which to ground decriminalisation has longer-term consequences for the progression of LGB rights in that jurisdiction.' In particular, the right to privacy is fairly limited to bring about change in a substantial way. For example, whilst consensual same-sex acts in private between men were legalised in England and Wales in 1967, it remained a crime in other circumstances, for instance when it took place in a public place or when one of the partners was aged between 16 and 20 at the moment of the act. Thus, it was only a partial decriminalisation, full decriminalisation only occurred in 2003.

One might think that the decriminalisation of same-sex acts through legislative reform, *a priori* willingly pushed by the states would indicate a commitment to progressing human rights in their jurisdictions. However, some case studies say otherwise. For instance, whilst Mozambique decriminalised same-sex acts in 2014 by passing a law removing Articles 70 and 71.4 of its Penal Code, the UN Independent Expert on Sexual Orientation and Gender Identity observed the following in its visit to the country (Human Rights Council, 2019, para.21):

The Independent Expert found no evidence of a connection between the process of decriminalization and a State vision aimed at combating violence and discrimination on the basis of sexual orientation and gender identity, or a concerted public policy to that effect. For example, during his dialogue with parliamentarians, the Independent Expert was told that the legislative change had nothing to do with homosexuality which, in their views, had never been illegal in Mozambique. They also indicated that it did not have anything to do with "permitting" homosexuality and that the decision to repeal the provisions related to the "vices against nature" had been grounded in the principle of equality and could not be equated with the "legalization" of homosexuality.

It is true that the legal recognition of LGBTI persons does not necessarily lead to greater social tolerance towards them. For instance, Ward (2013) observes that homophobia and violence against LGBTI persons in South Africa by far exceeds that in Uganda, despite the fact the former recognises same-sex marriage and the latter criminalises same-sex acts. According to a recent report surveying social acceptance towards LGBT people in 174 countries (Flores, 2019), if the level of acceptance has overall increased in the past decade, it is because of a polarisation of levels of acceptance, whereby the most tolerant countries are increasingly more tolerant and the least tolerant countries are conversely less tolerant. We can draw several conclusions from the observation that in some cases, the decriminalisation of same-sex acts is not instrumental in driving a positive change for LGB persons, at least immediately (Ward, 2013). First, whilst decriminalisation of same-sex acts is worth pursuing for the sake of avoiding extortion, blackmailing and persecution from state authorities (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015), and as a fundamental first step to develop other equality issues affecting LGBTI people, it probably needs to be framed in a wider strategy where negative social attitudes are taken into account. Second, the fact that the impact of decriminalisation differs from one country to another is also indicative of wider factors at play when considering the advancement of LGBTI rights. It is therefore important to supplement existing research with case studies unravelling these factors, which is what this research intends to do.

### **3.2 International human rights mechanisms and the decriminalisation of same-sex acts**

International human rights law has developed over the past 70 years to explicitly cover the rights of individuals with a minority sexual orientation, gender identity or sex characteristics (LGBTI rights) and the issue of the decriminalisation of same-sex acts specifically. As with many other human rights, LGBTI rights have not escaped the debate of universalism of human rights versus cultural relativism. From a pragmatic perspective, it is likely that a cultural margin of appreciation is needed to realise universal human rights (Donnelly, 1984; 2013) and it is now the view of UN institutions to reconcile the universality of human rights with cultural diversities (OHCHR, 2018). However, because human rights are a socio-historic product from the West, they cannot escape anti-imperialist criticism and scepticism towards their so-called universality (Brems, 2001). Sexual orientation as grounds for discrimination was therefore developed within the human rights system and mechanisms, as opposed to developed as a new set of rights, and as part of an attempt to normalise discrimination on the grounds of sexual orientation and gender identity within the existing human rights framework, with the view to circumventing contention from states (McGoldrick, 2016). This section discusses different human rights mechanisms and how they apply to issues facing LGBTI people, and in particular the decriminalisation of same-sex acts. The analysis shows a mixed picture in regard to state compliance with the rights of LGBTI people and progress on LGBTI rights overall.

#### **3.2.1 Charter-based mechanisms**

The Universal Declaration of Human Rights (1948), the foundation of the international human rights regime, states in its Article 1 that ‘all human beings are born free and equal in dignity and rights’ and in its Article 2 that ‘[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ Also, non-discrimination and equality before the law are two fundamental principles of international human rights law and are considered as elements inherent to human dignity (OHCHR, 2019).

In 2011, the UN Human Rights Council commissioned a study ‘documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity’ (Human Rights Council, 2011a, para.1). The report covers harrowing experiences of discrimination on the basis of sexual orientation and gender identity, including rape, killing and other acts of discriminatory violence (Human Rights Council, 2011b). In fact, since 2003, no less than seven resolutions were adopted by the UN General Assembly, urging states to ensure the effective protection of the right to life of all persons, regardless of their sexual orientation or gender identity, and to carry out prompt, thorough and impartial investigations into all killings (UNGA, 2003; 2005; 2007; 2009; 2011; 2013; 2015).

With growing concern from the international community in relation to these gross human rights violations, the Human Rights Council decided to create a new mandate for the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Human Rights Council, 2016). The role of the Independent Expert is to ‘assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity’ among others (Human Rights Council, 2016, para.3(a)). To do so, the Independent Expert is able to undertake country visits and issue urgent communications to states for alleged cases of violence and/or discrimination against persons on the basis of their sexual orientation or gender identity. Since the beginning of the mandate, the Independent Expert was able to carry out six country visits in Argentina, Georgia, Mozambique, Ukraine, Tunisia and the US, issue 12 reports to both the UN General Assembly and the UN Human Rights Council and 48 communications related to alleged cases of violence and discrimination against LGBTI people. Although all countries visited so far have all already decriminalised same-sex acts, the decriminalisation of same-sex acts is still being regarded as a priority topic for the Independent Expert mandate (Human Rights Council, 2017a, para.54; UNHCR, 2015). The mandate of the Independent Expert is one of the most controversial UN mandates, as it is constantly challenged by member states. Indeed, it took five years of negotiations for the mandate to initially be tabled, and attempts to block the mandate were made during both its creation (2011) and renewal (2016), by a coalition of states mainly belonging to the African Group and the Organisation of Islamic States (Freedman, 2019). This leads Sable (2010) to conclude that the prohibition of the criminalisation of consensual same-sex acts has not yet reached a crystallised norm of customary international law, underpinned by a deep division between Western and Non-Western states.

Other special procedures mandates have also focused on sexual orientation in general and the problem of the criminalisation of same-sex acts specifically. For instance, the Special Rapporteur on Torture reported that ‘members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations’ (Human Rights Council, 2011, para.34). Other mandates considering the rights of LGBTI people include the Special Rapporteur on the right to water and sanitation, the right to privacy, on human rights defenders, the rights to freedom of peaceful assembly and of association, on extreme poverty, freedom of opinion and expression, racism, violence against women, the right to health, on the sale and sexual exploitation of children, and the Independent Expert on the enjoyment of all human rights by older persons (ILGA World, 2023). This shows an attempt from UN institutions at a multi-pronged, perhaps holistic approach, whereby LGBTI issues are mainstreamed into the wider human rights system. In fact, several UN institutions have referenced the Yogyakarta principles, which, albeit not a UN instrument, have been developed by experts to apply existing international human rights law and standards to human rights issues facing LGBTI people (McGoldrick, 2016). In fact, it is so difficult to progress LGBTI rights within formal UN mechanisms that a group of 42 like-minded states decided to create the Equal Rights Coalition to advance the rights of LGBTI persons globally, coordinating efforts inside and outside of the UN (Equal Rights Coalition, 2022).

In addition to the UN mechanisms cited above, the UPR was created to allow for a state-to-state peer review of each state’s human rights record. The UPR was established in 2006 with the objective to put UN member states on an equal footing, promote dialogue between them, and unblock political tensions and manoeuvring taking place in UN institutions, as mentioned above (Gaer, 2007; Cowell and Milon 2012). During its UPR, a state receives recommendations by other UN member states on a range of human rights issues, and is free to accept, note or reject the recommendations made. Whilst the overall process does not technically bind states to make any progress on human rights issues, it allows civil society to make their voices heard by highlighting human rights concerns or violations in the international fora, emphasise some human rights issues that are not proactively being looked after at domestic level, and allow soft peer pressure from other states. A paper from Cowell and Milon (2012, p.352) emphasises the usefulness of the process in relation to the decriminalisation of same-sex acts, as it highlights states’ individual concerns and rationale for not pursuing the decriminalisation of same-sex acts:

The UPR process by its political and consensual nature provides a forum to take these differences into consideration and encourages incremental reform. Due to its dialogic nature the UPR process is necessarily slow. However, this permits it to engage with the issue of decriminalisation in connection with states’ internal concerns and legislative processes. This allows the recommendations to address and to tackle the obstacles specific to the state, rather than being bifurcated into ‘pro’ or ‘anti’ camps on LGBT rights.

Indeed, the UPR process is useful in unravelling states’ rationale for not decriminalising same-sex acts. Reasons mentioned for not embarking into the decriminalisation process include denying the existence of a domestic LGBT community, denying that LGBT rights are actually

abused or violated, a lack of financial or technical resources to carry out reforms, a risk of domestic backlash due to conflicting values, norms and practices or a lack of political appetite (Cowell and Milon, 2012, pp.350-351). These rationales can in turn help identify what prevent or help states go down the 'spiral model' of human rights compliance (Risse, Ropp and Sikkink, 1999). According to a report from the United Nations (2016), more than 100 UN member states have committed to addressing violence and discrimination on the basis of sexual orientation and gender identity in their UPR, which clearly indicates the importance of the process in relation to discussing the criminalisation of same-sex acts. Building on Cowell and Milon (2012) insights of the usefulness of states' response to their UPR, I have covered UPR state responses in every case study (see Appendix A) as basis for my research.

### **3.2.2 Treaty-based mechanisms**

Treaty bodies are panels of experts whose task is to implement the treaty they are responsible for, and to monitor states' compliance with their treaty obligations. All treaty bodies are able to receive individual complaints,<sup>7</sup> provided that all domestic remedies have been exhausted. There are nine treaty bodies covering nine core human rights treaties, namely the Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (ICCPR) (1966), the International Covenant on Economic, Social, and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), and the Convention on the Rights of Persons with Disabilities (2006). None of these treaties explicitly mention sexual orientation or gender identity. However, many of these treaties include the right to life, the right to dignity, equality and non-discrimination as well as the right to privacy. Almost all international human rights treaties cover the rights to privacy which provide for individuals' freedom from state interference with their private life. Case law is consistent in stating that the criminalisation of consensual same-sex acts conducted in private is unlawful and arbitrary (Human Dignity Trust, 2015, p.8).

Although none of these human rights treaties explicitly cover sexual orientation or gender identity, treaty bodies have interpreted the nine core treaties to explicitly cover discrimination on both grounds. For instance, the Human Rights Committee stated in its General Comment No. 35 that Article 9 of the ICCPR (1966) concerning the right to liberty and security of persons applies to LGBT persons (CCPR, 2014, para.3), and in its General Comment No. 36 that the right to life must be respected and ensured regardless of gender identity or sexual orientation (CCPR, 2019, para.61). In the latter, the Human Rights Committee also confirms that under no circumstances can homosexuality be a justification for applying the death penalty as a sanction to criminalisation, and that according to states' duties to protect the right to life under

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<sup>7</sup> The Committee on Migrant Workers' complaint mechanism is yet to enter into force.

the treaty, special protection measures must be taken towards LGBT persons (CCPR, 2019, para.36 and 23). Whilst this is encouraging, some authors have deplored that the Human Rights Committee still does not address the right of LGBT persons to self-expression (Gerber and Gory, 2014, p.436), whilst the prospect of having a general comment specifically dedicated to sexual orientation and gender identity issues has been deemed 'hopelessly unattainable' (Petrova, 2013, p.477). The Committee on Economic, Social and Cultural Rights also clearly stated in its General Comment No. 20 that the reference to 'other status' in Article 2 of the Covenant related to non-discrimination includes sexual orientation and gender identity (CESCR, 2009, para.32), and in its General Comment 22, that the criminalisation of same-sex acts violates the right to sexual and reproductive health (CESCR, 2016, para.23). The Committee on the Rights of the Child also observed in its General Comment No. 18 that states should pay specific attention to lesbian, gay and transgender children when implementing a national coordinating framework on violence against children (CRC, 2011, para.72), and in its General Comment No. 20 relating to the implementation of the rights of the child during adolescence, that states should 'repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status' (CRC, 2016, para.34). Similarly, the Committee on the Elimination of Discrimination against Women recognised in its General Recommendations No. 27 and No. 28 that older women can face multiple discriminations including on the basis of sexual orientation and gender identity, and that the concept of intersectionality means that sexual orientation and gender identity need to be considered in relation to non-discrimination, respectively (CEDAW, 2010a, para.13; CEDAW, 2010b, para.18). Finally, the Committee against Torture stated in its General Comment No. 2, that state parties to the convention need to take appropriate measures to protect all populations from torture or ill-treatment, regardless of sexual orientation or transgender identity (CAT, 2008, para.21) recognising that '[b]oth men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles' (CAT, 2008, para.22). The above confirms that sexual orientation and gender identity forms part of international human rights law.

Treaty bodies do not just interpret the treaties, they also review state parties' compliance with the treaties by issuing concluding observations or recommendations on how to progress human rights. For instance, the Committee on Economic, Social and Cultural Rights called for the decriminalisation of consensual same-sex acts in all of its Concluding Observations for countries reviewed in 2015 where same-sex acts were criminalised (Kirichenko, 2016). Thirdly, treaty bodies have all complaint procedures, accessible by either individuals, states or both. In 1994, in *Toonen v Australia*, the Human Rights Committee confirmed Mr. Toonen's claim that the Tasmanian law criminalising same-sex acts interfered with his right to privacy by allowing 'police officers to investigate intimate aspects of his private life and to detain him if they have reason to believe that he is involved in sexual activities' in his home (1994, para.2.2 and 2.4) and that Articles 2 and 26 of the ICCPR cover sexual orientation as ground for discrimination. More recently, the CEDAW Committee found in *Flamer-Caldera v Sri Lanka* (2022) that the criminalisation of consensual same-sex acts between women violated the claimant's right to non-discrimination, to be protected from gender-based violence, to participate in the public and political life of the country, to equality before the law, and her family rights. Overall, there is an increased reference to sexual orientation and gender identity



in treaty bodies' work. Indeed, treaty bodies have referred to sexual orientation, gender identity or intersex issues 54 times in 2014 compared to 138 times in 2018, and such references were included in half of the Human Rights Committee's Concluding Observations to every state it has reviewed in 2017-2018 (Kirichenko, 2019). Treaty bodies such as the CEDAW Committee (1979) have referred to corrective rape of lesbian women and the Convention on the Rights of Persons with Disabilities Committee (2006) to conversion therapy. As of 2019, 30 decisions on individual complaints related to sexual orientation or gender identity have been issued by three treaty bodies (Kirichenko, 2019).

Treaty bodies which are increasingly covering sexual orientation issues should constitute a good news story. However, the overall picture is much more nuanced. Indeed, since the Human Rights Committee confirmed via *Toonen v Australia* that the criminalisation of same-sex acts is breaching the right to privacy provided for by Article 9 of the ICCPR and that in total 173 have ratified the latter, this means that all 53 jurisdictions party to the treaty presently criminalising consensual same-sex acts in private between adults are in direct breach of international human rights law<sup>8</sup> (Human Dignity Trust, 2015). This leads the Office of the High Commissioner for Human Rights (2012, p.30) to remind states that:

The criminalization of private, consensual sex between adults of the same sex breaches a State's obligations under international law, including the obligations to protect individual privacy and to guarantee non-discrimination. This has been the consistent position of United Nations human rights experts since 1994, when the Human Rights Committee decided *Toonen v Australia*.

Furthermore, only 20 out of the 53 states party to the ICCPR which are still criminalising same-sex acts allow individual complaints, which, according to the Human Dignity Trust (2015, p.11) proves the inefficiency of the complaint process. In its report, the Human Dignity Trust encourages states which are party to the Convention to bring state-to-state complaints as they do not face the same risks as individuals who have to disclose their sexuality when bringing a claim against a state. Realistically, this is unlikely to happen as states encourage a more diplomatic and consensus building approach, as mentioned above.

### **3.2.3 Regional human rights mechanisms**

Regional-level treaties are also relevant when discussing the decriminalisation of same-sex acts. The European Convention on Human Rights (ECHR) which applies to all 46 Council of Europe member states since ratification is a requirement for the organisation membership; the American Convention on Human Rights which applies to 25 out of the 35 Organisation of American States members, ratification not being mandatory for membership; the African Charter on Human and Peoples' Rights which has been ratified by all 54 African Union member states; and the Arab Charter on Human Rights (Arab Charter), ratified by 13 out of

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<sup>8</sup> The list of criminalising jurisdictions includes the Cook Islands and Gaza, which are not UN member states but parties to the ICCPR nonetheless.

the 22 League of Arab states. All international human rights law treaties cover the right to privacy, except for the African Charter on Human and Peoples' Rights, the right to dignity, to equality and non-discrimination, although the Arab Charter's list covering grounds for discrimination is exhaustive (McGoldrick, 2016).

The ECHR is by far the most successful treaty in relation to both decriminalising same-sex acts and protecting sexual orientation. In 1981, the ECtHR concluded in *Dudgeon v the United Kingdom*, its first case related to the criminalisation of same-sex acts, that the criminalisation of consensual same-sex acts was in breach of Article 8 of the ECHR and consequently violated Mr. Dudgeon's right to private life. Since then, the European Court have confirmed in further legal cases that the mere existence of the criminal laws is a breach of Article 8, regardless of whether the claimant is subject to police investigation, such as in *Norris v Ireland* (1988), or whether there is a moratorium on bringing prosecutions, as in *Modinos v Cyprus* (1993). Since *Dudgeon v the United Kingdom*, 20 European states have decriminalised same-sex acts to access the Council of Europe membership. Although the road to decriminalisation across Europe has been long and difficult, according to the Human Dignity Trust (2015), the extent of decriminalisation in states which are parties to the ECHR as opposed to the states which are parties to the ICCPR demonstrates the efficiency of binding international human rights instruments.

Out of the 35 countries which are members of the Organisation of American States, six still criminalise same-sex acts and only four of those have ratified the American Convention on Human Rights. Of those four countries, only Barbados has given jurisdiction to the Inter-American Court of Human Rights to hear individual complaints whilst Jamaica has given jurisdiction to the Inter-American Commission on Human Rights to hear state-to-state claims in relation to the American Convention on Human Rights. To date, no individual or state-to-state complaints have been brought about the criminalisation of same-sex acts, although several cases dealt with the right to privacy in relation to sexual orientation. Indeed, the Inter-American Court of Human Rights ruled that the denial of custody on the basis of the claimant's sexual orientation violated her right to privacy in *Atala Riffo and Daughters v Chile* (2012), and the Inter-American Commission on Human Rights found that the *Marta Lucia Alvarez Giraldo v Colombia* (1999) case was admissible due to the fact that the claimant was denied her conjugal visit due to her sexual orientation, thereby constituting an interference with her private life. Consequently, the Human Dignity Trust (2015) concludes that the states criminalising same-sex acts are in breach of their obligations under the American Convention on Human Rights.

Looking at the 55 countries of the African Union, all parties to the African Charter on Human and Peoples' Rights, 32 still criminalise consensual same-sex acts in private. However, in *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006), the African Commission stated that the reference to 'other status' in Article 2 of the African Charter on Human and Peoples' Rights includes the prohibition of discrimination on the grounds of sexual orientation. Furthermore, the African Commission published a resolution on the protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity (2014), although the Commission remained silent on the issue of the criminalisation of same-sex acts. Nevertheless, sexual orientation as a protected

ground for discrimination in regional instruments is far from being a done deal in the African continent. In fact, a year after the publication of the resolution, the African Union Executive Council asked the African Commission to withdraw the observer status that the Commission granted to the South African NGO Coalition of African Lesbians. Three years later, after many negotiations including tensions between the two institutions, the African Commission agreed to withdraw the NGO's observer status. According to Amnesty International (2019), this decision amongst other attempts from the African Union Executive Council to undermine the work of the African Commission seriously affects the independence and autonomy of the human rights body. Also, a reason for concern was that the African Commission accepted Cameroon's justification that public morality was a good reason to detain five persons on suspicion of homosexuality, unchallenging that reasoning in its final report (ACHPR, 2005; Ibrahim, 2015).

Finally, whilst the Arab Charter on Human Rights (2004) prohibits discrimination overall, it does not mention sexual orientation or references to 'other status' thereby closing the list for potential other grounds for discrimination. The Charter does not allow individual complaints either, and researchers are sceptical that there will be any developments in relation to sexual orientation or gender identity any time soon, given the fact that the Arab League has a history of opposing progress in relation to LGBTI rights (Ibrahim, 2015).

Overall, the difficulty in progressing LGBTI rights within international and regional human rights mechanisms leads Amnesty International (2019, pp.40-41) to make this damning observation:

From the global human rights system established under the United Nations (UN) to the regional systems in Africa, the Americas and Europe, a common thread can be seen: political backlash against human rights bodies and mechanisms is becoming the new normal. States are undermining and damaging international and regional human rights bodies from all possible fronts, including from within. They are scaling up their political onslaughts, withdrawing from critical processes, cutting down budgets, and preventing civil society from engaging.

However, human rights mechanisms have successfully been used across the world to progress the rights of LGBTI people, thereby providing new avenues to citizens and civil society organisations for right-claims (Lennox and Waites, 2013).

### **3.3 Decriminalisation of same-sex acts in the Commonwealth**

The Commonwealth of Nations (thereafter 'The Commonwealth') is a political association of 56 states that were under British influence established in 1949. In fact, almost all countries pertaining to the Commonwealth were colonised by the British Empire. Exceptions include Mozambique, Rwanda and Gabon, which were former Portuguese, Belgian and French colonies, respectively; Cameroon, which only had part of its territory colonised by the British Empire; and Namibia, Samoa and Papua New Guinea, which were all colonised by former British colonies. It is therefore important to note that not all current Commonwealth countries

will have a common law system, the same experience of colonial rule or legacy, including postcolonial culture and language (for instance, see Mozambique case study, Annex A). As a result, the Commonwealth has also been criticised for forcing a loose association of countries sharing some historical, colonial ties, thereby overshadowing or homogenising diverse realities and voices from the former British Empire and ensuring the coloniality of power (for an overview of the critiques, see Chambers and Gilmour, 2024).

As of 2022, 32 out of 56 Commonwealth countries still criminalise same-sex acts. Out of the 24 countries which have decriminalised, half of them decriminalised through reform of their sexual offence laws and the other half as a result of legal challenges. Since most Commonwealth countries share a common heritage in relation to their criminal laws (see chapter 2), it is helpful to see whether the Commonwealth faces similar challenges in relation to LGBTI rights than the rest of the international organisations, and explore the extent to which it is equipped to deal with these challenges.

### **3.3.1. Commonwealth of human rights or values?**

Human rights were seen by most Commonwealth states in the 1990s as an important stepping stone assuring their legitimacy in the eyes of the international community (Viljoen, 2007). As of 2023, 46 out of the 56 Commonwealth states have ratified ICCPR; all of them have ratified the Convention on the Rights of the Child; and all but Tonga have ratified CEDAW. Consequently, and as mentioned above, most of the Commonwealth countries criminalising same-sex acts are in violation with core human rights treaties. This is because international organisations 'are often caught within a postcolonial paradigm, due to their formation, composition or history, making action on human rights difficult' (Cowell, 2013, p.135). The Commonwealth as an international organisation is no exception to the rule; if anything, the organisation is facing the added difficulty of being a former colonial association meant to promote British interests in the whole of its empire. Indeed, LGBTI issues are framed in a postcolonial rhetoric whereby LGBTI rights are contested as human rights and argued to be part of imperialist attempts by the West to impose norms on states (Campbell and Penna, 1998). Worse, several authors have argued that the mere notion of "Commonwealth" actually 'establishes commonalities on the basis of a backward-looking relationship to the British Empire [...] at the expense of privileging English over regional-language writing and global over local contexts' thereby ensuring the coloniality of power (Chambers and Gilmour, 2024, p.13). Consequently, resolutions on sexual orientation and gender identity are often blocked by Commonwealth states at the UN. For instance, a 2003 draft resolution intended to ban all discrimination on the grounds of sexual orientation stating that sexual diversity 'is an integral part of Universal Human Rights' was defeated by a coalition of states, including from the Commonwealth. A Pakistan delegate justified the veto by saying that the resolution was 'sponsored by militant gays from the West' and that the issue was not a concern of South-based countries but rather a Northern concern (Narain, 2005, p.5).

That said, international human rights mechanisms have been helpful in bringing about change in Commonwealth countries. As mentioned above, *Toonen v Australia* (1994) informed the decriminalisation of same-sex acts in Australia. Similarly, the ECtHR has been instrumental in driving change in the UK and Cyprus. In addition, countries such as the Seychelles or Nauru

committed to the decriminalisation of same-sex conducts in response to recommendations during their UPR. It is therefore important to look at the role of international institutions, processes and discourses, to unravel what works in driving the decriminalisation process in specific Commonwealth countries.

Whilst most Commonwealth member states share a common language and history stemming from their shared colonial past,<sup>9</sup> they are incredibly diverse: countries ranging from small nation states such as Nauru or Tuvalu to the world's largest populated country that is India, from low income (e.g., Malawi, Mozambique) to high income countries (e.g., Canada, New Zealand) in terms of Gross National Income per capita (World Bank, 2019). The Commonwealth has no constitution or mandate, but member states make commitments via statements issued during the Commonwealth Heads of Government Meeting (CHOGM), the most significant and publicised Commonwealth meeting, which takes place every two years. Ahead of every CHOGM, Commonwealth foreign ministers meet as the Committee of the Whole (COW) to decide the agenda, whilst parallel meetings between finance, business, law, health, and education ministers regularly take place. Since 1965, the Commonwealth Secretariat has assumed the administrative and political functions of the Commonwealth, taking this responsibility over from the British Foreign and Commonwealth Office. The Secretariat is implementing programmes and policies agreed at CHOGM, providing technical assistance to Commonwealth countries for their economic, social and political development. However, the financing, governance structure and effectiveness of the Commonwealth Secretariat have been highly criticised, and the organisation has received numerous calls for reform throughout the years (House of Commons Foreign Affairs Committee, 2018).

Since 1944, no less than 27 Commonwealth Declarations have been issued at different CHOGMs, covering issues such as human rights, democracy and the rule of law, nuclear disarmament, international cooperation, economic empowerment, or the environment (Commonwealth Secretariat, 2019a). In fact, considering the formative years of the Commonwealth against the backdrop of decolonisation movements, Commonwealth countries have been exclusively motivated by the opposition to apartheid and anti-imperialism which explains why declarations focus more on the construction, maintenance and recognition of member states rather than individualistic human rights (Shaw, 2003; Cowell, 2013). Because of its history, the Commonwealth cannot escape being a platform for anti-colonial and anti-imperialist issues (Campbell and Penna, 1998). For instance, the suspension of Zimbabwe in 2002 caused a lot of stir among some African states that viewed the move as imperialist (Phimister and Raftopoulos, 2004). Indeed, because consensus and voluntarism are the basis of the Commonwealth, most declarations reference equality and non-discrimination in an aspirational rather than in a binding way (Cowell, 2013). For instance, the Millbrook Commonwealth Action Programme on the Harare Declaration<sup>10</sup> (1995, art.3) states:

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<sup>9</sup> The last four countries to join the Commonwealth – Rwanda, Mozambique, Gabon and Togo – have no historical ties to the British Empire and therefore do not have English as their official language (except Rwanda which added English to their official languages).

<sup>10</sup> The Harare Declaration sets out the Commonwealth's core principles and values, purpose and membership criteria.

Where a member country is perceived to be clearly in violation of the Harare Commonwealth Declaration, and particularly in the event of an unconstitutional overthrow of a democratically elected government, appropriate steps should be taken to express the collective concern of Commonwealth countries and to encourage the restoration of democracy within a reasonable time frame.

Measures in response to violations of the Harare Commonwealth Declaration include suspension or exclusion from the Commonwealth. It is then not surprising to see that the Commonwealth Ministerial Action Group, which was set up to investigate and respond to any violations of the Harare Declaration via the Millbrook Commonwealth Action Programme on the Harare Declaration (1995, art. 4), has only ever suspended countries on the basis of their undemocratic regime rather than on the basis of human rights violations. Countries suspended from the Commonwealth include Pakistan, Nigeria, Fiji and Zimbabwe, all of which, except for Zimbabwe, have re-joined since then.

All Commonwealth countries have signed the 2013 Commonwealth Charter, whereby human rights, democracy and the rule of law are protected. In its Article 2, the Commonwealth Charter states that all Commonwealth countries are ‘implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.’ While sexual orientation is not covered explicitly by the Charter, it is commonly accepted that ‘other grounds’ cover sexual orientation and gender identity, in line with other human rights instruments interpretation (see above). Many other articles can apply to the decriminalisation of same-sex acts and LGBTI rights. For instance, Article 11 provides for the right to health and other services, whilst Article 16 for the role of civil society in supporting Commonwealth values and principles. In many countries, this could be applied when criminalisation *de facto* reduces access to services and where the role of civil society is not respected (e.g., Mozambique where LGBTI organisations cannot register as charities). Again, the Charter is only a ‘codification of the values to which Commonwealth members aim to adhere’ (Royal Commonwealth Society, 2015, p.3) and not a binding document. Due to its aspirational nature, critiques emphasise the need of an enforcement mechanism or the establishment of a peer review process very much like the UPR (Murphy, 2013). However, due to the sensitivity of the issue, a diplomatic approach behind the scenes of the international fora is preferred (Royal Commonwealth Society; 2015, p.4):

[...] the most practical solution to the question of dealing with disagreement was to allow leaders to work on areas of consensus which can be more easily spoken about publicly, whilst using more discrete and diplomatic channels for continuing engagement on more controversial issues.

In this context, LGBTI issues are unlikely to be raised in public and important fora such as the COW or CHOGM. Ultimately, it is very much down to civil society groups to promote Commonwealth values and hold their own governments accountable to the implementation of these values (Royal Commonwealth Society, 2015, p.4; Murphy, 2013). In fact, The Commonwealth Equality Network, a network of Commonwealth civil society organisations working on LGBTI+ issues was created in 2013 for this purpose. Moreover, more than 60% of the Commonwealth population is aged 29 or under (Commonwealth Secretariat, 2019b). This

is why in the Commonwealth Charter (2013, art. 13) member states recognise the following: 'the positive and active role and contributions of young people in promoting development, peace, democracy and in protecting and promoting other Commonwealth values, such as tolerance and understanding, including respect for other cultures.' Therefore, the expectation is very much on the future generation and the civil society to provide positive change in relation to LGBTI rights.

### **3.3.2 The Commonwealth and LGBTI issues: the power of transnational networks**

It is a fact that LGBTI rights issues have been addressed first and foremost by civil society organisations in the Commonwealth arena. Indeed, ahead of the 2005 CHOGM, young people issued a statement at the Commonwealth Youth Forum asking to participate in the Commonwealth governance process without discrimination, including on the ground of sexual orientation (Commonwealth Youth Forum, 2005, para 2.1.4). This paved the way for civil society organisations to follow suit at the Commonwealth People's Forum organised at the 2007 CHOGM, which recommended Commonwealth member states to include minority rights issues such as the rights of gay and lesbian people on the Commonwealth agenda (Commonwealth People's Forum, 2007, para 97.e). It is important to note, however, that raising these issues is not easy task, especially when they are raised in countries criminalising same-sex acts (e.g., 2007 CHOGM took place in Uganda). In 2007, anti-LGBTI rights activists lobbied the Ugandan Government to speak against LGBTI rights at the 2007 CHOGM. Whilst for Cowell (2013), this shows the growing influence of civil society organisation in the Commonwealth arena, it also demonstrates the controversy and sensitivity of raising LGBTI issues, even for civil society organisations. Case in point, in the following 2009 and 2011 CHOGM, LGBTI issues were not raised in any Commonwealth forum where civil society was present. LGBTI issues were picked up again at both the Commonwealth Youth and People's Forum at the 2013 CHOGM, notably with the help of The Commonwealth Equality Network mentioned above. They have consistently been raised within civil society fora in the margin of CHOGM since then.

Despite the increased pressure from civil society to put LGBTI issues on the Commonwealth agenda, multilateral engagement in the Commonwealth remains difficult. In the 2009 CHOGM, it was decided to set up a body of highly regarded individuals, the Eminent Persons Group,<sup>11</sup> to advise Commonwealth Heads of Government on the reform of the association, as 'the Commonwealth was in danger of becoming irrelevant' (Eminent Persons Group, 2011, p.17). The Eminent Persons Group identified 14 core recommendations to increase the effectiveness of the Commonwealth as an association, fit to address current global challenges (Eminent Persons Group, 2011). Interestingly, one of the key recommendations was that (Eminent Persons Group, 2011, p.20): 'Heads of Government should take steps to encourage the repeal of discriminatory laws that impede the effective response of Commonwealth countries to the

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<sup>11</sup> The Eminent Person Group already existed as an advisory group to the Commonwealth in 1985-1986, to start discussions in relation to dismantling the apartheid regime in South Africa.

HIV/AIDS epidemic, and commit to programmes of education that would help a process of repeal of such laws.'

This is the first time that the decriminalisation of same-sex acts was explicitly mentioned in the Commonwealth arena. However, Commonwealth heads of government refused to endorse this recommendation (Cowell, 2013). The fact that the decriminalisation of same-sex acts is seen as a key issue for reforming the Commonwealth as a coherent and relevant organisation is interesting, as well as the fact that the issue of decriminalisation was addressed from a health angle, rather than a human rights or equality issue (in contrast, gender equality is addressed as a standalone issue in another core recommendation made by the Eminent Persons Group). Another core recommendation made was to establish a Charter of Commonwealth values which was eventually drafted (see previous section) but the appointment of a Commissioner to give effect to the Charter was not accepted (Kirby, 2015, p.50). In 2010, LGBT issues were finally discussed at the governmental level at both the Commonwealth Senior Officials of the Law Ministries and the Commonwealth Women's Affairs Meeting (Royal Commonwealth Society and Kaleidoscope Trust, 2015). However, LGBTI issues still do not make it to any official statement from Commonwealth Heads of Governments.

Indeed, positive statements have been made in front of civil society organisations, but no concrete action has been made or consensus found in relation to progressing LGBTI rights. Also, Commonwealth Secretary Generals have often been criticised for not being more vocal on LGBT rights violations in the Commonwealth (Tatchell, 2011). Kamallesh Sharma opened the 2011 People's Forum stating that the criminalisation of same-sex acts was incompatible with Commonwealth values, whilst Baroness Scotland stated in 2015 that she would prioritise LGBT in the Commonwealth of Nations (Out Leadership, 2015). However, not tackling the issue of LGBTI rights and criminalisation of same-sex acts impacts on the relevance of the Commonwealth as an effective organisation. As Josephine Ojiambo, the former deputy secretary general of the Commonwealth (Ojiambo, 2019) stated:

Within the Commonwealth, we are all working within the context of a colonial legacy that makes the challenges of legislative reform to tackle discrimination a 'Commonwealth problem'. We must, therefore, see the Commonwealth as an actor itself, whose role is to end colonial forms of domination around the world.

There is therefore a clear pattern emerging, whereby civil society organisations are left with pushing LGBTI rights issues on the Commonwealth agenda. This strategy is yet to pay off, however, as both Commonwealth Heads of Governments and the Commonwealth as an organisation continue to fail to address these issues. Consequently, many recent cases of decriminalisation result from legal challenges brought against Commonwealth governments.

### **3.3.3 The role of the Commonwealth in decriminalising same-sex acts**

According to Cowell (2013), Commonwealth states are divided into three categories in relation to their stance on LGBT rights. Whilst pro-LGBT rights states favour a more vocal approach



to LGBT issues, cautious states prefer letting these issues be addressed via legal challenges, and states blatantly opposed to the decriminalisation of same-sex acts are unlikely to change position. Reasons for not decriminalising same-sex acts range from a lack of political appetite to domestic hostile climate and a preference for judicial process. Given the variety of state positions in relation to decriminalisation and, as covered in the sections above, the reluctance from states to engage via Commonwealth institutions or human rights mechanisms, it seems that the Commonwealth as an organisation has little role to play in driving change. Consequently, a majority of researchers are sceptical about the role of the Commonwealth in relation to the decriminalisation of same-sex acts amongst its members, due to the number of states criminalising same-sex acts and the weakness of the Commonwealth Charter. Indeed, Gerber (2014, p.82) states that it is 'highly unlikely that the Commonwealth will play a significant role in the decriminalisation of homosexuality among its members.' For Waites and Lennox (2013, p.539), '[t]he question of whether the Commonwealth can become usefully engaged in sexual orientation and gender identity issues is thus inseparable from the question of whether the Commonwealth can reform itself, and how it is perceived.' Indeed, 'the Commonwealth oscillates between a political alliance and a cultural association, which hinders its effectiveness in addressing pressing global issues' (Chambers and Gilmour, 2024, p.14) including human rights abuses. However, it can be argued that the Commonwealth's weaknesses, notably its extreme diversity in terms of human rights compliance and its inability to engage in sensitive and controversial topics such as LGBTI rights because of soft governance mechanisms, can also uniquely contribute to change. The Royal Commonwealth Society and Kaleidoscope Trust (2015) have highlighted the fact that all Commonwealth states are able to discuss issues on an equal footing, through cross-cultural dialogue and consensus-building. Indeed '[a]ll countries have a chance to raise issues that are a priority for their countries and feed differences of culture, development, religious belief or political systems into processes and conversations' (Royal Commonwealth Society and Kaleidoscope Trust, 2015, p.8). This has wide implications in relation to implementing human rights according to different contexts as well.

In addition, the fact that most Commonwealth countries share the same language and similar political and legal systems,<sup>12</sup> all inherited from their shared colonial past, facilitates opportunities to link up across countries and exchange best practices in relation to any issues, including LGBTI rights. These opportunities to link up and technical exchange practices already exist as part of formalised associations, meetings and sources of funding. Indeed, at governmental level, we have seen that the Commonwealth Senior Officials of the Law Ministries have discussed the issue of decriminalisation, whilst at civil society level, The Commonwealth Equality Network is linking up civil society organisations across Commonwealth regions. The Commonwealth Parliamentary Association is also an opportunity for parliamentarians working on LGBTI rights issues to exchange best practice, whilst a number of Commonwealth professional associations gathering journalists, lawyers or judges provide practical fora to discuss such issues in practice. In addition, organisations such as the

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<sup>12</sup> With the exception of the last four countries which joined the Commonwealth – Rwanda, Mozambique, Gabon and Togo – as they have no historical ties to the British Empire and therefore do not share the same language, nor political and legal systems.

Institute of Commonwealth Studies provides an avenue for academics to discuss Commonwealth issues (Royal Commonwealth Society and Kaleidoscope Trust, 2015, p.9). Finally, the Equality and Justice Alliance aims to provide direct technical assistance to Commonwealth governments to support them with reform of their discriminatory laws, including the laws criminalising same-sex acts. On the one hand, the Commonwealth appears to be a difficult forum to address LGBTI issues, especially when considering both multilateral engagement and its colonial legacy, which seems to endure in Commonwealth institutions, discourses and practices (Lennox and Waites, 2013). On the other hand, it facilitates connections and exchanges between countries that would *a priori* have little in common. According to Queen Elizabeth II (2009), former Head of the Commonwealth, this is precisely the position the Commonwealth needs to occupy: '[t]he Commonwealth is not an organisation with a mission. It is rather an opportunity for its people to work together to achieve practical solutions to problems'. These practicalities need to be assessed against the continuation of power dynamics where 'English [is] the primary language of communication and cultural exchange further reinforcing linguistic and cultural hegemony, while muting voices that do not conform to the Anglocentric narrative' (Chambers and Gilmour, 2024, p.14). Given the existing although paradoxical role of the Commonwealth in relation to the protection of LGBTI rights and conflicting views as to its effectiveness in doing so, there is definitive value in carrying out research on the Commonwealth as a vehicle to achieve decriminalisation of same-sex acts and promote human rights.

## **Summary**

This chapter has identified different routes to the decriminalisation of same-sex acts. The overall picture in relation to the decriminalisation of same-sex acts is quite fragmented: whilst progress has been made in relation to securing LGBTI rights within existing human rights standards, too many states party to core human rights treaties still criminalise same-sex acts, thereby weakening the entire international human rights regime. Structural issues derived from the social, historical and cultural context of human rights means that they are *de jure* and *de facto* a difficult vehicle to progress LGBTI rights. The Commonwealth's compliance with human rights is problematic when considering how many Commonwealth states still criminalise same-sex acts and their refusal to engage in these issues as an international organisation. Weaknesses inherent to the organisation, including its colonial legacy, partly explain the Commonwealth's failure to address the rights of LGBTI people but a lack of political will is still the major impediment to change. Consequently, LGBTI rights progress often rests on individual applicants seeking redress in both domestic courts and international courts, with all the financial, emotional and physical risks attached to the publicity of the case and the mandatory disclosing of the applicants' sexuality in countries where it is illegal to engage in same-sex acts.

## Chapter 4. Research Methodology

This research aims to isolate factors of success (or failure) in promoting LGBTI rights in the sense that they actually enhance states' compliance with human rights, notably by unravelling why countries radically change their position in regard to LGBTI rights by going down the path of decriminalisation, specifically looking at the 'boomerang effect' part of 'spiral model' developed by Ropp and Sikkink (1999) and how domestic and transnational social movements join forces to bring pressure to states criminalising same-sex acts 'from above' and 'from below' in postcolonial contexts. A secondary aim of this research is to bridge the gap between academia, policy and practice and provide experts and state officials willing to progress human rights for LGBTI people with concrete examples on how to do so when dealing with criminalising states, via their bilateral or multilateral interactions. Ultimately, I believe that this research should positively contribute to making the case for decriminalising same-sex acts globally, taking into account the diversity of queer experiences and sociocultural contexts shaped by power. This chapter covers the overall approach to the research design and methods used, including the rationale for selecting the five countries of study, before reflecting on the process used for both the thematic analysis of documents and interviews. I briefly cover research limitations and mitigations against these, before concluding this chapter with some reflections on my positionality as a researcher.

### 4.1 Research design

Whilst this research sits at the crossroads of postcolonialism, queer and human rights theories, a decolonial approach to the 'boomerang effect' (Waites, 2019) was chosen to capture the complexity and multiplicity of domestic and international discourses and activism shaping the decriminalisation of same-sex acts process in Commonwealth countries. This approach also allows us to test the framework against further case studies to fill in the gap in this area of research and refine our overall understanding of successful strategies to advance LGBT rights in postcolonial contexts.

#### 4.1.1 Theoretical framework

The fundamental aim of my research is to understand what factors lead to the decriminalisation of same-sex acts in Commonwealth countries. I have focused on the Commonwealth as this international political configuration provides the most extreme positions in regard to LGBTI rights. Since most Commonwealth countries share a common heritage in relation to their criminal law,<sup>13</sup> it is also helpful to see whether different Commonwealth countries face similar legal challenges in relation to LGBTI rights, and explore the extent to which the Commonwealth of Nations is equipped to deal with these challenges.

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<sup>13</sup> Some Commonwealth countries do not have a common law system given they were not colonised by the British Empire. These include Mozambique, Rwanda and Gabon which have instead a civil law system.

Through my research questions, I am integrating perspectives from human rights, law, sociology, international relations and politics when identifying and analysing patterns of decriminalisation of same-sex acts in Commonwealth countries. Given the inherent complexity of this research, where North/South, domestic/international and postcolonial dynamics are at play, the ontological approach had to be multidisciplinary by default and by design to capture as many factors impacting decriminalisation processes as possible. As such, many theoretical frameworks could be appropriate for and relevant to this research: from a multidisciplinary approach to human rights, to queer theories, intersectional approaches and decolonial frameworks. All of these approaches are subversive, in the sense that they challenge the normative and hegemonic social ordering of identities. Indeed, queer theories have discussed queer subjects as deviant and defiant to legal and social heteronormativity (Foucault, 1988; Butler, 1990; Browne and Nash, 2016) whilst intersectional approaches remind us that queer subjects evolve around a 'shifting and contested map of sexual identifications, politics and inequalities as these (dis)connect across time and place, re-constituted through, against and in relation to class, disability, ethnicity, gender and age, to name but a few' (Taylor, Hines and Casey, 2010, p.3; Liinason and Kulpa, 2008). Also, the decriminalisation of same-sex acts across the Commonwealth certainly showcases the diversity of queer experiences in fighting against the colonial criminalisation of their identities. However, these frameworks on their own miss the international components of this research, whether that is the international narratives and counter-narratives or the transnational activism at play, as subjects claim their human rights to *inter alia*, dignity, equality and non-discrimination. In this regard, multidisciplinary approaches to human rights 'tell us what human rights mean for those whose rights they are' and 'how human rights may be understood differently in different social contexts with important implications for human rights practice' (Freeman in Viljoen and Njau, 2012, p.8; Landman, 2005).

This research looks at how the decriminalisation of same-sex acts is achieved and experienced by different stakeholders around the Commonwealth, and evaluates how the social, political, and economic components surrounding the process affect such change. As a result, a multidisciplinary approach to human rights compliance should capture the complexity involved in states' moving from human rights commitment to compliance. However, I found decolonial approaches to be better suited for this research, as they place personal narratives and subjective standpoints at the heart of the research, which can hint at different, intersectional experiences of queerness (Gill, Purru and Lin, 2012). Also, a decolonial approach to human rights compliance felt the most appropriate theoretical framework to use in this research given a) the centrality of human rights in the discourse used in the decriminalisation process by activists and states alike, b) the necessity to capture postcolonial dynamics in the Commonwealth, an inherently colonial setting and c) the imperative to unravel both domestic and international factors at play. I build on Waites' (2019) decolonial approach to the 'boomerang effect', relying on the concept originally developed by Keck and Sikkink (1998, p.18) as an intrinsic and indispensable component of the 'spiral model' which conceptualises states' movement from human rights commitment to compliance. Indeed, the 'boomerang effect' is a useful framework to explain how domestic and transnational social movements join forces to pressure states 'from above' and 'from below', moving them further down the 'spiral model' to a human rights-consistent behaviour. Taking a decolonial approach to the 'boomerang effect' is helpful in analysing the fight for and against LGBTI rights in a

postcolonial context, including bringing a sociological outlook to capture both the diversity of queer experiences and the interactions and resistances between Global North and Global South. However, as covered in chapter 1, the model has only been tested in the context of legal challenges brought against Caribbean governments, thereby not covering cases of decriminalisation achieved through law reform or in other regions of the Commonwealth. The original contribution of this research is therefore to further investigate whether the successful use by postcolonial actors of 'transnational strategies to invoke human rights as defined in the UN system' identified by Waites (2019, p.396), which reveal successful 'boomerang effects' in diverse postcolonial contexts, can be confirmed in other postcolonial contexts and using different human-rights claiming strategies. In this regard, the case studies for this research were selected with the view to test this framework further and add to the evidence base whilst the thematic analysis of media documents and interviews were chosen to unravel how human rights are articulated in different sociocultural contexts shaped by power, how social structures and resources are accessed in rights-claiming processes, and how activists are impacted by these rights-claiming processes in return. This allows me to understand how identities are shaped by and within broader dynamics of power, how these play out in terms of the marginalising of postcolonial voices, the rigidification of negative narratives and narrowing of opportunities for activism when dealing with powerful institutions.

#### **4.1.2 Selection of case studies**

I believe a cross-cultural comparison of states helps explain and understand the different ways in which human rights are promoted and protected (Landman and Carvalho, 2009). Also, I decided at the outset to undertake a comparative study analysis where I would first look at the history, legal framework, policies and practices of five Commonwealth states which made recent and tangible progress towards LGBTI rights by decriminalising same-sex acts. Out of the 22 Commonwealth countries which have decriminalised same-sex acts, almost equal numbers have decriminalised through reform of their sexual offence laws or as a result of legal challenges brought against their governments. I therefore wanted to ensure I covered different processes of decriminalisation as well as covering different regions of the Commonwealth. I chose one country *per* region in the Commonwealth which has embarked in the decriminalisation process recently, whilst also focusing on countries which have been less studied. As a result, I chose to focus on Mozambique, Sri Lanka, Cyprus, Nauru and Belize. The analysis undertaken of these countries was conducted between 2017-2019 and can be found at Appendix A but I will provide a summary here to contextualise the subsequent analytical chapters.

Mozambique and Nauru are the only two countries of the sample which decriminalised same-sex acts through legislative reform. Despite being a former Portuguese colony, Mozambique was unable to escape the influence of the British Empire, which was ruling in neighbouring countries at the time. After the country's independence, this interconnection allowed Mozambique to plug into an array of international organisations including the Commonwealth of Nations, which has driven a flow of international economic aid and assistance. I hypothesised that Mozambique's dependence to international aid also permitted the domestic mobilisation on LGBTI rights to relay its message at an international level and apply pressure for change 'from above' and 'from below' (Keck and Sikkink, 1998, p.18). Turning to Nauru's

country profile, it seems that the review of their criminal code was pushed through by the Australian Government via dynamics of pinkwashing and racialisation of homophobia to mitigate its devastating refugee policy and uphold its human rights reputation, at low cost. Indeed, in 2016, the Australian Government came under increased international and domestic criticisms for sending gay asylum seekers to a country where homosexuality was illegal. This prompted Nauru to introduce a new penal code decriminalising same-sex acts the same year, with evidence of support in the drafting process from the Australian Attorney-General's Department since 2011. Both Mozambique and Nauru's case studies tend to prove the scope and conditions of the 'spiral model' developed by Risse, Ropp and Sikkink (2013) whereby material and social vulnerability move a country from human rights' commitment to compliance. Both case studies also confirms that transnational mobilisation is crucial in pressuring a government 'from the top' and drive human rights change domestically. Nevertheless, the prerequisite of domestic mobilisation that helps pressure government 'from below' as well, is absent in Nauru's case. In addition, the lack of further progress towards LGBTI equality since the decriminalisation of same-sex acts in both countries undermines the compliance assessment.

Conversely, Cyprus and Belize decriminalised same-sex acts following a court case brought against their governments. Belize is the only English-speaking country in Central America and it is at odds with its neighbours in regard to its political stance on sexual orientation and gender identity as it was the last country in Central America to decriminalise same-sex acts. The Belize case study demonstrates that changing the law can bring change in social attitudes, by creating a national debate on the issue of sexual orientation and gender identity, making a community visible to the rest of the society, as well as creating and legitimising space for LGBTI civil society organisations to operate. In contrast, the decriminalisation of same-sex acts in both Southern and Northern Cyprus was dictated by discussions around access to the EU. Indeed, although the legal case was won in 1992, it took threats from the EU to refuse Cyprus' membership for the country to comply with the ruling whilst, in Northern Cyprus, the decriminalisation took place in the face of heavy lobbying from Members of the European Parliament and Turkey which, at the time, was also attempting to join the EU. Both case studies nonetheless show the importance of the 'boomerang effect' (Keck and Sikkink, 1998, p.18), whereby strong domestic-led mobilisation can meet the support of the international community, which can provide resources, scrutiny, reporting mechanisms and legitimise space for LGBTI civil society organisations to operate.

Finally, since the decriminalisation process in India has been largely studied (Waites, 2010; Sheikh, 2013; Jyoti Puri, 2016; Narrain, 2018, Baas, 2021) and in the absence of other Commonwealth countries in Asia which have decriminalised same-sex acts at the time of the research,<sup>14</sup> I prioritised Sri Lanka as a case study to add in to the evidence base. Sri Lanka's recent disasters, a deadly civil war and tsunami, have deeply affected the political, economic and social make-up of the country. Despite a strong advocacy operating at both domestic and international levels for more than a decade, the decriminalisation of same-sex acts is not yet

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<sup>14</sup> Singapore subsequently decriminalised same-sex acts in November 2022

in sight. Risse, Ropp and Sikkink (2013) argue that in order for states to move towards compliance with human rights, some pre-conditions need to be met, such as the existence of a democratic regime and the state's capability to implement rules over its entire territory. However, Sri Lanka is deemed to be a 'flawed democracy' according to the Democracy Index 2021 with remaining issues of corruption and impunity for human rights violations (The Economist Intelligence Unit, 2021), whilst, in order to appease relations with minority ethnic communities, the Sri Lankan Government has allowed minorities to preserve their own personal laws. By doing so however, the state's influence and power to implement rules is more limited (Panditaratne, 2016), thereby giving credence to the authors' prerequisites leading to human rights compliance. Also, the diversity of case studies is aimed at testing the theoretical framework in different regions of the Commonwealth, which fought/are fighting for decriminalisation in different ways.

## **4.2 Methods and data collection**

Following the theoretical framework chosen for my research, I felt compelled to follow a decolonial approach to methodology, acknowledging the complexity, fluidity and messiness of the research process (Gill, Purru and Lin, 2012). As a result, a combination of qualitative methods was used to unravel the power dynamics at play, thereby moving beyond knowledge production centred around oppositional binary and giving centrality to the multiple and different contributions made to the decriminalisation of same-sex acts.

### **4.2.1 Decolonial approach to methods**

I decided that a qualitative approach to data analysis was more suited to this research for two reasons. First, whilst quantitative research is often preoccupied with measuring causes and consequences of a social phenomenon, qualitative research is more concerned with explaining why and how things are (Bryman, 2012). Indeed, understanding the context surrounding any given social behaviour is paramount for qualitative researchers, especially as such context evolves over time (Pettigrew, 1997; Bryman 2012). As my objective is to understand why and under which circumstances Commonwealth states decriminalise same-sex acts, qualitative methods are therefore naturally well-suited to answer the research questions. Second, and following the theoretical approach mentioned above, it also naturally follows that a decolonial approach to methodology had to be taken, moving away as much as possible from the Eurocentrism inherent to social research (Sian, 2022). Indeed, given the nature of my research, which is investigating the coloniality of power surrounding the decriminalisation of same-sex acts in Commonwealth countries, a decolonial approach to research methods must be taken to ensure ethical research that is non-exploitative and showing intellectual integrity. Qualitative methods are privileged in decolonial analyses as they focus on subjectivity rather than the presupposed objectivity of qualitative methods (Sian, 2022), especially when reliant on digital information (Bosch, 2022). That said, Eurocentric bias still permeates qualitative methods and therefore cannot be totally escaped. I have nevertheless tried to address this bias as much as possible by making my research intentions explicit, using a combination of qualitative methods to both unravel the power dynamics at play and giving centrality to the voices of those who are contributing to the decriminalisation of same-sex acts, interacting with the field beyond my research, from attending relevant

conferences to engaging on this topic via my work, and reflecting on my positionality as a researcher.

Indeed, according to a decolonial methodological approach, and bearing in mind the scepticism surrounding a 'methodology which is more often scientistic than scientific' (Bourdieu, 1996, pp.17-18), it is important to 'make explicit the intentions and the procedural principles that we put into practice in the research project' (Bourdieu, 1996, p.18). I did so by making explicit the intention underpinning my research, which is to contribute to the decriminalisation of same-sex acts globally, and contributing to the analysis of successful strategies to make them available to others (Santos, 2002). Also, my initial research proposal, the participant information form used for interviews and the research itself are all framed in this light. Additionally, I believed that a combination of methods could help in capturing as many insights from the multitude of stakeholders involved in the decriminalisation of same-sex acts from both the Global North and Global South, whilst unravelling ensuing complexity of interactions and narratives at play. As stated above, I started my research with a cross-cultural comparison of Commonwealth states which have embarked in the decriminalisation process in all different continents to encapsulate as much of the different regional dimensions of the Commonwealth as possible. I also decided to look at the international and domestic discourses in relation to the decriminalisation of same-sex acts by analysing media coverage of the issue in the countries of study to unravel the power dynamics at play and see whether I could identify patterns which triggered positive change. Consequently, rather than ignoring the coloniality of power including in the context of international relations and narratives, they are an integral part of the analysis. Most importantly, I carried out 16 semi-structured interviews with activists, judges, lawyers and members of international organisations to understand how the narratives play in local contexts. I have tried to ensure that the participants' voices and contributions have been fully represented in the analysis, and all dimensions covered at interviews to be part of the analysis rather than selectively chosen. In this regard, I have used a thematic analysis to both datasets collected, coding emerging themes rather than predetermining them to fit a theoretical framework. I also reflect on the relationship between myself, the researcher, and participants, in the last section of this chapter. Finally, it is important to mention that I have collaborated and discussed with individuals working on the issue of the decriminalisation of same-sex acts outside of this research and as part of my work as a civil servant between 2016-2021, thereby allowing me to gather more insights, critiques, and views on this issue. Overall, I believe I have achieved 'reflexivity, criticality and engagement [which] are crucial to ensure the production of ethical, non-exploitative research' (Sian, 2022, p.49). As a result, the research outcomes show the complexity of interactions and tensions at work in when discussing the decriminalisation of same-sex acts in Commonwealth countries, thereby moving away from oppositional binary research frameworks (e.g., North/South, core/periphery, domestic/international), and contributing to postcolonial approaches to LGBTI rights (Waites, 2019).

#### **4.2.2 Media documents**

The media analysis not only helped me to gather initial knowledge and corroborate the desk-based research I conducted for the case studies (see Annex A), but also made me more knowledgeable and effective during interviews as I did not have to ask interviewees to clarify



the context when referring to past events, discourses or actions. It also helped me understand the different narratives at play, especially in the context of the internationalisation of the decriminalisation of same-sex acts. The document analysis for each country was done in April 2020 using the database Nexis, which gathers over 40,000 international publications, media and news sources. To identify any shift in public narrative, it is important to choose a timeframe that is long enough to mitigate against any other factors which would impact the public discourse in relation to LGBT<sup>15</sup> rights (e.g., any other laws passed on LGBT rights) and so there is a quantitative element to the analysis, i.e., looking at a shift in number of sources discussing LGBT rights pre/post decriminalisation and which geographical context was more prevalent when discussing these issues. Consequently, the analysis of documents for each country starts ten years before the decriminalisation of same-sex acts in any given country (if applicable) to 2020, when this research was undertaken. As such, the document analysis for Mozambique covers the period 2005-2020. Mozambique's law decriminalising same-sex acts took effect in 2015, meaning the document analysis covers the five years following the decriminalisation of same-sex acts. Mozambique prohibited discrimination on the basis of sexual orientation in employment in 2007, and this important milestone for LGBT rights in the country is therefore captured in the analysis. Belize and Nauru both decriminalised same-sex acts in 2016, so the document analysis for these countries covers the period 2006-2020. For Cyprus, the analysis timeframe is longer due to two acts of decriminalisation in the country – in 1998 in Southern Cyprus and in 2014 in Northern Cyprus. Therefore, the document analysis for Cyprus as a whole, covers 1988 (ten years before the decriminalisation in Southern Cyprus) to 2020, six years after the decriminalisation of same-sex acts in Northern Cyprus. As of now, Sri Lanka has not decriminalised same-sex acts, therefore the analysis starts in 2010 to look at the narrative on the decriminalisation of same-sex acts and wider LGBT rights issues with the hope that, when comparing with the analysis for other countries, observations can be made.

For the analysis on Nexis, the following research parameters were entered for each country: '[COUNTRY] AND SPEECH OR STATEMENT OR DECLARATION OR SPOKE w/200 DECRIMINALISATION OR DECRIMINALIZATION AND LGBT OR HOMOSEXUALITY OR SAME SEX ACT OR SAME SEX OR GAY', which anticipated different treatments of the issue. The results were then manually compiled and categorised in a Microsoft Excel spreadsheet by date, source, geographical positioning and emerging analytical themes. Following these parameters and the period covered, and after screening out duplicative or irrelevant content, I collected and analysed a total of 267 media documents, including mainly press articles but also speeches, press releases and radio content. This total includes 76 resources for Mozambique, 22 for Nauru, 57 for Belize, 30 for Cyprus, and 82 for Sri Lanka. All sources have been allocated a unique identifier and can be found in Appendix C. Whilst all sources were contextually important for the qualitative analysis, 32 of them were screened out of the sample for the quantitative analysis, as not directly relevant to the decriminalisation of same-sex acts or LGBTI issues in the countries of study (see section 4.3.1 for further details). As

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<sup>15</sup> "LGBT" rather than "LGBTI" was used for the media analysis as the search engine picks up both acronyms if using the former but not the latter.

such, the quantitative analysis only covers a total of 235 documents: 72 resources for Mozambique, 20 for Nauru, 57 for Belize (unchanged), 29 for Cyprus, and 57 for Sri Lanka. The analysis process and its limitations will be explored further below.

#### **4.2.3 Interview process**

Interviews are the core element of my research, as I wanted the experiences, discourses and insights from individuals who have engaged with or in the decriminalisation process to be central to this research. I selected interview participants on the basis that they have worked on, or contributed to, the process of decriminalisation of same-sex acts in the five Commonwealth countries I selected. Interviews were carried out between 2018-2021, after securing approval from the Economics, Law, Management, Politics and Sociology Ethics Committee. In total, I have interviewed 16 individuals who have fought or are fighting for the decriminalisation of same-sex acts in the Commonwealth, spanning from local and international activists, judges, lawyers, and human rights advocates. In particular, civil society members from Belize, Mozambique, Sri Lanka and Cyprus were interviewed, which meant the sample is distributed across different country contexts and respondent groups (see Index for the list of interview participants and their characteristics). Interviews were carried out face-to-face or via a phone/video call in a safe, quiet and private place, whether that was the participants' workplace or home.

I started the recruitment of interview participants with a purposive sampling technique and then relied on snowball sampling. I first contacted UK-based transnational activists I knew through my work which, at the time, was as a UK civil servant advising on international LGBT equality, and asked them for other contacts in the key countries of study. I used my university email address as a way to contact the main bulk of participants but my work email address to contact gatekeepers and officials as I knew it would inspire more confidence in my work. This was convenient as some individuals, especially from international organisations, were particularly conscious of the sensitivities surrounding their work and would have probably been reluctant to engage in the research without prior familiarity. This, coupled with my decision to conduct semi-structured interviews, allowed me to ensure a degree of informality and collect candid rather than diplomatic answers in relation to the area of my research, and to some extent close the gap between myself, the researcher, and the participants. Interview questions were inviting participants to explore their own role in the process of decriminalisation of same-sex acts in the countries of study and prompt them to identify the conditions for moving this work forward; the interview questionnaire can be found at Appendix E. Also, the interviews were more akin to conversations to allow the building of a relationship between the researcher and the participant(s), threading cues of trust and knowledge. In most of interviews, I tried to 'reduce as much as possible the symbolic violence which is exerted through them', by instigating 'a relationship of active and methodological listening' (Bourdieu, 1996, p.19). I often had to prompt interviewees with the early findings of my research so they could trust I understood the sensitivities they were dealing with. As a result, I had many insights and contexts in which they were working, albeit I could not make them all explicit through my analysis without exposing the interviewees' identity or damaging their sensitive and non-public work: 'don't tell them I said what I am about to say' told me Participant 9, incidentally. My

relationship with interviewee participants will be further discussed as part of reflections on my positionality below.

Given the sensitivity of the topic, ethical considerations were at the forefront of my mind throughout the research. Subject to a carefully thought-through ethical process, all prospective participants had to read and sign the participant information sheet and informed consent form (see Appendix D). Whilst a couple of participants were happy to be named, I decided that I would grant anonymity to all given the small sample size. Since all participants were professionals in their field, they were able to navigate topics without distress. However, given the emotional drain activism entails, as covered in subsequent analytical chapters, I still provided suitable helpline numbers and would have suspended the interview immediately, should discussing the topic cause suffering. I transcribed the interviews verbatim and removed names and other personal data which are not necessary for this research, and to the extent that it was possible, removed or substituted any reference that may be able to identify the participants. I also coded the interview transcripts with a number only known to me. All data were stored on my University Google Drive or my personal encrypted and password-protected hard drive.

Whilst qualitative research does not necessarily lend itself to large sample sizes given the emphasis on quality over quantity, my sample ended up being relatively small anyway due to the fact that only a few international organisations work on the issue of the decriminalisation of same-sex acts in Commonwealth countries, and that the domestic LGBTI civil society of each country of study is relatively contained, when it exists (e.g., Nauru does not have a constituted LGBTI civil society). Consequently, I rapidly achieved the theoretical saturation of data through the use of both purposive and snowballing techniques. The emphasis of my research was to give as many analytical dimensions as possible and I felt I had enough material to relay the complexity of the issue studied. In addition, it was important that the richness of the data from individuals interviewed could be fully analysed and discussed.

### **4.3 Thematic analysis**

I applied a reflexive thematic analysis (Braun, Clarke, Terry and Hayfield, 2019) to both data sets collected, coding text according to emerging themes. Thematic analysis is widely popular in social research despite its lack of detailed protocols and procedures (Bryman, 2012). Reflexive thematic analysis helps in identifying meaning-based patterns through an open and iterative coding process led by the researcher, meaning the coding is organically shaped by emerging themes rather than predetermined to fit a theoretical framework (Braun, Clarke, Terry and Hayfield, 2019). The flexibility of the method was attractive to me as I was cognisant of my inherent Eurocentrism and I wanted to be guided by the data, rather than apply a rigid, Eurocentred and Eurocentring, framework to it.

#### **4.3.1 Media documents**

The thematic analysis of documents aimed to provide more insights into the interviews, by focusing on how LGBT rights and the decriminalisation of same-sex acts were portrayed in national and international media for the countries of study. The analysis was mostly qualitative,

looking at how different media treated the decriminalisation of same-sex acts and wider LGBT issues in any given country, including how elected officials positioned the decriminalisation of same-sex acts publicly. Furthermore, the comparative analysis showed how the international coverage on these issues impacted the local coverage, notably identifying how wider LGBT developments or media treatment translated in a postcolonial context. There was also a quantitative aspect in the analysis, where I assessed the publications over time to see whether there was a public discussion about these issues prior to the decriminalisation and, if so, whether the narrative changed after decriminalisation.

Publications which were not directly relevant to the topic of interest were screened out of the quantitative research so the analysis on the number of publications *per year* and the geographical positioning would be as accurate as possible, whilst some of these publications have been retained for the qualitative analysis to provide more context to the findings. For instance, Sri Lanka's research picked up a lot of interaction with human rights mechanisms where LGBTI rights were discussed but not directly in connection to the country itself. The fact that Sri Lanka was active in human rights fora is nonetheless interesting for contextualising the duplicitous stance the country has on human rights and LGBTI rights. When this is the case, I have made it clear in the analysis that the findings relate to the wider context than the issue of decriminalisation of same-sex acts or LGBTI rights.

Also, the document analysis in the following chapter covers both the number of publications on LGBT rights or the decriminalisation of same-sex acts and their geographical positioning *per year*. The bibliometric analysis over time (see figures at Appendix B) is aimed at identifying any shift in number of sources discussing LGBT rights pre/post decriminalisation of same-sex acts, and see whether wider national or international developments impact the national treatment of these issues. The quantitative analysis of sources discussing the decriminalisation of same-sex acts or LGBT issues in relation to any given country allows us to see whether regional (e.g., Africa, Americas, Asia, Pacific, Europe) or political (e.g., European Union or Commonwealth) media treatment matters in the coverage of LGBT issues. When categorising the publications' geographical positioning, attention was paid to how the issue of the decriminalisation of same-sex acts or LGBT rights was framed, i.e., as part of or in relation to a specific geographical framework (e.g., situation of LGBTI rights in Asia, or the decriminalisation of same-sex acts being negotiated with the EU or being part of a Commonwealth 'problem'). In all cases, the geographical positioning was mentioned in the publication rather than implicitly covered. When the issue of the decriminalisation of same-sex acts or LGBTI rights was discussed as part of wider international developments without specific political or regional contextualisation (e.g., listing of countries around the world which have decriminalised same-sex acts), publications were classified as pertaining to an all-encompassing 'world' coverage. All figures showing the publications' numbers and geographical positioning for each country can be found at Appendix B. The themes identified in the analysis are covered in chapter 5.

#### **4.3.2 Interviews**

The thematic analysis of interviews means to capture both the multiplicity of stakeholders involved in the process of the decriminalisation of same-sex acts as well as give a voice to

different individuals' realities, with the view to understanding what prompts states to decriminalise same-sex acts and which discourses are effective in this regard. For the analysis, I provided verbatim transcripts of interviews, removing all identifiers. I then organised the results according to the four emerging themes identified through interviews, which I found through my analysis to be revolving around the processes of decriminalisation, the international and local dimensions of activism and competing narratives, which my analytical chapters 6 to 9 cover in turn. Attention was paid in ensuring anonymity although I tried to give some context about the participants and the topics discussed throughout the analysis and in the Index to contextualise the findings as much as possible. Rather than making generalisations of experiences, I chose to highlight the opinions and insights of participants at the forefront of the analysis to reveal the in-depth experiences on the ground. As such, and due to the disparity of the profile of my respondents, the analysis shows how different experiences overlap, intersect, or conflict.

#### **4.4 Limitations**

As with all research, there are limitations to the methods used. Regarding the media analysis, there are inherent limitations in conducting analysis on online databases as it *de facto* excludes printed publications which may exist in addition to, or in different form from, the online version. In particular, Nexis may fail to capture local media and broadcast coverage for each country, which means the analysis is not representative of the actual media coverage over the period observed. In addition, some resources published at the time may not be available now. Furthermore, the analysis was done in English for all countries, which means resources from other key national languages are left out of the research (e.g., Portuguese for Mozambique, Greek for Cyprus, Spanish for Belize) thereby missing a sizable part of the picture. Overall, any media analysis will fail to capture a wider narrative on LGBTI issues; however, this is mitigated by the interviews, which are deemed effective to decolonise digital methods (Bosch, 2022) as well as reports published by non-governmental organisations and activists (e.g., Human Dignity Trust, 2015; Royal Commonwealth Society and Kaleidoscope Trust, 2015; The Other Foundation, 2017; Seyhan, 2022) which were integrated throughout this research, to give as much of a comprehensive picture as possible. It is also important to note that the media analysis was done with the view to exposing international narratives rather than taking them for the only legitimate narrative at play. In this regard, interviews were aimed at putting the media analysis into perspective.

Looking at interviews conducted, whilst there are clear benefits of choosing both purposive and snowballing techniques, including the ability to get useful and important information not accessible to everyone, there are also some inherent issues with the methods. For one, self-selection certainly undermines the objectivity of the sample and consequently the research, although I have made an effort to select a broad range of interview participants, spanning different organisations' affiliation and different countries from across the Commonwealth. In addition, another limitation comes from choosing a semi-structured approach to the interviews which, whilst allowing for the fluidity of the conversation and enabling social proximity, does not erase totally 'the forms of censorship which prevent the voicing of certain things and the promptings which encourage the emphasis of others' (Bourdieu, 1996, p.19). This is compounded by 'the imposition effect' (Bourdieu, 1996, p.20) of the need to keep the

conversation according to the lines of research enquiries which are not necessarily sensitive to the interviewees' context and lived experience. Due to the geographical disparities, most interviews took place over the phone or online, and sometimes in person. Whilst there are clear benefits stemming from the use of technology, including the ability to reach out to participants who I could not have reached out to without travelling, in-person studies have been shown to be marginally superior to video calls (Krouwel, Jolly and Greenfield, 2019; Hart, 2023). However, an important part of my sample is dispersed across the Commonwealth, thus budget, time and health constraints following the COVID-19 pandemic justified the use of video calls. I also found that regardless of the interview format, I often had to build a connection between myself, the researcher, and the interviewee by volunteering information about my findings, in line with the sensitivity of the research discussed above. The language barrier meant that one interview had to be sent to a local activist who did not speak English, thereby closing down the amount of information I could have received. In this case, I was able to interview another participant with a similar profile (activist in Mozambique) who spoke English and could add more context to the decriminalisation process in this country; the email interview was therefore used to corroborate rather than supplant other insights. Overall, I believe that the use of combined qualitative methods helped mitigate the limitations identified above, in addition to preventing the data collected getting flattened. Indeed, I clearly signposted in the analysis where interview participants/narratives were local, global, or a combination thereof. Whilst removing identifying data to safeguard the privacy of the interview participants, I retained some contextualising data for both the interview and media analyses (see Index and Annex B) and by supplementing background information in case studies (see Annex A). Furthermore, the choice of a thematic analysis was also helpful in striking a balance between observing patterns and retaining the specificity of different experiences and contexts, as discussed in the previous section.

#### **4.5 Reflections on the researcher's positionality**

The researcher's positionality, meaning their worldview and position towards the research and its context, influences both the process and outcome of the research (Rowe, 2014). Consequently, some self-reflection is needed to disclose the researcher's motivations, preconceptions and beliefs about how the world is and what needs to be investigated (Malterud, 2001). Reflecting on my positionality, it is clear that the research process and outcomes was shaped by my own vision of the world, itself influenced by my characteristics and related to my social, political and economic context, as well as by what the research should, in my mind, achieve. From the outset, I was clear that the enduring discrimination of LGBTI people was not tolerable and should be ended, that there was a research gap to be filled in order to achieve this, and that this research should be accessible and used by non-academics. My approach to this research was thus conceived as a part-time PhD, in order to prevent any isolation from the non-academic world I wanted to serve. My position, working for the UK Civil Service on LGBT equality, had both benefits and disadvantages. Indeed, it greatly helped to secure buy-in from interview participants for and during my research, especially inspiring trust to those participants who may not have wished to disclose the full aspect of their work, given sensitivities:

I should say at the outset that we can talk to you fairly candidly I think about what we know, but much of what we know and what we are working on is not public knowledge. So, we will have to be careful in terms of... We may need to be careful just in terms of certain things... Our involvement [...] is under the radar. So, we will talk reasonably openly with you about what it is we are involved in but just to flag at the beginning that much of what we do is completely confidential (Participant 4)

I will share that report with you now... just it's not public yet (Participant 7)

Indeed, I have tapped into my existing network acquired through my role as a civil servant to secure most interviews, sometimes chatting about current work or recalling an event I attended with the participant as a preamble to the interview itself. Whilst the premise and conditions of this research was always firmly explained and framed with caveats, notably via a participant information sheet and informed consent form stating that there would not be any benefits other than contributing to the purpose of the research (see Appendix D), I cannot exclude the possibility that interviewees subconsciously agreed to the research given the nature of my civil service role:

Thank you for your interest [...] and for your support and, in your previous capacity, in your current capacity and probably in your future capacities, thank you very warmly for your support (Participant 10)

That said, many interviewees recognised the importance of investigating the research questions as a motivation for participation:

The only thing I want to have, is a copy of your research after you are done, for my own history books if you will' (Participant 1)

What you described was actually very very useful and as I said the provision of this kind of analytical framework is something that academia, of course, has the ability to do [...] there's very little research on the social impact of decriminalisation and I think your research could be kind of a first step in relation to that. (Participant 10)

I am hopeful that the value of the research was strong enough a motivation for participating in this study and trumped any perceived side benefit or feeling of obligation. Nonetheless, disclosing my work status also *de facto* positioned me in the context of the UK Government's work, thereby reinforcing the North/South division, which this research is exploring. Indeed, many researchers have uncovered their position as Western scholars investigating the Global South (Sian, 2022) and I am no exception in this regard, myself a UK-based French national. My research focuses on both the Global North and Global South but I cannot ignore my own positionality which colours my view of the world, and my interactions during this research. In fact, my nationality, either perceived or real, was reflected on by some interviewees. For instance, my most provoking questions on the value of the Commonwealth or somewhat

candid ones about the state of LGBTI activism in the Global South were answered by recalling my positionality:

That is a very French question [...]. Other French interviewers, francophone interviewers asked me very similar questions. I think it goes back to a very atavistic animosity but also perhaps to a certain jealousy that certainly exists in the case of the Commonwealth of independent states and the Lusophone countries. (Participant 15)

These are like basic... naive questions but I understand. I know where you come from. I have been to Soho; I know your LGBT history. It was fought and won by ordinary citizens (Participant 1)

Although I was not interrogating participants' sexuality but rather their activism in relation to LGBT rights, sexual orientation and gender are still relevant in this research. In this regard, I was conscious of being a white cisgender heterosexual woman investigating, in the main, the experiences of queer men in the Global South. My interest for this area of research is not surprising however as 'women, educated individuals, and those with gay and lesbian friends were more likely to be allies' (Fingerhut, 2011, p.2230). However, contrary to my locality, my sexuality or gender were not questioned throughout my research. I can therefore only suppose that my sexuality was either wrongly or rightly assumed, which may have shaped the interview process in different ways, as the quote from Participant 1 above reveals. Rather than challenging inferences made about my locality or sexuality, I have taken them as part of the research process and record them here to showcase the assumptions which transpire during any interview and the apparent social distance between myself, the researcher, and interviewees. I used my knowledge and empathy to close the social distance as much as I could but could not, and would not, erase it totally. This is to emphasise the blurring of lines between the outsider/insider position of the research to the issue studied. Whilst there are both inconveniences and advantages to being either an outsider or insider (Holmes, 2020), I clearly navigated both these statuses depending on the participants and aspects of the topic discussed (Merton, 1972, Mercer, 2007; Holmes, 2020). For instance, I could share an understanding about the sensitivity of advocating for LGBTI equality from the Global North but could certainly not share the real experiences of discrimination of queer men and women in the countries of study. With this note, the output of my empirical work starts at the next chapter where I analyse media documents in the five countries of study before continuing with the analysis of interviews (chapters 6 to 9).



# **Chapter 5. Competing narratives on the decriminalisation of same-sex acts in the Commonwealth: a comparative analysis of documents**

Previous chapters showed that human rights have successfully been used across the world to progress the rights of LGBTI people whilst the risk of backlash exist in relation to Western states' human rights discourses. Understanding how human rights discourses are effective in making the case for the decriminalisation of same-sex acts in postcolonial societies is therefore important. I have conducted an analysis of 267 documents (see Appendix C) as per the methodology described above, to see how the decriminalisation of same-sex acts is portrayed in national and international media in the countries of study. The analysis covers the evolution of the media treatment of LGBTI issues over time, to see whether they are positively impacted by the decriminalisation of same-sex acts. Despite the specific context which saw the decriminalisation of same-sex acts in the countries of study (with the exception of Sri Lanka), the analysis shows similarities in international and national narratives deployed around the decriminalisation in the media, including demonstrating the importance of domestic mobilisation, human rights mechanisms and international relations. The relevance of the Commonwealth worth mentioning as part of a media narrative on the decriminalisation of same-sex acts in postcolonial contexts, however, is questioned. Analysing different narratives in postcolonial societies contribute to the understanding and refinement of the set of circumstances needed to move states from human rights commitment to compliance on the issue of LGBTI rights, which can then be further explored at interviews.

## **5.1 The emergence of narratives**

Before analysing the narratives developed in relation to the decriminalisation of same-sex acts in the countries of study, it is important to discuss when and in which context the decriminalisation of same-sex acts and wider LGBTI issues are being discussed publicly. This section will explore how the decriminalisation of same-sex acts is approached by the media, especially in comparison to wider LGBTI issues, and how the location of the decriminalisation impacts discourses, especially in relation to the Commonwealth.

### **5.1.1 Impact of the decriminalisation of same-sex acts on media coverage**

Through a quantitative analysis of media coverage for the observation period (ten years before the decriminalisation of same-sex acts, if applicable), patterns can be identified. For all countries covered by this research which have decriminalised same-sex acts (thereby excluding Sri Lanka), we observe peaks in media coverage when decriminalisation took place. Indeed, whilst the research parameters entered on Nexis accounted for wider LGBT developments, the number of publications issued on the topic of decriminalisation or LGBT rights in relation to these countries all peaked at the time of decriminalisation. Also, for

Mozambique, we observe a spike in coverage in 2015 when the new penal code was introduced, *de jure* decriminalising same-sex acts (see Appendix B, Figure 1) whilst for Nauru and Belize, the peak of publications took place in 2016 (see Appendix B, Figure 2 and 3) when both countries decriminalised same-sex acts as a result of legislative reform and a court case, respectively. This is not the case for Cyprus however, as there was barely any media coverage in 1998 when the Government of the Republic of Cyprus decided to decriminalise same-sex acts, and the increased number of publications in 2014 (see Appendix B, Figure 4) cannot only be attributed to the decriminalisation in Northern Cyprus but to the first pride organised in the island. The lack of international commentary about the decriminalisation of same-sex acts in Northern Cyprus can be explained by other LGBT-related developments, but the lack of publications on the decriminalisation of same-sex acts by the Republic of Cyprus five years after the court ruling is harder to explain. Nevertheless, the comparative analysis of publications clearly shows a tendency to broader international media coverage when a country decriminalises same-sex acts, which provides an opportunity for public conversations about the progress of LGBT rights in the country in question. This is even more relevant in the context of LGBT issues being rarely covered in the media or in official discourse before the country decriminalises same-sex acts. This is true for Belize and Nauru, and particularly interesting in the case of Mozambique, as the country enacted a law prohibiting discrimination in employment on the basis of sexual orientation before decriminalising same-sex acts, although this was largely left unnoticed by the media. Indeed, only two articles mentioned that Mozambique enacted this law, and even then, this law was not the central point of either of the articles, which focused on wider LGBT rights developments, or lack thereof, in Africa (M8; M9, Appendix C). This prompts the question: is equality and non-discrimination less of a controversial issue than the decriminalisation of same-sex acts? Contextual understanding is probably what is at stake here, as the decriminalisation of same-sex acts is perceived as condoning same-sex behaviours and making them visible, which I will discuss further below. The analysis also shows that decriminalisation was not developed/approached as part of a government's preconceived narrative.

The comparative analysis of documents further demonstrates that the decriminalisation of same-sex acts does not necessarily prompt a new and continued discussion about LGBT issues, especially if there is no LGBT rights activism in the country. Indeed, whilst there is a spike of media coverage in Mozambique at the moment of decriminalisation, further spikes of publications in the following years are mainly due to the number of articles from mainstream international media referencing Mozambique as part of wider observations in Africa, the world, and the Commonwealth (see Appendix B, Figure 6). Similarly, from the moment of the decriminalisation of same-sex acts in Nauru, the document analysis reveals that the country is referenced as a positive development in relation to LGBT rights in the Pacific region and/or the world (see Appendix B, Figure 7). However, none of the documents mention further progress on LGBT issues and one article mentions that the impact of the decriminalisation of same-sex acts in Nauru is minimal, as Australia continues its policy of sending LGBT asylum seekers to Nauru's detention centre, where they face harassment and abuse despite decriminalisation (N19, Appendix C). Also, the lack of coverage before and after the decriminalisation of same-sex acts in both Mozambique and Nauru can probably be explained by the lack of a strong domestic civil society which can relay and capitalise on such an achievement for LGBTI rights. Whilst there is no constituted LGBTI civil society in Nauru, the

main LGBTIQ organisation in Mozambique is still not able to register as an organisation which hampers its work (Bowser, 2017). Nevertheless, whilst it is clear that there is little public discussion on LGBTI rights issues prior to the decriminalisation of same-sex acts, the decriminalisation itself provides a clear albeit short window of opportunity for discussion of issues facing LGBTI people publicly.

A case in point is the media coverage observed in Belize. The number of publications mentioning Belize in relation to same-sex acts or LGBTI rights overtime follows the progress of the *Orozco v Attorney General* (2016) court case. Indeed, the first spike of media coverage starts in 2011, when the court case was discussed in the UK as part of a new campaign to scrap laws criminalising same-sex acts in the Commonwealth (see Appendix B, Figure 3). A second, bigger spike was observed in 2013 when the case was heard, and in 2016 when the positive ruling was published. Another spike can be observed in 2018, when Trinidad and Tobago decriminalised same-sex acts as a result of a court case brought by Jason Jones against the Attorney General for Trinidad. That year, parallels were made between the two cases, and framed as positive developments in the Commonwealth. Since then, the media coverage of same-sex acts or LGBT rights in Belize has diminished considerably but without leaving behind a national debate on the issue. Indeed, regardless of the different views on the decriminalisation of same-sex acts portrayed via the media, the mere publicity of the court case had the merit of creating a national debate where, for the first time, LGBT issues were finally discussed publicly. Commenting on a poll on the issue of the decriminalisation of same-sex acts by a TV news show in 2013, Caleb Orozco observes (B30; Appendix C):

While the poll was not scientific, it meant that we had successfully triggered national interest in our cause and that Belizeans were taking sides. We did not need to win the poll question, “Do you support decriminalizing sodomy?” just to show that the evangelical opposition was not in control of the social narrative about LGBT human rights concerns in Belize.

These findings point towards wider research showing the impact of the publicity brought by litigation (Rosenberg, 2008; Klarman, 2004). Conversely, legislative reform, which was pursued by both Nauru and Mozambique, does not necessarily bring public awareness (Stoddard, 1997; Aantjes et al., 2022). This will be further interrogated in the analysis of interviews.

### **5.1.2 Media treatment of the decriminalisation of same-sex acts**

Analysing the geographical aspect of the publications for different countries also shows the way international mainstream media (e.g., Agence France Press, Premium News, States News) relay and frame national issues such as the decriminalisation of same-sex acts. Overall, we can observe that the decriminalisation of same-sex acts in any given country is often framed within an international context, where this positive development is compared to wider developments internationally. These ‘international narratives’ about the decriminalisation of same-sex acts have ramifications in terms of promoting the visibility and understanding (or lack thereof) of LGBTI experiences in different postcolonial contexts.

For instance, both Belize and Sri Lanka are referenced extensively in international media coverage in 2018 as Trinidad and Tobago and India, two Commonwealth countries, subsequently decriminalise same-sex acts. Whilst it is understandable that rulings on the decriminalisation of same-sex acts in Commonwealth countries can be compared given the similarities of the countries' legislative framework based on the common law, the comparison is not supplemented by details on the domestic context for each country, giving the impression that the decriminalisation of same-sex act is a tick-box exercise, rather than resulting from domestic processes and action. Indeed, before Mozambique decriminalised same-sex acts, references to LGBT issues were always in the context of other, and in majority, African countries rather than a national issue in and of itself. Also, two articles mention Mozambique as criminalising same-sex acts alongside other countries (Africa News, 2009; B2, Appendix C), but only a few specifically refer to Mozambique as a positive outlier in the African continent because of its softer social attitudes towards same-sex behaviours (M5, M7, M8, M9, Appendix C). In this context, the decriminalisation of same-sex acts in Mozambique is treated as a natural development because of the country's soft stance on same-sex behaviours whilst domestically the situation is perceived otherwise. For instance, the case of the decriminalisation of same-sex acts in Mozambique is treated as a beacon of light in comparison to Zimbabwe, where the president was making homophobic statements at the time, or to Nigeria where a rally against US interference on LGBT rights took place (M19, Appendix C). To put this narrative into perspective, two positive developments took place in 2014, which were not covered by the international mainstream media. In 2014, former Mozambique president Joaquim Chissano wrote an open letter to African leaders stating '[w]e 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' (Chissano, 2014; Appendix C). A few months later, and for the first time, the African Commission on Human and Peoples' Rights acknowledged LGBT rights by adopting Resolution 275 on the protection against violence and other human rights violations based on sexual orientation or gender identity. It is worth noting that these statements marked a shift in the narrative surrounding LGBT rights, where public figures take a stand ahead of the decriminalisation of same-sex acts. However, this was not covered by international media thereby providing a missed opportunity to frame the decriminalisation of same-sex acts in Mozambique as part of domestic and regional developments. This treatment, in turn, can fuel anti-LGBT sentiment based on anti-imperialist resistance (Ng, 2017) as it emphasises a transnational perspective skewed by a Western outlook.

Consequently, since LGBTI issues are often portrayed as part of wider international developments, it is fair to assume that there could be a perception that there is a wider international LGBTI agenda at play. Whilst international comparisons are helpful in providing understanding on the advancements on equality for LGBTI people overall, it also can prompt a disconnection between any national development with the international prism. Unfortunately, this can contribute to the argument that the decriminalisation of same-sex acts is a Western import to push the 'Gay Agenda' (B3, Appendix C) and indeed, foreign interference in domestic affairs is actually often quoted as a rationale to oppose the decriminalisation of consensual same-sex acts. International comparisons made by international mainstream media are not necessarily to blame for this however. Rather, the silence of governments and domestic media on the issue of LGBTI rights leaves a vacuum filled by the international media coverage.

Indeed, in the case of Mozambique for instance, the 2017 Other Report Foundation reported a lack of media attention on LGBTI issues. According to the report, the lack of treatment was justified because 'LGBTI issues are too sensitive or 'not a priority to be discussed in the media' (p.11). This also echoes findings from research conducted in Ghana, which shows that the journalistic style deployed locally focuses on leaders as worthy newsmakers, thereby erasing the voices from human rights defenders and queer Africans and contributing to the perception that queer Africans do not exist, whilst anti-LGBT discourses proliferate in mainstream news media outlets (Hasty, 2005; Baisley, 2015). Consequently, when LGBT issues are covered, they are most often linked to matters abroad, such as same-sex marriage in the US or, for other countries, to other international entanglements. In this regard, the situation of LGBT rights or the decriminalisation of same-sex acts in Nauru is almost never discussed domestically, as part of the Commonwealth or even the Pacific region, but more often in relation to Australia's position on human rights or as part of wider positive international developments on LGBT rights (see Appendix B, Figure 7). Comparably, when the Northern Cypriot Parliament voted to decriminalise same-sex acts, the media coverage emphasised that Northern Cyprus 'was the only place in the EU where homosexuality was a criminal offence' (C10, Appendix C) and that it was 'Europe's last sodomy law' (C11, Appendix C). In contrast, the NGO 'LGBT Cyprus said via its Twitter feed: "British Colonial Law beaten! Decriminalisation of homosexuality in North Cyprus a reality! Congrats.'" (C10, Appendix C) replacing the decriminalisation of same-sex acts in a postcolonial context rather than a European one, demonstrating that locating the narrative matters.

The analysis of media coverage also highlighted the importance of international organisations raising issues of LGBTI equality to the international level as well as articulating these issues according to a specific narrative. A case in point is when Human Rights Watch's *The Alien Legacy* (2008) report was published, allowing a new framework of analysis assessing the likelihood of countries criminalising same-sex acts based on the inheritance of colonial laws. Similarly, the launch of the Human Dignity Trust's strategic litigation campaign against states criminalising same-sex acts in 2011, or the campaign from the Kaleidoscope Trust in 2013 ahead of the Commonwealth Summit in Sri Lanka shaped the narrative around the decriminalisation of same-sex acts, giving it a transnational, Commonwealth prism.

### **5.1.3 The Commonwealth narrative**

The review of media documents shows that a Commonwealth angle is rarely taken when the decriminalisation of same-sex acts is discussed in the media. In fact, it is a narrative provided by international organisations rather than emanating from domestic stakeholders or the Commonwealth of Nations. Looking at Figures 6-10 at Appendix B, we can see that the decriminalisation of same-sex acts is mostly referenced in relation to the Commonwealth for Belize and Sri Lanka. This is because other neighbouring countries such as Trinidad and Tobago and India have decriminalised same-sex acts as a result of court cases brought against them, and parallels in terms of criminalising provisions can be drawn due to the similarity of legislative frameworks. This is also mainly due to the efforts of the different international organisations (Human Rights Watch, Human Dignity Trust, Kaleidoscope Trust) to provide a Commonwealth narrative when articulating the issue of the decriminalisation of same-sex acts in these countries. Also, the research indicates that the Commonwealth

narrative is only used in the context of legal challenges brought against Commonwealth governments rather than when countries proactively reform their laws, and as part of a narrative developed by UK and US-based stakeholders rather than domestic stakeholders. Indeed, the responsibility of the British Empire for spreading the laws criminalising same-sex acts throughout the Commonwealth is never a key argument for local activists, elected and non-elected officials when arguing for the decriminalisation of same-sex acts in their countries. Instead, compliance with human rights standards is preferred. Reasons for not using the Commonwealth narrative, emphasising that colonial-era laws need to be dismantled, are unclear. It could be argued that it is difficult to untangle colonialism from present social relations and structures in which people and narratives operate (see chapter 2) thereby making the Commonwealth narrative not attractive or effective domestically. It also could be due to the fact that, since this specific narrative is framed by Western organisations and relayed by international mainstream media, it is *de facto* discredited before it is even used domestically. This point has been notably discussed during the interviews conducted for this research and is further examined in chapter 7.

This does not mean however that the Commonwealth is not a useful framework for change as it is helpful to encourage the UK to try and provide reparations for its colonial past, notably by focusing on progressing LGBTI rights internationally, allocating funding and prioritising diplomatic lobbying in different international and bilateral fora. The review of documents clearly shows this effort, which means the Commonwealth narrative is at least effective with the UK Government. For instance, Baroness Anelay, then Secretary General of the Commonwealth announced that the UK Government was involved in pushing for the decriminalisation of same-sex acts in the Commonwealth (M24, Appendix C):

To defend LGBT rights, we have lobbied the Commonwealth - most recently at the level of Prime Ministers in Malta - and governments around the world: from Belarus to Uganda; from Nigeria to Belize. After lobbying by the British High Commission in Maputo, Mozambique revised its Penal Code, which led to so-called "acts against nature" - widely interpreted as homosexuality - being decriminalised.

However, whilst the Commonwealth narrative is often used publicly around Commonwealth summits, most of the analysis shows that international relations and diplomatic efforts are often focused on other international relationships, for instance the US or Australia's influence.

## **5.2 Domestic narratives around the decriminalisation of same-sex acts**

The analysis of media coverage in all five countries is helpful in distinguishing common narratives developed in favour or against the decriminalisation of same-sex acts. The arguments developed against decriminalisation mainly revolve around the place and use of law in society, whereas arguments in favour revolve around equality. Government narratives cautiously frame the decriminalisation of same-sex acts.

### **5.2.1 Arguments against the decriminalisation of same-sex acts**

One of the main arguments developed in several case studies is that the law criminalising same-sex acts is not or rarely enforced and therefore removing the criminalising provisions is a pointless exercise. For instance, Belize Action, a coalition of the Anglican, Catholic and evangelical churches opposing the case for decriminalisation in Belize, stated that the law has 'never been used to charge, prosecute or convict any person for a consensual act' but was nevertheless 'a good law that protects human dignity' (B4, Appendix C). This argument is not only deployed by church representatives but also relayed by officials at the top of the Government. In Sri Lanka, President Sirisena justified maintaining the criminalisation of same-sex acts on the basis that the 'prosecution of homosexuals was rare and it would [therefore] not infringe on sexual minorities' to maintain the law (S47, Appendix C). Similarly, health minister Rajitha Senarathne stated during a weekly media briefing that 'anybody is free to practise the art... but the Government does not want to establish the phenomenon as officially decriminalized unlike in some European States' (S50, Appendix C) thereby falsely implying that same-sex acts are legal but culturally condemned in Sri Lanka.

In practice however, the law is used to target LGBT persons. As such, many reports of violence against LGBT persons were found in the media over the years, including in Sri Lanka. In 2014, a survey in Sri Lanka revealed that 'two thirds of [LGBT] respondents reported physical violence, half reported sexual violence, and a third reported attempting suicide' (S35, Appendix C). A survey carried out by the LGBTIQ organisation Equal Ground in 2016 reported 67 cases of hate crime based on sexual orientation or gender identity within the area of Colombo which, taking into account low self-reporting and the limited geographical scope of the study, means that 'the real problem is likely to be on a much larger scale' (S45, Appendix C). The police also admitted incidents against LGBT persons two years later (S62, Appendix C). Other findings relayed by the media include that 'gay men have fled Sri Lanka in recent years and are at present seeking asylum in various countries' whilst 'Transgender and Crossdressers constantly faced harassment by the police for 'misleading the public,' and in several cases were forced to provide sexual favours to avoid arrest' (S44, Appendix C). In addition, the survey found that 'LGBT people do not possess the freedom to live and reside with their same sex partners due to laws, stigma, security reasons and discrimination' (S44, Appendix C). In some countries, the law is actually enforced, even though in rare circumstances. Indeed, in 2011, 'two groups of men were arrested in the Northern Cyprus under Article 171 of the 1929 Criminal Code, which criminalizes male homosexuality' (C7, Appendix C), which means that the existence of the law allows public authorities to use it as and when they choose to enforce it. As developed in the literature review in regard to the decriminalisation of same-sex acts in Britain, this argument is therefore a moot point as the law is often used by authorities in order to blackmail and stigmatise LGBTI individuals (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015). As discussed above, this also shows that local reporting of experiences facing LGBTI individuals helps tackle the 'official' narrative that the law does not impact them.

A second strategy developed by opponents to the decriminalisation of same-sex acts is to connect the decriminalisation to other controversial issues, specifically that decriminalising same-sex acts would cause harm and amount to increasing cases of sexual offences, in particular against children, although no evidence sustain that claim. In this regard, Belize Action stated that the law criminalising same-sex acts is 'a good law that protects human

dignity' on the grounds that it is often used in sex abuse cases, whilst the 'West wants 'to recruit and homosexualize' Belizean children (B4, Appendix C). When the Government of Nauru announced it decriminalised same-sex acts, it also stated that 'the penalties for sexual offences, particularly relating to children, have been increased' to counter the perception that the decriminalisation of same-sex acts will lead to an increase of sexual offence against children (N12, Appendix C). Similarly in relation to Cyprus, a statement released by the church's Holy Synod affirmed that homosexuality 'corrupts the young' (C2, Appendix C). The issue of same-sex acts being (falsely) connected to harm against children is yet again a tactic displayed by religious authorities to secure opposition to law reform. Another issue connected with the decriminalisation of same-sex acts is the decriminalisation of prostitution. For instance, Sri Lankan President Sirisena defended his decision to reject the proposal to decriminalise same-sex acts on the basis that some of the proposals put forward 'also called for the legalisation of sex workers' (S48, Appendix C). Yet again, LGBTI rights are often denied on moral grounds and directly associated with other, deemed controversial issues such as sex work or sexual offences against children. And, indeed, some media reported the justification of the existence of the law criminalising same-sex acts on the basis that the law comes from moral religious grounds (S17, Appendix C), in line with Lord Devlin's school of thought discussed in the literature review.

A third argument developed and also covered when discussing the decriminalisation of same-sex acts in England and Wales (see chapter 2), is that the decision to decriminalise same-sex acts belongs to parliament and not the courts. As the attorney general of Belize declared: '[i]t is within our right as a sovereign nation to keep section 53 on the books as long as we want. [...]. It is the people's right through their elected officials to change the law' (B7, Appendix C). The argument that the issue of the decriminalisation of same-sex acts should be decided by elected officials and not the court has also been deployed by church representatives in Belize. Indeed, Pastor Louis Wade declared that this issue 'belongs in parliament and not in the courts' (Rudon, 2013). This argument has been found to disregard the fact that judges are often appointed by elected officials (Graber, 1993) and that elected officials are unwilling to settle a political conflict and would rather displace the dispute to the judiciary (Graber, 1993; Frymer, 2003). Nevertheless, it is still used by opponents to the decriminalisation as a discreditation tactic. Indeed, this is also the reason why the state of Belize appealed the *Orozco v Attorney General* (2016) ruling, arguing that when Belize accessed the ICCPR, there was no common understanding that the prohibition against discrimination based on sex included discrimination on the basis of sexual orientation, and to infer this interpretation at a later stage undermined Belize as a democracy.

Another discourse developed against the decriminalisation of same-sex acts was that of an expected 'scope creep' whereby the next *de facto* and *de jure* step would be granting same-sex marriage. This can be seen in media coverage related to Mozambique, Sri Lanka and Belize. In Mozambique, the media widely reported and connected other events on LGBTI rights to the decriminalisation of same-sex acts in the country, not least marriage equality being introduced in the US a few days prior, drawing a parallel between the two events. In Sri Lanka, the Sunday Observer (S73, Appendix C) also noted that '[s]ome Sinhala newspapers even printed fake news stories claiming 'Sri Lanka was about to legalise gay marriage' when it was only the decriminalisation of same-sex acts which was actually considered by the



Government. In Belize, the idea that the decriminalisation of same-sex acts would lead to other rights in a scope creep was indeed presented by the coalition of churches in a joint statement reading: '[i]n every country that has granted a new 'right' to homosexual behaviour, activists have promoted and steadily expanded this 'right' to trump universally recognised rights to religious freedom and expression' (B3, Appendix C).

Finally, the argument that any progress on LGBTI equality, including the decriminalisation of same-sex acts, was pushed by foreign interference meddling with a country's domestic affairs, has been deployed extensively throughout the case studies of this research. Indeed, then president of Zimbabwe Robert Mugabe commented on the news that same-sex marriage was legalised in the US by provokingly stating that he would 'get down on one knee' and propose to US president Barack Obama (M18, Appendix C). Also, the decriminalisation of same-sex acts was treated by some media as an interference from the West. For instance, PM News (M19, Appendix C) reported that '[u]nder the influence of the US, Mozambique has recently decriminalized its anti-gay law. At the moment, US is putting pressure on Kenya to legalize gay Marriage.' We also find the narrative of foreign interference in Belize. Although the Human Dignity Trust 'work[s] through local lawyers' (B3, Appendix C) – in this instance Belize's former attorney general Godfrey Smith – the fact that the NGO is based in London encouraged criticisms of foreign interference in Belizean affairs. Indeed, in a joint statement, the Anglican, Catholic and evangelical churches stated: '[t]he people of Belize will not surrender our constitution, our moral foundations, and our way of life to predatory foreign interests' (B3, Appendix C). A flyer from Belize Action stated (B4, Appendix C): '[UniBAM, the Belizean organisation] are bringing foreign attorneys from foreign homosexual organisations with huge foreign funding to impose their foreign values upon [us]'. The Huffington Post (B6, Appendix C) also reported that the Commonwealth Lawyers Association, the International Commission of Jurists and the Human Dignity Trust were accused by Belize Action of being 'homosexual organizations' pushing 'foreign values', which further stated that 'the case is a Western import to push the 'Gay Agenda' (B5, Appendix C). Nevertheless, Lord Goldsmith, former UK attorney general who represents the Human Dignity Trust pointed out that it is 'somewhat ironic that so much ink has been spent in characterising [his] clients as foreigners ... when in fact the law they are trying so hard to preserve is a colonial import; it is a legacy of British rule' (B7, Appendix C). Another point of contention in the case was the testimony provided by Professor Brendan Bain, an HIV clinician, who argued that there was no basis for the hypothesis that 'decriminalizing the practice of anal intercourse among consenting adults would lead to a reduction in the incidence rate of HIV infections among [men having sex with men]' (B15, Appendix C). As a result, the Pan Caribbean Partnership against HIV and AIDS (PANCAP) disassociated themselves from Professor Bain on the basis he 'has undermined the public health and human rights goals of PANCAP' (B14, Appendix C). This led to some news coverage relaying arguments against the decriminalisation of same-sex acts to state that their 'own Caribbean Professional Doctor Professor Brendan Bain gave expert testimony about the damage to health of buggery and other activities' and that for this reason 'the anti-conscience LGBT lobbyists pressured the UWI and had the man fired' (B45, Appendix C). Again, the dichotomy between a national expert facing the pressure of a foreign agenda is at play here.

Comparison with the Western agenda is also a constant threat flagged by those opposing the decriminalisation of same-sex acts in Sri Lanka, advocating instead a different culture based on moral decency (S17, Appendix C):

One must not compare Sri Lanka with western ideals where gay marriage, gay adoption, publicly gay politicians are fully part and parcel of day-to-day life. The only logic for Sri Lanka to maintain its status quo on being anti-gay is then the much harped upon 'culture and ideals of decency' that we so proudly deem to possess.

The demarcation between Global North and Global South is extremely effective in postcolonial societies. Indeed, the positioning of homosexuality as colonialist renders LGBTI activists' attempt to use the human rights narrative almost useless as it is presented as furthering cultural imperialism (Thoreson, 2008; Baisley, 2015), although this is of course denying the prior existence of homosexuality in these societies (Dlamini, 2006; Perniola, 2017) and Christianity as a colonial import which has made religious institutions effective in perpetuating the coloniality of power (Asante, 2020).

### **5.2.2 Countering narratives and strategies**

To the many arguments deployed by those opposing the decriminalisation of same-sex acts, we can observe counter-narratives that defend the need to decriminalise. First and foremost, domestic civil society and LGBTI activists have described the violence they face daily. For instance, many publications from international media mentioned the increased violence faced by claimant Caleb Orozco since the court case was publicly heard (B7; B8; B10; B11; Appendix C). Indeed, Caleb Orozco reported that he 'has been forced to hire private security guards following death threats' (B8; Appendix C), that he 'had stones thrown at [him], experienced simulated gunshots, insults and physical harm on public transportation' (B10; Appendix C) and that he 'lost two teeth, had [his] family property invaded and car damaged by two masked men' (B11; Appendix C). The level of violence experienced by Caleb and its coverage by international media led elected and non-elected officials to speak out on human rights and the decriminalisation of same-sex acts. The fact that the media covered 'a series of highly inflammatory, homophobic advertisements, prompt[ed] the country's first lady to speak out against homophobia' (B8; Appendix C). Most likely in response to this violent backlash, Belize Prime Minister Dean Oliver Barrow also commented that although the Government of Belize would respect religious positions on homosexuality, 'what [the] Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law', which was welcomed and relayed by the Inter-American Commission on Human Rights (B12; Appendix C). Even church representatives condemned the violence against Caleb and the LGBTI community although others chose to deny the existence of violence and stated that these hateful acts were committed 'within the community itself' (B12; Appendix C). The violence faced by Caleb Orozco was such that it became a powerful argument for the decriminalisation of same-sex acts, used to encourage diplomatic lobbying at the Commonwealth Summit (B6; Appendix C) and making the case for wider progress on LGBTI rights. For instance, at the 2017 Oslo Freedom Forum, Norway Prime Minister Erna Solberg spoke about the fact that Caleb had 'courage every day to face violence, threats and isolation

because of his outspoken activism' (B27; Appendix C). Similarly, the fact that the Sri Lankan organisation Equal Ground documented through surveys the violence against LGBTIQ people in the country, helped discredit the argument that the law criminalising same-sex acts is a 'dead law' with no effect on individuals since it was not enforced by public authorities (S17; Appendix C). Domestic mobilisation reporting on the experiences faced by LGBTI individuals on the ground is then instrumental in providing a counter-narrative to opponents to the decriminalisation of same-sex acts, by providing tangible evidence of the violence faced by LGBTI individuals in their contexts.

To the argument that decriminalising same-sex acts would inevitably lead to granting same-sex marriage, those advocating for the decriminalisation chose to refocus the debate on the recognition of existing rights to privacy, dignity and non-discrimination. Also, 'Orozco's counsel, Chris Hamel-Smith SC, told the Supreme Court that his client was not seeking new rights but simply wished to enforce existing "fundamental freedoms" governing privacy, human dignity and equal protection under the constitution' (B7; Appendix C). This shows the attempt from LGBT plaintiffs to normalise their existence as part of the existing heteronormative and homophobic social and legal structures (Andersen, 2005), reducing themselves to pre-determined categories provided by the current law (Bumiller, 1988; Miller, 1998). However, the attempt to refocus the debate into a national one can be effective, bringing home an issue that has predominantly been internationalised. Discussions around LGBTI rights and the decriminalisation of same-sex acts have also been helpfully framed according to the local context. For instance, given Sri Lanka's own history of civil war between Tamils and Sinhalese groups, issues are framed along this political divide. Indeed, in an interview with the Daily Mirror (S5; Appendix C), Rosanna Flamer-Caldera, Director of Equal Ground, an LGBTIQ organisation in Sri Lanka, stated:

We can't say the Sinhalese deserves these rights, a Tamil deserves these rights and a heterosexual deserves these rights and a homosexual doesn't deserve these rights. You can't do that if you're living in a country that is a democracy and Sri Lanka is a democracy so we need to have equal rights across the board for everybody.

The efforts deployed by the LGBTI movement to analogise sexual orientation to other grounds of discrimination such as race is not new. In fact, it was attempted in different contexts such as in South Africa, Ghana and Namibia, with varying degrees of success (Thoreson, 2008; Baisley, 2015). In an attempt to normalise the existence of LGBTI individuals, and within the context of a much-needed national reconciliation, the narrative in favour of the decriminalisation of same-sex acts deployed also emphasise the diversity and inclusivity of organisations promoting LGBT equality (S5; Appendix C):

Equal Ground was founded in 2004, because at that time we felt that there was a pressing need to have a mixed organization of lesbians, gays, bisexual, transgender and heterosexual people. We are probably the only organization in Asia that is so mixed that we have heterosexual members as well.

Attempts to (re)localise the narrative around the decriminalisation of same-sex acts can also be helpful when responding to the accusations of foreign interference pushing the 'homosexual agenda', whether that is focusing on guaranteeing the rights enshrined in a national constitution or reconquering the knowledge about social attitudes post-colonisation. That said, these efforts can be limited due to the fact that we are all now living in a postcolonial world where it is impossible to detangle colonialism from present social relations and structures in which people and narratives operate (see chapter 2). Another argument at play is to emphasise the universality of human rights and the state's compliance to the human rights regime. Also, Caleb Orozco argues the following (B6; Appendix C):

Whatever they mean by "homosexual organizations," we are all human rights organizations, supported by the leading jurists in the world (some may be gay or lesbian, but most, evidently, are not), and we are committed to upholding the rule of law and protecting human rights values, which are universal values. We are NGOs. None of us is well-resourced, and the lawyers representing us are all doing it *pro bono*. UniBAM's opponents have also forgotten that the consensus amongst the international community, of which Belize is a respected member, has consistently reiterated that to criminalize LGBTI people is to violate their human rights.

This reasoning can contribute positively to the debate, by reminding the Government of its stance on and commitment to human rights internationally, thereby closing the gap between the Government's domestic and international narrative, further moving the state down the 'spiral model' towards human rights compliance (Risse, Ropp and Sikkink, 1999). However, and as discussed in chapter 2, human rights are also an imperialist project and in that sense are still inadequate as a tool, although indispensable for the progression of the rights of sexual minorities (Harris, 1994, p.744).

Another argument in favour of the decriminalisation of same-sex acts is the economic benefit of securing equality for LGBTI individuals. In an interview with The Guardian, Paul Dillane, former Executive Director of the Kaleidoscope Trust, stated that the 'economic argument' has been effective with Nauru, the Seychelles and Mozambique when advocating for the decriminalisation, through emphasising 'the costs of policing and jailing otherwise law-abiding citizens versus the benefits of tourism, reputation, the ability to attract foreign talent and to develop local human resources fully' (B33; Appendix C). In Sri Lanka, where many LGBTIQ individuals have fled the country to seek asylum in other countries, activists have deplored that 'their knowledge, creativity, service and support for the betterment of their adopted country' instead of their own, and concluded: '[w]e as a nation, are poorer for it' (S60; Appendix C). Few articles have relayed this line of reasoning, however, leaving doubt as to whether it is an effective argument which resonates with the public.

One counter-narrative missing in this research is the one disconnecting the issue of the decriminalisation of same-sex acts with sex work or violence against children. It would be interesting to see whether such a counter-narrative has been successfully used to push the decriminalisation of same-sex acts in other countries.

### 5.2.3 Official narrative on the (de)criminalisation of same-sex acts

When analysing the language and narrative used by governments which have decriminalised same-sex acts, we can observe different strategies at play depending on whether they have proactively decriminalised same-sex acts or whether they have been pushed to decriminalise, i.e., as a result of a court case brought against them. Countries such as Mozambique and Nauru remained silent on the issue of decriminalisation and refrained from engaging in a public debate when pursuing decriminalisation, whilst countries like Belize and Cyprus ended up defending their stance against decriminalisation, putting them in a difficult position as religious opponents to reform were more virulent in their dissent. The Sri Lankan Government is yet to decriminalise same-sex acts but has been drawn into a national debate about the decriminalisation and wider LGBTI rights notably by local activists using international human rights fora to progress equality.

The comparative analysis of documents shows that countries which have proactively decriminalised same-sex acts through legislative reform have remained silent and cautious on the issue of decriminalisation. For instance, the media coverage of the decriminalisation of same-sex acts in Mozambique started not when the penal code was at a drafting stage or passed, but when the law took effect in 2015, which means that there was little to no public announcement or discussion driven by the Mozambican Government prior to the decriminalisation. As such, the announcement of Mozambique's new penal code was portrayed and relayed in the media as a 'largely symbolic' non-event (M16; Appendix C), especially since the sections of the colonial-era penal code were not implemented and as Mozambique was celebrated for its soft stance on same-sex behaviours (compared to other African countries). It is not surprising then to see that the Government is silent on this issue, and that 'no official events or celebrations were scheduled to mark the occasion' (M18; Appendix C). This observation aligns with the conclusions drawn in a 2017 The Other Foundation report around the Government's overall silence on LGBTI issues (p.16), which leads us to think that the decriminalisation of same-sex was probably an instrumental change to align with human rights standards, rather than a well thought-through attempt to ensure equality for LGBTI people in the country. This is why, quickly after the introduction of the new penal code removing the criminalising sections, media attention is drawn to the fact that, despite the decriminalisation, the Mozambican LGBTIQ organisation Lambda is still not registered, contrary to other charities in the country (Machado, 2016). The assumption that the decriminalisation was a tactical move made by the Government rather than a real attempt at ensuring equality for all in Mozambique is confirmed during a 2016 visit by the UN Independent Expert on Sexual Orientation and Gender Identity who was told by parliamentarians that 'the legislative change had nothing to do with homosexuality which, in their views, had never been illegal in Mozambique. They also indicated that it did not have anything to do with "permitting" homosexuality and that the decision to repeal the provisions related to the "vices against nature" had been grounded in the principle of equality and could not be equated with the "legalization" of homosexuality' (Human Rights Council, 2019, para.21). Since then, the country has committed to ending HIV/AIDS by 2030, stating that men having sex with men should be a population to prioritise in this effort whilst Lambda is yet to be officially registered, so concessions on LGBTI rights continue to be small and tactical rather than resulting from a genuine concerted effort to promote equality in the country.

Another government which was silent on the impending reform of its criminal code which would see the decriminalisation of same-sex acts was Nauru, which noted rather than accepted the recommendations to decriminalise at its UPR, three months before decriminalising same-sex acts. When Nauru announced the decriminalisation, it emphasised it did so as part of a wider reform package including changing the definition of rape and abortion, to be compliant with international human rights standards, and by increasing penalties for sexual offences against children (N12; Appendix C). This carefully crafted government press release coupled with the fact that Nauru noted but did not accept the recommendations to decriminalise at its UPR before enacting the law reveals a cautious approach taken by the Government.

Governments which have decriminalised same-sex acts as a result of a court case brought against them by LGB citizens however, had to engage in a public debate about the issue. The developments in Cyprus show that, although a legal case to decriminalise same-sex acts brought to the ECtHR was won by a LGBTI rights activist in 1992, it took threats from the EU to refuse Cyprus membership for the country to comply with the ruling. The reason for this reluctance to comply was mainly from the strong opposition of the powerful Orthodox Church, as covered in press articles during that time. In 1996, riots erupted in front of the Archbishop Makarios's palace in Nicosia, Southern Cyprus, as 'thousands of supporters' (C1; Appendix C) protested on behalf of Father Pangratios, a suspended priest trialled by religious courts on immorality after the archbishop claimed he was gay. Asked by a television reporter to explain why Father Pangratios had so many supporters, [the Archbishop] described them as "Modinoi", using the surname of Alecos Modinos, the chairman of a group campaigning for rights for homosexuals in Cyprus' and claimant in the 1992 case (C1; Appendix C). The opposition from the Church was still strong after the court ruling and, in 1997, '[t]he Greek Orthodox Church of Cyprus [...] called on the country's 56 Members of Parliament, all of whom are Greek Orthodox, to reject legislation to decriminalize homosexual acts' (C2; Appendix C). As a response, the Cypriot Government had to 'urge[...] the deputies to approve the legislation amending the country's laws against homosexual acts by the mid-May [1997] deadline set by the Council of Europe' (C2; Appendix C). Archbishop Makarios, 'lashed out at those who backed decriminalising gay sex, dubbing them "enemies of our nation" [and] threatened to excommunicate homosexuals and their supporters' (C4; Appendix C). Facing a strong backlash, the official narrative of the Government was mainly focused on aligning with the Council of Europe ruling to move 'the Mediterranean island closer to its dream of joining the European Union' (C2; Appendix C). The official narrative deployed was therefore not about defending equality for all but about ensuring the membership to an international organisation. We find a similar official narrative in the case of Belize, when, faced by a violent church opposition, the Prime Minister had to explain that although the Government of Belize would respect religious positions about homosexuality and would continue to fight the case brought against them on the issue of decriminalisation of same-sex acts, the Government's duty is to 'ensure that all citizens, without exception, enjoy the full protection of the law' (B12; Appendix C). Also, when governments opposing the decriminalisation of same-sex acts are faced with violent anti-LGBTI rhetoric, especially when led by religious authorities in their countries, they cling on to the human rights regime as a way to compromise their position, which is to socially condemn homosexuality but to pave the way for the decriminalisation.

The analysis of documents for Sri Lanka reveals interesting national dynamics. The Government is yet to decriminalise same-sex acts but has been drawn into a national debate about the issue and wider LGBTI rights, notably by local activists reacting to progress on LGBTI equality, or rather lack thereof. The Sri Lankan Government has toyed with an intention to decriminalise same-sex acts, notably by considering its incorporation as an objective of its National Human Rights Action Plan, but has also used homophobic slurs publicly, revealing that social attitudes may still be far away from acceptance of LGBTI individuals. Indeed, in 2017, the Sirisena Government rowed back on including the decriminalisation of same-sex acts in its National Human Rights Action Plan on the basis that 'prosecution of homosexuals was rare and it would [thus] not infringe on sexual minorities' to maintain the law (S47; Appendix C). The Government led by Sirisena being a coalition government, there was 'speculation that the change of stance by Rathana Thero [MP] reflected deepening divisions within the Government that threaten to break apart the coalition.' Indeed, for some, the issue of the decriminalisation 'holds the potential of a political bomb' (S71; Appendix C):

For a country that was divided politically almost at the centre in the past between the Government and opposition forces on all issues, major or minor, this sex issue could lead to extreme political destabilisation with provincial and even the presidential election round the corner. [...] No doubt those suggesting that we go the Indian way will have staunch opponents in government ranks but there are one or two who have openly declared themselves to be homosexuals. If they put their foot in the mouth and declare their support for decriminalisation they will be bringing the sky down on their yahapalanaya [new] government.

A year later, President Sirisena called 'the ousted prime minister a "butterfly." As it is a homophobic slur [...], the entire community took to the streets a few days after the president made this remark' (S77; Appendix C). This is not the first time that Sri Lankan elected officials used homophobic slurs publicly. Indeed, a year before, an MP called the Minister of External Affairs a 'ponnaya' during a parliamentary debate (S73; Appendix C). However, the backlash caused by the President's statement and ensuing protests marked a notable change which shows that 'Sri Lankan culture is becoming more tolerant of LGBT+ people' (S78; Appendix C). There is indeed room for hope as the third Sri Lankan party, the Janatha Vimukthi Peramuna (People's Liberation Front) has invited LGBTIQ members for a public dialogue on democracy (S76; Appendix C) and presented a manifesto encompassing LGBT rights which 'would deliver about two million votes' at the 2019 presidential election (S81; Appendix C). However, LGBTI issues are still not discussed by the two dominant parties, the United National Party and Sri Lanka Freedom Party which have been in government until now.

The National Human Rights Action Plan is not the only hook for the decriminalisation of same-sex acts however. In 2018, the Colombo Gazette reports that this could be achieved through the ongoing constitutional reform process (S62; Appendix C):

From a policy change standpoint Professor Camena stated that even though the constitutional reform process is in the back burner there could be a possibility of explicit protection offered to the LGBTIQ community through

expansion of the fundamental rights chapter. This reform, coupled with an introduction of post-enactment of judicial review of all legislation that is inconsistent with the constitution can nullify the criminalisation of same-sex conduct as stated in Penal Codes 365 and 365A of Sri Lanka. The Human Rights Commission of Sri Lanka has taken a strong public position in including explicit protection for the LGBTIQ community.

Given homophobic statements made by elected officials and the missed opportunity to include the decriminalisation of same-sex acts in the National Human Rights Action Plan, it may seem difficult to imagine any positive change on LGBTI rights in Sri Lanka. However, the fact that Sri Lanka's national human rights body and the third political party of the country publicly call for the protection and inclusion of LGBTIQ rights and that the homophobic statements made were met with protests, suggest that there is a national dialogue emerging on this issue, which will probably be amplified during the next visit of the Independent Expert on Sexual Orientation and Gender Identity in the country. With encouragements from the recent positive ruling in India, the constitutional reform process could be indeed a great opportunity for the decriminalisation of same-sex acts in Sri Lanka.

### **5.3 International narratives around the decriminalisation of same-sex acts**

Looking at international narratives at play, we can see how the decriminalisation of same-sex acts in any country is internationalised, either by transnational activism or by treating a domestic issue as an international one by the media. It also reveals how countries are positioning human rights domestically and how they interact with human rights mechanisms internationally. These findings are important when considering the movement states make from commitment to compliance with human rights and how they position LGBTI rights within that 'spiral model' of change (Risse, Ropp and Sikkink, 1999).

#### **5.3.1 Ineluctable transnationalisms**

Indeed, the comparative analysis of documents reveals that transnationalisms are at play in cases of decriminalisation of same-sex acts, and shows how this transnationalism is relayed in public discussions. The most flagrant case of transnationalism is when the Human Dignity Trust, a UK-based NGO using strategic litigation to defend the rights of LGBT people, launched a campaign in 2011 targeting states where consensual same-sex acts are illegal. British newspaper The Guardian covered the launch of the campaign and specified that Belize was the first country targeted by the strategic litigation before focusing on Jamaica and Northern Cyprus (B3; Appendix C). The Belizean case is reported in the press to be 'shaping up to be a constitutional legal clash with international political dimensions,' where it is expected that via a 'domino effect,' other countries will be encouraged to decriminalise same-sex acts (B3; Appendix C). Whilst a relative domino effect is to be observed – Trinidad and Tobago, India, Botswana, Antigua and Barbuda and Saint Kitts and Nevis have decriminalised same-sex acts since then – the international political dimensions are also at play domestically since the Human Dignity Trust, the Commonwealth Lawyers Association and the International Commission of Jurists joined Caleb Orozco and his organisation UniBAM as interested parties in the court case. Whilst the transnationalism of the issue is helpful in the sense that there is



a clear strategy at play to undo this colonial legacy across the Commonwealth countries, it also fuels a narrative that there is foreign interference in domestic affairs, as we have seen above.

It is interesting to note however that the transnationalism of the case, and indeed the decriminalisation of same-sex acts, also include opponents to progressing LGBTI equality. Indeed, and as reported by international media outlets, it is Pastor Scott Stirm, an evangelical missionary from Texas who is running the Belize Action movement (B4; Appendix C). Equally, the Alliance Defending Freedom (ADF), an American Christian NGO, is reported to have campaigned in Belize against attempts to decriminalise same-sex acts (N12; B29; Appendix C). The presence of the evangelical church in Belize is not an exceptional case: American preachers have also been found campaigning against LGBTIQ equality in Uganda, for instance (Lively, 2009; Kaoma, 2014; Nyanzi and Karamagi, 2015; Dreier, 2018). Given the wider international dynamics at play and the fact that the criminalisation of same-sex acts is still widespread, it is likely that interested international parties will be involved in local issues of (de)criminalisation.

Where transnationalism is referenced in public arguments in favour or against decriminalisation, it is often presented as a unified force for change, frequently used to discredit foreign organisations meddling in domestic affairs by imposing ones' views, culture and norms. However, this portrayal often hides nuances and a more complex narrative. Indeed, the Belizean churches' position against the decriminalisation of same-sex acts was relayed to be a consensual one, although clear dissident voices in churches abroad could be heard. As The Huffington Post (B6; Appendix C) reported, even though Reverend Eugene Crawford 'who's presented himself as a leader of Belize Action on local television, says that all the churches in Belize support the push to keep the laws intact,' it was at odds with statements from the Vatican which, in 2008, urged states to take necessary measures to put an end to all criminal penalties against individuals with a minority sexual orientation or gender identity, and senior representatives from the Church of England who have come out against the criminalisation of same-sex acts (B6; Appendix C). The internationalisation of the issue in the Belizean case is therefore used to present arguments as universal and consensual truths when, in reality, positions are much more nuanced. This is to show the power of the decolonisation narrative in postcolonial societies, instrumentalised successfully by opponents to the decriminalisation (Baisley, 2015) including leading to a schism within their own transnational movements when organisations from the Global North show more LGBTI-inclusive stances (Dreier, 2018). Transnationalism will be explored further in chapter 7 whilst the fragmentation of movements will be discussed in chapter 9.

### **5.3.2 Foreign perspectives**

Following from the above, the media coverage is leveraged to internationalise a domestic situation, antagonising the public and polarising the debate along the North/South divide. For instance, the US legalised same-sex marriage four days before Mozambique's new penal code took effect, thereby skewing the coverage of the event. Indeed, the decriminalisation of same-sex acts was treated by some media as a direct interference from the West (see M19; Appendix C).

That said, the internationalisation of a domestic issue can also contribute positively to change. For instance, the analysis of documents in the decade prior to Nauru decriminalising same-sex acts (2006-2016) show that, from a human rights perspective, the attention is focused on Australia sending refugees to detention centres on the island (N1; Appendix C). LGBTI activists in Australia were protesting against the Australian Government's treatment of refugees in Nauru. In an obituary of prominent Australian activist Lance Gowland, it is mentioned that 'Gowland found new ways to support social justice causes, sailing his yacht to Nauru in 2004 as part of the Flotillas of Hope to protest against the Howard Government's policy of detaining asylum seekers' (N2; Appendix C). The parallel between the treatment of refugees and LGBTI people in Nauru is rapidly drawn and Australia's paradoxical stance on human rights is consecutively called out by activists stating that the country is 'taking steps backward in its movement for equal rights' by sending gay asylum seekers to a detention centre located in a country where same-sex acts are illegal (N11; Appendix C). This will lead further down the line to the actual decriminalisation of same-sex acts in Nauru, following pressing calls from Australia to do so in order for the latter to repair its human rights image. Indeed, during Nauru's 2015 UPR, the Australian Government 'urged the Pacific nation to [...] decriminalise same-sex relationships' (N8; Appendix C) which was covered by both the British and Australian media (N8; N9; Appendix C). An article from The Guardian mentions the 'significant influence' that Australia has on Nauru given the \$25 million of aid allocated to Nauru every year and the detention centre being the second biggest employer in the island (Doherty, 2015), thereby giving weight to Australia's call for reform. It is unsure that the island would have decriminalised same-sex acts without Australia's refugee policy shamed in international media coverage. As a result, we must interrogate the hierarchisation of human rights in a global and postcolonial context, whereby human rights are traded against one another – in this context, refugee rights against LGBTI rights – and selectively applied to the benefit of the Global North, and so even though it has technically led to a positive outcome.

Foreign interference can be found in many other attempts from the West to call for the decriminalisation of same-sex acts, whether through public statements or quiet diplomatic lobbying or direct funding to LGBTI activists on the ground. In 2013, US President Barack Obama called for the decriminalisation of same-sex acts around the world during a visit to Senegal, which prompted anti-colonial rhetoric in some countries (M6; Appendix C) although was largely left unnoticed by Mozambique local media. Given the probable tactical legal change in Mozambique, activists have plainly called out the Mozambican Government for abiding by 'the external pressure put by some embassies and foreign donors' (Tsandzana in Agence France Press, 2015) rather than looking at furthering equality in the country.

Foreign interferences in relation to the decriminalisation of same-sex acts in Belize can also be found beyond the parties involved or interested in the court case. Indeed, in an address to the Commonwealth Summit in Perth, UK Foreign Secretary William Hague said the following (B3; Appendix C):

The UK would like to see the Commonwealth do more to promote the rights of its lesbian, gay, bisexual and transgender citizens. It is wrong in our view that these groups continue to suffer persecution, violence and discrimination within

the Commonwealth and that many members still have laws criminalising homosexuality.

The UK has indeed been active on the issue of the criminalisation of same-sex acts in the Commonwealth since 2011 (see M24; Appendix C), notably by providing funding to the Human Dignity Trust and others. It is not only the Commonwealth who lobbied Belize on the issue of LGBT rights, but also the EU. Indeed, in 2015, LGBTI issues were raised by the Council of the European Union with Belize as part of the 'political dialogue under Article 8 of the Cotonou Agreement,' covering the respect of human rights in the political dialogue between the EU and the African, Caribbean and Pacific states (B18; Appendix C).

Sri Lankan activists have also received support from the UK and other countries to promote LGBTI rights in the country. In 2013, it is reported that the British High Commission 'marked IDAHO with a presentation of a cheque by the British Deputy High Commissioner, Robbie Bulloch, to Rosanna Flamer-Caldera, Director of Equal Ground' (S21; Appendix C). Since Sri Lanka was due to host the Commonwealth Summit that year, there was a considerable amount of media coverage about the country's human rights record, including LGBTI rights but particularly in light of the atrocities committed during the civil war. Also, different countries displayed different strategic lobbying tactics. Canada's Prime Minister decided to boycott the Commonwealth Summit due to the country's human rights record (S25; Appendix C) whilst the UK decided to attend, Foreign Secretary William Hague stating that 'the UK could only raise the issue "if we are there"' (S28; Appendix C). The media coverage ahead of the Commonwealth Summit showed that many organisations and parliamentarians pressed Australia, New Zealand and the UK to lobby Commonwealth countries to decriminalise same-sex acts (B11; S28; Appendix C). Indeed, former House of Commons Deputy Speaker said that the UK should use the Commonwealth Summit in Sri Lanka to legalise same-sex acts (S26; Appendix C) whilst The Kaleidoscope Trust, a UK-based organisation working across the Commonwealth on LGBT rights reported that they 'received reliable reports that LGBT activists in Sri Lanka had been threatened with arrest, and organisations had been warned that they could be closed down if they continued to advocate human rights for all,' which was deemed 'particularly poignant, given that Sri Lanka is hosting the Commonwealth Heads of Government meeting' (S27; Appendix C).

During the Summit, at the Commonwealth People's Forum, the UK raised concerns about the treatment of the LGBT community stating that it 'will continue to make the case for both acceptance and integration of the LGBT community, and press Commonwealth states to recognise that the LGBT community deserve the same protection as all others' (S30; Appendix C). The lobbying efforts around the decriminalisation of same-sex acts in Sri Lanka were then and since overshadowed by the wider human rights issues concerning Sri Lanka, including accusations of corruption and torture (S42; Appendix C). In addition, there was hope that the negotiations to access the EU Generalised System of Preferences Plus (GSP+), which enable preferential trade incentives to implement conventions on human rights would provide a suitable hook for the decriminalisation of same-sex acts in Sri Lanka. However, State Minister Lakshman Yapa made clear during the GSP+ negotiations that '[t]he Government would not take measures to decriminalize homosexuality in Sri Lanka' (S46; Appendix C), and Sri Lanka was able to access the scheme without changing its law. To what extent these different

strategies deployed by foreign stakeholders, activists, elected or non-elected officials are effective is yet to be determined. However, there is a clear interest in intervening on equalities matters, notably for international positioning and by the dynamics of transnationalism.

### 5.3.3 Human rights mechanisms

Looking at how governments position the decriminalisation of same-sex acts in relation to human rights standards demonstrates how the human rights language has permeated the different countries of study. Indeed, whilst the Government of Nauru was not very active or vocal in human rights fora, and did not accept the recommendations to decriminalise same-sex acts during its last UPR before the change in law, it nevertheless quoted human rights as a rationale for change when announcing the decriminalisation. Indeed, the official press release provides that the new Crimes Act 2016 'removes references to punishments that are inconsistent with international human rights standards' (N12; Appendix C). Similarly, whilst Mozambique did not officially comment on the introduction of the new penal code, parliamentarians justified the decision to repeal the criminalising provisions on the grounds of the principle of equality, which is a basic human right (Human Rights Council, 2019, para.21) whilst Cyprus emphasised that the compliance with the ECtHR ruling was the *sine qua non* condition to access membership with the EU. Finally, Belizean Prime Minister Dean Barrow, whose government was fighting a case against the decriminalisation of same-sex acts at the time, declared that '[a]fter all, the Belize Constitution that affirms the supremacy of God also affirms fundamental rights and the dignity of the individual human being' (Barrow, 2013). It is indeed an important finding that different governments, regardless of whether they have proactively started the process of decriminalisation in their countries, ultimately still defend the human rights regime and principles of equality and non-discrimination. Another interesting observation is the fact that this view on human rights standards do not appear to be conflicting with the criminalisation of same-sex acts or intolerant social attitudes towards same-sex behaviours. This could be due to LGBTI rights not being perceived as human rights, or that states international commitment to human rights 'entrap' them, to borrow the language of Risse, Ropp and Sikkink (2013), forcibly moving them from talking the talk to walking the walk, and going further down the 'spiral model' of human rights compliance.

The research done also highlighted the countries' interaction with human rights mechanisms. Whilst Sri Lanka and Mozambique were extremely active in human rights fora, Nauru and Belize's interventions were more scarce and mainly non-committal although ultimately both countries had to defend the decriminalisation of same-sex acts through the prism of human rights. Indeed, the review of documents for Belize shows that the country does not engage on LGBTI rights as human rights. Belize voted in favour of the amendment to remove sexual orientation from the resolution on extrajudicial, summary or arbitrary executions (B1; Appendix C). Four years later, the country also rejected the recommendation to decriminalise same-sex acts during its UPR, on the basis that the Government was prohibited from commenting on an issue being considered judicially. Belize also signalled the lack of capacity in implementing human rights change given the small size of the state. The Government declared that '[t]he assistance of the international community and United Nations agencies in building capacity and mainstreaming human rights education was welcomed' (B13; Appendix C). In a similar fashion, Nauru's engagement with human rights mechanisms was scarce and non-committal.

Indeed, Nauru was absent the day of the vote on removing a reference to sexual orientation from a resolution on extrajudicial, summary or arbitrary executions (M3; Appendix C), and did not sign the UN statement supporting the decriminalisation of same-sex acts (N7; Appendix C). In 2015, during Nauru's UPR, the Australian Government 'urged the Pacific nation to [...] decriminalise same-sex relationships' to which Nauru's Justice Minister responded that '[e]very nation has challenges, and can reach greater heights by participating seriously in the UPR' (N8; Appendix C). However, Nauru only noted rather than accepted the recommendation to decriminalise at the end of its UPR process (N10; Appendix C). As discussed above, the island decriminalised same-sex acts less than three months after the UPR outcome, which prompts the following questions: was the decision to decriminalise taken after the UPR process and enforced very quickly or was noting the recommendation instead of accepting it a way of not drawing attention to the fact that the island would ultimately decriminalise same-sex acts? The short timeframe suggests the latter rather than the former, and is supported by the comprehensiveness of the reform package and the Government's narrative around the decriminalisation of same-sex acts.

In contrast, the review of documents shows that Mozambique and Sri Lanka were extremely active in human rights fora, despite their reluctance in engaging on LGBTI rights. Mozambique's interventions in the UPR for other African countries are, in this regard, revealing. In 2010, Mozambique stated that the country 'was confident that Angola would continue to display its commitment to human rights protection by accommodating the recommendations made in the context of the review process' (M3, Appendix C); some of the recommendations made being in relation to the decriminalisation of same-sex acts, which Angola rejected. Similarly in 2014, Mozambique stated that it was 'remarkable that Mauritius had not rejected any of the [UPR] recommendations', celebrating the 'open minded approach of the Government towards the realisation of human rights' (M10; Appendix C). Mauritius indeed noted the recommendation on decriminalising consensual same-sex acts rather than rejected it. This shows Mozambique's involvement in and commitment to the human rights regime. Other statements of support to the human rights framework support this observation. For instance, Mozambique highlighted that the Central African Republic 'should be commended for the progress made to improve the situation of human rights' (M11; Appendix C). However, support for human rights as a set of principles or regime does not extend to supporting LGBTI rights specifically. Indeed, Mozambique was one of the countries in favour of removing sexual orientation from the resolution on extrajudicial, summary or arbitrary executions (M3; Appendix C) thereby showing that public support to LGBTI rights is not perceived as supporting human rights, too costly politically, or even that LGBTI rights are not considered as human rights.

Comparably, Sri Lanka had many interactions with human rights mechanisms and made a high number of interventions in human rights fora. The country ran for a seat in the UN's Asia region but was defeated because of a campaign disclaiming the country's poor human rights record (S1, Appendix C). Indeed, the country was subject to a UN report on alleged war crimes during the civil war (United Nations, 2011). In a 2010 interactive dialogue on the right to health at the Human Rights Council, Sri Lanka mentioned its draft national Action Plan on Human Rights 'aimed at strengthening the existing provisions in the field of economic, social and cultural rights' but remained silent on the issue of the decriminalisation of same-sex acts,

despite other countries founding 'regrettable that the Special Rapporteur tried to reinforce the links between sexual orientation and right to health' by recommending the repeal of laws that criminalise adult consensual same-sex conduct (S2; Appendix C). The silence on LGBTI rights continued throughout Sri Lanka's interaction with human rights mechanisms, and the country abstained during the vote on the amendment to remove sexual orientation from the resolution on extrajudicial, summary or arbitrary executions (S7; Appendix C). That said, the country was extremely interactive promoting overall commitment to human rights during Human Rights Council sessions, including UPRs (S6; S8; S9; Appendix C). Sri Lanka's interventions in favour of the human rights regime did not, however, distract human rights mechanisms' monitoring of Sri Lanka itself. Indeed, the International Movement Against all Forms of Discrimination and Racism asked 'when and how the Human Rights Council would respond [to the alarming situation in Sri Lanka],' recommending that 'the Human Rights Council appoint a Special Rapporteur or another Special Procedure mandate holder to investigate the situation in Sri Lanka' (S10; Appendix C). That year, Sri Lanka was bumped as Commonwealth Heads of Government Meeting host due to its human rights violations.

This stance did not however discourage Sri Lanka's engagement with human rights mechanisms, whether discussing other countries or its own. At its own UPR in 2013, Sri Lanka accepted 113 out of 204 recommendations but the country did not respond to the recommendation to decriminalise same-sex acts (S20; Appendix C). In 2015, Sri Lanka voted against an attempt by a coalition of 43 countries led by Russia and including India to oppose the extension of benefits available to UN staff in different-sex relationship to those in a same-sex relations (S38; Appendix C). This apparent conflicting stance on LGBTI issues shows that votes and interventions in human rights fora respond to complex international and domestic dynamics. This led MINT (S38; Appendix C) to suggest that '[c]learly, these votes aren't simplistic indications of ideological positions: geo-political relations and intense lobbying by government representatives and NGOs working in the field of LGBT rights internationally play a crucial role' whilst Cohen (S53; Appendix C) observes that the 'lack of political unity on the [LGBT] issue in Sri Lanka, for example, has led to the bizarre situation where it is illegal to discriminate against someone because they are gay, but it remains illegal to have gay sex.' This ambiguous stance on LGBT issues can be observed at Sri Lanka's third UPR (S55; Appendix C). Indeed, the country accepted several recommendations on the protection against discrimination based on sexual orientation and gender identity but only noted recommendations to decriminalise same-sex acts (S57; S58; Appendix C). The distinction is interesting here, as broad commitment to protect against discrimination is perceived as less politically onerous than specifically committing to decriminalising same-sex acts. This could be because making non-legislative changes to improve LGBT rights is seen as more achievable for the Government or that the Government of Sri Lanka is confident it can make the case that the country is already promoting LGBT rights without making further progress. In 2018, Sri Lanka accepted the visit of the Independent Expert on Sexual Orientation and Gender Identity (S74; Appendix C) and reiterated the invitation in 2019 (S80; Appendix C).

Finally, the document analysis shows that Cyprus' commitment to human rights extended to LGBTI rights. Since the decriminalisation of same-sex acts in 1998, Cyprus voted against the amendment to remove sexual orientation from the resolution on extrajudicial, summary or arbitrary executions (C5; Appendix C). In 2016, the Cypriot Minister for Foreign Affairs stated

that the '[p]rotection of human rights was a cornerstone of its AIDS response policy' (C17; Appendix C). In 2018, '19 Member States [Cyprus included] urged the Commission to ensure a strong follow-up to the current list of actions and adopt a coherent EU LGBTI strategy' (C21; Appendix C).

Even though state commitments made to human rights can fall short of protecting LGBTI rights, the analysis of documents shows nonetheless that local civil society is successful in using human rights fora to raise issues surrounding LGBTI rights, whether that is the issue of hate crime based on sexual orientation and gender identity in Sri Lanka or the difficulty of getting the only LGBTIQ organisation registered in Mozambique. For instance, at CEDAW in 2017, Rosanna Flamer-Caldera, a prominent LGBTIQ activist and Executive Director of Equal Ground, a NGO advocating for LGBTIQ rights in Sri Lanka, testified that 'while there had been no prosecutions under the offending sections of the Penal Code, misapplication of these laws by state officials had been widely documented' and that the '[c]riminalisation also prevents lesbian and trans persons from accessing protection and justice for violence and discrimination perpetrated by private and public actors.' (S51; Appendix C). The active intervention of Sri Lanka's in human rights fora led Rosanna to state (S5; Appendix C):

I hope we can take the Prime Minister's statement that he would like to discuss things with us and take that forward and perhaps convince the Government that's it's time to decriminalize homosexuality. [...] part of our battle or our work would have been fulfilled with that happening if it does happen and I think it will, I think the Government is actually thinking about these things now and they are thinking very positively about human rights in general and I think they are willing to address these kinds of issues.

By allowing complaints by private individuals, human rights mechanisms are also important in ensuring the decriminalisation of same-sex acts. According to a review by the Council of Europe, the decriminalisation of homosexuality was due to the positive impact of the ECtHR case law (C15; Appendix C). An interview given by jurists to the Cyprus News Agency (C20; Appendix C) highlights that Article 34 of the ECHR was the main enabler for Alecos Modinos to challenge the law:

Nicosia ratified in 1989 the right for its citizens to apply to the Court. 'For me, this is the most important element of the Convention' says Demetriades, adding that the provision entitles a person to become the defender of his or her own rights. When asked about a landmark case, Pourgourides and Demetriades point to the 1993 decision in 'Modinos v [Cyprus]' that led to the decriminalisation of homosexuality in Cyprus. This was the first European Court ruling condemning the Republic of Cyprus and affirmed the sense that people can apply to the Court versus their own country, when they feel that their rights are being violated, Demetriades says.

What about the place of human rights in the Commonwealth? As discussed in chapter 3, whilst all Commonwealth countries have signed the 2013 Commonwealth Charter which *de facto* protects human rights, democracy and the rule of law, the aspirational nature of the Charter

means that it is not proven to be an instrument conducive to change. As such, critiques have emphasised the need of an enforcement mechanism or the establishment of a peer review process very much like the UPR (Murphy, 2013). Also, the issue of the decriminalisation of same-sex acts has been tentatively framed as part of the human rights agenda in the Commonwealth by NGOs. In 2013, ahead of the Commonwealth Heads of Government Meeting (CHOGM) in Sri Lanka, a report by the Kaleidoscope Trust and LGBTI activists across the Commonwealth 'calls for Britain's former colonies to repeal anti-gay legislation, with an immediate moratorium on enforcement' (S28; Appendix C). In a speech in London, Sir Shridath Ramphal, former Commonwealth Secretary General equated the 'opposition to the persecution of LGBTI people with the campaign to end slavery in the 19<sup>th</sup> century and the anti-apartheid struggle of the 20<sup>th</sup> century' meaning that '[a]s with the abolition of slavery, the decriminalization of homosexuality in our time must be an act of law' (B6; Appendix C). However, the 'issue of anti-gay discrimination remains off-limits' in CHOGM discussions (S28; Appendix C), leaving little hope for Commonwealth action on LGBTI rights.

As discussed in the literature review, a key question is to understand whether LGBTI rights movements should attempt to secure international recognition to pressure for change from the top or build the case for human rights locally (Lennox and Waites, 2013). The review of documents tends to show that the former strategy is at play and effective in holding states accountable to their commitment to human rights, ultimately mandating them to practice what they preach. However, this strategy has a limit in the sense that it does not necessarily create a space for effective local narratives on the issue of the decriminalisation of same-sex acts. Consequently, the decriminalisation of same-sex acts can be artificial (e.g., Mozambique, Nauru, Cyprus) and shy away from a meaningful and impactful public debate which would bring about positive change in social attitudes. This shows the need for an existing thriving local civil society setting up and shaping the route to and narrative of change, as a condition for harnessing effective 'boomerang effects' (Simmons in Risse, Ropp and Sikkink, 2013; Hennida, 2015).

## **Summary**

The analysis of media documents shows competing narratives and counter-narratives used between different actors in relation to the decriminalisation of same-sex acts. Several observations can be made: first, the publicity brought by domestic litigation is more impactful in raising awareness of LGBTI issues than legislative reform. This is compounded by the international media treatment of the decriminalisation of same-sex acts, which positions the decriminalisation process in a geopolitical setting, whether that is the Commonwealth, Europe or Africa, giving the impression that the decriminalisation is a tick-box exercise, rather than resulting from domestic circumstances. This fuels anti-LGBTI sentiment based on anti-imperialist resistance as it emphasises a transnational perspective skewed by a Western outlook. Indeed, one of the most effective arguments against decriminalisation is tying it to the Global North/ Global South relationship, which positions homosexuality as colonialist, thereby rendering the human rights or Commonwealth narrative almost useless as it is presented as furthering cultural imperialism. Consequently, domestic reporting has a role to play to relay the story from the perspective of human rights defenders and queer individuals fighting for their rights, to (re)localise the narrative. Second, the analysis of documents shows that official



stances on the decriminalisation are paradoxical. Indeed, whilst governments will justify the criminalisation of same-sex acts, they will also defend international commitments to equality and non-discrimination. Although this suggests that states are going down the 'spiral model' of human rights compliance by acknowledging the validity of the international human rights regime by paying lip service to the human rights discourse (Risse, Ropp and Sikkink, 2013), this also exposes that states get stuck in their movement to compliance because of the postcolonial context. Third, even though state commitments made to human rights can fall short in regard to LGBTI rights, local civil societies are successful in using human rights fora to raise issues surrounding LGBTI rights, thereby forcing compliance through the 'boomerang effect' (Keck and Sikkink, 1998, p.18; Waites, 2019). In other words, harnessing pressure 'from above' and 'from below' is needed to ensure states move further down the 'spiral model' of human rights change. Indeed, domestic civil society secure international recognition and legitimacy by holding states accountable to their commitment to human rights but should focus on creating space for performative (as understood by Butler, 1993) local narratives on the issue of the decriminalisation to emphasise the compatibility of human rights with diverse contexts (Lennox and Waites, 2013).

The findings of this chapter will be further interrogated in the subsequent four chapters which provide a thematic analysis of the interviews conducted with activists, judges, members of international organisations who have worked on the decriminalisation of same-sex acts in the Commonwealth. Chapter 6 discusses the processes of decriminalisation of same-sex acts as perceived and narrated by the different actors so broad patterns of decriminalisation can be identified; chapter 7 unravels the global power dynamics at play in any local attempt to decriminalise same-sex acts; chapter 8 goes into detail about the crucial role and impact of local activism in decriminalising same-sex acts; and finally, chapter 9 discusses the competing and sometimes overlapping narratives used by different actors and institutions in relation to the decriminalisation of same-sex acts, showing the power dynamics at play.

## Chapter 6. Processes of decriminalisation of same-sex acts

When considering the decriminalisation of same-sex acts in the Commonwealth, the ability to change this British colonial legacy is ultimately within the remit of the state and their lawmakers. It is therefore important to look at what justifications states use to oppose or enable the decriminalisation of same-sex acts, before embarking in law reform either proactively or as a result of a legal challenge. I conducted interviews with activists, lawyers, judges and members of international organisations who have worked on the decriminalisation of same-sex acts in Commonwealth countries (see Index for participants' characteristics) and asked them to reflect on the processes of decriminalisation of same-sex acts. This chapter first explores the rationales deployed in support of the different decriminalisation processes pursued, before looking at the different perceived impacts. It is clear that the different paths followed, whether that is decriminalisation through legislative reform or resulting from a legal challenge, have different repercussions in relation to the visibility of LGBTI individuals in society and, it appears, subsequent advancement of their rights. The chapter also touches on the need for the decriminalisation of same-sex acts to be pursued as soon as the opportunity arises and regardless of its relative impact, given how it stigmatises LGBTI individuals' lives. However, the visibility brought by the decriminalisation process is by far the best indicator of potential success, in the sense that it will provide wider opportunities for advocacy and further change (Leachman, 2014). The chapter concludes on the absence of a third decriminalisation process by which national legislators engage with their constituents on the need for decriminalisation through meaningful participation and deliberation, which *de facto* limits opportunities for minority rights' claims.

### 6.1 Rationales for (de)criminalising same-sex acts

Whilst activism and decades of legal judgments made by different courts in different countries have clearly demonstrated the evidence underpinning the need to decriminalise same-sex acts, it appears that it is not compelling enough for states to start reforming their laws, preferring to consider the decriminalisation as part of a (political) cost-benefit analysis, which prompt decision-makers to let the matter be adjudicated by the courts and over rely on activism from individuals affected by the law.

#### 6.1.1 A clear socioeconomic and legal justification for the decriminalisation of same-sex acts

Hildebrandt (2014) showed that, since the 1980s, courts have provided an alternative route to decriminalisation, which means that many countries have decriminalised same-sex acts as result of a legal challenge. Consequently, strong and well thought-through arguments have been deployed in different courts explaining the necessity of decriminalising same-sex acts (Sperti, 2017). As Participant 3, an international human rights lawyer puts it, the decriminalisation of same-sex acts 'really is a no-brainer' from a legal and human rights perspective: 'there has been so many judgments that have made all the necessary

connections between the criminalisation of homosexuality and all different rights, claims and entitlements. So, I don't think legally speaking it's difficult.'

Participant 10, another prominent international human rights advocate, summarises decades of activism, legal challenge and rational thinking applied to the issue of the criminalisation of same-sex acts:

There is a legal narrative which one could see it as taking point of departure in international human rights law, and which provides a grounding and a solid theory as to why criminalisation is contrary to human rights principles and to the human rights commitments of pretty much any member of the international community, that is a member of the United Nations. The legal narrative, I think, has become very solid throughout the last 20 years because it actually connects with principles that are so clearly enshrined to the notion of dignity and the notion of personal freedom, let alone the more technical considerations of privacy, which were the ones used historically in *Toonen*, in other jurisprudence and doctrine that was more kind of like in my view finding legal ways to explain why, but not necessarily going to the great principle of basically understanding sexual orientation and gender identity as part of the areas in which persons need to exercise their will, if they really want to be free.

The legal argument for the decriminalisation of same-sex acts has been developed in so many different contexts that it clearly informed which type of decriminalisation should be adopted. For instance, Participant 14, a lawyer, explains how states should pursue full decriminalisation rather than partial decriminalisation by equalising the age of consent:

Arguably you're leaving the most vulnerable people, particularly vulnerable, without an equal age of consent, certainly from the experience in the UK. The unequal age of consent has the most detrimental impact so there will be people prosecuted, it has a special detrimental mental impact on young people.

As such, any government wanting to decriminalise same-sex acts can rely on existing evidence and past examples about the process. Indeed, many countries including in the Commonwealth have now decriminalised same-sex acts one way or another, from updating their entire Penal Code to only revoking the criminalising provisions, including examples of inadequate ways of going about it. Participant 14, a human rights lawyer, argues: 'if you look at the way it happened in the UK, I mean I know that was prehistory almost, because it was in the 60s ...but it was pretty awful. It was pretty awful and it was done so reluctantly and begrudgingly. I am not sure it is necessarily the best way to do it.'

This legal understanding and narrative are clearly understood and relayed by individuals fighting for the decriminalisation of same-sex acts in their own context. Participant 1, a Belizean LGBTI activist fighting for their rights, puts it simply: 'our Constitution, and in fact no Commonwealth constitution speaks to their fundamental rights as applying to only straight people, it applies to citizens.'

The legal argument in favour of decriminalisation is also backed up by the evidence available as to the detrimental economic impact of the criminalisation of same-sex acts, around 'the cost of brain drain' and 'the economic cost of exclusion' (Participant 10). Indeed, research has shown that anti-homosexuality legislation threatens the security of LGBTI people by providing space for physical violence, extortion and blackmail, arbitrary arrest and detention, displacement from home and loss of work (Makofane, Beck, Lubensky and Ayala, 2014). Consequently, stigma and exclusion of LGBT people are likely to generate loss of productivity, as Badgett (2014) demonstrated for the case of India. Participant 10 argues that 'it's well documented that criminalisation, just by sheer existence, actually creates a chilling effect and a vortex of victimisation.' Participant 5, an international human rights lawyer, concurs:

It is there... not being used necessarily to prosecute people or enforce the law, but as a harassment, as a tool to [...] foster homophobia as well as transphobia really, and you see it in the corruption within police taking advantage of that and vulnerable people. [...]

Amongst many criminalising countries, where you are not seeing regular arrests and people being prosecuted and imprisoned for these offences, but they use it as a tool for harassment and there is certainly evidence and case studies of women being harassed by the police as they were in public together and things like that.

Also, everyone agrees and knows that the 'evidence base is there' and 'in a context where you would have that clear evidence, clearly you would decriminalise because it's the right thing to do for the good of the people,' Participant 10 argues. Consequently, Participant 14 also recalls that the recent Indian Supreme Court judgement 'gave that strong recommendation that you don't just decriminalise, you have to address the harm done.' One would think that in the face of such clear socioeconomic and legal evidence for the decriminalisation of same-sex acts, which is well understood and articulated by many around the world, as well as the threat of having to address the harm done in addition to changing the law, would provide a strong case for the state to decriminalise same-sex acts as soon as possible. However, the reality is different and whilst these arguments are ultimately effective in countering the narratives resisting the decriminalisation same-sex acts (as we will see in chapter 9), they are not enough in and of themselves to prompt states to proactively decriminalise.

### **6.1.2 Institutionalised homophobia resisting change**

Overall, participants perceived that any Commonwealth country's decision to decriminalise was instrumental, often the result of a trade-off rather than resulting from a political motivation to provide equality for LGBTI people in the face of evidence and legal reasoning based on human rights. Indeed, Participant 7, a member of an international organisation, mentioned the decriminalisation of same-sex acts being implemented via a 'top-down approach' where states are 'working out different benefits' of pursuing such change rather than embarking on dismantling the colonial legacy because it is both the right and smart thing to do. This insight hints that the third phase of the 'spiral model' developed by Risse, Ropp and Sikkink (1999) whereby states make tactical concessions by adopting human rights actions, may be at play.

A recurring departing point for states to defend the maintenance of the criminalisation of same-sex acts is the fact that the law is not enforced in practice. Many activists and human rights advocates have challenged states on this very argument: 'if it were true that by not implementing those laws there's no impact at all [...] why muddle the pond?' Participant 10 argues, or in the words of Participant 1, 'what the hell would you have a law that you would not use?' As discussed in chapter 3, the reality is that there is evidence that the mere existence of the law criminalising same-sex acts is detrimental to LGBTI lives (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015), which makes this very argument tenuous at best: 'people were extorted and blackmailed into submission' recalls Participant 1, a Belizean LGBTI activist, when the state of Belize defended not implementing the criminalising law. Furthermore, there is little credibility to such statements when we observe that some states have deployed the exact opposite narrative to justify removing criminalising provisions. For instance, Participant 6, a Cypriot activist, explained that it was easy to demonstrate in the Turkish Republic of Northern Cyprus 'why decriminalisation should happen because it was a law that was actually still being adhered to.' In contrast, the argument put forward by the Republic of (Southern) Cyprus was that the law was not implemented and therefore should be taken off the books. Interestingly, the arguments deployed by states to justify maintaining the criminalisation of same-sex acts do not call into question the validity of human rights but rather deny human rights violation by pointing out the fact that the law is not implemented, which concurs with state behaviours identified in the second phase of the 'spiral model' (Risse, Ropp and Sikkink, 1999; see section 2.3.1). If governments deploy the 'dead law' narrative to justify inaction despite the lack of strength or indeed grounds of such an argument, one can naturally assume that there is a political cost of action.

Indeed, many activists and human rights advocates interviewed mentioned that homosexuality is used as a 'political tool' to 'scaremonger' (Participant 2) and that states are resisting the decriminalisation of same-sex acts to maintain the 'creation of a second class of citizens' for 'political expediency', 'because they don't want the political cost of not leaving it alone' (Participant 10). Participant 10, a member of an international organisation, further explains the rationale for states to refrain from decriminalising same-sex acts:

Basically, you don't want to alienate part of your constituency that is going to have to vote for you in the next six months and so you say: 'let's not touch that.' All of this has to do with the fact that criminalisation and in some extent same-sex marriage, but that's a different kind of discussion, have the ability to connect with deep emotions on the political level. For many reasons, whole political campaigns around the world have been waged on the issue of decriminalisation or same-sex marriage, in context that have much deeper problems than any of those two issues. A whole political campaign will be built around that. If you want to destroy a politician, the very first thing that you can do is to actually spread the rumour that [they] support [the] decriminalisation of homosexuality. [...] Why is that like that? Well because it connects to very, very deeply held ways in which people believe society should be structured, and structures of gender determination that people are very much wishing to uphold as part of their way to understand the world.

Participant 10 plainly states that ‘the protection of a certain understanding of sexual orientation and gender identity is the protection of systems of power that are reflected everywhere in a particular system.’ Consequently, ‘it would be very surprising if systems were completely open to change everywhere just naturally,’ they rationalise. Previous research conducted has already demonstrated that homophobia is used as a political strategy for building nation-states and shaping a collective identity (Boellstorff 2004; Currier 2010; Weiss and Bosia 2013) and the interviews conducted for this research contribute to that wider evidence. It is clear that maintaining the *status quo* is a way to perpetuate existing relationships of power, which can drive paradoxical stances. As Participant 6 testifies: ‘we had gay MPs, closeted ones [...]. But we had one actually voting against decriminalisation.’ When prompted to develop on the reasons why an elected official would perpetuate discrimination against themselves when they are in a position (of power) to make change, the response from Participant 6 was: ‘I actually find sometimes that people that are in the closet can be a little bit more hateful, on occasion, because in their effort to hide or disassociate themselves from the issue so that it doesn’t become public for them’. This shows how the stigma attached to homosexuality prevents governments from making changes, even when there is clear evidence for doing so. This builds on existing studies that show the effects of both internal and institutional homophobia, notably in terms of queer individuals absorbing society’s anti-gay messages, which translates into isolation and pervasive self-hate (Little, 2001; Butler, 2007). Also, internalised and institutionalised homophobia are not only limited to politicians but to all institutions and members of society. Participant 16, a judge, confirms that ‘there is deep seated antipathy in law-making bodies against queer people.’ Participant 16 further recalls:

[There was] a colleague who is widely known to be same-sex oriented himself who kept it quiet his whole career and who was ambivalent, if I remember correctly, on taking a stand on these issues. So many of the people who are taking homophobic stands are themselves same-sex oriented or have same-sex oriented children or family or best friends or colleagues.

It is because a ‘lot of decisions are also done for political gain’, Participant 12, a Mozambican activist argues, that the burden is then on activists to show that there are political benefits to decriminalise same-sex acts: ‘this is why a strong civil society is necessary because in very many ways it needs to be that the narratives are created so that politicians have no other option’ than decriminalise, explains Participant 10. However, based on the analysis done in the previous section, it is unlikely that creating a compelling narrative will be enough in and of itself, especially without the conditions necessary for the first stages of the ‘spiral model’ to be unlocked, including the combination of domestic and international pressure capitalising on the state’s economic and/or social vulnerability (Risse, Ropp and Sikkink, 1999, p.20; 2013).

Case in point, for those states which ended up decriminalising same-sex acts through law reform, the perception from interviewees was that ‘cleaning up the Penal Code’ would be a low-cost exercise ‘to get all of this out of the way’ (Participant 7 and Participant 8 respectively), especially since the decriminalisation is not perceived as *de facto* condoning LGBTI acts or behaviours. This state behaviour identified speaks again of a tactical concession resulting from external pressure rather than a political motivation to complying with human rights. Speaking about Mozambique, Participant 13, a local activist, explains:

The Government decided to decriminalise because in fact the law was no longer applied [post-independence] and there was no clear feeling in society that the law should remain, since most people did not even know that the law criminalised. In fact, decriminalising was an easy measure for the Mozambican Government, because it was a law with no practical effect and there was no social opposition.

It is important to note that 'no social opposition' does not mean that social attitudes were particularly in favour of removing the law or that there would not be any political cost in driving the change but that the change was to be framed as modernising the Penal Code rather than ensuring the rights of LGBTI people. Paradoxically, the Penal Code was updated following human rights standards, thereby reinforcing the validity of the human right framework as the basis for positive change but narratively questioning its applicability to queer individuals and reinforcing human rights as a condition for modernity. In short, using human rights as a tactical concession both reinforces human rights by further triggering the 'spiral model' (Risse, Ropp and Sikkink, 1999, p.20) and committing states to a human rights discourse which would likely lead to compliance, but also weakens them by positioning their scope as selective (as opposed to universally applicable, including to queer citizens) and nature as imperialist (externally applied without input from affected individuals or groups).

### **6.1.3 A political cost-benefit analysis to decriminalisation**

From all interviews conducted it is clear that not just one argument, however strong, was enough to decriminalise same-sex acts. Rather, states assess different political, economic and reputational benefits resulting from either maintaining the law or removing it. Economic arguments in favour of decriminalisation include removing the law to encourage tourism from LGBTI individuals - 'what was unspoken was we are a high-end tourist destination and this [criminalisation] could be putting people off' Participant 7, a member of an international organisation, recalls - and some 'international pressure' for change as 'the amount of aid that [governments] receive from overseas comes packaged,' assesses Participant 9, an activist working in Africa. Whilst it is clear that aid conditionality has indeed been used by the West to promote the legalisation of same-sex acts, studies have shown the limited and even counter effect that this has had on LGBTI rights (Jjuuko and Tabengwa, 2018; Ojilere, 2018; Velasco, 2020). Nevertheless, interviewees show that these arguments continued to be made to materially vulnerable states (as defined by Risse, Ropp and Sikkink, 2013). It is hard to ascertain whether these arguments are effective in driving change, however. Activists in Mozambique, for instance, have clearly linked the decriminalisation of same-sex acts as resulting from pressures from donors (see section 5.3.2 and Mozambique case study at Appendix A) but this did not translate, understandably, into official discourses. There is some evidence, however, that arguments based on states' social vulnerability are effective, as they are articulated in elected official discourses. Indeed, political positioning in the international landscape is an element that states will take into consideration when thinking about making a step towards the decriminalisation of same-sex acts. For instance, the Republic of Cyprus responded to an overall 'pressure of [...] joining the EU at the time' (Participant 6). Regional trends towards the decriminalisation were also particularly mentioned as a contributing factor

that helped some African countries in their decision to decriminalise to avoid a legal challenge against them in an ever-nearing future or to politically align with neighbouring countries (Participant 8). For Northern Cyprus, because the country is not recognised by the international community, 'they needed to at least appear to be a state that was accepting human rights' (Participant 6) to increase their legitimacy as a state, thereby recalling the role human rights play in nation-building processes and reinforcing existing systems of power (Rajagopal, 2003). Additionally, states' interaction with international human rights mechanisms was also perceived as a contributing factor, with states being 'really tired of getting these recommendations in Geneva' (Participant 7) at the Human Rights Council and Human Rights Committee, especially as the laws were not enforced. Although in other interviews, some expressed scepticism that international human rights mechanisms were effective as a pressure on their own (Participants 14). Taken together, arguments in favour of LGBTI rights do play into states' material and/or social vulnerability (Risse, Ropp and Sikkink, 2013) although they are likely to be effective when resulting from external pressure.

Regardless of the factors (or combination thereof) taken into account to decriminalise same-sex acts, building support for the decriminalisation is never easy as there is a political cost when morality politics are at play, that is when opposition to gay and lesbian rights is salient and based on deeply held values or beliefs (Haider-Markel and Meier, 1996). Participant 7, a member of an international organisation, recalled what happened when a group of MPs in Kenya gathered to advocate for human rights change, including decriminalisation:

I think it was 14 of the 25 [MPs] who lost their elections and they partially attributed to being members of this [human rights] caucus and publicly speaking out on what are sensitive delicate issues in Kenya, whether it was equality and non-discrimination or indigenous persons' rights or land issues...

This insight shows that some human rights issues are politically costly. Similarly, Participant 7 commented on political engagement on the issue of decriminalisation in Belize:

The US Embassy every year would host a reception on IDAHOT, [the senator] would be the only official delegate from parliament or government to attend that event. And [they] only served one term but senators there are appointed... I don't know how much of [their] advocacy played into [them] not being reappointed...

The doubt cast over the potential political repercussions of speaking out in favour of decriminalisation means that it is unsurprising that governments are reluctant to engage in a decriminalisation process: 'it's rare that a politician will put their neck out' affirms Participant 14. As such, deploying a human rights discourse can be unsuccessful without specific conditions in place, such as material or social vulnerability (Risse, Ropp and Sikkink, 2013). The specific context will then inform whether human rights are a discourse emanating from the resistance to the status quo or in favour of the establishment, if not imperialist in nature and purpose. Given the fluidity and duplicity of such discourse, governments overwhelmingly rely on externalising their agency (or perception of agency) by identifying a scapegoat assuming the responsibility for change. In this regard, many activists emphasised the need



for governments to have 'an excuse' or 'find a reason' to pursue decriminalisation. In Cyprus, one effective argument relayed by elected officials was that not complying with the *Modinos v Cyprus* ruling to decriminalise would prompt the country to be excluded from the ECtHR or have the Court sided against them in other judgements. This argument relies on the country's social vulnerability but not in relation to human rights *stricto sensu*. Rather, compliance with human rights is perceived as a tactical concession for wider political gains, thereby giving credence to the 'spiral model' developed by Risse, Ropp and Sikkink (1999). Participant 6, an activist from Cyprus explains:

I am not exactly sure why because you have government not actually adhering to rulings and not being dismissed or taken out from the [European] Court [of Human Rights] but they were sort of told that if they come out of the Court, it would obviously affect other decisions that were being put forward by Cypriots against Turkey because of the Turkish invasion in Cyprus [...]. So, the fear was that those other cases would be dismissed as well.

It also seems like some states have chosen to let the legal challenge play in the courts to avoid taking the responsibility to arbitrate an issue perceived as too publicly controversial and politically costly. This leads Participant 6 to conclude: 'for five years Cyprus did not act on it until it was sort of forced by the court' and that 'decriminalisation happened literally a week before the deadline by the European Court [of Human Rights]'. Many interviewees mentioned the fact that 'when the legislature is not acting, which is unfortunately in most cases, the court is filling the gap.' Participant 6 emphasises: 'I am saying this but I always know about how even more difficult it is to bring back to the Commonwealth because for [Cyprus] it offered a scapegoat to the Government when they [...] had to do it; they could blame somebody else.' Indeed, unlike other international organisations such as the EU, the Commonwealth of Nations lacks strong functional institutions to ensure member states' adherence to human rights values and principles (Torrent and Roiron, 2015), including judicial redress mechanisms which prevents the matter of the decriminalisation of same-sex acts to be addressed outside of its political agenda. If there were such robust institutions, however, it is likely that enforcing human rights would recall, if not strengthen the organisation's colonial legacy, thereby rendering the scapegoat narrative moot.

Undeniably, the colonial history hinders human rights discourses and redress avenues such as proactive legislative reform. Participant 15, a judge, confirms: 'in many circumstances the democratic process is just not working on this topic,' and as such 'in many countries, there is no real prospect' but to legally challenge the criminalising law in court. Legislating as a result of a legal challenge is nonetheless not straightforward and some states have gone further in mitigating the impact of change by retaining a different age of consent, thereby perpetuating the othering of same-sex relationships. Participant 6 confirms:

At the time, 16 was the age of consent in Cyprus and for same-sex partners it was put to 18 years-old and the last change that happened in 2001 was that the age of consent was brought in at the same level, to the age of 17, which was a bizarre compromise... because the politicians were not ready to bring same-sex age of consent to 16.

Also, even if governments are leaving the decriminalisation of same-sex acts to courts, they still actively demonstrate their resistance to change for political benefits. This often results in a piecemeal approach to equality, leading to partial decriminalisation, which interview participants have condemned (Participant 14 in particular). Specific postcolonial contexts inform the need for, and nature of, states' tactical concessions which, in turn, shape the opportunities available to activists, including dictating the route to decriminalisation. The factors contributing to the decriminalisation of same-sex acts under different decriminalisation processes will be explored in the following section.

## **6.2 Different decriminalisation processes for different impacts**

The reluctance of governments to meaningfully engage with the discrimination facing their LGBTI citizens affects not only which decriminalisation process will ultimately be undertaken, whether that is waiting for a legal challenge or going through quiet reform (where social discourses and discussions on LGBTI equality or recognition of LGBTI identities are absent), but the consequent invisibility or ultra-visibility of LGBTI individuals in society, often perpetuating a sense of othering and a reinforcement of heteronormativity. The different perceived impacts of decriminalisation, whether through legal challenge or reform is discussed next.

### **6.2.1 Decriminalisation through legal challenge**

Owing to the fact that governments often refrain from decriminalising same-sex acts through proactive legislative reform, leaving the issue to be adjudicated by the courts instead, interviewees have formed a view on the role of the courts as a legitimate place to arbitrate issues around the (de)criminalisation of same-sex acts. As Participant 1, an LGBTI activist from Belize, explains:

In good governance, you learn that you use the courts to arbitrate the issues, not the media! You recognise that you govern on constitutional morality not your personal views and you seek to, as much as possible, respect the principles of the constitution. And so... for me those things were important because they allowed [the claimant] to then become a mechanism of arbitration and debate.

For some individuals, letting 'those things flesh themselves out either in court or in the media' is a way for governments to 'stay arbitrary' (Participant 1) although it could be argued that not pursuing the decriminalisation of same-sex acts and opposing a legal challenge of this nature is far away from being impartial to the issue at stake. There was a general sense however that this was the *de jure* and *de facto* position of any government and that resorting to the court was ineluctable. 'You are making a mistake if you think people have a choice' between reform or going to the court, affirms Participant 15, whilst Participant 14 recalls: 'there he was as a bloke in his mid 50s and just was like 'I'm just so fed up of being demeaned and degraded by these criminal laws. I've just... I've had enough. I'm just going to do something about it.' And so literally he did, went to good lawyers and made it happen.' The enduring lack of equality

and exhaustion of political avenues, means that it is left to LGBTI individuals to seek redress in courts: 'the point of litigation is: harm is done to you, or something is done to you and you need a remedy, therefore you go to court to get your remedy,' Participant 14 concludes. The motivation for bringing a sexual orientation discrimination case to the court results from acute suffering and enduring stigma, has been covered in other research (Johnson, 2016) and is echoed throughout the interviews conducted.

Some participants have discussed the role of judges in arbitrating issues which are not being arbitrated by the legislature. Participant 15, a judge, explains that both the legislature and the judiciary 'are parts of the constitution of the country and each of them has to play their respective parts and particularly where the other has failed to play a part.' The idea that the legislature was failing to act in relation to providing equality for LGBTI people was reasserted throughout the different interviews conducted. For Participant 15, a case in point was the Supreme Court of India's ruling in *Suresh Kumar Koushal v Naz Foundation*: 'they said it should be left to the legislature to deal with [the decriminalisation of same-sex acts]. And that was ignoring the fact that the legislature had done nothing for 150 years both in British colonial times and subsequently.' Also, some interviewees felt it was incumbent to the judiciary to act, as Participant 15, a judge, eloquently states: 'I am doing what universal human rights requires and there is a sort of tension between the democratic elected parliaments and the judiciary which answers to the principles of the Constitution.'

Participant 16, another judge, further explains:

Judges of their tradition, training and experience often feel uncomfortable about the idea that they are activists but occasionally when there has been no action and there needs to be action, then if the judges have a legislative or a constitutional foundation, which they don't always have [...] then they gotta go searching to find a solution and if they can, they have to provide that solution as part of their constitutional duties.

This posture also sheds a light on how 'judicial activism', an arguably hollow term used to show disagreement with any given judicial outcome (Kmiec, 2004), is understood in this context, which is the power of the courts as an effective mechanism for progressing rights as elected officials are unwilling to settle a political conflict and would rather displace the dispute to the judiciary (Graber, 1993; Frymer, 2003). Importantly, human rights enshrined in the Constitution can be claimed by activists, contextualised and framed by local social movements, thereby becoming a tool of resistance (Rajagopal, 2003).

Whilst decriminalising same-sex acts through the court claim seems to be the only path towards equality, it is nevertheless not that straightforward. Most Commonwealth countries are from a common law tradition and, as a result, national courts rely on precedence, following and applying principles declared in previous cases decided by higher courts on similar issues. As discussed in the literature review, the criminalisation of same-sex acts was exported to Commonwealth countries by the British Empire amongst other criminal laws through the codification efforts of English colonisers, which means that we can find similar and comparable legal provisions criminalising 'sodomy' or 'unnatural sexual offences.' As a result, international

and domestic lawyers have relied on international comparative law to demonstrate the need for the legalisation of consensual private same-sex acts. There are two caveats to this strategy however. First, whilst the court will consider other relevant decisions, it will not necessarily come to the same conclusion, especially when taking into consideration other domestic considerations as courts will not be isolated from the local context (Klarman, 2004; Rosenberg, 2008), and as judges are appointed by elected officials (Graber, 1993). As such, it is not and cannot be the sole argument for decriminalisation. Second, international input is not always welcomed by domestic courts and 'in fact, it might rub them up the wrong way' Participant 3 warns, if pushed to reach the same decision. Also, international and local lawyers interviewed advised caution and declared that they were 'very very careful that [they] know the attitude of the court [...] towards international involvement' (Participant 3) before appearing before them and using international comparison arguments. The only safeguard provided is 'you will have to know your court. And you will have to know your context' (Participant 3). Participant 3 recalled that drawing upon the jurisprudence from other jurisdictions 'was one of the strategies that was deployed in the Belize case, whereby a lot of emphasis on the then recent judgement to the Delhi High Court in a case called *Naz*' was placed. This strategy was not as straightforward as the Indian Supreme Court ended up reversing, at first, the *Naz Foundation v Govt. of NCT of Delhi* judgement. The parties supporting the claimant's challenge decided to let the Belizean court know of this 'major reversal' for the following reasons, Participant 3 recalls:

Partly because there is a duty of candour but, even beyond that, we knew that in the event of the court and probably the authorities in Belize and some other churches and so on would have jumped at the opportunity to let the court know that the very authority on which so much weight had been placed had actually been contradicted and reversed by the highest apex court in India.

International comparison or involvement is therefore not necessarily an easy go-to strategy to argue the decriminalisation of same-sex acts through legal challenge. Another key feature of legally challenging the Government on the criminalisation of same-sex acts is that the publicity of the case brings visibility to LGBTI individuals as well as to the issue at stake. Participant 4, a human rights lawyer, explains:

Everybody has their eyes on the ultimate judgement but... during that 4-day hearing, for the first time ever in Belize, LGBT people were on the national agenda and the national discourse and nobody could avoid their existence because the issue was in the public space. And where they have never before been invited to speak on [the] radio or TV... the issue is - as it is in many countries - everybody knows about it, but nobody talks about it. Everybody was talking about it, for the first time ever. LGBT people were being interviewed on the radio and TV talk shows and just telling their stories about how they are just regular people like everybody else, with jobs and lives and everything else. That would not have happened without this case. UniBAM had been working for 20 years and doing advocacy and lot of campaigning and lot of things that you do. This took it to another entire different level and put this issue into the national discourse and on the national agenda.

This is to show that domestic advocacy is not enough to bring about change on its own, and that a court case can be instrumental in bringing about enhanced visibility to the issue. However, this publicity also has its disadvantages in terms of the abuse and violence faced by LGBTI individuals who all of the sudden faced more visibility in a homophobic society, and strong, long-lasting counter-mobilisation which researchers have argued to be detrimental to any further social change (Klarman, 2004; Rosenberg, 2008). This backlash translated into the clear radicalisation of some stakeholders opposing the decriminalisation of same-sex acts and the existence of LGBTI individuals overall, notably from right-wing religious groups. As Participant 3, a party to the Belizean case, assessed:

You never know how these things are going to play but, in the end, [the right-wing religious groups] shot themselves in the foot. Because they were just so overboard on all of those arguments, that they alienated themselves, I think, from a lot of people. And I think that's part of the all dismantling of them. But, ultimately both us and Caleb and his legal team were focused on the legal issues, not the mud slugging around all of it and [we] did not engage with that, we just maintained our professionalism around 'this is a legal case and everybody should have their day in court, including the churches.' And, in the end, they just painted themselves into a pretty ugly picture and it worked against them rather than against us.

At the appeal hearing however, Participant 4, a human rights lawyer, recalls that 'there was a bit of media attention and some reporting on it but really it was a very calm environment outside the court houses,' which was at odds with the violent protests displayed earlier in the case. This could be due to the drop in credibility from these stakeholders who have radicalised themselves via a counter-backlash (Klarman, 2004) but also to the fact that, by then, the case was discussed in the public domain for 10 years, thereby raising the visibility of LGBT individuals and the need for equality (Leachman, 2014).

### **6.2.2 Decriminalisation through legislative reform**

Conversely, in countries where the decriminalisation of same-sex acts happened through legislative reform rather than legal challenge, interviewees pointed out that there was not necessarily 'much discussion about it' (Participant 7) and that the decriminalisation process was quiet because there was not a political attempt to have a constructive debate on the issue. This contrasts with previous legislative reforms undertaken in countries around the world – for instance in the UK, where a committee was set up to look at the offence of homosexual behaviour and where a public debate ensued (see section 2.1.3 for a discussion about this legislative process). Indeed, when states have gone through the legislative reform process, it seemed like they were in a position to make that change without engaging much political capital in the process, as we discussed above in the case of the decriminalisation in Mozambique. Also, legislative reform was perceived by Mozambicans as a 'non-event' (Participant 11). Participant 10, an international human rights advocate, stated that they were 'not able to actually ascertain a red thread, so to speak, that would show [...] exactly how it was that the process was taken through the political machinery. One day it was there' and that

they suspected that 'it was just done very discreetly so that it could just be done.' Participant 14 also recalls:

At the time when it happened in Mozambique, I remember people would say to me: 'the only reason why they managed to get it through so successfully and so calmly is that the evangelical right wing in the United States don't speak Portuguese. So, they don't know it's happening.'

This shows the power of transnational advocacy, which we will explore in chapter 8, but also how the decriminalisation of same-sex acts can take place quietly through legislative reform. To highlight that point, Participant 7 mentioned the process of decriminalisation in the Seychelles where 'at the time it was a one-party state so 31 of the 32 seats in the National Assembly were from the same party as the president':

The president basically said 'this is going to happen' so the Attorney General then made various public statements complaining about the process in Geneva and said 'parliament, get on with it'. So, parliament... they held national consultations with the public just to... but again the discussion was largely 'we have this provision in the Penal Code, we just want to tidy it up, we don't use it'. [...] The church came in, gave their position saying 'we disagree but we will take this as a vote of conscience, recognising the political dynamic of a one-party state.' Apart from that national consultation, the parliamentarians didn't really speak out vocally one way or the other. The vote was 14 [in favour]-14 [abstentions] with four abs[ences], so it passed.

This example shows yet again that even with a political majority and no strong opposition to reform, states do not seize the opportunity to meaningfully create space to discuss LGBTI equality. A consultation was held to open the discussion with the public but the articulation of the discussion was around tidying up the penal code and aligning with human rights mechanisms rather than a political motivation to open up a debate about LGBTI equality in the country. This is important to note as some have argued that litigation removes the chance for democratic deliberation (Zimmermann, 2015) when interviews show that this does not happen through legislative reform either. Yet again, decriminalisation through legislative reform is argued on the basis of human rights compliance, showing that states are receptive to international human rights norms even if to justify tactical concessions.

### **6.2.3 Impact of decriminalisation**

We have seen that not all decriminalisation processes provide opportunities for meaningful social dialogue or for the visibility of LGBTI individuals. When reflecting on the impact of the decriminalisation of same-sex acts, notably through legislative reform, many interviewees highlighted that the subsequent attitude from elected officials in most countries essentially considered the 'job done' (Participant 7, Participant 8) in relation to ensuring equality for LGBTI people. For instance, when discussing the decriminalisation of same-sex acts with a parliamentarian from Nauru, Participant 7 mentioned that they 'did not agree with the change and [they] seemed to think that it had been rolled back,' which leads us to think that there has

been little change in terms of societal attitudes since the decriminalisation took place in the Pacific Island. Similarly, when looking at the decriminalisation in Mozambique, interviewees commented on the fact that it was a 'symbolic win' that 'said something for countries around us, in terms of what Mozambique stands for' (Participant 12) but not much else. Participant 12, a Mozambican activist, further argues:

The reason why this is so symbolic is the fact that the Government doesn't stand for LGBTI rights in any public space. At all. [...] Mozambique has beautiful laws; we also have a law that protects people on the basis of sexual orientation in the workplace but [...] they're just there. [...] Our government officials don't publicly or state officials don't publicly defend LGBTI rights.

As a result, 'many people don't even know that [the law on non-discrimination in the workplace] exists', and they qualified these laws as 'silent laws' (Participant 12) that do not translate into people's lives. This coincides with the research demonstrating that legislative reforms are not likely to make a profound positive impact on the lives of LGBTI people if they are passed without citizen awareness and support (Stoddard, 1997; Aantjes et al., 2022). This discrepancy between law in theory and law in practice has a particular explanation in the case of Mozambique. Participant 10 explains:

Only between 5 and 10% of the conflict trial[led] in Mozambique get solved by the courts. The rest is solved by customary mechanisms which is (sic) *regulos*, tribal leaders, ancestral leaders. They are the ones solving 90 to 95% of the conflicts. About only 10% of the population speaks Portuguese, right? So, the phenomenon of criminalisation is a phenomenon that is fundamentally urban, and fundamentally impacting particular populations within the urban. That doesn't mean that the stigmatising influence of it all has not reached everyone [...] I'm not surprised that the law is as malleable in Mozambique as it is. Because, at the end of the day, it only represents a rather small fraction of the way society is structured.

The judicial dichotomy brought by the imposition of a new legal system through colonialism explains the relative impact of legislative reform without considering legal pluralism. Indeed, the interlocking nature of systems of subordination will evidently affect citizens' legal consciousness according to the position they hold in society and the intersection of their characteristics (e.g., gender, class, religion, ethnicity) (Harding, 2011). This is also why a decolonial approach to decriminalisation needs to be taken, without which a fully accurate picture cannot be drawn, or a transformative process followed (Ozsoy, 2021). Similarly, Risse, Ropp and Sikkink (2013) have tried to capture that complexity when refining their five-phase 'spiral model' to explain why and how states move from human rights' commitment to compliance, including when the decentralisation of rule implementation is an impediment to effective human rights change. In a nutshell, the law criminalising same-sex acts inherited from the British Empire does not operate in a vacuum but in a complex postcolonial context, as this will be discussed further in chapter 9, and any theoretical framework will have to be both nuanced and comprehensive enough to be useful.

In opposition to the absence of reaction to the decriminalisation through legislative reform, the immediate impact of decriminalisation after a legal case is often a violent backlash so the legalisation does not necessarily mean that LGBTI individuals will be safer or the pacification of society as whole: 'it's almost like an elastic reaction, an immediate reaction where there are people who... I mean the violence just flares,' remarks Participant 8, an official working for an international organisation. In the case of Trinidad and Tobago, Jason Jones 'needed to be evacuated out of the country' because the 'immediate repercussions of the challenge' were 'quite intense,' Participant 8 further recalls. The legal advancement provided by the decriminalisation could provoke the resurgence of hate crimes or the rise of homophobia, targeting already marginalised, stigmatised, and discriminated communities. In fact, the decriminalisation of same-sex acts was not perceived as a mean to reduce the violence against LGBTI people. A couple of interviewees mentioned that hate crime is prevalent in countries in Central America or Africa which have decriminalised same-sex acts whilst countries which have not decriminalised were not necessarily violent towards LGBTI people. Indeed, research conducted by Ward (2013) shows that violence against LGBTI persons in South Africa exceeds that in Uganda, despite the fact that the former recognises same-sex marriage and the latter criminalise same-sex acts. Participant 1 explains: 'people are murdered all over, in Mexico and Brazil for example, have the highest rates of hate crime, even though they have strong laws.' Similarly, Participant 8 affirms that 'the violence perpetuated against women and lesbian women in particular [in South Africa] is a direct result of homophobia and so the 'job done' narrative doesn't really work because there is still a sort of reconciliation process that needs to happen in the minds of people.' These findings echo what several authors observed in relation to litigation not necessarily being instrumental in driving a positive change for LGB persons (Andersen, 2005; Ward, 2013). Participant 1, a LGBTI Belizean activist, mentioned that whilst one may presume that 'things are done and over with. It's not.' Indeed, the decriminalisation of same-sex acts in any country does not mean that the stigma attached to same-sex relationships is removed. As Participant 1 testifies two years after the decriminalisation of same-sex acts in their country: 'there is legal freedom, but a big crack of the work is cultural freedom. The cultural freedom means that people don't give a damn anymore that somebody walks out on the street.' Nevertheless, interviewees also pointed out some positive impacts longer term: 'the perception of human rights has matured a little bit in Cyprus in the last decade or so,' confirms Participant 6.

Even though the mobilisation through legal challenge has an immediate negative impact especially in light of the instant backlash (Klarman, 2004; Rosenberg, 2008), it may still be the best available tool in light of limited political opportunities (Keck, 2009; Sommer et al., 2013). This leads us to conclude on the relative impact of the decriminalisation of same-sex acts from either proactive legislative reform or as a result of a legal challenge, in the sense that even if it does remove the opportunity for institutions to persecute LGBTI individuals, it does not however instantly change negative social attitudes. Nevertheless, the picture is more nuanced when assessing change through a longer timeframe. Participant 14 observes two facts post-decriminalisation, that 'obviously the taboo is still there' but that once the decriminalisation happens 'people don't really care,' in the sense that the violence and discrimination flares at the moment when the issue is discussed but is quickly forgotten after that moment, as Participant 4 and 6 recalled. Thus, whilst interviews conducted show evidence of the decriminalisation of same-sex acts resulting from tactical concessions made by states, in line



with the third stage of the 'spiral model' developed by Risse, Ropp and Sikkink (2013), the fourth and fifth stages of the model whereby states internalise human rights norms and practices and display consistent compliance with human rights is more difficult to demonstrate, as evidence of negative attitudes and violence can be observed and insofar as states can ensure norm compliance in their own jurisdictions. Further, ideally longitudinal, studies focusing on the social impact of the decriminalisation of same-sex acts would be helpful to demonstrate the effectiveness of different decriminalisation processes pursued.

### **6.3 Reflections on decriminalisation processes**

Because of the challenges brought by the political unwillingness to actively promote the need to decriminalise same-sex acts, there was a consensus amongst interviewees that any opportunity for change had to be seized rather than choosing the most effective way to decriminalise same-sex acts, especially when the impact of decriminalisation is hard to assess in the context of enduring stigma. The decriminalisation of same-sex acts is indeed worth pursuing whenever the opportunity for reform or legal challenge arises, as it is a necessary milestone to any further reform providing equality for LGBTI individuals. That said, recent cases of decriminalisation can imply that there is a binary choice between high profile legal challenges or quiet reform where social discourses and discussions on LGBTI equality or recognition of LGBTI identities are absent, when there may be other opportunities for a meaningful discussion on equality using the processes available in a deliberative democracy whereby a reasoned and fair agreement is achieved via the active participation of free and equal citizens (Worley, 2009; Ojilere, 2018).

#### **6.3.1 An opportunistic approach to decriminalisation**

Individuals interviewed were invited to reflect on what, in their view, brings about change, so factors contributing to an effective decriminalisation process could be identified. Whilst no one could easily pinpoint to one specific factor that led any given state to proceed with legislative reform or an individual to decide to challenge a state through the court, all articulated that change was not linear and happened in 'spurts' or 'big burst[s]' (Participant 9) and that actors willing to pursue the decriminalisation of same-sex acts had to 'meet the event' (Participant 9), 'seize the moment' (Participant 14) and take advantage of the opening or opportunity provided, whatever its shape or form. This utilitarian approach to change, by which the ability to reach the outcome dictates the means used, has been justified throughout the interviews. Firstly, LGBTI individuals' constant stigmatisation, victimisation and resulting suffering (Lennox and Waites, 2013; Makofane, Beck, Lubensky and Ayala, 2014; UNHCR, 2015) is reason enough to trigger a person to bring about a legal challenge (see chapter 10), especially when global communication means showcase other countries in similar contexts which have already legalised same-sex acts in private. Participant 14, a lawyer, summarises:

At the end of the day, for the sake of the wellbeing of those kids who grow to be adults and therefore the adults... you just have to decriminalise, it doesn't matter how you do it. Because of [...] the impact the criminalization on young people and it doesn't stop... that sort of mental health impact doesn't stop. So

it just has to end. And that's why, in a way, just being opportunistic is the way forward.

Secondly, there was a high degree of consciousness that the issue of LGBTI equality overall and the decriminalisation of same-sex acts specifically are either too politically costly or too easily subject to instrumentalisation for political gains, which meant that governments are unlikely to willingly embark on a meaningful journey towards equality, as discussed above. As such, the limited political opportunities means that litigation is the only way forward (Keck, 2009; Sommer et al., 2013). Thirdly, the decriminalisation of same-sex acts in and of itself removes the sword of Damocles above LGBTI peoples' heads by removing the ability of state authorities to enforce the law or the threat of the law to coerce LGBTI individuals, so the decriminalisation of same-sex acts will be worthwhile just on that tangible impact. As such, interviewees were of the same view that 'any opportunity has to be seized' (Participant 14) in order to decriminalise.

All interviewees also agreed that the decriminalisation of same-sex acts was a necessary step regardless of the future of LGBTI equality in the country following the decriminalisation process undertaken. 'It all comes to political will, ultimately. Or the courts,' Participant 3 affirms, but either process will respond to the emergence of a right set of circumstances, such as a political majority, the chance to access an international political grouping of states or to get international legitimacy in the case of legislative reform, as well as the ability from different actors to seize the opportunity for change. Participant 11, who works for an international human rights organisation, explains:

And sometimes, I mean what happened in Mozambique, happened also in many other countries where potentially you have an opportunity because it's not a political issue and you have an opportunity to indeed work on a very technical level, remove that on the occasion of revision of the Penal Code where people say 'woof, I don't even know what it is, it just has never been used, let's just remove it'.

The opportunity for change can also be spontaneously seized by LGBTI individuals affected by the criminalising law. Participant 14, an international human rights lawyer, analyses what pushed Jason Jones to challenge the Government of Trinidad and Tobago over the criminalisation of same-sex acts: 'he was just a bloke fed up, and he just went off and just did it himself'; 'there was no strategy, this person had no strategy.' Participant 14 further argues: 'and the same with the case which eventually decriminalised in India. There was no strategy, they just took the opportunity.' The ability to seize the opportunity is even more important as sometimes litigation strategies fail to achieve the expected effect (Klarman, 2004, Rosenberg, 2008). Participant 14 again explains:

How long that litigation has been going on in Nigeria... what a waste of time and money that is. The worst laws in the world and still no banishment. There must be a decade old now these laws, or coming to it. Either it's just been incredibly badly run or very incompetently run or you're just up against a system that is just so incredibly effective and blocking you at every stage, that you need

another strategy completely. You just need to be constantly thinking of different ways of doing it, maybe try one thing and try another thing when you get challenged.

Whilst recent studies have focused on anti-homosexual legislation and narratives in criminalising countries (Amusan, Saka and Muinat, 2019; Johnson and Falcetta, 2021), further research needs to be carried out to assess whether there is indeed a failure to identify or seize the opportunity for change. Whilst a difficult exercise, identifying opportunities for change is important to help clarify the complex picture LGBTI activists navigate. Although interviewees have articulated the need to be opportunistic in thinking about change, they also reflect on the uncertainty of the outcome once a decriminalisation path has been undertaken. Participant 14 explains:

I mean Caleb's case is very interesting because of course it did work in Caleb's case... and then in Kenya it all goes horribly wrong, reinforces it. And then you look at India, the first Supreme Court decision and that all goes horribly wrong and the court reinforces the discrimination. So, it is not a certainty and I think you should really really only do it when it is a certainty because of that risk of reinforcing all the hate that comes with losing a case like that.

Consequently, actors involved in the decriminalisation of same-sex acts should think long and hard about the potential consequences if the outcome intended is not reached, to maximise the chances of success or mitigate the impact of failure, when seizing the opportunity for change.

### **6.3.2 Decriminalisation at the beginning of a journey**

Whether the decriminalisation of same-sex acts was perceived as enabling wider subsequent improvements in LGBTI individuals' lives or not, it was considered as a first necessary step for all interviewees, given the acute suffering of citizens impacted by the law (Lennox and Waites, 2013). Participant 2, a Sri Lankan LGBTI activist, explains:

Well, obviously the top priority is decriminalisation because without decriminalisation, none of the other things can come into place. Decriminalisation, non-discrimination. Without these two, there is no way we can even tackle poverty or any of the other issues that affect the LGBTIQ community, like it affects everybody else in this country but we have like all these double and triple jeopardies that shackle us. So, we are unable to work on other issues until this issue is sorted out because without this being sorted out, we can't change mindsets, we cannot change the way people view us. [...] Without any rights, you can't get anything done.

Of note, the recognition by the state of fundamental human rights is perceived as a prerequisite to social change. Nevertheless, interviewees acknowledged that getting the criminalising provisions to be struck off criminal codes is 'only a really small part of the broader fight for equality and freedom and non-discrimination' and 'just a small piece in a much, much

wider puzzle' (Participant 5). Also, many interviewees explored the decriminalisation of same-sex acts as a milestone in a global journey or 'trajectory' (Participant 4) towards LGBTI equality. For instance, same-sex marriage was often discussed by both those opposing and supporting decriminalisation, as the hidden or ultimate goal, respectively. For activists, same-sex marriage is a long way away from the decriminalisation of same-sex acts, as social attitudes have not suddenly changed after the law being enacted. As Participant 1 puts it: '[y]ou can't get a marriage if you don't have the protections and anti-discrimination legislation protections.' At the same time, same-sex marriage needs to happen if we consider equality seriously. As Participant 16, a judge, states: 'decriminalisation is in fact an implicit movement towards ultimately equality, which includes marriage equality.' When considering further change through legal challenge, many interviewees emphasised the length of time needed to achieve such change, with court cases taking years to a decade to get to a satisfactory outcome. Additionally, the high visibility and resulting struggle of claimants in any case means that many would not put themselves forward as a claimant in a case. As Participant 1 challenges: 'so you know people who are standing in line to take a case to the Supreme Court for marriage equality. Do you know how much (sic) people are standing in line? Well, there are zero.'

Importantly, the leap between the decriminalisation of same-sex acts and full equality requires additional laws on hate crime or non-discrimination, additional advocacy and actual compliance within different institutions. As Participant 1 explains: 'it's much more complex than getting a Supreme Court decision. You actually have to do the administrative work to ensure the system complies and that is the next level of work.' This insight shows the limited capacity of the law to bring about social change (Andersen, 2005) and the tedious work remaining for LGBTI activists to normalise their existence as part of the existing heteronormative and homophobic social and legal structures, including to enable the next phases of the 'spiral model' where states are fully compliant with human rights (Risse, Ropp and Sikkink, 2013). The path towards legal and cultural equality will therefore be different according to the local context. Participant 1 analyses:

All movements operated in a liberation framework, and then moved on to a civil rights framework. But in Belize we started on a civil rights' footing which then inspired a liberation framework of short-term interventions for those people with immediate needs and their personal development.

Even though the road towards full equality will be long and not without hurdles or setbacks, the decriminalisation of same-sex acts through legal challenges provided visibility to LGBT people and issues they face, and a definite opening for advocacy (Leachman, 2014). As a result of exposure, Participant 1 points out, the younger generations 'move faster than the speed of light' and use the momentum of decriminalisation of same-sex acts in their country to fight the next battle. 'So, these young people give me hope that the next generation will be less bashful, more shameless, more visible and more demanding of rights and enforcement of protection', confides Participant 1.

Importantly, it was perceived that the decriminalisation of same-sex acts would most likely be opening a path to a broader set of equality legislation if claimants in a court case have thought

of the decriminalisation as a first milestone of a wider strategy. Participant 7 stated that Caleb Orozco was successful because he thought and strategised 'well beyond the decision' to work with the Government on the next big milestone. Participant 5 also reflected on the decriminalisation process in Belize:

And interesting as well, looking at those 10 years, how much has really changed in Belize, from Caleb being insulted in the streets and from being like a pariah, to now really being brought in on policy development and the like and being a real statesman in effect and the development and growth of the community and new LGBT organisations.

For other countries which have forged a path towards greater equality following decriminalisation, the visibility of LGBTI individuals continued to be an important tool for change, and the mediatisation of activism in local context, such as pride events or 'bringing homosexuality to people's houses, when it [is] discussed on TV' (Participant 6) continued to be a point of focus for advocacy. This will be discussed further in subsequent chapters.

### **6.3.3 Opening a third path towards decriminalisation**

The analysis of the decriminalisation confirms the study of the processes of legalisation of same-sex acts from Hildebrandt (2014) which shows that the 20th century was a turning point with decriminalisation mainly undertaken through the courts rather than legislators which was the main medium for change up until then. We have discussed above that governments are reluctant to engage parliament on the decriminalisation of same-sex acts as it is perceived as either being too costly politically or too advantageous to instrumentalise LGBTI individuals for political gains, and that they tended to leave it to the courts, where they can achieve the outcome expected whilst showing resistance to it by being the opposing party to the case. Consequently, legal challenges seem the preferred route for bringing about change. As Participant 14 observes: 'if you could generate enough interest to pursue change through the legislative process, great. But it doesn't seem to happen that way.' The politicisation of LGBTI lives seems inescapable, especially in a postcolonial context, as will be discussed in subsequent chapters.

However, achieving decriminalisation through the courts is not necessarily providing an ideal path either. Participant 14 reminds us that cases tend to go to the '[lowest] common denominator, i.e., just privacy' when it has already been argued that sexual orientation is an integral part of the human identity (Sperti, 2017). In addition, some countries do not allow for court access for human rights challenges, like in Sri Lanka, which undermine the possibilities for a challenge or the legal system is mixed and the law does not translate to the entire country, like the *regulos* in Mozambique or the application of sharia law in other local courts, all of which prevent the triggering of the 'spiral model' (Risse, Ropp and Sikkink, 2013).

What is strikingly absent from the analysis of interviews is a process by which governments willingly embark in legislative reform, with the full participation of and in dialogue with society. Is the future history of decriminalisation condemned to the courts, and if so, where will this lead us in terms of the relationship of LGBTI individuals and the state? How many lives

sacrificed in the fight for an outcome that will be known? What does that mean about the legitimacy of the state in recognising marginal and different identities? If the choice is only truly between quiet legislative reform or a high-profile court case – is it better to expunge the issue publicly because, from a sociological perspective, it brings it to the forefront of the evidence or is it better to follow the Mozambican or Nauruan model and just get rid of the discriminatory colonial legacy? Interviewees seemed to answer that the outcome justified the means adopted but the evidence shows that recent legal challenges in the Commonwealth tend to bear more fruits in terms of raising LGBTI visibility and providing other opportunities for change than quiet legislative reforms.

Ideally, in a deliberative democracy, there would be a meaningful dialogue and discussion on issues of human rights and have politicians engaging with the population on this issue (Worley, 2009; Ojilere, 2018). The bold choice could be for politicians to front the issue of decriminalisation, showing leadership and accountability for human rights, non-discrimination and inclusion. As Participant 6 explains:

Difficult decisions need to be tackled, I feel, in the beginning, by the way, of the administration so that you have time to work on them until the end of the administration. If you have 5 years or 4 years in front of you, it should not be just pre-election campaigning and as soon as the campaign... as soon as the election goes then the effort is not there. But my advice towards politicians in general is tackle things at the beginning of your mandate and set where you would like to be not now but in 10 years' time and if you are saying that 'uh society needs to change' then you need to make the legal change as well so society eventually can change.

However, this does not seem a likely option for redress on the issue of the decriminalisation of same-sex acts in postcolonial societies. One must therefore interrogate the role of the Commonwealth and its lack of effectiveness, as an international organisation, in moving forward this important conversation and/or providing a redress mechanism to unlock the 'spiral model' of change, as defined by Risse, Ropp and Sikkink (1999).

## **Summary**

This chapter identified a pattern of decriminalisation in which states refrain from proactively reforming their laws and rely on activism from individuals affected by the law so they do not bear the political cost of siding with a controversial moral issue, despite decades of legal judgements and research providing evidence for the need of decriminalisation, regardless of the context. Risse, Ropp and Sikkink (2013, p.14) already found that 'the successful use of pure persuasion through recourse to nothing but the "better argument" is extremely rare in international affairs.' However, it seems that states are less receptive to human rights claims in postcolonial societies, where their Western-centric approach is highlighted by powerful anticolonial discourses which, in turn, both limit and narrow the routes for human rights improvement. This effective counter-narrative has already been identified by Risse, Ropp and Sikkink (2013) in the context of China but has even more relevance on the issue of decriminalisation of same-sex acts in the Commonwealth. Indeed, looking at the recent

decriminalisation processes, interviews highlighted two main paths to decriminalisation, either high profile legal challenges or quiet legislative reform, where social discourses and discussions on LGBTI equality or recognition of LGBTI identities are absent. This has a consequence in relation to the (in)visibility of LGBTI individuals in society, often perpetuating a sense of othering and a reinforcement of heteronormativity. Whilst these findings are important to bear in mind in order to inform future decriminalisation processes, interviewees were unanimous in calling for any opportunity for decriminalisation to be seized given the importance of providing human dignity to LGBTI individuals, although local advocacy and perspective for wider equality was deemed important to meaningfully pursue the journey towards equality in the longer term. The next chapter explores the international dimensions intrinsically connected to any decriminalisation process undertaken in Commonwealth countries.

## **Chapter 7. International dimensions of decriminalisation**

No instances of decriminalisation of same-sex acts in Commonwealth countries to date escaped international coverage, input, influence or interference, whether that is at the request of the Government undertaking the legal change or not. International inputs come in different forms, ranging from international funding to local activists, international organisations' support to legal challenges, running commentary from global media, to diplomatic lobbying. The constant internationalisation of the issue of the decriminalisation of same-sex acts and wider LGBTI issues responds to the need for transnational advocacy on either side of the fight for or against decriminalisation and wider competing international narratives to power. This chapter explores the rationale from different actors to interfere or seek international influence, before considering the benefits and pitfalls of transnational advocacy prior to looking at the Commonwealth and human rights narratives as attempts to internationally frame the issue of the decriminalisation of same-sex acts. Interviews revealed that transnational work is ineluctable to drive change, especially as the issue of the decriminalisation of same-sex acts cannot escape its internationalisation, but that human rights provide a more compelling (although not exclusive nor perfect) narrative to change than one centred around the Commonwealth. That said, in the same way that a decolonial approach to human rights can be used to counterbalance inevitable undertones and reinforcements of imperialism, we could reimagine the Commonwealth as a space for decolonising the decriminalisation of same-sex acts, either by putting the colonial legacy at the forefront of the narrative for decriminalisation or by shedding a light on the different experiences in which sexual rights are experienced and exercised.

### **7.1 Internationalisation of the decriminalisation of same-sex acts**

The internationalisation of the issue of same-sex acts is due to different motivations from stakeholders who want to either maintain or assert their power/narrative in an ever-globalised world. In particular, states are using the opportunity for human rights change as a way to consolidate or shift their position internationally, whether they are responsible for driving change in their own jurisdiction or not. Indeed, rather than simply conceptualising international interference as unilaterally imposed from foreign actors into any (domestic) issue of decriminalisation, we observe a two-way dynamic between states facing the decriminalisation of same-sex acts in their own country and foreign states' interest in seeing change happening in these countries, whether that is from a human rights, political or economic perspective, if not a combination of these reasons. Similarly, domestic activists welcome the spotlight provided by international exposure as it helps amplify their case for decriminalisation and enable pressure 'from above', when states are receptive to outside pressure, as set out by Risse, Ropp and Sikkink (2013).

#### **7.1.1 Foreign actors' motivations**



The interviews revealed that many states provide support to either the retention or repeal of the criminalisation of same-sex acts in another country with the view to assert or maintain influence. Interviewees working for international organisations perceived that states pushing for the decriminalisation deployed a 'carrot and stick situation' or 'quid pro quo' (Participant 8) to either assert their economic influence or shift geopolitics. For instance, some interviewees commented that any diplomatic action in the Pacific region was an attempt to push back against China's dominance in the area. As such, if governments pushing for compliance with human rights perceive it as a goal in itself, they also use it as a means to achieve wider political and economic objectives. States deploy a wide range of methods to convince other countries, including diplomatic lobbying but also funding to international and domestic organisations working towards the decriminalisation of same-sex acts. The motivations from foreign governments to push for the decriminalisation of same-sex acts are therefore multiple, similar to any other international engagement. For instance, literature investigating states' rationale for aid allocation finds competing and overlapping motives (Swiss, 2017) including altruistic aims (Lumsdaine, 1993), intentions skewed either towards donors' national self-interest in foreign policy or trade, including shaped by colonial past and political alliances (Alesina and Dollar, 2000) or towards furthering processes of globalisation (Swiss and Longhofer, 2016). Historical ties and responsibilities towards exporting the criminalisation of same-sex acts cannot be overlooked either (Human Rights Watch, 2008; Kirby, 2013; Han and O'Mahoney, 2018): 'the UK has a big guilt trip for this kind of work, obviously,' Participant 3 confirms. In addition, states may have an interest in showcasing themselves as pro-LGBTI rights in the global stage, to legitimate their national sovereignty and justify foreign intervention, allowed by the global conditions of homonationalism (Puar, 2013). It is therefore not surprising to see that national progress towards LGBTI equality becomes a parameter used by the West to assess the necessity of interference, allowing the involvement of a wide range of donor entities including states, commercial corporations, as well as international and non-governmental organisations (Ng, 2018). Indeed, some organisations pursuing the decriminalisation of same-sex acts across the Commonwealth confirmed they received 'multiple sources of funding, some are governmental, some are more like foundations, private donors,' Participant 3 asserts. Whilst more research needs to be done to ascertain which factors prompt certain actors to particularly invest in the decriminalisation process internationally, it is enough to understand that the motivation to intervene is unlikely to disappear given the multiple reasons for, and overwhelming evidence of, state engagement to date.

That said, states' interest in influencing LGBTI equality internationally is not static and will be dependent on the government in power. Remembering work emanating from the United States under the Obama administration, Participant 14 recalls:

There was that ability to be creative, think out of the box and think in different ways and you need to have those resources. And so, what I've noticed is that the international community seems less and less interested in this as an issue whereas, you know, 5-6-7 years ago there was a lot more interest, a lot more commitment to making it happen.

Similarly, Participant 14 remembers: 'people sort of laughed at how the clear influence that [Ugandan LGBTI activist] Frank Mugisha had. He met everyone on his trip to the UK. And I

just don't think it's a priority for the Foreign Office or the British Government [anymore].’ It is unclear why administrations switch their stand on international LGBTI politics but the backlash provoked by some interventions such as the one following the UK’s aid conditionality announcement (African social justice activists, 2011) could have dampened enthusiasm, or a pro-LGBTI rights global policy does not strictly align with domestic or international objectives anymore. More research needs to be conducted on the evolving nature of international interference in regard to LGBTI rights. For some interviewees, the failure of some states to decriminalise same-sex acts is still due to the changing pattern of international involvement and the lack of robust and coherent international coordination. Participant 14 explains:

If you take the Caribbean [...] and it really does shows how it is so not a priority for anyone that isn't queer or LGBT... a combination of the British, the Canadians, the United States, however many South American countries would like to join in: Bolivia, Mexico ... they could just all turn around to those seven jurisdictions left that continue to criminalise and just say 'come on, you're gonna stop doing this.'

However, the interference with the decriminalisation of same-sex acts in any given country is not contained to those wishing to pursue equality for LGBTI people. Many interviewees mentioned the 'influence of the church' (Participant 6), in particular 'evangelical churches based in the US and Canada' (Participant 8) which are providing funding to enable the opposition to the decriminalisation of same-sex acts domestically, which chimes in with existing research signposting to the presence of American preachers and funding in Uganda for instance (Lively, 2009; Kaoma, 2014; Nyanzi and Karamagi, 2015; Dreier, 2018). Participant 9, an African activist, explains:

These religious pressure groups, these organisational pressure groups probably have more power than you think they do and that they are being given credit for having. The aid we see is only the aid that is officially recognised. [...]

A lot of the money comes from the outside and not as much from the actual community itself. So that might be an issue of philanthropy in the [African] region more than that it's an issue of beliefs. To me, that is a huge key that has not been unlocked yet, with the funding profiles.

More work needs to be done to unravel the motivations from foreign actors to invest in anti-decriminalisation and anti-LGBTI equality work, although existing research points towards imperialist attempts from the US clergy to fight off the spread of Islam in different regions, including Africa (Kaoma, 2014). Participant 9 interrogates: 'knowing where the money is coming from, what the agenda of that money is, is vital. Because I don't know if it's anti-LGBTI in its purest form. It could be anti-African; it could be a bunch of things.' Motivations from foreign actors on both sides of the argument for the (de)criminalisation of same-sex acts are therefore similar in the sense that they rely on, *inter alia*, domestic factors, economic and political gains including in a context of global coloniality where older colonial forms of domination perdure in the current world system (Grosfoguel, 2007). This, in turn, fuels entrenched norm polarisation (Symons and Altman 2015), thereby shaping 'duelling networks'

(Bob, 2012) with opposing agendas ferociously advanced by both sides of the argument for the (de)criminalisation. This will be further discussed and substantiated in subsequent analysis.

### **7.1.2. Domestic motivation for foreign interference**

Seeing international interference as unilaterally imposed by foreign actors would lead to missing a big part of the overall picture. Indeed, interviews show the agency of domestic actors in seeking or instrumentalising international input for their own benefits. As discussed in the previous chapter, both Northern and Southern Cyprus were looking for international recognition with European institutions to positively position themselves geopolitically. Participant 6, an activist from Cyprus, explains:

The legitimacy that was coming from the discussions with the European Parliament, which were not resolutions or anything like that because they could not happen as resolutions, it was more of a push and it was some meetings coming from Members of European Parliament (MEPs) from Europe. [...]

In parallel, you had the European Parliament or some MEPs that were trying to convince the authorities here in the North that they need to progress in [decriminalising same-sex acts] and there was also quite a lot of movement about the unification of Cyprus so they needed to be on good terms with the European Parliament.

This testimony confirmed that states' social vulnerability, as understood by Risse, Ropp and Sikkink (2013), positively influences their movement from commitment to compliance. Another positive condition nudging states towards human rights compliance, their material vulnerability (Risse, Ropp and Sikkink, 2013), has also been confirmed through interviews. Indeed, it was also made clear by some interviewees that some countries' governments are particularly receptive to foreign aid. When discussing the situation in Mozambique, Participant 9, an activist, mentioned:

So now they will give [the] talk to get the cheque but they won't register [the domestic LGBTIQ organisation] unless the court forces them to because of the... in my mind, the fear of once they have registered, you have recognised that LGBTI people exist not just as a health crisis but as a Mozambican identity. [...]

I think I heard something in the news that this giant oil project actually just fell through. That's also big because now they are going to be even more reliant on aid. So that's to me what the Government is playing with.

Economic interdependencies will likely play a role in any government appetite to bring about change. In addition, studies have found that the politicisation of homophobia is being used for states' global (re)positioning (Kahlina, 2015; Weiss and Bosia, 2013) as well as maintaining power domestically by diverting attention away from governance failure (Tamale, 2013; Dreier,

2018). In this regard, it is likely that international interference will play favourably in the eyes of domestic elected officials willing to assert their sovereignty by publicly opposing it. Any research on international interference will therefore need to capture all attempts to internationalise the issue of decriminalisation and the interplay between economy, geopolitics, sovereignty and human rights.

Not only governments but also local activists welcomed the international spotlight. When carrying out interviews, it was clear that most activists in Commonwealth countries, or professionals working on the issue of LGBTI equality in Commonwealth countries (regardless of whether they identify as activists or not) knew each other, are connected via more or less formalised networks and refer to each other's work or context when discussing their own domestic realities. Indeed, throughout the interviews, many drew on international examples to discuss the countries covered by this research, often internationalising the issue of the decriminalisation of same-sex acts. This is because beyond governments' interest in interfering with the issue of the decriminalisation of same-sex acts or capitalising on other governments' interest in their decriminalising of same-sex acts, local activists have remarked on the benefits brought by the internationalisation of the issue. As Participant 1, a Belizean activist, puts it: 'for me, it helped to have international exposure.' The reason for this is twofold: the internationalisation of the issue amplifies local demands for decriminalisation and ensures the *relative* safety of activists by providing hyper visibility and more international scrutiny over the state's action. Participant 1 further explains:

For small states, international exposure is a black eye to the tourism sector, if you will. It's a black eye to their diplomatic relations, it's a distraction if you will. So for me the messaging of international media is important. The media do their research and look at the cultural values of the state, the constitutional framework of the state and remind the state what their obligations are, what their responsibilities are in governing.

I will discuss the role of international media in chapter 9 but it is important to note here that this international spotlight will be more or less effective depending on the weight attached by the state to its international human rights reputation or its reliance on economic partnership or tourism. The ability to captivate an international audience is important to hammer home the importance of decriminalising same-sex acts but also gather momentum around domestic activism. When considering what would enable further legal challenges abroad or at home, Participant 1 explains: 'and more importantly those people will have to have the same kind of blanket support that [the claimant] had in this case and building that kind of support is not easy. Especially when international work centres around what is fashionable, and who is being covered at the time.' These findings coincide with the movement from human rights commitment to compliance identified by Keck and Sikkink (1998) by which the 'boomerang effect' allows domestic and transnational social movements to join forces to bring pressure 'from above' and 'from below' to drive human rights change (p.18). It also supports findings from Risse, Ropp and Sikkink (2013) that both states' material and social vulnerability will make them more or less receptive to external pressure to comply, which local activists are very well aware of and use to their advantage to progress the decriminalisation of same-sex acts. As such, it is clear that postcolonial actors have awareness and agency in articulating

and claiming their human rights internationally to bring about change domestically (Waites, 2019) and bearing in mind the coloniality of power shaping their context.

## **7.2 Transnationalisms**

Since the internationalisation of the decriminalisation of same-sex acts is inevitable in an ever-connected world, so is the formation of transnational communities, alliances and partnerships. Interviews conducted with judges, lawyers, local and international activists or members of international organisations showed that the issues facing LGBTI people resonate in such a way that they are borderless. The benefits of transnational activism were widely discussed across all interviews as well as the experienced pitfalls so lessons can be learned. Whilst a cost-benefit analysis of transnational activism is an impossible task given the blurred lines between local and global activism, an issue that research is still grappling with, interviewees seem to consider it remains, in a worst-case scenario, a necessary evil to bring about change.

### **7.2.1 Inevitable transnationalisms**

Literature unravelling the dynamics and processes of transnational activism, understood as the diffusion and mobilisation of social movements across borders, has noted the importance of advocacy groups in influencing both the international diffusion of human rights generally (Keck and Sikkink, 1998), and LGBT rights specifically (Kollman and Waites, 2009; Holzhacker, 2012; Ayoub 2017). As such, it is not surprising to see that transnationalism has been discussed through all interviews conducted. Interviewees mentioned international kinship brought by similar experiences of discrimination and stigma, as a motivation to work across borders. Participant 14, a lawyer, explains:

There is always a funny thing about gay men and lesbians, or gay men maybe more, where we get targeted with a sort of internationalist brush, where, somehow, we are an international conspiracy. And any way that's got any truth to it... obviously there's no conspiracy to become a gay lobby... but is that gay people, wherever they are, understand the persecution of gay people wherever they are. So, when I am with Frank Mugisha, I understand his persecution. I get it. And I am certain it would be the same with others, even Caleb's persecution. When I was born, it was a criminal offence to be gay in this country. [...]. We genuinely understand each other.

Also, the discrimination experienced transcends national boundaries and, in the context of this research, the North/South divide. In this regard, Lalor (2020) reminds us that the closeness brought by a shared identity cannot erase the distance of structural violence, where power imbalance and coloniality are still at play. Nevertheless, the connectedness is there and accounts from claimants seeking redress through the courts also highlighted the empathy and desire to alleviate the suffering of others (Johnson, 2016). For Participant 14, the shared experience justifies transnational work:

When the UK had Section 28 enforced and all these other horrible laws enforced against the gay community in the United Kingdom... I wish the

Americans, the Dutch had come in and helped us. I wish that had happened and it should have happened. We should have been offered asylum in other jurisdictions... with what we were faced with back then. [...] It's one of those terrible terrible human rights violations that should appal the whole world but for those people that understand it... we have an empathy and a bond with each other. [...] Why wouldn't we be supporting each other?

In addition to this common experience, interviewees mentioned that it is impossible to consider activism exclusively in a domestic context in an ever-connected world and as activism relies on the ability to make alliances with others to organise around and provide visibility to a cause (Ayoub, 2016). As such, many local activists interviewed for this research were also members of international organisations promoting LGBTI rights internationally and able to leverage funding or political capital for their own causes, as well as able to explicitly articulate their transnational work. In particular, Participant 1, a Belizean activist, mentioned having a 'transnational strategy which included lawyers from outside', 'separate relationships with other international organisations', 'diplomatic engagement' and using the UN Council for Human Rights mechanisms such as the 'Universal Periodic Review'. This experience is echoed in Sri Lanka, Cyprus and Mozambique, with evidence of LGBTI organisations working closely together with other human rights organisations and across borders. Participant 12, a Mozambican activist, confirms: 'there's a lot of cooperation that happens here, with organisations, with partners and funders, and some of them are at the UN, there are other Southern African foundations that are also involved quite strongly.' Similarly, Participant 6, a Cypriot activist, mentioned that the International Lesbian, Gay, Bisexual, Transgender, Intersex Association (ILGA) Europe 'had a role to play in organising things as well, putting people in contact.' Interestingly, however, not all of these transnational collaborations led to the decriminalisation of same-sex acts. Indeed, whilst we observe decriminalisation in Belize, Cyprus and Mozambique, this has not happened in Sri Lanka yet. This shows that the 'boomerang effect' as developed by Keck and Sikkink (1998) can be hindered by other local factors, which will be further considered in chapter 8.

Transnationalism is not only used by LGBTI organisations on the ground but also those organisations which are resisting the decriminalisation of same-sex acts. Many interviewees (Participants 1, 8, 9) covered the influence of Canadian and American churches in countries where the decriminalisation of same-sex acts is being argued over domestically. This influence and extensive financial support were covered previously and is well documented in existing research (Lively, 2009; Kaoma, 2014; Nyanzi and Karamagi, 2015; Dreier, 2018).

In the context of a legal challenge being brought against the Belizean state, Participant 1 mentioned that the persons who initiated the case were 'outside this country [...]. They were the ones who initiated the case and they were the ones who leveraged the space for action.' This shows that the opportunity for action is sometimes provided from outside rather than inside national boundaries. Sometimes, transnational resources and partnerships are the only means for domestic activists to organise themselves as they are not recognised or supported by their government. For instance, the main LGBTIQ organisation in Mozambique is not registered as a charity and therefore cannot receive grant funding for their work. Participant 12 emphasises: 'and what that means is that in order to receive funding and in order to actually

carry out their programmes, they partner with a lot of organisations. [...] They partner with many other organisations in the region that work on human rights, women's rights, gender rights, [etc].'

As a result, transnational activism seems ineluctable, sometimes the determining factor for local activism to thrive. The power of transnational activism therefore compels Participant 16, a judge, to call on international alliances to drive change: 'empower the queers on the ground, empower them, support them, challenge those who are not supporting them through your professional associations, through your international organisations, through your partnerships.' The ineluctable transnationalism found in LGBTI activism in the Commonwealth therefore portray transnational activists as firmly rooted in their domestic context but actively engaged in the world beyond their home state (Tarrow, 2005).

### **7.2.2 The benefits of international partnerships**

The benefits of the existence of a transnational community are that local civil society organisations, when they exist, can tap into resources from abroad to further their local agenda (Ng, 2018). Indeed, LGBTI organisations not only leverage outside resources on the issue of decriminalisation of same-sex acts but also to benefit their local community and increase their legitimacy. In Sri Lanka, the main LGBTIQ organisation spent the money received from ILGA on relief work, as Participant 2 explains:

At that time, [through] the International Lesbian, Gay, Bisexual, Transgender, Intersex Association [...] we raised money, which I called 'raising pink dollar for disaster'. We raised around 25,000 dollars, which we spent every single dime of it on relief materials. [...] And through that, we started making contact in the East coast as well as the South coast and, once our relief work was over, we started fundraising, obviously. And we had actually a good start with fundraising because I happened to accompany a lady from the Global Fund for Women on a reconnaissance mission to the East and the South to ascertain the damage and particularly how [...] women in those areas coped with all of the damage because, at the end of the day, there was a lot of loss of life and stuff like that. So, when they saw the type of work we were doing as well, they gave us an initial grant of 5,000 dollars towards the end of 2005.

In addition to resources, civil society organisations are able to pull international strings to pressure their own governments to act on LGBTI rights, including starting the process of decriminalisation of same-sex acts. For instance, Participant 2 states: 'I would say we are quite successful in what we are doing, lobbying the Government, lobbying the United Nations and others to bring attention to our situation here.' Whilst domestic activists are tapping into their transnational networks for resources, knowledge and support, the mere existence of transnational networks also provide space and opportunities for action. The initiation of the *Orozco v Attorney General* (2016) litigation is a case in point, as Participant 4, a lawyer, explains:

In 2007, there was a workshop in the region organised by the University of the West Indies [...] to look at how strategic litigation can be used on this issue and which countries are the best prospects. Belize is identified as a best prospect because of its Constitution. Caleb puts his hand up and says “I was ready yesterday to do this.”

This chimes in with the potential for strategic litigation in the Commonwealth identified by Novak (2021), which shows that the involvement of international organisations expert in comparative and international law can help local activists to make the case for change and ultimately ensure states’ human rights movement to compliance. The initiation of the case not only clearly shows an opportunity for change coming from the outside but also how the international ramifications/networks are at play. Participant 4 further explains:

So, the case gets filed in 2010. We were just being established as an organisation then, and one of our legal panel members [...] happened to be in Belize on another matter speaking with Caleb’s lawyer and said: “by the way there is this new organisation which focuses on this issue, would it be helpful if we collaborate.” And she said: “yes absolutely.” So, we were invited to intervene as an interested party. [...] So you had LGBT plaintiff against the Government, and then you had three international organisations and three religious organisations supporting either side.

Overall, the benefit of transnational activism is the sharing of knowledge so lessons can be learnt (Keck and Sikkink, 1998; Kirby, 2013; Ayoub, 2015). Participant 3, a lawyer, explains:

I have come to think, like many others have, that sectorial struggles are important but what is most important is that people make connections. Not solely because that’s the right, ethical thing to do, but because making connections across movements, working collaboratively and interrogating the rule of the criminal law is actually more effective when we are working together across communities, across stakeholders, and even if that means that there might be a time and a place when there are [moments] to have single issue strategy. [...] And I am not saying that there aren’t merits for having individual strategies to tackle each of those issues [...] but it is important that expertise and the lessons that they have learned be shared with others, across their communities [...] and other stakeholders. Because others can also learn from their successes and the failures, because so much of these issues are so interrelated.

Whilst the pitfalls of transnationalism will be explored below, it is worth noting here that some benefits from transnational LGBTI activism in the Commonwealth have been articulated through interviews and recent research (Waite, 2017), notably by allowing judicial dialogue between similar common law jurisdictions (Kirby, 2013; Novak, 2021). Whilst transnational funding and support may come with the strings of coloniality attached, it is undeniable that evidence points towards opening routes for redress, concurring with research finding a correlation between local memberships in international non-governmental organisations and



better human rights practices (Hafner-Burton and Tsutsui, 2005; Simmons in Risse, Ropp and Sikkink, 2013).

### 7.2.3 The pitfalls of transnationalism

For all the benefits of transnational activism however, disadvantages exist. First of all, foreign help is not always welcome, especially when there is little consequence for international activists who are arguing for change but are not on the ground. Plethora of studies have emphasised the dangers of global advocacy disconnected from local realities including the imposition of Western terminologies unfit to local experiences and subsequent reinforcement of structures of powers (Long, 2005; Ellawala, 2019). This is especially acute as actors from the Global North are not subject to the 'structural violences of coloniality' (Lalor, 2020, p.4). Participant 7 explains how the case of *Jason Jones v AG of Trinidad and Tobago* played out with the local community:

Local civil society wasn't pleased with Jason for taking that case, being based in London. So, there was that split there and it was for the local civil society to bear the brunt of the retaliation. So immediately after the decision and Jason speaking outside the courthouse, he was in hiding and then... speaking with the UK High Commission... I think he was in touch with the US Embassy as well, just about getting out of the country safely but... obviously, for local activists and the community, that wasn't an option.

In addition, foreign help can be perceived as an agenda imposed by the West contradicting local culture, social norms and economic security directly fuelling anti-LGBTI rhetoric (Sadgrove et al., 2012) although research refuting homosexuality as a colonial import helps thwart that claim (Dlamini, 2006). Nevertheless, foreign engagement, especially at diplomatic level, should be conscious of the resonance of postcolonial discourse and not take an imperialistic approach to advocacy. Participant 16, a judge, explains:

Mr. David Cameron who was British Prime Minister in 2006. That was the way not to do it. Not to come and say we are telling you what to do. What he should have done was to shut up. You can contrast that with Barack Obama, who was less prescriptive but as emphatic when he visited Kenya about three or four years later.

At any rate, the perception of interference is still perceived as 'a legitimate form of criticism' (Participant 3) by some stakeholders interviewed, including during a legal challenge 'when an external body [is] trying to meddle in the affairs of a domestic court' (Participant 3). Furthermore, to attract international partnerships and funding, activists need to frame their work within international parameters, which does not always fit their objectives or reduce their work to a single issue (Dutta, 2013; Ellawala, 2019). Participant 12 testifies:

There's a lot of work, a lot of partnerships happening but one of the criticisms from some of these organisations is that the focus is very strong on HIV which

reinforces the stigma around LGBTI issues and sexual and gender minorities... and the focus on men having sex with men.

Again, this chimes in with existing research showing how sexuality is medicalised through global health activism, thereby restricting its potential use as a tool for political mobilisation around identity politics outside that space (Seckinelgin, 2009; Dutta, 2013). Finally, all transnational work is often done in English, which is not always the language spoken by communities across the Commonwealth or which resonates most with them, and therefore prevents work and exchange of knowledge in addition to further reinforcing the coloniality of power via an Anglocentric narrative to the detriment of other local languages (Chambers and Gilmour, 2024). Participant 12, a Mozambican activist, explains:

[Activists in Angola] said and they sort of expressed how much they wished... because the movement is a little bit younger there than in Mozambique, how much they wished there was more partnership and sort of more... just sharing lessons learned, sharing challenges, etc., sharing resources.[...]

Language was a problem. Language has always been a problem. So, the lack of English speakers [...] in organisations here in Mozambique and the lack of resources [are a problem].

In this context, language prevents access to the resources and knowledge needed for local activists to contextualise and operationalise rights and to build human rights claims from the ground up (Rajagopal, 2003), contributing to a feeling of disempowerment and marginalisation and reinforcing the rigidity and imperialism of rights by preventing inputs from the diversity of experiences in the Global South's (Kollman and Waites, 2009). From a decolonial perspective, it is important to consider how to prevent the homogenisation of diverse experiences and voices from postcolonial contexts via the imposition of English as a primary means of communication and production of knowledge (Chambers and Gilmour, 2024). Finally, some interviewees understood that some international NGOs, especially from the Global North, have more power and need to be aware of that role. Participant 14, a lawyer, argues:

I think people shouldn't act as gatekeepers and I think there is danger of international NGOs that they do act as gatekeepers and they become sort of... There is a sort of like a deference to them and that's a problem. But that is a problem across the board with international NGOs, that they have got to be acutely aware of that power that they have and make sure they don't abuse it or exploit it or fall victim to it.

This echoes existing research showing the role of international NGOs in operating as gatekeepers due to their substantial resources and long establishment in the global stage, which end up designing the boundaries of what constitute legitimate human rights claims and holding access to international organisations (Gamson, 1997; Linde, 2018; Ng, 2018). That said, and whilst interviewees have shown the risks of transnational advocacy, they were all adamant that it was needed to provide change, giving credence to the necessity and usefulness of the 'boomerang effect' in enabling the 'spiral model' of human rights change by

harnessing pressure ‘from above’ and ‘from below’ (Risse, Ropp and Sikkink, 2013). The next section of this chapter will look at the different international narratives used to justify transnational advocacy.

### **7.3 International narratives for transnational advocacy**

The effectiveness of both the Commonwealth of Nations and international human rights regime were discussed with all interviewees. Whilst many used a human rights language or recognised human rights discourse at play, many did not mention the Commonwealth as a relevant narrative for activism and change. The only times the Commonwealth was mentioned was when interviewees were part of/working with Commonwealth’s related organisations. In contrast, the human rights discourse and mechanisms were mentioned many times by all interviewees as a relevant discourse for action, which could, in turn, provide an opening for the Commonwealth of Nations to be relevant on the issue of the decriminalisation of same-sex acts amongst its members.

#### **7.3.1 The decriminalisation of same-sex acts through a human rights lens**

Whilst movements around same-sex dissent can be traced back to the 19th century, LGBT rights did not appear in the human rights regime until the 1990s, spurred by the strengthening of transnational LGBT networks (Kollman and Waites, 2009). It is then unsurprising to see resistance to opening up the human rights framework to LGBTI rights from those who want to maintain current logics of exclusion. Participant 7, a member of an international organisation, recalled state officials claiming: ‘we were tricked when we ratified those [human rights] treaties, we didn’t know that equality and non-discrimination meant this,’ meaning the inclusion of LGBTI individuals. Despite this challenge, activists nevertheless still found LGBTI rights a powerful narrative to engage states on the issue of decriminalisation by forcing the broadening up of universal definitions, applying their local contexts. Indeed, states selectively complying with human rights were challenged by activists during interviews. Participant 1, a LGBTI activist from Belize, argues:

Well once you are a citizen, it does not matter who you are: sex worker, drug user, LGBT. You are a citizen! [...] Everyone endorses a constitution across the Commonwealth, they can’t then come in erode the dignity and human rights of the citizens as they wish, they are being selectively hypocritical! And they are undermining their own human capital and their potential for productivity and advancing their own development! How can they shoot their own selves in the foot! By making their own citizens collateral damage or expandable! [...]. In simple terms, they are agreeing on a constitution, and they are agreeing on signing treaty obligations. Their issue, really, is their own internal values of [...] how they see the dignity and rights of people they don’t like.

Indeed, the marginalisation of LGBTI individuals resulting from a selective reading of human rights cannot be justified given decades of development of international human rights law and standards. This was achieved through the universal potential of equality and non-discrimination provisions in all human rights instruments, which, as core and cross-cutting

rights in international human rights law, provide for other grounds of discrimination to be added to the list (Petrova, 2013). Participant 15, a judge, explains:

[Criminalisation of same-sex acts] is not compatible with the one principle of international human rights for which is beyond question and that is that you cannot discriminate against, police people, on the grounds of their race. But of course, once you take that step, then you gotta think of the other grounds of discrimination, gender, skin colour, and sexuality, disability, refugee status, prisoner status, et cetera, et cetera.

Equality and non-discrimination principles, as originally found in Article 7 of the Universal Declaration of Human Rights and in subsequent international and regional human rights treaties, open up access to the full panoply of human rights, which is crucial when considering the impact of the criminalisation of same-sex acts. Participant 14, a lawyer, explains 'why dignity is the best right that sort of captures it all':

Obviously, it's about privacy, well we have sex privately, everyone does. But it is also about your ability to express yourself, to express your identity and be who you are in the public space as an LGBT person and it is the whole point about criminalising identity, criminalising sex. It doesn't just criminalise the act of sex, it criminalises identity and therefore the extent to which women are targeted in jurisdictions that criminalise. [...]

You will be able to join together, come together as a group, campaign, experience life as a group is terribly important. And the reality is: to criminalise somebody because of who they are is degrading, it is degrading of that individual. So, the prohibition on degrading treatment is of course essential.

Evolving jurisprudence in relation to the decriminalisation of same-sex acts has demonstrated the costs of taking a non-holistic approach to human rights: from restricting privacy to the freedom from state interference with one's sexual intimacy rather than a right to self-determination, to reinforcing socially accepted notions of sex, marriage and family (Sperti, 2017). Participant 14 further explains the problem in conceiving the decriminalisation of same-sex acts as an exclusive right to privacy:

It doesn't really address the problem. I mean it's a very heteronormative approach to LGBT equality. You know they just want to look at it from the point of view of very much of what's acceptable to straight people, 'ok we will give you the residual right to have a shag as long as nobody can see you and does nothing about it.'

In a nutshell, 'you can't say "a little bit of human dignity", human dignity is human dignity' concludes Participant 14, and this is why 'you can't divorce [decriminalisation] from marriage. You can't say we only want to partially persecute gay people... the way partial decriminalisation [does].' Human rights as a whole capture the full lived experience of LGBTI individuals and therefore are a useful discourse to argue for both the decriminalisation of

same-sex acts and wider equality issues facing LGBTI individuals around the world, and so despite identified issues with pre-determined concepts (Sperti, 2017) which does not adequately or helpfully translate in postcolonial contexts, especially given human rights' sociohistorical origins and application (Otto, 1997; Brems, 2001; Rajagopal, 2003). This will be further explored in chapter 9.

### **7.3.2 Human rights in action**

All interviewees confirmed that the conversation on the decriminalisation of same-sex acts should be based on human rights. Participant 1, an activist from Belize, argues: 'the centre of any talking point is examining what the human rights systems are in states and to use those systems to really force the value of human rights at a state level.' As such, human rights were not only discussed as standards but as mechanisms and tools for compliance, thereby giving credence to the 'spiral model' (Risse, Ropp and Sikkink, 2013). Indeed, activists have clearly articulated that they are using human rights mechanisms to bring national and international attention to the decriminalisation of same-sex acts specifically, and LGBTI rights more broadly. That said, interviewees found it is difficult to assess whether states are meaningfully engaging with the human rights processes. A member of an international organisation, Participant 11, explains:

To me, it's always extremely difficult to understand why a state accepts or notes a [Universal Periodic Review (UPR)] recommendation because sometimes I've seen states that just rejected and noted some of the recommendations just because it was a specific state that was making that recommendation. [...]

They don't want to be seen as responding to recommendations made by others but to be seen as the ones taking the initiative to decriminalise and not being again at the service of others, or potentially [...] responding to some recommendations from former [...] usually... UPR recommendations on sexual orientation and gender identity are made by Global North countries so [...] former colonial states that actually imposed [criminalisation].

Conversely, states will also have reasons to be actively engaging with human rights mechanisms. For instance, Sri Lanka has 'always been very active in the Human Rights Council [...]'. A lot of it had to do with messaging because of the civil war' remarks Participant 7, an official from an international organisation. Wider understanding of international dynamics at play is helpful to understand which UPR recommendations by which states will likely be accepted, either meaningfully or as posturing. Existing research points toward the accessibility of guidelines for human rights implementation, political peer pressure and socialisation as different levers for human rights compliance (Etone, 2019; Carraro, 2021) although geographical proximity (Burger, Kovac and Tkalec, 2021) and perduring North/South divide (McMahon and Ascherio, 2012; Cowan and Billaud, 2015) are still at play. Considering that sexual orientation and gender identity recommendations made via the UPRs are only accepted by 13.8% of Commonwealth states, compared to 57.5% of non-Commonwealth states (Lennox and Waites, 2013), further analysis of human rights compliance in a postcolonial context would be welcome.

In any case and regardless of the level of sincerity, the public commitment made will provide a clear route for civil society organisations on the ground to keep lobbying their government (Risse, Ropp and Sikkink, 1999). At a minimum, it allows activists to gather momentum and shed light on a specific issue which they think should be prioritised by their government. Indeed, if they have not successfully engaged with elected and non-elected officials in their countries, they can at least count on an international position via the UPR, as governments will have to respond to any human rights issues raised by international and national organisations. Participant 1, an activist from Belize, remembers: ‘nobody knew what the position of the Government was until the Universal Periodic Review 2009 was submitted,’ which shows how the mere existence of this international mechanism can help organising on the ground.

Human rights standards are also applied through court judgments, and many lawyers interviewed pointed out that legal challenges to the criminalisation of same-sex acts are strategically good to ‘further develop international law’ (Participant 3) as many countries have ratified UN treaties. Additionally, other opportunities for international legal challenge can be further explored provided the exhaustion of available domestic remedies, as demonstrated by the ground-breaking CEDAW case *Flamer-Caldera v Sri Lanka* (2022). This is particularly helpful for activists to know, as we have seen in the previous chapter that states over rely on the courts to decriminalise same-sex acts. Overall, interviewees pointed out that any international human rights pressure to decriminalise was helpful. Participant 3, a lawyer, summarises:

Whether that’s the UPR, or a treaty body decision, or the UN Secretary General or High Commissioner for Human Rights. It’s all pressure. But ultimately it comes down to political will and prioritisation unless the courts strike it out. [...] But there are all sorts of pressure points coming from different angles and they are all useful and helpful.

Also, despite the challenges attached to using human rights for the decriminalisation of same-sex acts in the Commonwealth, including around their contested universalism (Brems, 2001), it was still felt as a relevant framework for action, especially in light of the even greater challenges facing the Commonwealth as an institution.

### 7.3.3 The Commonwealth

‘I asked my parents: is Mozambique part of the Commonwealth?’ Participant 12, a Mozambican activist, confided when I reached the interview question about the relevance of the Commonwealth to the fight for LGBTI equality in the country. Whilst Mozambique was one of the last countries to join the Commonwealth and was a Portuguese rather than a British colony, the question still reflects the lack of relevance and use of the Commonwealth as a useful context to progress LGBTI equality. As Participant 9, an activist working in the African region, points out: ‘no one talks about it, no one really brings it up, no one really frames their discussions like this.’ That said, Participant 7, who is a member of an international organisation, mentioned that the Commonwealth of Nations is ‘a trusted partner’ because all

of the work is done by consensus. Because of the need for consensus however, any 'public push from the [Commonwealth] Secretariat around decriminalisation isn't going to happen,' Participant 7 candidly confesses. Indeed, given the majority of Commonwealth countries still criminalise same-sex acts, with countries such as Uganda and Nigeria actively promoting or reinforcing homophobic laws, any change emanating from the Commonwealth organisation is unlikely to take place (Gerber, 2014). Even when countries agree on tackling any human right issue, the disparity of member states means a disparity in the interpretation of the law. This led Participant 7 to state in relation to modern slavery: 'So even though there's ostensibly consensus, we haven't been able to have a focused [...] programme of work on that area even though supposedly it's an area of interest which heads [of state] have committed to pushing for change.' Whilst the *modus operandi* of the Commonwealth was perceived as a factor preventing the organisation to being effective on the matter of the decriminalisation of same-sex acts, so does its limited powers and funding. Participant 9 bleakly assesses: 'the powers diminished it considerably as a body. Maybe not the funding as much. That might keep the language of the Commonwealth alive for much longer' whilst Participant 14 deplores: 'the Commonwealth is really an NGO, isn't it? An underfunded NGO.' Finally, the colonial history of the Commonwealth means using the Commonwealth as a narrative 'comes with baggage that I don't think anyone really wants to deal with,' Participant 9 affirms.

That said, the Commonwealth of Nations still is another avenue to ensure conversations on LGBTI rights happen, supporting member states with any human rights implementation, reaching out to allies in national human rights institutions, and governments. Participant 9, an African activist, also sees potential in remembering the Commonwealth's colonial history:

It's not great framing. But there can be a shift in that right now the framing is LGBTI people come from the Commonwealth, they are Western, they are liberal, they are Northern. There is this image. What we're trying to do is to shift the narrative that the Commonwealth is homophobic, or brought homophobia, brought transphobia, brought through colonisation violence towards the other, the marginalised. Then the Commonwealth becomes useful, we can demonise the Commonwealth for a lack of a better word.

The 'blaming narrative', whilst helpful to explain the export of homophobia, does not go far enough to bring about change. Indeed, whilst the British Empire clearly has a responsibility in exporting homophobia and the laws criminalising same-sex acts in the Commonwealth, jurisdictions have had 'complete legislative and judicial independence for 50 years', Participant 15, a judge, remarks. Participant 15, further explains:

But once [countries] have got legal independence they have their own rights, and in a sense, the criticism of the Commonwealth of Nations that it just hasn't gone in with enough power and that it hasn't sent soldiers in and forced the good people of Kenya or Uganda or Nigeria or Cameroon to get rid of these laws, that would itself be the very thing that would first of all destroyed the Commonwealth overnight but, secondly, it would really be a mistake to take the power out of the hands of the people or their institutions.

However, other interviewees welcomed the opportunity to blame international organisations to bring positive human rights change. Participant 6, an activist from Cyprus, explains:

It would be ludicrous to say that the influence of the Commonwealth is anywhere as the EU is but... at least, when some issues can be taken by international bodies, it can help in finding that excuse for politicians to, at least locally, use them in a way that they can progress certain equality changes, not just for LGBTI but generally speaking.

Therefore, for the Commonwealth of Nations to be relevant on the issue of the decriminalisation of same-sex acts, if it was not to be reformed, would be to capitalise on its ability as an organisation to channel funding and for lobbying purposes, as suggested by interviews above, including by providing a space for transnational work and alliances, through a Commonwealth lens. Participant 14 explains: 'the more discussion you have, the more powerful people come, therefore there will be more interesting progress for equality.' Given the value provided by a human rights framework, the Commonwealth could also reinforce the human rights regime through its membership. As Participant 15 recalls:

The charter of the Commonwealth contains a provision which is very strongly for equality as one of the core principles of the goals and says that human rights covenants, we are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights and so on. We are committed. So, the values that they have adopted are committed to equality. And this is now a hammer that could be used to drive home the principle of equality in the countries that have not yet adopted that on the basis of gender, on the basis of indigenous status, on the basis of sexuality.

As discussed in chapter 5, it seems that the Commonwealth of Nations provides an avenue for transnational activism (Waites, 2017) allowing for the exchange of information and experiences (Kirby, 2013; Novak, 2021). However, it is clear that there is potential for the organisation to be more effective and relevant on the issue of the decriminalisation of same-sex acts if a more robust approach towards decriminalisation is taken (Arimoro, 2021): 'there needs to be more of a vision, there needs to be more leadership' from the Commonwealth, Participant 14 acknowledges. And leadership on contextualising human rights compliance through a postcolonial lens might be a way forward in shaping a decolonial approach to the decriminalisation of same-sex acts by, at minima, providing the space for different spatio-temporal meanings of sexual rights (Rajagopal, 2003; Corrêa, Petchesky and Parker, 2008).

## **Summary**

This chapter demonstrated that the internationalisation of the issue of same-sex acts responds to different motivations from stakeholders who want to either maintain or assert their power/narrative in an interconnected world. Motivations from foreign actors on both sides of the argument are therefore similar in the sense that they rely on, *inter alia*, domestic factors, economic and political gains including in a context of global coloniality where older colonial forms of domination perdure in the current world. States are using the opportunity for human



rights change as a way to consolidate or shift their position internationally, whether they are responsible for driving change in their own jurisdiction or not, whilst activists welcome the spotlight provided by international exposure as it helps amplify their case for decriminalisation. In particular, benefits from transnational LGBTI activism have been articulated through interviews, as it provides new opportunities, allows for judicial dialogue between similar common law jurisdictions or enables domestic and transnational social movements to join forces to bring pressure 'from above' and 'from below' to drive human rights change (Keck and Sikkink, 1998, p.18). The internationalisation of the decriminalisation of same-sex acts is therefore a double-edge sword: whilst providing the conditions for the pressure mechanisms needed to move states to comply with human rights, it also hinders the 'spiral model' conceptualised by Risse, Ropp and Sikkink (1999, p.20) by supplying the counter-narrative needed to set up resistance and backlash to social change in postcolonial societies. However, whilst transnational funding and support may come with the strings of coloniality attached, it is undeniable that evidence points towards it opening routes for redress. In this regard, the Commonwealth as an institution may have a role to play in ensuring human rights compliance by providing voices to contextualise them or enforce them, beyond providing a platform for exchange and knowledge. Crucially, whilst the Commonwealth as an organisation can enable the 'boomerang effect' by connecting domestic societies with the international community, it seems that it also acts as a blocker to further the 'spiral model' by legitimising or preventing states' movement to human rights compliance, providing the anticolonial narrative to curb further progress.

## **Chapter 8. Activism in postcolonial societies**

The previous chapter discussed the international dynamics at play when looking at the decriminalisation process in Commonwealth countries. However, these dynamics interact within specific local postcolonial contexts, which inform the way activism operates on the ground. This is especially true as there is a distinctive impact of different types of colonialism, which, in turn, shapes the political, cultural, legal and social approach to LGBTI rights differently from one context to another. Thus, this chapter explores how LGBTI rights are articulated, perceived within and shaped by postcolonial contexts, before discussing the local experiences of activists fighting for the decriminalisation of same-sex acts including how activists are impacted when claiming their rights, building on a decolonial analysis to the 'boomerang effect' (Waites, 2019). The chapter concludes with the need for international and domestic actors to coordinate action and pressure states both 'from above' and 'from below' to effectively drive change.

### **8.1 LGBTI rights in postcolonial contexts**

LGBTI rights resonate differently in postcolonial contexts, depending on the type of colonisation, the relationship between citizens and the state, the place of the rule of law in society, and other multiple factors which shape postcolonial societies. The interviews conducted shed a light on the different factors at play when considering the criminalisation of same-sex acts and the subsequent forms of activism needed to advocate for decriminalisation given some of the factors at play, including on where to assign responsibilities when deconstructing the (colonial) reasons for criminalisation.

#### **8.1.1 Different types and effects of colonialism**

There is extensive literature discussing both the impact and legacy of different types of colonialism, showing both the detrimental impact of colonialism in tearing down the political, social and cultural fabric of societies as well as its contribution to economic growth, development or democracy and the rule of law (Landes, 1998; Bernhard, Reenok and Nordstrom, 2004; Lange, Mahoney and vom Hau, 2006; Lange, 2009; Olsson, 2009; Daniels, Trebilcock and Carson, 2011). Interviewees were able to reflect on the influence and impact of colonialism in their own countries. For instance, Participant 12, a Mozambican activist, stated that 'Mozambique was a wreck, obviously, after colonisation. Our level of education was one of the worst in the world' whilst Participant 15, a judge, generally observes that 'the image of an uncorrupted judge, the image of a human being who could not be seduced by money, position and political power was a wonderful image and it remains. It remains today long after the British Empire is finished.' Observations made went beyond a simple assessment of the positive or negative impact of colonialism, and participants drew comparisons between different types of colonialism. This is the case of Mozambique, which albeit part of the Commonwealth of Nations, was in fact colonised by Portugal. Participant 12 explains:

Portugal was [...] considered the country that really did colonise us. I mean in terms of Britain, there isn't almost any influence. The Portuguese influence is extremely high here. Very, very, in terms of almost everything. Obviously, the language, and in terms of structures, in terms of many social, cultural ways of being. But in terms of the British, no. I think what's really interesting about Portuguese rule when we compare it to other countries like Angola for example, is that something about their indirect way of colonising the countries in comparison to the other countries around that were much more enforced by British rule, French in Central Africa, etc., is that the Portuguese mixed much more. I wouldn't like to say that it was softer because it wasn't. But there are different consequences and you can really see it when it comes to the historical consequences in the region.

The distinctive impact of different types of colonialism means that the political, cultural, legal, and social approach to LGBTI rights will also be experienced differently. Trying to explain the reason for the absence of a backlash when same-sex acts were decriminalised in Mozambique, Participant 12 explains that this could be due to postcolonial social attitudes, in part inherited through years of Portuguese ruling:

There's something about Mozambique, where we... the country doesn't necessarily... including religion and religious leaders, doesn't necessarily condemn something, and in this case, LGBT issues, but they don't stand for it either. It's definitely complicated. [...] There is this very popular saying in Mozambique that we are the country of, in Portuguese it's 'Deixa andar', that is 'let it walk' [...]. We just go with the flow if you could say it that way. It's considered a very, I don't really like that word, but a very tolerant society in terms of... maybe passive is better, in terms of letting things go but it also doesn't stand for almost anything. [...]

... and when it comes to LGBTI issues as well, for example, the countries that were colonised by Britain like Zimbabwe, Zambia, the countries around... and how their laws are quite different from the laws in Mozambique and Angola and also... and then I wouldn't know if that would also have consequences on it... but on this label of us being more tolerant societies when it comes to issues like this.

This insight coincides with a 2016 survey which found that Mozambicans had higher tolerance towards same-sex relationships than other African countries (Dulani, Sambo and Dionne, 2016). When comparing the impact of British and Portuguese empires on the moral and legal regulation of sexuality, Gomes da Costa Santos and Waites (2019) found that the earlier British criminalisation of same-sex acts and the Protestant missions focused on civilisation through education (compared to the civilisation through labour approach taken by Catholic missions under the Portuguese rule), explains the discrepancy between current social attitudes towards same-sex relations between Mozambique and Kenya, the former being more lenient than the latter which still criminalises same-sex acts nowadays. This adds to research which found a legal path dependence between common law systems and the criminalisation

of same-sex acts but had mixed results when trying to identify why some postcolonial countries fail to decriminalise the law compared to others (Asal, Sommer and Harwood, 2013; Han and O'Mahoney, 2018). Inevitably then, different colonialisms will have different repercussions for LGBTI individuals' present experience of coloniality and shape the opportunities available to them. When comparing postcolonial societies, wider factors are at play and could have an impact on the way to decriminalising same-sex acts and the time it takes the country to embark in this process. Indeed, the effect of different types of colonialism is felt about the way race, sex and class are perceived, as much as social attitudes. Participant 12 continues:

I think that, going back to the type of rule that we had and the comparison of Portuguese rule and British rule. I think it definitely has an influence and I think that the fact that our societies are a little... the fact that we're a little bit more mixed, helps, in terms of diversity. Because there's already racial diversity in many ways. It's complicated, there's a lot of power relations that interplay when it comes to class and race here in Mozambique but it is a much more mixed society.

It is thus important to locate homophobia within broader relations of inequality (Murray, 2009), which are themselves shaped by different types of colonialisms. Colonialism is not homogenous, however, as not imposed in a vacuum but instead superimposed to other social, cultural, legal and economic contexts. Consequently, even if one country - in the case of the Commonwealth, England - has colonised different countries around the world, its influence and impact will be experienced differently depending on local contexts, affecting the way communities identify themselves in specific ways. Participant 6, an activist from Cyprus explains:

If you ask a Cypriot the day before independence, they always considered themselves as a Greek island, just like Crete, or like Rhodes, they never considered themselves as being... the concept of an independent state was not understood, or was not there. So, the nationality *per se* was not understood.

As a result, many populations which have inherited their criminal laws from the British Empire forget that this was the case, given their strong ties with other, presumably neighbouring countries. In this context, advocating for the decriminalisation of same-sex acts could also mean recalling the colonial legacy. Participant 6 unravels the dynamics at play in Cyprus:

Greece never banned homosexuality. But because we took our legal system from the UK and keep[ing] in mind how we [Greek Cypriots] strongly associate Cyprus with Greece, [...] we realised that the ban came from the British. Even for the North, they strongly associate with Turkey, there was again not a ban in Turkey at the time so... eventually this is what made us think of the effect of the UK at the time.

This adds to the reflection about the potential for the Commonwealth to be the space for exposing that colonial legacy, as discussed in the previous chapter. Finally, another factor to take into consideration when thinking about the colonial legacy of the criminalisation of same-

sex acts is replacing the colonial law within the wider colonial legacy. Participant 14, a lawyer, explains:

We left a mess impossible especially around sexual affecting intimacy... so-called crimes affecting intimacy. A complete mess. So, most of those restrictions still have the legacy of the English laws across the board. I remember being in Jamaica once and this guy who [...] just couldn't believe the laws were in such a mess but he said: 'you ask any Jamaican if they had a choice which law they would get rid of, the law allowing rape in marriage or the law on homosexuality, they would retain laws committing rape in marriage. [...] And so that just shows what a mess it is, and that's all a British legacy of mess.

As discussed in the literature review (chapter 2), the insights about the Mozambican case study confirm existing research showing that colonialism is part of the social fabric (Davies, 2002) and therefore impossible to dismantle without challenging a complex nexus of beliefs and systems which form part of individuals and communities' identities. Consequently, all of the factors discussed above, such as religion, race, sex and class, as well as type of colonial rule and ideology will have to be taken account through the inherent hybridity of postcolonial societies (Bhabha, 1994) when thinking about advocating for the decriminalisation of same-sex acts in any postcolonial country.

### **8.1.2 State violence and the rule of law**

The state's history of violence and discrimination against LGBTI individuals was also covered in the interviews. For instance, after Mozambique's independence, Frelimo's leader Samora Machel ran a network of internment camps 'to mentally decolonize wayward members of urban society and putative enemies of the socialist revolution, the camps became a dumping ground for unwanted citizens accused of all kinds of wrongdoing' (Machava, 2018, p.429). The programme ran on the principle of perceived morality and many LGBTI people were sent there, as Participant 12, a Mozambican activist, testifies:

[The idea was] to take everyone in Mozambican societies, in different provinces who were considered immoral and were considered 'inútil', 'useless.' [...] People who didn't work, sex workers, LGBTI people... and he would take them to camps [...] where they would work for months, years, and many of them would die. And it was really a horrible camp for them to sort of bring their morality back.

If the independence from the colonising country certainly does not *de jure* mean the end of the criminalisation of same-sex acts as all countries have retained their penal codes (see chapter 2), it neither *de facto* means the end of homophobia and entrenched negative social attitudes towards LGBTI people. In fact, some studies have found that state violence against LGBT individuals is a widespread practice resulting from new democracies' politics, LGBT individuals being a convenient political diversion (Ungar, 2000). As such, the history of state violence conditioned the activists' relationship to the state. In the view of another African activist, Participant 9, because of Mozambique's 'incredible story of civil war', 'loose moves

could easily lead to trigger institutions to riot against government violently. [...] In my mind Mozambique falls into the category of very violent past and people willing to be violent for political, cultural or traditional aims.' As such, the ability of governments to decriminalise same-sex acts depends on the anticipated backlash from different institutions in the society.

If this example reinforces the idea that states have a responsibility in retaining the criminalising laws and reinforcing the othering of LGBTI people, it also implies that local activism and routes for actions are going to be impacted by the history of violence. The relationship that activists have with their states on issues has been extensively covered at interviews. As an activist from Sri Lanka (Participant 2) testifies:

The problem is that, since independence, government after government, not particularly the first few governments that were in place but certainly after the Bandaranaike Government in the mid 1950s, there has been a huge, what should I say, gap in good politics, good governance and democracy. But we have seen these government after government coming in and robbing this country blind, treating it like their own fiefdom where they can do whatever they please and get away with murder. And they have been. They have been for years and years and years. Unless you are mega rich, most citizens of this country struggle. Struggle because of apathy, because of thuggery and corruption. You step out on the road and it's just a free for all and nobody cares about rules, and regulations and laws... this is a lawless, unregulated country that is heading into a huge train wreck. And at some point, something has got to give.

This bleak picture is echoed by other activists around the world, who understand first-hand how the law is experienced in their local communities. The discrepancy between the law and how it is perceived in practice is something that was mentioned by many, either because the law is not willingly enforced by the state in practice or because the state does not have the means to enforce the law to the entirety of its territory. As discussed in chapter 6, the criminalisation of same-sex acts is not necessarily enforced and the majority of the population is not aware that the law exists: 'people forgot' (Participant 1); 'we probably have many laws that are inherited from colonial era that are simply ignored; many laws in Mozambique are very vague' (Participant 12). The state also does not necessarily have the means to effectively implement the law, as the example of *regulos* in Mozambique but also the perception by activists that 'this country is not governed in a "we govern every inch of this land" kind of a thing' (Participant 9). The fact that the law is not embedded in society as a whole means that when decriminalisation happens, it is often not resulting in an immediate change for LGBTI people. This hindrance was foreseen by Risse, Ropp and Sikkink (2013) when developing the pre-conditions necessary to the fulfilment of the 'spiral model', one of which being the state's capability to implement and enforce its rules over its entire territory. Even if the legal structure had been dismantled, 'the remnants of it were just everywhere' (Participant 10). This explains the power of the law in ostracising people, as Participant 10 puts it: 'the idea that [...] LGBT persons are somehow anti-social has carved what I call a deep groove in the social awareness of people. And that's how the law works. The law actually creates notions of propriety or non propriety.' As a result, the relationship of LGBT citizens and the state in postcolonial societies

is shaped by past and present legal, semi-legal and extrajudicial violence (Ungar, 2000) which must inform the way advocacy operates on the ground.

### 8.1.3 Postcolonial societies

As discussed above and in chapter 2, dismantling the colonial legacy is not only an impossible but probably undesirable task as postcolonial societies now reflect a juxtaposition of belief systems, some of them acquired before or during colonisation. Some countries are fiercely proud of their traditions and culture but also abide by beliefs introduced by colonial powers and influence. In the Pacific islands for instance, interviewees working for an international organisation expressed how struck they were by ‘the number of churches and how Christianity is imbued in everything’ (Participant 7):

They are fiercely proud of their traditions and culture but Christianity has only been there for a couple of 100 years... Yet, they talk about Polynesia being there for aeons and so on but you don't speak about the pre-Christian beliefs, really. In a religious sense. And the church has been very active in fighting back against public statements in support of decriminalisation or the activities of civil society.

Similarly, a Sri Lankan activist (Participant 2) reflects on their culture:

People talk about “the culture of Sri Lanka” [which] is mainly British Victorian culture and it's not very much our own culture. Because if it was our own culture, we would have been in a much different place because our culture before was... Number 1, we were a matriarchal culture, not a patriarchal culture. We didn't have anything such as marriage. [...] It's a hodgepodge of Victorian values and morals and past practices [...].

A Mozambican activist (Participant 12) also reflected on the impact of colonialism on the Mozambican identity: ‘the language in and of itself kind of was thrown into disarray from the very beginning. The local languages are not supported, local languages are not given those spaces. Portuguese is strong, proud. And people are proud of it.’ Consequently, the makeup of any society will be an interlacing of different factors, which means identities are constructed and reconstructed so people end up ‘owning’ the law criminalising same-sex acts. An activist from Cyprus (Participant 6) explains:

The realisation that we got stuck with these laws from the British came later. Much later I would say. [...]

It felt like a very local law [...] It felt like we took ownership of the law in a very very strong way. So, there was not an issue about the British being at fault but I think further discussions later and let's say interconnections that came at a later stage is what helped here. [...]

I don't think that any of the politicians here sort of blame the UK for the [criminalisation of same-sex acts]. They actually thought it was very logical to have a ban on homosexuality even though the UK decriminalised homosexuality in 1967 after [Cyprus] became independent. [...]

Reclaiming the colonial legacy of the criminalisation of same-sex acts will thus go so far, as people will justify the ownership of these laws through negative social attitudes. As a result, even countries that wish to dismantle the colonial legacy will struggle justifying the decriminalisation of same-sex acts, as Participant 7 explains:

There are countries saying: 'right, we're making a clean break with our colonial past,' like Barbados. The Governor General opened parliament in August, she made reference to [...] this being a legacy of colonialism but [...] then, at the same time, she threw in the caveat of 'any change will be done through referendum.' Knowing that... anyone familiar with Barbados will know what the outcome of that would be.

Overall, building on a decolonial analysis to the 'boomerang effect' (Waites, 2019), we can understand the complex sociocultural contexts from which postcolonial actors instigate the boomerang and claim their human rights. The observations made in this section have multiple consequences for local activists lobbying for change, as they navigate the complex makeup of postcolonial societies. However, they clearly show the limits of recontextualising the criminalisation of same-sex acts as a colonial legacy. The inherent hybridity of postcolonial societies (Bhabha, 1994) means that there is a disconnect with the legal framework but, depending on the type of colonialism and local history in relation to diverse sexualities, some embrace of homophobia, which means there is no immediate reject of the alien law – in the same way there is no immediate embrace of pre-colonial attitudes (see chapter 9). In this context, decriminalisation can risk being instrumentalised as a break from the colonial past without addressing the root problems of negative social attitudes and injustices facing LGBTI citizens in postcolonial societies, as exemplified by the situation in Barbados. Thus, it is likely that a decolonial approach centring personal narratives of queer citizens in their local contexts will be more transformative than retracing the origins of the law which will not, in and of itself, dismantle the colonial legacy (Davies, 2002; see chapter 2).

## **8.2 The necessity and strain of activism**

Since social attitudes will not necessarily be conducive to change, activism in the Commonwealth should be centred around changing hearts and minds. The interviews reveal the dangers surrounding activism and consecutive visibility of LGBTI people, which is nevertheless necessary to bring about change. This section will therefore consider the violence faced by activists on the ground before exploring the motivations for activism to finally assess the impact of activism on individuals and the society at large. Interviews show that the desire to alleviate the suffering of others is what prompts individuals to embark on the activist journey, especially as a sense of kinship is developed between LGBTI individuals enduring stigma and discrimination. Whilst activism is crucial in enabling positive change, it should not be forgotten that the visibility it brings carries risks of violence and backlash.



### 8.2.1. The consequences of activism and (hyper)visibility

The extreme violence and safety risks faced by local activists and claimants fighting for the decriminalisation of same-sex acts and wider equality issues was brought up in most interviews. Even when relatively tolerant social attitudes towards LGBTI individuals prevail, activism in postcolonial contexts can nevertheless provoke a backlash as the *status quo* is challenged. Participant 1, an activist from Belize, explains: 'people took it for granted that as long as you do not make waves, you have no problems,' and that 'as long as you were invisible and you do not challenge the *status quo* that things were alright.' As soon as the activist movement for the decriminalisation of same-sex acts gains momentum, either by campaigning or through a court case, activists are faced with threats and violence from a range of actors, whether they are institutions or members of the wider society. In relation to institutional violence received by LGBTI activists, Participant 2, an activist in Sri Lanka recalls:

We feel as an organisation a lot less threatened [under President Sirisena] unlike during the time of President Rajapaksa where it was a very authoritarian government and whoever he didn't like just disappeared. So we felt very threatened, and rightly so! Because we were under surveillance, our phones were bugged, I was followed... All those kinds of intimidation tactics also did take place.

Advocating on LGBTI issues is also dangerous in a context where consensual same-sex acts are still criminalised, where any campaigning efforts can be challenged by the state. Participant 2 explains the situation in Sri Lanka:

Unfortunately for us, we have a law that criminalises same-sex consensual relationships and people don't bother to look at the wording of the law. They just automatically brand everybody who is gay a criminal. So, it would have been so much easier for them to close us down. Far more easier than any other NGO.

It is not only threats from the Government that activists in Sri Lanka were facing, but also from various religious groups. 'We also withstood intimidation and death threats and various threats of violence from Muslim extremists from the East coast [...and] from Sinhala Buddhist nationalist groups as well,' confirms Participant 2. Indeed, LGBT individuals face multifaceted violence from all parts of society (Ungar, 2000). The violence faced is not contained to those who are actively lobbying for change but also by any LGBTI individuals in a homophobic society. LGBTIQ Sri Lankans 'are in hiding, they are scared for their lives, they don't have proper jobs, they get bullied, harassed, violated, every single day,' Participant 2 confirms. The visibility brought by advocacy and campaigning also raises the particular risks for LGBTI activists. In the case where a legal challenge was brought against the state, the claimant becomes hyper visible and is particularly subject to violent abuse and threats: 'you don't get paid for going through stress and anxiety of being a claimant in a case where thousands of people will be ripping at your integrity and your reputation,' Participant 1 says. They further expand:

Over time, there was the usual death threats, there was the usual 'you won't make it to [the expected end of the court case],' [...] my own classmate said that to solve the litigation problem, all I had to do was to die. [...]

I became conscious of my own security, I got cameras, I had to get some resources to hire four bodyguards to take me to the original hearing [...] and ever since [...] I have been on guard. I haven't decided yet whether I am celebrating life because I expect to die or [if] I am celebrating life with the expectation I wouldn't pass [the] age of 51. [...]

They were all these good Christian evangelicals who were delivering prayer notes, wanted to pray for my soul. I even had one on the plane praying for me. I was like where was I going to go! So, I told her 'Listen, go for it!' And she prayed for my soul.

This experience supports analysis of backlashes provoked by activism through litigation (Klarman, 2004; Rosenberg, 2008). It is not only the claimant to the case or visible LGBTI activists who face the brunt of the hostilities but anyone associated with challenging the *status quo*. Lawyers representing the interested parties in a court case on the decriminalisation of same-sex acts were told they 'deserved to be fed to sharks' and one of them 'was accused of being a lesbian' for their role in the case, Participant 1 recalls. These conditions are aggravated by the stress and anxiety of relatives. As one relative to the claimant told them: 'you may not give a damn what happens to you but imagine how we would feel if something would happen to you!' Participant 1 recalls. This coincides with accounts from other litigants who reported how their advocacy shaped their relationship with relatives (Johnson, 2016). Participant 1 testifies:

And joining me in that fight was my family, my mother, my sister... Nobody ever tells you that one of them will have a terrible illness along the way. My sister had discovered she had cervical cancer, and she was living with it for four or five years, so she was living with it throughout this case... And I had to deal with that! I had to deal with my mum discovering that her diabetes was affecting her hearing and her sight... I had to deal with that!

Therefore, fighting for the decriminalisation of same-sex acts in postcolonial societies 'is not for the faint of heart' (Participant 1) and is an incredible burden individuals carry with them. Participant 2, an activist from Sri Lanka explains:

We do things and we make it look easy, we make it look as if there were no issues, no threats, no this, no that. We make it look easy because we do not want to magnify any kind of fear or show people that we are scared of them. [...] But for me in particular, [...] it's a constant struggle every single day to put on a happy face and just do things and make it look easy. And that's what we are good at doing. We make it look really easy to have pride. So much so that

the UK Government has basically said to asylum seekers “well you have pride in Colombo so how can it be such an issue?” But it’s a huge issue!

Activists in postcolonial societies are trapped between the tension of putting a brave face to their emotional labour domestically whilst risking countering the victim narrative that the Global North relies on to justify intervention. Waites (2019) also identifies through decolonising the ‘boomerang effect’ how rights-claimants are redefined through claiming their rights, including how engaging with a human rights discourse may lead activists to become articulated within wider narratives that may not serve further rights-claiming or restrict them in rights-claiming processes available to them. One might wonder whether the threat and violence faced by activists lobbying for change is worth it, given the risk of restrictive narratives or uncertainty of the outcome, although, as mentioned in chapter 6, it may constitute the only opportunity for change (Keck, 2009; Sommer et al., 2013).

### **8.2.2 Motivations for activism**

Throughout the interviews, activists explained why they decided to take on the risk to campaign and organise for change in the face of so much adversity. As Participant 1 puts it: ‘this job doesn’t come with any security! No pension plan, no compensation package... Absolutely nothing! This job doesn’t even pay good! So... what the hell did I do it?’ Participant 1’s reasons were twofold. First, they noticed that the community affected by laws and policies were not represented: ‘I realised HIV work that people were talking about. The community, its HIV vulnerability, but nobody from the community itself is speaking of itself.’ So, the urgency of action results from the need for representation. Secondly, there was a clear understanding that without change, there would be no space for individuals to thrive: ‘I had the epiphany: you are perpetuating mistreatment by remaining silent and I did not want to remain silent.’ Indeed, research conducted shows that one of the main rationales for litigation is the desire to achieve personal redress (Johnson, 2016). Participant 1 further explains:

I was walking down the street receiving insults. For what? [...] I am being stared at...’psss’... small comments, whispers... For what? And I realised, if I am going to go through all that, may as well go through all that for something I believe in rather than go through all that for doing nothing other than being who I am, which was an honest person. So, I stood my ground on the basis that I carried a burden of responsibility for defending my dignity and rights that nobody else would do better than me. I carry a pain that nobody can understand unless they live my life and I needed to fight back in some significant way against such bigotry [...] In simple terms, I was prepared to stick it to them by telling them I am not going anywhere! Of course, that comes with a price. [...]

I did it because it was the right thing to do at the time and that nobody had the...for a lack of a better word ‘cojones’ [to] actually be visible, make the sacrifice and stand their ground despite the hardship. I did it because it was the right thing. It was not the most easy thing to do but it was the right thing.

When asked if elected officials could have decriminalised same-sex acts through legislative reform, which would be less hazardous and costly for LGBTI individuals, many interviewees emphasised the political cost mentioned in chapter 6, preventing concrete actions for change. Participant 1 explains: 'parliamentarians here might have been sympathetic to our issue but they did not have the principal backbone to move things along, that is the burden of our civil society to do so.' It was actually discussed through the interviews that making the community visible is important to reach a critical mass to take up space and bring about change. Participant 1 testifies:

At first, the community was like afraid of defending themselves on Facebook. And then [...], there was a shift! But there wasn't a visible shift because even my board [...] weren't ready to go to the media and they assigned me to continue and do the job of being visible [...].'

As Participant 2 summarises: 'one always has to have hope, yeah? And one always has to have that conviction that, at some point when you keep chipping away at the tree, that the tree is going to fall down.' Ultimately, the hope for change is what prompts individuals to embark on the activist journey, especially as a sense of kinship is developed between LGBTI individuals enduring stigma and discrimination, which motivate them to alleviate the suffering of others (Johnson, 2016). It is important to recall here that there is intention, agency and purpose when activists are 'throwing the boomerang' and harnessing both pressure 'from above' and from 'below', rooted in their own experiences, empowerment and empathy shaped by their postcolonial contexts.

### **8.2.3 Impact of activism**

We have explored the motivations for activism and the impact it had on individuals carrying out activism but this section will cover the impact of activism on society. Many interviewees observed the success in activism in 'changing hearts and minds' (Participant 5). Participant 1 explains how the Belizean society and institutional actors shifted position during the length of the court case and as LGBTI individuals made themselves more visible:

The original anti-right propagandist evangelical group dropped out the case, and I learned later that the head of the evangelical association is not an activist pastor. It was the American evangelical who was! So not only my community and the opposition changed, the political leadership changed. But the community leadership base began to expand! When I first started it was only my organisation and we are the oldest and only policy and advocacy organisation in the country by the way. I saw a military woman stepped up! I saw a man with HIV celebrated in the media and stepped up! I saw a HIV positive young fellow step up!

This account shows how visibility is extremely important to bring about change in social attitudes (Leachman, 2014). Participant 16, a judge, explains:

The more that you know that your child or your parent or your uncle or your brother or your friend or your congregation member sitting next to you in the pew or your colleague or your neighbour is queer, the more quickly your ideas will change. So, this is the point that Harvey Milk makes: 'come out,' he said.

Participant 15, another judge, concurs: 'even in such [homophobic] countries, judges might, step by little step, be willing to take steps that make life a bit easier for their fellow citizens who are gay because [...] they will increasingly begin [...] to know gay people. That makes it harder to be horrible to them.' This is why activism is important even when decriminalisation is discussed in the courts, because it raises the much-needed visibility for the movement to gain a critical mass so it cannot be ignored anymore. Participant 16, a judge, explains:

When people say to me 'what can we do,' obviously legislators are important, obviously judges are important but in Botswana where there was this extraordinary beautiful and moving judgement [...], a three-judge bench which is now wrongly under appeal and I think the appeal will be rejected partly because there's been a visible queer movement in Gaborone, in Lobatse and elsewhere. So those judges likely know people who are queer. Now that doesn't always help [...] They are deeply embedded homophobes, wherever you go. But the start of change lies with activist organisation, even in Nigeria, even in Ghana.

This leads Participant 16 to conclude 'I see the path to reform as laying in activism' because 'every act of coming out is a political act. And that's the way to do this and that's what gives me hope.' Observations from interviewees support the theory that visibility brought by activism create space for LGBTI individuals to disclose their sexual identities to others, thereby enabling positive associations among the public at large and the consecutive improvement of social attitudes (Garretson, 2018).

### **8.3 Strategising for change: methods of successful activism**

One of the main questions this research aims to answer is what works to effectively bring about change in those countries which are still criminalising same-sex acts. The interviewees discussed achievements and failures of activism, reflecting on domestic organising, international inputs and the ability to harness both to successfully decriminalise same-sex acts in Commonwealth countries.

#### **8.3.1 Local activism: organising in context**

Many interviewees mentioned the importance of understanding the context and liaising with the local communities before spearheading an issue, including campaigning around the decriminalisation of same-sex acts. For instance, in Sri Lanka, the domestic LGBTIQ organisation started their activism doing relief work in several parts of the country that were badly hit by the tsunami of 2004, rather than starting to advocate for LGBTIQ rights. In Belize, activists consulted with the community prior to any engagement to see whether it had any issue with them starting lobbying and litigation work against the criminalisation of same-sex

acts. Also, context is important to decide on when to seize the opportunity to push for the decriminalisation of same-sex acts. For instance, Participant 6, an activist from Cyprus, explains the difficulty of arguing for LGBTI rights when the country was facing other human rights concerns:

You couldn't talk about human rights if it was not involving the refugees here in Cyprus, the internally displaced. [...] It was a very tough thing, [...] 10 years after the invasion, to talk about that we need to decriminalise homosexuality whilst there were still people living in makeshift houses, and that people were moved away from their areas or [...] third of the island had to actually flee their houses. So, it was a very difficult time as well in bringing these things. So, anything that had to do with human rights at the time was always considered in how it affects refugees, [the] internally displaced.

These testimonies coincide with a clear observation from Brysk (in Risse, Ropp and Sikkink, 2013) who explains that successful communicative action on the human rights agenda takes into consideration and manages outstanding, wider social issues. When the timing is right, activists have to build support from the ground up: 'it is not all about law and lawyers, it's also about the community owning the process and doing what they can to push things along,' Participant 1, a Belizean activist affirms. And that work is slow. Participant 9, an African activist, explains: 'it's unfortunately soft advocacy because it's not visible. The allies aren't visible and they don't want to come out. This makes writing on them hard, and reporting on them hard.' But ultimately, 'those connections are starting to form and build' and these 'allies that have formed in the communities and [activists] are using their power in whatever space to slowly shift these conversations,' Participant 9 concludes. Changing social attitudes and using the media to work on the visibility of the community, as mentioned above, is what will ultimately end up being successful. These observations echo previous research on the 'spiral model' that demonstrates that successful activism encompasses a communication strategy framed with universal or established values, and are delivered by credible and charismatic speakers through accessible and salient media (Brysk in Risse, Ropp and Sikkink, 2013).

Indeed, interviewees highlighted that successful advocacy relies on well-connected individuals, lobbying domestically and internationally for change, including through activists' own connections in parliament and government. The media interest for and publicity of activism in some countries meant that these activists were high profile enough to require the attention of decision-makers domestically and given enough protection, 'the assaults and abuse notwithstanding,' emphasised Participant 7, a member of international organisation. Participant 2, a Sri Lankan activist explains:

[A] person like me for example, if something happens to me, I don't think twice about going to the police, I don't think twice about hiring a lawyer, I don't think twice about complaining to somebody who knows somebody who knows somebody who will go right to the top [...]. But if it is somebody from a poor village from somewhere, they don't have ANY recourse. None whatsoever.

The need for alliances is also across organisations and not only individuals. Participant 6, a Cypriot activist, recalls how successful activism relied on connecting through other issues: 'it was more LGBTI activists working through other organisations, established ones. And the feminist movement was a very big push then, was a big help.' Similarly, in Mozambique, Participant 12 affirms that 'there's a lot of cooperation that happens here, with organisations, with partners and funders.'

In addition, interviews revealed that strategic thinking in advocacy goes a long way, and most activists who have successfully lobbied government for change through court challenges have done so as part of a wider strategy to provide equality for LGBTI people. Participant 1, an activist in Belize, explains:

All movements operated in a liberation framework, and then moved on to a civil rights framework. But in Belize we started on a civil rights footing, which then inspired a liberation framework of short-term interventions for those people with immediate needs and their personal development.

Some degree of planning to map out expected positions and counter positions from opponents to decriminalisation was also necessary. In the interviews, all domestic activists mentioned their advocacy work and how they strategically created space for action both domestically and internationally. For instance, Participant 1, an activist from Belize, mentioned the use of a 'strategy' focusing on 'map[ping] out the formal thinking of [the] state,' a 'civil rights framework' and 'communication plan.' In Belize, the planning included 'basic research like mapping out cabinet thinking, like engaging both sides of the party, both sides of the aisle, getting our community to stick to our points and [...] developing a library of communications and articles from around the world and nationally to inform our messaging,' and 'hammering away for all persons who were LGBT in Cabinet, to the technical people' so their message could be heard, Participant 1 explains. They further argue:

For us, the first thing that was important was to map out the level of resistance. And we used HIV as a platform to assess opposition and to collect information. [...] After that, my community, who were both politically affiliates start[ed] to map out the opposition of various parties. The other thing is recognising that politicians, well not all politicians are the same everywhere, they follow the same principle. They are always afraid of what the public thinks so they need power! That is where it is important to have some sort of advocacy organisation or a coalition of organisations behind a particular case, having champions behind a particular case speaking up and being clear about what the message is or promoting values that everyday persons can understand and connect to the case personally.

The interviewees highlighted the importance of the existence of civil society to do the advocacy work in all circumstances, even when litigation is underway: 'what works for us is that we had a strong advocacy organisation with the head of that organisation who was also the claimant in the litigation work' (Participant 1). That organisation was able to support advocacy work, support the litigation process, including 'ensuring that the claimant in the case had the

necessary security or awareness of security' (Participant 1). Support with 'security and self-care of the individual' is needed, as well as support from family and friends to 'keep you sane' and 'stick it out' despite threats and abuse (Participant 1). Having 'very effective legal advice' provided by 'good lawyers' (Participant 14) was also seen as an enabler of successful decriminalisation.

Overall, 'having an organisation is always a good thing because it will focus people's minds and energy,' Participant 14, a lawyer, concludes. All interviewees agreed that organising around the decriminalisation of same-sex acts needed to be well resourced to be successful: 'whichever advocacy organisation is involved in decrim[inisation] they have access to some resources to do the work,' Participant 1, a Belizean activist affirms. Although there is not 'a one-size fits all way of organising' (Participant 14), what is ultimately compelling is having motivated individuals who are ready to persevere and fight for their rights: 'you need brave people who will need to set some sort of vision and that helps make everything else go much easier,' Participant 6, an activist from Cyprus concludes.

### **8.3.2 Internationalisation of activism**

When discussing their activism, interviewees ineluctably reflected on international opportunities for them to lobby their own governments. For instance, when activists struggled to access Members of Parliament or Ministers to discuss the issue of decriminalisation or LGBTI equality, as they ignore correspondences sent to their offices or requests for a meeting, the strategy is to 'ambush parliamentarians when I see them at various receptions that foreign missions have,' where 'they are very happy to talk to me in that kind of settings and everything is all just lovely and wonderful and stuff like that', although often it is not followed up by action, recalls Participant 2, an activist from Sri Lanka. Equally, Participant 1, an activist from Belize, recalls mapping out international opportunities to leverage change domestically:

The other part of that is really the diplomatic engagement, documenting official positions whether it's the human right system like the international treaty obligations or it's engaging regional systems like the African Commission, the Organisation of American States, [...] building the history of a track record of official positions also helps in forming strategies and allowing individuals to then zoom in on who to engage, how to engage and what to do.

The access to political geographical groupings also allowed a targeted approach to activism: 'when we joined the EU, it affected both the North and the South, in [the sense] there was more assistance to the civil society, so [the] civil society starting becoming a little bit more aware of its right, and it helped in organising the civil society and organising', explains Participant 6, an activist from Cyprus. International organisations also spot opportunities for domestic action, and reach out to local activists to assess whether additional, international pressure would help decriminalise same-sex acts. Participant 4, a lawyer confessed that Cyprus 'was an obvious low hanging fruit' for their international litigation work as 'it was clear that it had already been established that these laws violated the ECHR so it was the last pocket of Europe that still criminalised.' The decision to intervene allowed for additional international pressure as 'political discussions including with members from the European



Parliament' (Participant 4) were already taking place in the margin on the need to decriminalise same-sex acts.

Importantly, the international support that activists have, including in the case of litigation, was crucial for them enduring the abuse and getting some protection if needed: 'those people will have to have the same kind of blanket support that [the claimant] had in this case and building that kind of support is not easy,' Participant 1 recognises. Of course, and as discussed in the previous chapter, whilst international support for activists can go a long way in ensuring their safety, it can also provoke a backlash as not all the domestic population can receive the same kind of support.

This is why it is important for international organisations and actors to consult with domestic civil society to make sure their intervention will not cause more damage than good. Consulting with the community affected by the issues and finding the appropriate time to start work was well understood by several international organisations working on human rights. When Participant 10, a member of an international organisation, asked whether it would be helpful for them to bring up the decriminalisation of same-sex acts with local governments, the civil society categorically refused stating: 'this is not the strategy.' 'And we said: ok, then we don't focus on that. And it turned out to be the right thing [to do],' Participant 10 recalls. Similarly, because 'local groups and local lawyers wanted to', 'we helped filed the case at the European Court for Human Rights' against Cyprus, Participant 4 explains. The need for local civil society to be able to set the strategy and organise around it has been identified as a condition for effective human rights compliance (Simmons in Risse, Ropp and Sikkink, 2013) including to harness a balanced and effective 'boomerang effect' (Hennida, 2015) and evidenced through interviews, including in relation to Trinidad and Tobago when the civil society was not strategically aligned with Jason Jones deciding to challenge the Government on the criminalisation of the same-sex acts (as discussed in chapter 7) or Belize, when the civil society successfully organised around the case brought by Caleb Orozco (see above). The capacity of civil society to organise around the decriminalisation of same-sex acts as an important condition to move states down the 'spiral model' of compliance (Risse, Ropp and Sikkink, 1999; 2013) will be discussed next.

### **8.3.3 Harnessing pressure 'from above' and 'from below'**

Successful activism is 'multi-layered' and 'opportunistic' (Participant 1), taking advantage of a 'window of opportunity' (Participant 6) or an 'opportunity approach,' where 'being there in the right place at the right time' is necessary to make sure the 'movement [can] meet the event' (Participant 9). One of the key means of successful advocacy is to insert the issue of decriminalisation of same-sex acts amongst other discussions to raise the need for change. Participant 1, an activist from Belize, explains:

It was important to use litigation as a tool not only to [...] advance decrim[inalisation] but to aid the issue of citizenship and what it means to exclude your own citizenship in discussions around slogans like 'leave no one behind,' in discussions like anti-poverty campaigns, in discussions like broad development plans, in discussions like healthcare.

The ability to leverage space and time in an opportunistic way is crucial, as circumstances can change. Consequently, advocacy groups and coalitions must be prepared to adapt: 'the process is dynamic because as soon as you start to have strategic intervention, it changes,' Participant 1 explains. Participant 5, a lawyer working for an international NGO commenting on the shift and change in the political environment in Sri Lanka exemplifies: 'we were going to have some kind of strategy which is on hold at the moment, on the back burner just as we assess how... no one really knows what is going to happen yet.' Thus, advocacy work needs to change in face of setbacks but also capitalising on positive turns of events. Participant 6, an activist from Cyprus, recalls that 'there was a window of opportunity where the European Court [of Human Rights] [...] started accepting taking individual cases' which meant activist Alecos Modinos could finally and directly legally challenge his country's criminalisation of same-sex acts.

However, interviewees were clear to not take up these, often international, opportunities, if domestic civil society was not 'in a position to respond to that event or that change' (Participant 9). Participant 9, an African activist, further develops:

The right way to do it is to build the movement up so that when these events take place, [activists] are able to jump on them. To meet the events that are going to take place as the world looks, as the world moves. Whether they are bad events, murders and violence, or whether they're good events, legal change, constitutional, etc. It's vital, it's so important. And then you get lucky! It's that you need both. You need the event to take place and the international community to push those events and you need the movement to be bold and strong enough to meet those events.

As such, in the Republic of Cyprus, whilst activist Alecos Modinos took the opportunity to lodge a complaint with the ECtHR which led to a successful court judgment, it was only pressure from the EU that ultimately prompted the decriminalisation process five years later. Participant 6, an activist from Cyprus, explains why:

For the decriminalisation of the Republic of Cyprus, the recognised part, it was due to the case being taken by one person, but then we did not really have a LGBTI community here, so like an organised LGBTI community, unfortunately. There was one organisation, the Gay Liberation Movement but the Gay Liberation Movement never actually managed to register or really become very active. The organisation was never official because they could not get 20 members actually registered, to get the organisation registered.

This example shows both the importance of having a thriving civil society behind a court case, as exemplified by UniBAM supporting the court case in Belize, and the importance of state registration so domestic civil society have the means to organise, as discussed in the case of Mozambique. Similarly, Participant 9 reflects on the legislative reform in Mozambique: 'this constitutional or law change happened and the movements were not able to meet and bring the conversation, forced the issue to keep that story going. So, to me it is not a good example

of top pressure downwards without inclusivity of the LGBTI movements.’ Also, even in the case of Mozambique where the decriminalisation of same-sex acts happened, because of the lack of pressure ‘from below’, not much progress has been made in regard to LGBTI equality in the country since then, with the main LGBTIQ organisation still not registered. Participant 9 concludes that although there are attempts ‘to build the capacity on the ground to pressurise the religious institutions, to pressurise community institutions, traditional institutions,’ ‘the grounds for support to pressurise from the bottom are not there’, which means local activism is ‘riding on the wave of aid.’ These testimonies support the ‘boomerang effect’ which is the process by which both domestic and transnational social movements need to join forces to bring pressure ‘from above’ and ‘from below’ to drive human rights change (Keck and Sikkink, 1998, p.18).

The complex but careful sequencing of both the domestic and international pressure is important, however, and needs to be built from the ground up to maximise the ‘boomerang effect’ leading to human rights compliance. In other words, international norms and/or political pressure ‘cannot be expected to sustain significant rights improvement unless there are fundamental changes in the domestic institutions of accountability and governance’ (Simmons in Risse, Ropp and Sikkink, 2013, p.44). This probably explains the lack of progress since the decriminalisation of same-sex acts in Nauru where domestic civil society is absent and the lack of progress since the decriminalisation in Mozambique as the LGBTI civil society is not allowed to be registered. Whilst there is a strong civil society in Sri Lanka, the pre-conditions needed to trigger the ‘spiral model’, such as the existence of a well-functioning democratic regime and the state’s ability to implement rules over its entire territory (Risse, Ropp, and Sikkink, 2013) are not met as the country is deemed a ‘flawed democracy’ (Democracy Index, 2021) and rule implementation is limited by the existence of personal laws (Panditaratne, 2016). The necessity of domestic activism does not mean, however, that international norms or socialisation cannot create the conditions for the emergence of a strong local civil society, as exemplified by the case of Cyprus joining the EU. Nevertheless, the delivery of a human rights activist agenda will have to be informed from, and delivered by, local activists. That said, as discussed, there is not always the opportunity or the privilege of choice when LGBTI citizens are faced with both enduring stigma and restricted or restrictive opportunities for action in their local contexts.

As such, when discussing the best way to go about the decriminalisation of same-sex acts, whether through legislative reform or bringing about a legal challenge, and who is ‘entitled’ to bring up a legal challenge, no one seemed to prefer a route for action, as discussed in chapter 7. Participant 14 explains:

I don't think it really matters that you got decriminalisation through a case. I don't think it really matters. And that was interesting because there's all this stuff that everyone always gets quite animated about... who brings the case? Who owns the case? [...] I don't really think it matters where it has been decriminalised or who has decriminalised as long as it has been decriminalised. And I think there's a lot of posturing around that. I think it's a bit of a non-question.

Given the complexity of dismantling the colonial legacy which is the criminalisation of same-sex acts in postcolonial societies, any route to activism is indeed welcome to embark in the fight to equality, despite the visibility and burden such a path can bring to individuals or any anticipated lack of progress towards further equality beyond the immediate decriminalisation.

### **Summary**

This chapter shows the distinctive impact of different types of colonialism, and how it shapes the political, cultural, legal, and social approach to LGBTI rights. Crucially, since colonialism is part of the social fabric and societies have embraced the criminal laws after independence, it is impossible to decriminalise same-sex acts without challenging a complex nexus of beliefs and systems which form part of individual and community identities. Indeed, the relationship of LGBTI citizens and the state in postcolonial societies is shaped by past and present legal and social violence which impacts the opportunities and the way advocacy operates on the ground. As such, activism in postcolonial societies will most likely bring about risks of violence and backlash, but prevail on the basis of a desire to alleviate the suffering of others. Importantly, LGBTI activists will know how to leverage space and time to pragmatically seize any opportunity for change, according to their local circumstances. Key factors to successful activism include deep knowledge about the local context, strategic planning, opportunism, raising visibility of LGBTI individuals, including through the use of media, and the ability to harness international input into local strategies. In particular, the mobilisation of purposive domestic agents who have the motives and means to organise is crucial to human rights compliance (Simmons in Risse, Ropp and Sikkink, 2013). Indeed, without a careful and coordinated action between international and local activism, strategies for the decriminalisation of same-sex acts in postcolonial societies may fail. This further calls for the need to provide decolonial analyses to the 'boomerang effect' (Waites, 2019) to capture the complexity of interactions and resistances between Global North and Global South actors, fully embrace the diversity of queer experiences, and refine the 'spiral model' developed by Risse, Ropp and Sikkink (2013) by clarifying the opportunities available to activists shaped by conditions such as social or material vulnerability and postcolonialism, to further inform successful activism in these contexts.

## Chapter 9. Competing narratives

We have seen in the previous chapters how activism in the Commonwealth is shaped by postcolonial, international and transnational dynamics which paint a complex picture for activists to navigate. This results in the decriminalisation of same-sex acts being caught in multiple, overlapping and competing narratives, which is worth unravelling if we want to understand what works in advocating for the decriminalisation of same-sex acts in postcolonial contexts. As Participant 9, an African activist, puts it 'it's a battle of narratives... and narrative to power.' Participant 10, member of an international organisation, concurs that there is a 'political approach to decriminalisation' which relates 'to power and balances of power.' This chapter covers the types of narratives used in favour or against decriminalisation in postcolonial contexts, before unravelling the power dynamics at play, including between and within movements and institutions with the view to deconstruct these competing narratives. Specifically, the influence and use of media by a range of stakeholders is discussed. The chapter concludes with lessons learnt from successful and unsuccessful narratives.

### 9.1 A battle of narratives

The interviews showed that, across the different contexts, the narrative in favour of the decriminalisation of same-sex acts tends to focus on universally agreed principles, such as non-violence. This narrative is then layered with other targeted arguments through framing contests (Ryan, 1991; Benford and Snow, 2000) that have a chance of succeeding within local contexts of state social vulnerability or economic dependency (Risse, Ropp and Sikkink, 2013), whilst narratives in favour of the criminalisation of same-sex acts predominantly place LGBTI individuals as deviants threatening the *status quo*. These narratives resonate differently in postcolonial societies where other issues such as race, colonialism and religion are inherently connected to LGBTI issues.

#### 9.1.1 Pushing decriminalisation forward

Interviewees reflected on the fact that they had to work with the unfolding public narrative and harness it. Participant 1, an activist from Belize, explains: 'you learn that advocacy is multi-layered but it is also opportunistic. You leverage the timing and the space then weaken opponents' arguments and also place pressure on the state to be constructive in their response between two opposing forces which disagree on an issue.' Indeed, interviewees reflected on the fact that any arguments in favour of the decriminalisation will have to be targeted to meet the objective intended; 'you tailor [arguments] to the needs that are required to be met to have a successful outcome' confirms Participant 3, a lawyer. That said, many of the interviewees still identified useful arguments depending on the narrative at play. The most compelling narrative on the decriminalisation of same-sex acts is an anti-violence narrative and that 'under good governance, you don't marginalise the already marginalised' asserts Participant 1, a Belizean activist. Participant 9, an African activist, further argues:

The shift is to shift the conversation from please accept LGBTI people to please just stop killing them, please just stop beating us and excluding us and sending

us away, the violence [...] because you can't argue that, you can't, from a religious point of view, you can't fight [...] that narrative. You can't say 'you should drive them away from our communities.' And so, tapping into those parts of values system is so important.

Participant 10, member of an international organisation, also asserts that 'at the basis of all political dialogues and understanding is people should be free from violence and discrimination based on features or characteristics of who they are.' Nevertheless, that narrative is limited insofar as it focuses on ending violence but does not attempt to quash enduring stigma or discrimination, which can continue in more subtle and pervasive ways, even when formal equality is provided (Meyer, 2015). Consequently, more refined arguments need to be deployed in the context of what would be most compelling to the audience. For instance, when governments are conscious about their reputation as a country, whether that they want to be seen as standing for human rights or part of a collective in a region (Ayoub, 2015), activists have pushed in that direction. Participant 6, an activist from Cyprus, recounts: 'so even now when I am trying to push for changes here locally, the argument "oh we cannot be the last EU country that does this," it still plays in the ears of certain people.' Participant 4, a lawyer, concurs:

So, when the [H.Ç. v Turkey] case got filed, [the Government] defended the case, they filed a defence but I am sure they knew that there was no way they were going to win and so ultimately that case prompted, I think, accelerated legislative reform. Because if you look at the Hansard discussions around the legislative repeal, an MP makes reference to the case and says 'do we really want to have a judgement against us in Strasbourg? We need to reform these laws or we are going to have this judgement against us.'

When faced with the argument that the decriminalisation of same-sex acts will lead to wider changes for LGBTI people including same-sex marriage, which is perceived as negative to the opponents to decriminalisation, activists refocused the debate to the issue at stake. Participant 6, activist in Cyprus, explains: 'I guess it's trying to find ways to say [...]: "no this is it, there is nothing more"', 'we said "well this is now what we have in front of us"' so the narrative was focusing on the issue rather than potential future events, which would depend on a different context. Participant 6 further explains:

Everybody was saying that the world was going to change the day after civil unions, we said "no." So now, the argument after 4-5 years, is that well we actually see what the problems with civil unions are. There is obviously a shift [in relation to] same-sex relationships in the general public so we can now start talking about certain items that were not... not very ok.

The temporality and space attached to the issue debated is therefore very important. When confronted with the accusation of bringing a Western agenda, local activists were efficient in bringing their race, nationality and sexual orientation in the forefront of the argument, taking the, often hypocritical, rhetoric away. Participant 1, activist from Belize, explains:

I made the point that evangelicals, the Catholics and the Anglican Church agenda is also foreign because their headquarters are not in Belize, it is in another country. For us, I made the point that our main opponent was an American evangelical who needed to look in a mirror to see what colour skin he had! And who needed to check his own people! Then, unofficially it shifted that conversation and killed all discussions around the idea that it was a foreign import, a foreign agenda. [...]

And lastly, I made the point that I am a LGBT Belizean, I am not imported. By rights, I am not foreign, our constitution is fundamental to me as a citizen. And people over time began to understand that.

Whilst a narrative centred on non-violence is probably effective as a starting point as appealing to universal values (do no harm), more targeted and refined narratives are deployed to prevent the contamination of other issues (e.g., same-sex marriage, colonialism) or appeal to states' social vulnerability (e.g., international reputation). Ultimately, contextualising the experience exposes the coloniality of power and provides an intersectional lens to queerness thereby showing the disparity in experiences of homophobia depending on individuals' social position, characteristics and context (Meyer, 2012; Seyhan, 2022). This corroborates research which emphasised the need to make space for a counter-narrative embodied and told by marginalised individuals as part of and within the LGBTQ+ community (Lund, Burgess and Johnson, 2020) especially when these experiences are not relayed or captured by national media (Asante, 2020). This would help with decolonising human rights by recontextualising them in their contexts, and building human rights from the ground up (Rajagopal, 2003).

### **9.1.2 Resistance to decriminalisation**

The interviews also revealed the narratives favoured by opponents of the decriminalisation of same-sex acts. Elected officials often justified inaction because either the law was, in their views, not enforced, or because social attitudes were not ready for change on the issue of LGBTI equality. Participant 6, an activist from Cyprus, explains:

The main argument that we always get is "oh we cannot have this [decriminalisation] because society is not accepting." But for me, there needs to be a vision by the politicians. So, if the politicians cannot set a vision of how we move forward, [...] it's a chicken and egg thing. [...] How are you going to start talking about legitimising the relationships if, at the same time, the state itself says that they are illegal. So yes, you need to have the laws, and obviously change of minds at the same time, fortunately or unfortunately. But you cannot have the argument that comes first that the society is not ready for it. Society is not ready for it, because it hasn't seen somebody... you have been telling society that it is wrong up until then. So, the argument is that you need to set a vision by the politicians, which unfortunately their primary thing [is] how am I going to get voted in the next round of election, so that's what it is causing the big problem. I mean this for all arguments, not just LGBTI related [arguments].

Research conducted on social attitudes have indeed shown that African countries which have decriminalised same-sex acts – Mozambique, South Africa, Cape Verde – have higher acceptance towards homosexuals’ than those which still criminalise same-sex acts, whilst even though social attitudes are relatively positive in Namibia and Mauritius, it still does not necessarily ensure decriminalisation (Dulani, Sambo, and Dionne, 2016). As argued through this research, this type of argument is fabricated to justify inaction rather than a genuine reason to bring about change at a later date. Another argument displayed was ‘we start with this one and then where we go? What’s the next step?’ (Participant 6), the next step implied being obviously a more controversial one, be that same-sex marriage or any other challenge to a social norm. This is an argument mainly deployed by religious groups and conservative members of the population favouring a *status quo* on social and moral issues. Participant 8, a member of an international organisation, attests:

The moment they hear decriminalisation, they hear same-sex marriage. We've had the same in Grenade when we did the referendum there and the referendum was on gender equality but somehow a lawyer for the church had connected that to gay marriage and they said “well if you are going to have gender equality” – and that’s a woman – “if you are going to have gender equality, the next logical step is gay marriage.” And I was just like, can you please make me understand how this works? I just don't understand what that connection is.

Similarly, Participant 7, also a member of an international organisation, tells us: ‘all you have to do is look at The Bahamas and Grenadines, the referenda there around women’s equality. It didn't take long for the Church to step in and make that debate about same-sex marriage.’ Indeed, the reality is that opponents to the decriminalisation of same-sex acts will try to connect the issue to another, more controversial social issue - ‘they immediately link it to abortion’ says Participant 8, a member of an international organisation - to garner support for opposing the decriminalisation. Participant 8 further explains:

They have a very, almost schizophrenic, approach like they do with sexual orientation and gender identity because in health it’s fine, or mostly fine in health. But when it comes to decrim[inisation], it’s a complete no-no. [In a Commonwealth country, they] adopted the principles on HIV provision... and it was sex workers, it was prison population, it was men having sex with men, it was LGBTI population and all of this coverage was just... I mean we were like wow! But then you talk about decrim[inisation] and it’s like: “No, no, no, no, no. This is not what we are saying.”

Participant 7 confirms governments’ selective interpretation of international equality commitments: ‘I mean Sustainable Development Goal target 10.3, it is ‘eliminate discriminatory laws.’ It’s not qualified but they’re very quick to say “no, no, back up, it’s [only] in relation to gender, maybe disabilities.” Whilst the validity of human rights is not questioned by states, they selectively apply them, restricting their definition and scope to maintain or reinforce existing systems of power.



Also, experiences from the ground reflect the lack of consensus amongst states around the prohibition of discrimination against sexual orientation needed to assert the authority of the international human rights regime (Donnelly, 2013; McGoldrick, 2016). The lack of consensus is used by opponents to the decriminalisation of same-sex acts, backed up by funding and organised mobilisation to help land arguments and gather momentum. Participant 4, a lawyer, recalls what happened in Belize, where the Church was very 'vocal' against decriminalisation:

You had priests complaining outside the Parliament. I think a very interesting part in Belize is the evolution of the religious right, their intervention in the case. They were incredibly well organised, incredibly well funded and incredibly aggressive in their defence of these laws. They were much more aggressive than the Government in the court. They had placards outside of the courtroom, during the hearing... candle light vigils, protests where they burnt an effigy of UniBAM, Caleb's organisation, really very quite aggressive and ugly opposition to the entire issue.

Narratives deployed by stakeholders against the decriminalisation of same-sex acts revolve around maintaining the *status quo* and morality, notably by linking the decriminalisation with threatening the rest of the moral order, be that furthering women's rights or LGBTI rights, to garner opposition. Consequently, LGBTI individuals are portrayed as deviant - 'LGBTI people cannot be good citizens and we want to promote good citizens' was the argument used, recalls Participant 10, a member of an international organisation. This coincides with other research which has demonstrated that decriminalisation arguments tend to shift the perception of LGBT individuals as deviant sexual offenders to victims of hate crime (Woods, 2017), thereby coming back to the non-violence narrative deployed first and foremost by LGBTI activists.

### 9.1.3 Postcolonial lens

Colonialism shapes both narratives in favour and against decriminalisation. Participant 10, a member of an international organisation, asserts that 'the way that criminalisation has found its way into the law through colonial processes is deeply impacting the way in which the narratives to maintain it are held.' Indeed, in postcolonial societies, narratives around the decriminalisation of same-sex acts bounced against narratives connected to 'decolonisation,' 'un-Africanism' and 'Christianity.' As such, 'there is too much backlash, there is too much reverberation' when advocating in favour of the decriminalisation of same-sex acts, affirms Participant 9, an African activist. Whilst any social change which challenges the *status quo* and power relations within any given society is difficult, it is even more so when considering the need to navigate complex postcolonial realities with subsequent overlapping and intrinsically connected narratives. Consequently, foreign or international support for change can backfire depending on the context. Participant 12, an activist from Mozambique, explains: 'the concept of, first of all, of being gay, being lesbian, being bi, being transgender is something that came from the West, is something that came from the fact that we were colonised. So that's a huge discourse and it's also really used by religious leaders,' with the view to counteract efforts to advocate for the decriminalisation of same-sex acts. It is true that "LGBTI" as a concept does not necessarily connect to local experiences and language. For instance,

Msosa (2016; 2017) showed that most Malawians associate homosexuality with non-consensual anal sex rather than consensual same-sex relationship as it is translated to 'mathanyula', aka anal sex in Chichewa, the official language of Malawi. Therefore, the terminology will inherently be perceived as foreign. This is compounded by the need to show opposition to former colonial powers: 'it's a case of we won't entertain [decriminalisation] because of the North/South dynamic,' Participant 7, a member of an international organisation, confirms. They further explain:

One example is Trinidad and Tobago. At the Montevideo conference there was a leader of the opposition, he was a former speaker, he is then a senator and an ally... and following that conference and the establishment of the Equal Rights Coalition, he wrote to the Foreign Minister and said 'Trinidad and Tobago needs to join this.' It went nowhere for those very reasons: "all of this is a Western thing," "look at who the members are."

As discussed in previous chapters, homophobia is used by states to politically differentiate themselves from the West (Boellstorff, 2004; Currier, 2010; Weiss and Bosia, 2013), causing local LGBTI voices to be obliterated in the political instrumentalisation of the issue. In an attempt to decolonise the narrative around the criminalisation of same-sex acts, many have tried to reconnect with their social reality before colonisation. Participant 10, a member of an international organisation, confirms:

Ancestral cultures existing in Sri Lanka were quite accepting of sexual and gender diversity. And therefore, I would connect very strongly the defence of criminalisation with the defence of the colonially imposed power structures that, of course, are right now at the base of all of the conflict.

Whilst this narrative is helpful to question the immutability of the criminalisation of same-sex acts and underpinning homophobia, it is not a silver bullet to change entrenched views on homosexuality. Participant 9, an African activist explains why:

We tend to be like "well pre-colonialist worlds were understanding and loving [etc.]." And there is evidence to it and we do need to write those histories because the other history has been written, [one] of savagery and terror. [...] But it's a little bit revisionist. I think you can add to it without revising it but it wasn't all pretty and wonderful [...] trans people specifically, gay people specifically have been part of cultures and traditions for a very long time. Their acceptance and violence towards them, [...] in my mind, was honed in and became incredibly violent with colonialism. But it wasn't not a thing before. So, the exercise of rewriting, of writing those issues is important but not something we should lean on, I think.

It follows that activists pushing for the decriminalisation of same-sex acts need to be careful not to 'romanticise' (Participant 9) pre-colonial societies to the point of rewriting history and forgetting that the lived realities are of a postcolonial one. For instance, reviews of customary laws in Kenya and Mozambique warn us against idealising Africa's pre-colonial approach to

same-sex acts (Gomes da Costa Santos and Waites, 2019). As discussed in previous chapters, forcing a leap of time in the past to dismantle the colonial legacy would also challenge other, potentially positive colonial imports. Participant 10, member of an international organisation, argues: 'this is part of the way that the state is structured because this is the way colonial states were created and why would we differentiate between that and the separation of powers in the state which was also a concept brought by the colonial structure?' Consequently, it is not only impossible to dismantle the colonial legacy but it is also undesirable, as colonialism has permeated social relations and structures, either reinforcing, tweaking or erasing pre-existing laws and customs, thereby creating a new social context in which people live.

Therefore, interviewees naturally ended up discussing what a compelling narrative as part of a decolonisation process would entail. Contrary to rewinding history or challenging the colonial legacy, it appears that reflecting on who LGBTI people are in postcolonial societies would be more effective to contextualise experiences. As mentioned in the previous chapters, the visibility of LGBTI people makes it harder for the community to ignore the injustice and exclusion they face and enables the improvement of social attitudes (Harrison and Michelson, 2017; Garretson, 2018). Participant 9, an African activist, confirms:

Decolonising to me, and [...] I know what [the Mozambican LGBT organisation] is trying to do, is shift the narratives that LGBTI people are our community members, are our neighbours. Because contact, knowing a person who is LGBTI is by far the biggest indicator that you are going to be accepting of LGBTI people.

Reconnecting people with their surroundings is important to generate buy-in. Participant 9 further argues: 'That's to me what decolonisation is about, it's not dismissing. It's understanding and then tapping into something that can shift us back to the values that drive most people.' They further argue in the context of Mozambique:

It's more about tapping into what it means to be African. It's the values that needs to be tapped into, that the decolonisation will take place. The values in Western countries is liberalism, it's "everyone has the right to." And when we tap into those values here, you don't get responses because it's not the values people hold here. The values people hold here [in Mozambique] are 'you are because we are, we are because you are, you being gay means we are gay, you being trans means we're trans', it's 'your identity is not yours, it's ours' [...]. So yes, you have "the right to" because human rights have gone throughout the world but if you describe it in that liberal way of 'well I have the right to be whoever I want', you don't get the response. So, decolonising the narrative, the activism, the advocacy is about saying a different narrative.

This testimony shows efforts by local activists to convert the human rights discourse away from its alien, liberal and elitist connotation, and strongly supports the importance of localising activism in context as it allows the 're/formulation and transformation of the space-based global legal discourse' (Rajagopal, 2003, p.271). In order to change negative social attitudes,

activists are taking into account the context shaping these attitudes, including the place of taboo, religion, culture, even when these elements have been brought or shaped by colonialism to argue about change. Participant 9, an African activist, explains what this means in practice:

Being African, for all the unfortunateness of it, is also now being Christian. And we know we can intellectualise it and theorise [...] that is colonisation in and of itself and it brought with it the homophobia and the transphobia. How can we use it now to fight those things? But [...] we have to use it.

Citing the example of the Afrobarometer, Participant 9 highlights how activists and researchers can tap into these postcolonial values and use them to shape the narrative:

What we want to ask people is 'should people who are different be protected?', or 'should people who are different be welcomed in our communities and societies?', 'should we listen to whatever the Government says?', 'should we have a common humanity?', and we can also ask Christian questions: 'are we all part of God's image?'

This approach is also effective when discussing the violence and discrimination that LGBTI people face in their context. Participant 9, further explains:

We need social justice language. Justice is the point that we're trying to make. We don't want LGBTI rights and when people hear human rights for LGBTI people, that's what they're hearing. They're hearing you want special rights [...] I don't think anywhere in the world [the issue] is actually the cause for LGBTI movement, it's equal rights in the way that is framed as individual liberal rights. In Southern Africa, it can't be framed like that. It has to be framed as a justice issue. So, for instance, the issue isn't that same-sex marriage isn't allowed [...] it's that it isn't blessed by the reverend or the community. People can do whatever they want in their own bedrooms. People can dress however they want. I mean I am exaggerating; I think people hold different beliefs, but they can do whatever they want but you must have children, you must be part of the family, you must be blessed by the family, you must be accepted by the family. Those things are all bottled up. If we don't address those then we gonna miss the point. So, it's saying there is an injustice in being kicked out of your family and community. There is an injustice in being murdered for who you want to love. There is an injustice in hate. And we need to solve these injustices rather than include everyone. Because including everyone is a sure-fire way for most people in Mozambique and other countries of just ignoring it. I think we still need to use human right language; I think there's a lot of power in human rights language. I think the end result needs to be human rights but how you go about convincing people for that cause has different narratives in different languages.

In a nutshell, 'it's Africanising, Mozambicanising, for a lack of a better word, instead of LGBTIsing Mozambican' concludes Participant 9. Sometimes, this means that the approach

on LGBTI rights will be completely different. Participant 9 emphasises: 'to a large degree that's because people don't want to talk about sex, [which is] taboo in and of itself. It's why I think in some other countries trans groups are making a lot more [progress] because they're not talking about sex, they are talking about gender.' Thus, focusing and adapting the narrative depending on the context is crucial. This is even more important when considering some of the narratives at play against the decriminalisation of same-sex acts. Participant 10, a member of an international organisation, explains how pushing a specific narrative in favour of the decriminalisation of same-sex acts can be ineffective:

I was listening [...] to a preacher in Ghana saying that his argument for ensuring that homosexuality is illegal is that God has designed a building with a door that has a sign that says 'enter', in one side that says 'exit' and that that's the way that the building needs to be used and anybody who tries to enter through the exit is breaching the social order, and therefore must be criminalised. And that was his argument. So [...] when you get to a political dialogue and that is the argument, there's very little that you can do to actually place it in terms of the high-flying principles of the Universal Declaration of Human Rights.

Also, the different narratives used in favour of the decriminalisation of same-sex acts, whether that is the human rights argument or the economic case can be ignored, thereby corroborating research showing individuals' resisting scientific evidence to mark symbolic and cultural boundaries, especially when change is not advocated by a perceived authoritative source of knowledge (Davies, 1982; Whitehead and Baker, 2012). Participant 10 summarises: 'mixing those narratives is the key to being lost at the level of political debate because they don't mix.' A concrete example on how narratives do not translate is the one in Sri Lanka. Participant 10 explains:

In Sri Lanka you have a national human rights plan that has been there for a while and for which anti-discrimination and equality are driving principles. And that plan was prepared on the basis of a series of cooperation initiatives that aimed at identifying a significant programme concerning law reform, public policy and access to justice. And I think that that process is a process that technicians and politicians [...] would be actually quite amenable to; a technical discussion as to how you create coherence by decriminalising. And [...] then you have the manner in which this falls onto religious discourse in the way that religious discourse impacts the political reality.

Ultimately, because all these narratives are overlapping, interconnecting and conflicting, actors will switch from one another depending on the relevance and performativity at any given time. However, attention must be paid to the relevance of any narrative when switching audiences, taking into account the usual pitfalls of transnationalism such as the imposition of Western terminologies unfit to local experiences and subsequent reinforcement of structures of powers given the complexity of postcolonial realities. From the perspective of a broader 'spiral model' of compliance, these necessary but competing narratives shed a light on the fact that human rights violations linked to sexual politics indeed sometimes pre-date the modern state system, and are enacted by non-state actors and social institutions such as

religious organisations, family members or wider community, with states being negligent, complicit or powerless towards them (Brysk in Risse, Ropp and Sikkink, 2013). This will be further explored in the following section.

## 9.2 Dynamics of power

Identifying the narratives at play without understanding the power dynamics supporting them is not enough to navigate them successfully. This section will look at the importance of the instrumentalisation of LGBTI issues for different actors to stay in power or retain influence, before looking at internal struggles for influence within movements and institutions advocating for or against the decriminalisation of same-sex acts. The influence of powerful social, often religious, actors backed by economic imperatives means the plurality of local queer experiences are minimised or suppressed and dynamics of coloniality reinforced.

### 9.2.1 Maintaining the *status quo*

Overall, the reluctance to decriminalise same-sex acts is founded on the fear to dismantle or reconfigure existing power structures. Consequently, the narratives at play opposing the decriminalisation of same-sex acts tend to present LGBTI individuals as deviant, a community pushing for special rights or as agents of the West trying to dismantle the local culture. Throughout different sociohistorical contexts, LGB individuals have been instrumentalised and demonised as antisocial or breaching moral values to maintain power (Davies, 1982), including for states to divert attention away from governance failure (Tamale, 2013) or in the case of religious institutions to compete with alternative domestic religious movements (Dreier, 2018). This was the case during Michel's camps in Mozambique, internment 'people who were not moral, people who were not contributing to society,' such as 'unemployed people, [...] sex workers and LGBTI people' (Participant 10). Politicians 'don't want the political cost of not leaving it alone' recalls Participant 12, a Mozambican activist. Similarly, Participant 6, an activist from Cyprus, remembers arguments being made about the fact that even if the law is not enforced, decriminalising would lead to challenging the *status quo*: 'we still need the law because of the social system [...] If we try to change it would bring unrest to the people.' Also, the instrumentalisation of homosexuality is used for 'political expediency' because homophobia is just a powerful tool to keep them in power' (Participant 3). Participant 2, an activist from Sri Lanka explains:

Homosexuality being taboo is actually now a political tool, which the joint opposition and various other politicians are using to scaremonger... basically. Saying "oh if homosexuality, if we give them their rights, they are going to just turn everybody into homosexuals, we won't have a culture, we won't have children... our children will have to be scared because they are all perverts and paedophiles." And so, they do this so that they can scare people into working for them and stuff like that. And they used this against the Tamils in the past and they are trying to use this against the Muslim community now as well, so... it's not just us! Although we are getting quite the brunt of it because we have suffered under that yoke of criminalisation for the last 135 years.

Arguments opposing the decriminalisation of same-sex acts need to be countered, if only to reveal the performative excuse governments deploy not to act. Specifically, when countering arguments on the foreign import of homosexuality, the narrative around colonial legacy can help bust the myth of homosexuality being pushed by the West. Participant 3, a lawyer, explains:

When you have leaders and other government authorities making arguments to the effect that homosexuality or normative gender identities [are] just a Western input [...] and when actually, this legislation that you are so strenuously trying to defend is clearly a relic of colonial times. You should see how irrational they are. So, this is not just about reminding the Government, the UK Government that this is a way to make amend, but it's also a political strategy to show how ridiculous and irrational those arguments are. But I think most government authorities know all of that, it just that it keeps them in power.

For many activists, the unwillingness to challenge the *status quo* results from, at best, laziness to front any backlash or, at worst, an attempt to retain power by pandering to influential groups in society. Participant 9, an African activist argues for the case of Mozambique: 'they won't recognise that LGBTI people exist and that is because if they do that, it will trigger a lot of work for them. I think we're just avoiding work, a lot of religious backlash, a lot of cultural backlash [...] it's not exactly their priority.'

Also, the influence of religion and religious activism was discussed by many interviewees. Participant 9 further explains:

Underneath a lot of the surface are religious groups conniving to hate. And I think the Government knows about those groups more than LGBTI people, doing more than we do, and there's a fear. And not a fear that they will kill LGBTI people but a fear that without their support they will lose power. I don't think it's a 'oh we are scared of the backlash', I think it is a scared of the backlash of them losing power without the support of these groups.

Participant 12, an activist from Mozambique, assumes that the reason why Mozambique successfully decriminalised same-sex acts is because of the relative tolerance of religious movements: LGBTI Mozambicans 'really felt alienated and they didn't feel like they could be themselves in their religious spaces but when they did, in certain cases, there wasn't so much backlash,' they confirm. Also, the religious backlash is from institutions more than society. Participant 9, an African activist, agrees:

There is a relative openness, more so than other places but also a closeness to it. So, I don't think there would get too much public backlash. I think it is more institutional backlashes from the churches, from other religious groups, from their own cultural groups [...] it doesn't make them not do it but it's making it drag it on as long as possible to make sure that backlash isn't as huge, essentially.

It is true that religious institutions have been instrumental in campaigning against the decriminalisation of same-sex acts in many countries and played a significant role in the backlash (Long et al., 2003). However, it is important to note that not all organisations claiming to defend religious values are tied to specific denominations or that religious institutions cannot contribute to positive change (Long et al., 2003; Taylor and Snowden, 2014). Ultimately, it comes down to organisations' current position of power in society. Indeed, Participant 12 recognises that 'some of the countries around [Mozambique] [...] where religious leaders have more impact and more power,' do not embark in the process of decriminalising same-sex acts. Participant 8, a member of an international organisation concurs: 'a large part, particularly in Africa, is [under] the influence of the church and more so now [from] the evangelical churches based in the US and Canada.' Indeed, existing research points towards the US clergy coordinating efforts to counter the spread of Islam in different regions, including Africa (Kaoma, 2014) whilst transnational activism from churches has also been evidenced (Lively, 2009) although when positive towards LGBTQ issues, it is resisted under the banner of anticolonialism (Dreier, 2018). This is because religious homophobia has been demonstrated to be instrumentalised for politicians' self-serving interests (Tamale, 2014; Nyanzi and Karamagi, 2015). The meddling of politics and religion is however not exclusively a Mozambican or African observation. For instance, Participant 6, an activist from Cyprus, reflects on the influence of the Church in the political apparatus of Cyprus:

In the Greek Cypriot community, the Church was very very strong. Let's not forget that also when Cyprus became independent from the UK, the first president of Cyprus was actually the archbishop so you can imagine what the influence of the Church was here and also in the political spectrum.

The influence of powerful social, mainly religious, actors wishing to maintain the social order hinders any effort to challenge the *status quo*, including the inheritance of a colonial legacy such as the criminalisation of same-sex acts, in addition to erasing queer experiences and voices (Taylor and Snowden, 2014). This influence is often backed up by economic influx into campaigning or helped by wider economic issues, which will be discussed next.

### **9.2.2 Economic influence**

It would be amiss not to discuss financial resources when discussing stakeholders' power and influence over the debate of social issues such as the (de)criminalisation of same-sex acts. The issue of funding, especially for campaigners organising against the decriminalisation of same-sex acts has been covered in most interviews. Importantly, there was a perception that the funding was provided from external sources: 'a lot of the money comes from the outside and not as much from the actual community itself. So that might be an issue of philanthropy in the region more than that it's an issue of beliefs,' explains Participant 9. The idea that external funding plays an important role in allowing for more effective organising has been covered in chapter 8 when discussing transnational advocacy. Participant 9 further explains the dynamics at play in South Africa:

It is a really big problem the funding and where the funding is coming from. We have this new curriculum that was written by all the LGBTI groups and the



Government and they were working together with this beautiful thing in the curriculum is the most progressive thing you'll ever see in your life and an internationally funded group came and it is being pushed through because we have power, but it is being a lot of money, a lot of effort is being put to shut it down. And this is in South Africa, where they failed at shutting down various changes that have been taking place in the last 20 years now for LGBTI people. So, there is this concerted effort from outside to keep Africa and [...] other poor countries down, through religion.

More research needs to be done on the source of funding against any progress towards LGBTI equality to understand and dismantle the narrative at play, although investigations have already revealed that Christian groups from the US are investing considerable amount of money in anti-LGBTI rights campaigns around the world (Archer and Provost, 2020; Savage, 2020). Understanding the funding attached to any progress towards LGBTI equality is also important, however. Indeed, interviewees similarly reflected on the issue of getting aid to progress equality that may skew the narrative around decriminalisation. Case in point, Participant 9 recalls that the aid provided is 'very much HIV driven' and therefore governments will place decriminalisation as part of a health narrative which as the consequence of associating stigma with LGBTI people's lives and removing the space for a broader discussion on equality (Dutta, 2013; Ellawala, 2019). A similar frame corruption has been observed by Sadgrove et al. (2012) who suggested that local economic concerns shaped by global asymmetries were successfully exploited to challenge anti-homosexual rhetoric. Also, whilst participants have not criticised the financial help from coming from the West, it is understood that it comes packaged and therefore skews the narrative and activism on the ground. In this regard, Waites (2019) observes similar issues related to the availability of social structures and resources to activists willing to 'throw the boomerang' being restricted or constrained in postcolonial contexts whilst activists' engagement with international(ised) human rights discourse may require them to become articulated with wider categories of human rights discourse.

Financial considerations and economic dependency are always at the forefront of LGBTI activists' minds. In the case of Mozambique, Participant 9 reflects on what would be the effects of 'Covid killing the tourism industry, the terrorist attacks killing the tourism industry, what big hit that has' and how governments could be reliant on aid as a result. The economic dependence from states, which prompts them to international commitments on equality and non-discrimination was indeed covered at interviews. Participant 2, an activist from Sri Lanka, explains:

The Sri Lankan Government has, in our [2017] Universal Periodic Review [...] committed to putting non-discriminatory clauses within the Government's structure of Sri Lanka. Putting non-discriminatory clauses to protect and serve the LGBTIQ community to instruments such as the Constitution and so on and so forth. However, having said that, they haven't implemented anything. In fact, before even the review [...], Sri Lanka passed a Human Rights Action Plan in January of 2017 taking the decriminalisation of homosexuality completely out of the Human Rights Action Plan [...]. So, we haven't seen very much chang[e]

as far as implementation is concerned, there has been a lot of lip service so far. The lip service has also been as far as to more or less commit to decriminalisation when the European Union was reviewing Sri Lanka GSP+ status [...]. And they went ahead and gave Sri Lanka the GSP+ on understanding that there will be changes made to the current laws and [...] but... no shocker to us, the Sri Lankan Government reneged. Sri Lanka seemed very good at creating papers of all the things they were going to do, like action plans and the like, Human Rights Action Plan here and Gender Policy Action Plan there, but they weren't [...] much actual implementation happening. So again, this idea is that Sri Lanka saying of all the right and engaging at the international level but when they come home nothing is really changing on the ground.

The power of economic dependency results in insincere commitments to progressing LGBTI equality, thereby providing the conditions for the 'spiral model' of advocacy developed by Risse, Ropp and Sikkink (2013) whereby material vulnerability moves countries from human rights commitment to compliance. Participant 9 further asserts:

[Criminalising countries] ratify all these agreements and they join all these bigger groups. [...] We really want to have a date to sort of push these discussions but we are hitting brick walls with all of it. And again, it's just as much as needed to get the actual cheques in but no more. And try not to put it in the public, try not to let the public know about it.

The future will tell us whether this dichotomy between international commitments and domestic practice will endure or whether events will fuel the 'spiral model' of compliance described above. However, the lack of pre-conditions needed to trigger the 'spiral model', such as the ability for civil society to operate in a functioning democracy or the state's ability to implement rules over its entire territory (Risse, Ropp, and Sikkink, 2013) may hinder states' internalisation of, and compliance with, human rights in the immediate term, be that looking at further progress towards LGBTI equality in Mozambique and Nauru, or the decriminalisation of same-sex acts in Sri Lanka. This double discourse also results in geographical disparities within a country where citizens are treated differently from foreigners. Participant 9, an activist explains in relation to Mozambique: 'it's relatively gay friendly as a tourist destination because of those enclaves. And there's a recognition that those enclaves are special and outsiders are coming in here and we just have to make outsiders do whatever they want to do.' This in turn reinforces the split identified by Puar (2002) between racialised and white queer subjects, whereby dynamics of coloniality are reinforced through the duplicity of treatment. A decolonial approach to human rights compliance is therefore instrumental in exposing these paradoxes and disconnections, nuancing the success of the 'boomerang effect' in postcolonial societies where human rights claims were not harnessed through legal challenges.

### **9.2.3 Internal dynamics of power**

Whilst power dynamics can be understood by looking at arguments in favour of maintaining the *status quo* or at economic dependencies, resulting in different actors competing for power,

we can also observe power dynamics within movements and institutions, which adds in complexity when trying to understand what works in decriminalising same-sex acts. Indeed, no social movement or institution is monolithic by nature. In the case of the LGBTI movement in Mozambique, Participant 9 explains:

Lambda right now is the only LGBTI organisation. And that's very much a strategy by the LGBTI movement in Mozambique, which is don't break into a lot of different organisations, contain into one organisation, fight for one thing and push for that progress. In other countries, it isn't working like that. So, the trans groups, the intersex groups are breaking away from the big LGBTI groups and finding a lot more space to have conversations with government, a lot more space to have conversations with communities. Lambda doesn't have that. There will always be branded as that LGBTI group. And I think that is the weight of that. That it comes with trans, it comes with intersex, it comes with gay, it comes with marriage, it comes with a whole bunch of different things.

This example illustrates the lack of homogeneity of any single movement and how the organisation of one movement often reveals competing issues and priorities. Intra-movement frame disputes have been conceptualised by Benford (1993) to explain disagreements within movements on both what reality is, and how it should be presented to maximise collective mobilisation. The issue of representation of the LGBTI community was also brought by Participant 14, a lawyer: 'Jason [Jones] ended up speaking for – and so did Caleb [Orozco] - for the LGBT community in Trinidad and Tobago and also Belize but they're not! They're actually speaking for themselves.' This echoes criticisms faced by the two claimants where they *de facto* became the symbolic impersonation of an entire community given their hypervisibility. Indeed, researchers have argued that LGBTI claimants are representing only one way to gaining freedom, reducing themselves to pre-determined categories provided by the legal framework they have to navigate as claimants (Bumiller, 1988; Miller, 1998), which is even more problematic if local LGBTI activists have another advocacy approach in mind than litigation (Robinson, 2012; Waites, 2019).

The evident multiplicity of experiences faced by any community does not involve just the LGBT movement but movements opposing the decriminalisation of same-sex acts as well. In Belize, the disunification of the religious movements in their fight against the decriminalisation of same-sex acts was caused by the looming successful outcome of the legal challenge. Participant 4, a lawyer, explains:

They ended up [...] breaking apart and some really right-wing sub-groups emerged, and then you have sort of the pre-existing ones. The pre-existing ones decided not to appeal and the more ultra-right-wing groups wanted to appeal and applied to appeal but we challenge that, our local counsel challenged that, and won on the basis that they were not a party to the original case so they couldn't be a party to the appeal. So out go the evangelicals. The Anglicans just decided not to appeal, they said basically "we have done what we were going to do, we are not engaging in this anymore." So, it came down to the Catholics. And the Catholic Church, even though the Holy See has said

publicly, including at [the] UN General Assembly, that criminalisation is wrong, even though this is a sin, it shouldn't engage the criminal law. The Catholic Church in Belize wanted to continue engaging the criminal law [...] They convinced the Government to appeal on limited grounds so while accepting the result of decriminalisation they wanted to challenge 2 of the 5 grounds on which the court had found in favour of decriminalisation, so non-discrimination on the grounds of sex and freedom of expression. So, no issue with the ultimate result. The Catholic Church then appealed the entire judgement on 5 grounds but ultimately ended up withdrawing its appeal and it sounds like that came as a result of their counsel not wanting to be involved anymore [...] nobody's heart was in it anymore. So, the Church, step by step, completely disintegrated in terms of their very very organised opposition to this issue. So that just left the appeal, the limited appeal, which the Government decided to continue to pursue, perhaps because of background pressure from the churches, to not just drop it.

Participant 1 confirms that 'we learned from the beginning that even various church memberships were divided on the issue', 'so it was not a complete united opposition. It was one based on optics, not reality.' Other interviewees also confirmed that the landscape in terms of different actors involved in campaigning against the decriminalisation of same-sex acts was fragmented: 'we know that Christianity is by far the biggest religion so that's our focus. But there's so many different denominations. There are so many different offshoots, there are so many different groupings,' confirms Participant 9. As such, not every single movement can claim unity of lived experiences, if not unity of purpose.

The fragmentation is not only contained within movements but within institutions too, which includes the state. Participant 2, an activist from Sri Lanka explains: 'the Prime Minister and his party are willing to make the changes, but the president and his party are not,' whilst Participant 1, an activist from Belize testifies 'I learnt that Cabinet was divided on the issue [of decriminalisation].' Similarly, Participant 7, a member of an international organisation, observes a 'split' between the foreign affairs ministry and justice department in South Africa. Their colleague, Participant 8, explains:

Jacob Zuma [...] was very liked in the region because he was very pro African whereas Thabo Mbeke was seen as very westernised and went to London Schools of Economics [etc.], and so that's where the dichotomy happened between foreign affairs and justice because you had justice advancing the rights locally, advancing LGBTI rights locally and then foreign affairs taking that internationally. And they were sometimes saying two completely different things... [...]

And justice has a much younger portfolio ... He understands more... he is taking the lead on domestic violence, he is taking the lead on LGBTI violence so he is taking the lead on all of that and there is a lot of legislative and policy movements in South Africa but when it comes to internationally, foreign affairs or international relations [...] They will vote accordingly when it comes to the

promotion of LGBTI rights but when it comes to maybe an African state, they will just keep quiet completely. But then when they are sort of semantic international gatherings, let's say on women or justice, you'll find South Africa very firmly in the LGBTI category.

This means that the picture constantly changes and activists need to adapt to different, conflicting and ever-changing discourses. Participant 8, a member of an international organisation, explains the conflicting messaging they got from the Government during the legal challenge in Belize: 'We got that weird messaging from the Government where they were like "oh we are going to appeal" or the Attorney General would say "oh we are going to appeal" but in the back room they were like "we are not really going to appeal, we just say because..."' This means it is difficult for activists to navigate the duplicity of messaging but it also allows for windows of opportunity. Participant 8 explains the situation in Sri Lanka:

Well after Rajapaksa was voted out of office, [...] there was a reform process going on. We actually supported a constitutional review process and in the chapter on rights and specifically the provision on non-discrimination, their draft of the new constitution included language around sexual orientation and gender identity but that died... Obviously there's been a shift back after the last election ... which makes it very interesting... but that brief period between Rajapaksa and the current Government gathering... there's certainly progress nationally.

The duplicity of messages from the Government makes it hard for activists to navigate the landscape but also provides opportunities for action, in the same way that the issue of representation can rally or antagonise support.

### **9.3 The fabric of narrative**

The influence of the media was covered at interviews, both positively and negatively. Crucially, it is used in the context of advocacy in relation to the (de)criminalisation of same-sex acts as a powerful tool to shed a light on the experiences of LGBTI individuals and bring arguments into the public arena, transforming the world into 'no more than a village' (McLuhan, 1964). As such, interviewees discussed the necessity of taking control of the narrative, reflecting on times where the unfolding public narrative escaped them, served them or constricted them.

#### **9.3.1 The influence of the media**

The media was perceived as an instrument to debate the issue of the (de)criminalisation of same-sex acts and diffuse the narratives and counter-narratives deployed by both sides of the argument. On one hand, 'the media was not very helpful' in Belize, notably by their 'usual pontification of imported talking points by American media. Anti-rights media. American anti-rights media,' Participant 1, a Belizean activist notes. On the other hand, it was still deemed useful when allowing for the amplification of arguments in favour of the decriminalisation of same-sex acts: 'in fact, one media host even gave me two hours of free time to debate the issue with my opponent. They said it was the best non-mayoral debate they have ever seen

in their station', recalls Participant 1. Media coverage is a double-edge sword where opposing narratives are diffused 'allowing both sides to trash out the issue,' confirms Participant 1. However, the different arguments are not necessarily given the same airtime due to power dynamics mentioned above. Participant 1 explains:

Even the media was concerned about the extremism of the evangelical. In fact, they were not even prepared to speak on our issue in 2006. In 2011-2012 that is when they opened up to speak on our issue. So, there were a number of things that forced some sort of constructive response and debate that led to the [Prime Ministers'] speech in September 2013.

That said, social media allowed the community to raise visibility and deploy arguments outside of traditional media channels (Ng, 2017), as demonstrated by LGBT online activism in Brazil (Corrêa, Sívori and Zilli, 2012) or China (Chase, 2012). Participant 1 recalls:

I linked their opponents' features to their pages and our social media war started and... Hundreds and hundreds and hundreds of commentary threads... move back and forth and the community just got mad at the bullshit and they took over the debate on social media. So, it was a social media war when we won.

Nevertheless, the media was seen as a less effective space for a productive debate than the courts, as arguments could get heated and inflammatory. Indeed, Andersen (2005) pointed out that whilst antigay sound-bite slogans were more likely to be relayed unchallenged by the media, they would be exposed as nonsensical in courts. Interviewees also discussed the influence of international media, maybe more so than domestic ones. For instance, in Mozambique, Participant 12 notes:

In terms of the decriminalisation there was actually quite a bit of media coverage. There was much more international media coverage, which is ironic! It's not ironic, it's how our system works. Because the media... it's getting better and that's something that I really wanted to say, that the media is getting or embracing and including LGBTI voices much more than it did before.

From a transnational perspective, the weight of international Western-led media coverage on the issue of LGBTI rights can re(assert) asymmetries of power between North/South, which in terms can fuel anti-LGBT sentiment based on anti-imperialist resistance (Ng, 2017). Nevertheless, the international exposure of domestic situations can also trigger pressure 'from above' (Risse, Ropp and Sikkink, 2013) by enabling diplomatic pressure, further funding and some protection to the most visible activists, although these international actions without consultation from activists on the ground can lead to a serious backlash (African social Justice Activists, 2011). All in all, the issue of the decriminalisation of same-sex acts cannot escape its mediatisation, as much as it cannot escape its internationalisation so activists will have to harness the narrative to shift social attitudes.

### 9.3.2 Visibility of advocacy

The media is therefore used as a tool to inform the public at large of the issues facing LGBTI people, and to play out arguments in favour or against decriminalisation. Participant 12, a Mozambican activist, explains how activists in Mozambique focus on campaigning: 'one of their biggest pushes is to give people information.' The rationale for this push, Participant 12 argues, is as follow:

People don't even know what it is to be an LGBTI person or to be a gay person, to be a lesbian person. They have an idea [...] there are probably very derogative ways of referring to someone [...] they did a study, I think in three cities in Mozambique where they tried to explore a little bit more about the public perception on LGBTI issues and most people didn't even know what it is to be a homosexual person. So, I think the lack of information in this case definitely plays a huge role in the way that everyone sort of relates to it.

The invisibility of LGBTI people's lives, as covered in chapter 8, means raising awareness is essential, especially in light of evidence that knowing LGBT people in your community is a key enabler to improving social attitudes (Garretson, 2018). Also, this work is prioritised by advocacy on the ground in order to shift attitudes towards LGBTI people in all areas of the public sphere. Participant 12 confirms:

One of the biggest focuses of [the Mozambican LGBT organisation] as well, is working with religious leaders. So, for the past couple of years, are spent a lot of work, a lot of advocacy, a lot of sensitisation with religious leaders who work with [the Mozambican LGBT organisation] and then work with their own communities and their spaces.

This chimes in with other research which positions the possibility of churches becoming allies of LGBT emancipation (Williams et al., 2020). Participant 9, an African activist confirms:

From our discussions with the different people in Mozambique [...] the allies aren't visible and they don't want to come out. This makes writing on them hard, and reporting on them hard. [...]

[The movement's] bigger picture is 'change attitudes and the rest will follow'... So, the litigation, all of that, is secondary to the attitudinal change, their media work, their visibility work. So, I think the allies sort of come from that, from them being... I don't want to say natural allies in the communities and stuff but the allies that have formed in the communities and them using their power in whatever space to slowly shift these conversations. [...]

That's how you get your allies and they are reluctant allies. Don't think they... They are most not queer. If they are queer, there is self-hatred, there is self-denial. They might understand gay men issues but they don't understand trans or intersex issues. They... I mean let's call them not perfect allies but who

understand that hatred and violence is bad. And that the church, the community should be inclusive, welcoming and participatory and not exclusionary. Even if they don't understand and they don't know this and they don't know that and they are not really even listening to what actors want on the ground or people want on the ground. That's the vast majority of what your allies look like. Obviously, there are [also] the ones which have invested real time in it and efforts to becoming real good allies.

The potential challenges of interpersonal and institutional allyship have been explored in relation to maintaining or reinforcing historical hierarchies and oppressive attitudes (Russell and Bohan, 2016), whilst pervasive internal and institutional homophobia can still taint these relationships (Little, 2001; Butler, 2007). Nevertheless, allyship can still be a powerful instrument for collective action and liberation, notably by allowing richer discussions and unlocking mechanisms for action (Russell and Bohan, 2016). Consequently, activists are investing time and resources in changing attitudes. The concept of allyship is also particularly interesting in the context of new media channels. For instance, Mwangi (2014) noted that LGBTI-friendly political candidates in Kenya failed to secure party nominations during the 2013 elections whilst they seemed popular online. Beyond showing the political cost of siding with LGBTI issues (see chapter 6), it shows the limits of online advocacy. This observation is compounded by the disconnection but simultaneous realities of both online freedom and offline discrimination (Barnhurst, 2007).

However, it is not only LGBTI people's lives that are made visible through the media, but also the opponents to decriminalisation. For instance, in Belize, 'the evangelicals did a nice job of showing their extremism' asserts Participant 1. The extremism and violence displayed by opponents to the decriminalisation of same-sex acts or LGBTI rights more broadly means that it often turned the debate in favour of LGBTI equality. Participant 6, an activist from Cyprus, explains:

The success of the first pride, interestingly enough, was a protest against the church. That's how I see it anyway. Because the church came publicly very very much against the first pride for example, in 2014 [...] The rhetoric was that bad that when the pride was happening a couple of weeks later, a lot of the left primarily, I would say, but it was a general thing protested, they came to the pride to protest against what was actually being said by the church. So, I say the first pride in Cyprus, 90% of people that were there, they were not LGBTI or purely straight people allies but were there to support progress in human rights.

The perception of extremism relayed by the media can be seen as a blocker or an enabler as the debate turns into one direction. Participant 1 explains how the arguments played out politically during the *Orozco v Attorney General* (2016):

Let's start with the Prime Minister. When [the claimant] filed this case, I knew exactly what his position was. Decrim[inisation] was fine! His first position. But in the media, he pandered to the religious right, and he said: "I don't know



why these people started this case!” That was in 2010-2011. And in 2013, he shifted his tone and he said ‘the state will not shirk to its responsibility’. Imagine that! That was September, Independence Day speech, 2013. Then I saw the leader of the opposition issue a statement that his party wants to be a party of inclusion. No party has ever issued a single sentence, much less a programme on LGBT issues in this country.

This is to show the power of media in LGBTI advocacy, including how it informs and shapes public discourses around LGBTI issues, for better or for worse. The ability to shape the narrative is therefore crucial for everyone involved in the debate over the (de)criminalisation of same-sex acts.

### **9.3.3 Taking control of the narrative**

The ability to control the narrative involves many factors, including the ability to drive advocacy without fear of repercussions. Participant 1, an activist from Belize, recognised that whilst the state did not support their advocacy work, they were at least able to conduct their work without disturbance: ‘they did not shut down my organisation, I was not harassed by the police, there was not amplification of incendiary language by parliamentarians in Cabinet.’ This contrasts with the situation in Sri Lanka where activists have demonstrated government’s action to stop their advocacy work or amplify homophobic language (see chapter 8). Interviewees were also able to reflect on lessons learnt following situations where the narrative escaped them. For instance, the control of narrative incurs its own risk as individuals can be crystallised in a symbolic position where they represent a community, as discussed above. Participant 5, a lawyer, testifies about the situation in Belize:

There was really a sense that the case became just about Caleb Orozco and that local groups are really now trying to work to prevent that in any other future litigation, that’s really about the community and not there being this focal point on one claimant. Just because of the risk that puts that individual in and the pressure of that.

Importantly, ‘some fear that doing advocacy on decriminalisation might actually bring visibility to the issue and further violence and discrimination, stigmatisation; might actually run counter to the overall objective. And others believe that it’s a first step to move forward and go,’ explains Participant 11, a member of an international organisation. The negative impact of the visibility brought by media coverage has already been covered in existing research and above, including showing the increase in physical attacks on LGBTQ-identified individuals (Barnhurst, 2007). Collaboration with local civil society who can dictate the way forward is therefore important. This will have the additional benefit of ‘[having] to deal with this sort of arguments on top of the bigger arguments, the bigger legal arguments and challenges that you got to get over to achieve decriminalisation and to prevent the opposition party to say this is all a foreign agenda. We work under the radar and behind the scenes’, affirms Participant 5. Also, interviewees have emphasised the need for a well thought-through communication strategy, especially when it comes to transnational activism, to avoid the risks of multiple stakeholders’

profiles and objectives confusing the ultimate goal, which is to decriminalise same-sex acts. Participant 5, a lawyer, explains in relation to Belize:

Having, in hindsight, and something that we as an organisation are developing in Belize but also elsewhere where we are working now, is [having] a much more comprehensive communication strategy with our local partners. Because opposition groups like the churches in this piece of litigation, they've got a great communication strategy, they got they words out and a lot of money behind it and so there is a need to counteract those negative perceptions that are put out there in the media when you get a handle on a good messaging around the litigation which can go hand in hand with, not only the legal change, but also starting to change hearts and minds as well.

Participant 4, a lawyer, equally attests:

We always take our lead, on anything we take our lead from local groups, what do they want? So, in that case that's what they wanted. In most cases in domestic courts, local partners prefer that we are under the radar and so that's what we do. In international and regional cases [...] we are visible. [...] typically that the way it plays out but it depends very much on the local context, and we always take our lead from local groups and local lawyers.

Ultimately, a successful narrative is incumbent on the drive and willingness of key stakeholders to make it work. Participant 10, a member of an international organisation, explains: 'I think what works is what civil society and receptive progressive elements within the state are actually determined that it works.' In addition, Participant 6, an activist from Cyprus explains:

Difficult decisions need to be tackled, I feel, in the beginning, by the way, of the administration so that you have time to work on them until the end of the administration. If you have 5 years or 4 years in front of you, it should not be just pre-election campaigning and [...] as soon as the election goes then the effort is not there. But my advice towards politicians in general is tackle things at the beginning of your mandate and set where you would like to be not now but in 10 years' time and if you are saying that society needs to change then you need to make the legal change as well so society eventually can change.

The control of the narrative is also important from the point of view of the Government. For instance, Participant 9, an African activist, explains why the only LGBTIQ organisation is not registered by the Government of Mozambique: 'once you register, you lose control'.

Overall, and as discussed in chapter 7, there is no one-size-fits-all approach to decriminalisation. 'In some cases, it is legislative reform, in some cases is litigation, in some cases is executive action. In some cases, it will be none of the above because there's no spaces anywhere so it should be a different thing' concludes Participant 10, a member of an international organisation. They further argue:

I don't think that there is one model of decriminalisation and of course I think in that sense, we need to learn the lesson of how standardise colonial processes created damage and not to repeat them in terms of the decriminalisation. So just like [...] there shouldn't have been one way to understand the law on personal autonomy and there should never have been a section 377 across the Commonwealth, there should not be a manual for decriminalising. There should be principles, in my view, and those principles include of course the human rights-based approach [...]. They should include participation, they should include representation of the impacted communities and peoples and populations and they should include, finally, the principle of effective participation in the debate.

Closing the loop, a multiplicity of narratives is needed to counter different approaches taken to discredit the movement towards the decriminalisation of same-sex acts, whether that is positioning LGBTI individuals as deviants threatening the social order, or agents from the West trying to recolonise local identities. Ultimately, centring the narrative around the voices of LGBTI individuals in their contexts will help unravel the coloniality of power and the hypocrisy displayed by opponents to the decriminalisation of same-sex acts. This is especially important as powerful political, social and religious organisations will want to make sure that local queer experiences are suppressed in order to maintain the *status quo*.

### **Summary**

The chapter shows that, across the different contexts, the narrative in favour of the decriminalisation of same-sex acts tend to focus on universally agreed principles, such as non-violence, which means human rights are still a compelling discourse for change in postcolonial contexts. However, this narrative in and of itself does not suffice and is layered with other targeted arguments that have a chance of succeeding within local contexts of state social vulnerability or economic dependency that hinder the 'spiral model' for change as predicted by Risse, Ropp and Sikkink (2013). All of these narratives are overlapping, interconnecting and conflicting, and actors will switch from one another depending on the relevance and effectiveness at any given time. However, attention must be paid to the relevance of any narrative when switching audiences, taking into account the usual pitfalls of transnationalism such as the imposition of Western terminologies unfit to local experiences and subsequent reinforcement of structures of powers given the complexity of postcolonial realities. Indeed, these narratives resonate differently in postcolonial societies where other issues such as race, colonialism and religion are inherently connected to LGBTI issues, and as discourses in favour of the criminalisation of same-sex acts predominantly place LGBTI individuals as deviants threatening the *status quo*. Consequently, recentring the arguments around the experiences of LGBTI individuals in these societies help prevent the narrative from running away from the issue at stake, by exposing the coloniality of power and providing an intersectional lens to queer experiences. This is especially important as the issue of the decriminalisation of same-sex acts cannot escape its mediatisation, as much as it cannot escape its internationalisation, so activists will have to front, challenge or harness these public narratives to shift social attitudes.

## Chapter 10. Conclusion

This research aims to understand why and under which circumstances Commonwealth states decide to decriminalise same-sex acts with the view to identify successful strategies for ensuring the dignity of LGBTI individuals in Commonwealth countries. Evidence collected points towards states embarking in the decriminalisation process reluctantly, as the criminalisation of same-sex acts is now fully part of postcolonial societies' legal and social contexts. This is evidently demonstrated by the narratives deployed to resist decriminalisation, clearly used to maintain existing systems of power and distract from domestic governance failures. Crucially, this research demonstrates that postcolonial states are less receptive to international pressure for human rights compliance given anticolonial narratives resonate strongly in postcolonial societies. Whilst we can clearly identify patterns of movement from human rights commitment to compliance identified in the 'spiral model' (Risse, Ropp and Sikkink, 1999, p.20; 2013), including through 'boomerang effects' in the countries of study, these are undeniably shaped, delayed or hindered by powerful anticolonial discourses. This was already identified as an impediment to change by Risse, Ropp and Sikkink (2013) in the context of the People's Republic of China successfully challenging the universality of human rights by criticising their individualist, Western-centric approach. However, taking a decolonising approach to human rights change allows us to further refine the 'spiral model' of compliance to take into account not only how human rights are articulated or resisted, but also the social structures and resources available to activists willing to harness state pressure 'from below' and 'from above', and how activists themselves are (re)defined through claiming them in the specific sociocultural context of postcolonial societies. This critical assessment, in turn, has the potential to inform effective strategies to counter these discourses and minimise the weakening of the human rights framework. I find that effective strategies will need to include the (re)localisation of queer experiences to successfully bring about change, as demonstrated by the success local litigants have in claiming their human rights. However, this research also opens the door to the possibility of a different future if routes for redress were widened, including by enabling the effective participation and agenda-setting of queer citizens locally and globally. Significantly, I am making the case for states to take leadership in bringing about the decriminalisation of same-sex acts in their own territories, and for the Commonwealth as an institution and at minima, to support this process by playing a stronger role in supporting the contextualisation of human rights by LGBTI individuals in postcolonial societies.

### **Decriminalisation in the Commonwealth: refining the scope and conditions of the 'spiral model' in postcolonial societies**

The sociohistorical criminalisation of same-sex acts in Commonwealth countries covered in the literature review shows that social and legal control is the main, if not only, rationale for the criminalisation of same-sex acts as evidence falls short to demonstrate the necessity of criminalisation, in line with the 'harm principle' developed by Mill and Hart. In the context of the Commonwealth, the criminalisation of same-sex acts has travelled, exported through British colonialism, which resulted in it carrying new attached meanings and shaping new contexts. Indeed, these laws are now the makeup of most postcolonial societies in Commonwealth countries, which have then implicitly or explicitly embraced these laws as part

of their local contexts. Looking at evidence of both the colonial legacy and the negative impact of the criminalisation of same-sex acts, there is not an argument for criminalising states to maintain these laws. However, this research shows that the reason why countries still resist the decriminalisation of same-sex acts resides in its usefulness in maintaining the coloniality of power and distract from domestic governance issues. As a result, states are likely to get stuck in the 'spiral model' of compliance (as defined and refined by Risse, Ropp and Sikkink, 2013) by committing to human rights standards of equality and non-discrimination and acknowledging the validity of the international human rights regime but still criminalising same-sex acts, and resisting calls for decriminalisation if not economically or reputationally prone to outside pressure for change. This explains why states leave the matter of decriminalisation to the courts and rely on activism from individuals affected by the law so as not to bear the political cost of siding with a controversial moral issue.

The original contribution of this research rests in the broadening of a decolonial approach to the 'boomerang effect' undertaken by Waites (2019) outside human rights claims through legal challenges, and looking at other human rights claims strategies in other postcolonial contexts than Belize and Trinidad and Tobago. The broadening of a decolonial approach to different decriminalisation cases in the Commonwealth allows us to further explain the complex, hybrid sociocultural contexts that activists navigate and which impact the social resources and structures available to them for rights-claiming processes. The five case studies discussed in this research evidence social influence mechanisms at play when considering states' movement from commitment to compliance (Risse, Ropp and Sikkink, 2013). Indeed, dynamics of coercion through binding legal judgements can be found in Cyprus and Belize, incentives in the form of aid conditionality, trade preferences, and organisational membership were notably identified in the cases of Mozambique, Sri Lanka and Cyprus; varying degrees of capacity-building were observed in Belize, Mozambique, Sri Lanka and Cyprus whilst dynamics of persuasion and discourses were identified in all five case studies. Crucially, evidence of the 'boomerang effect' where states are pressured 'from above' and 'from below' (Keck and Sikkink, 1998) via transnational advocacy can be found in Sri Lanka, Cyprus, Belize and Mozambique whilst Nauru seemingly only experienced pressure 'from above.' The thesis successfully unravels factors that prevent these mechanisms to operate effectively. Most conditions affecting the 'spiral model' were already identified by Risse, Ropp and Sikkink (2013) – regime type (democratic v. authoritarian), state capability (consolidated v. limited), level of (de)centralisation of rule implementation, material and social vulnerability – and are present in the analysis. However, these factors are specifically shaped and impacted by postcoloniality. Indeed, anti-colonial and anti-West narratives are powerful in corrupting mechanisms of persuasion and discourse deployed locally and internationally, including when relying on human rights, thereby slowing down states' movement to compliance, especially when considering progress from stage 3 (tactical concession) to stages 4 and 5 (human rights internalisation and compliance) of the 'spiral model'. This can explain, for instance, why Mozambique still refuses to register the main LGBTI organisation in the country, why Sri Lanka fails to decriminalise same-sex acts despite evidence of 'boomerang throwing', or the lack of progress on LGBTI rights since decriminalisation in Nauru.

Whilst progress has been made in relation to securing LGBTI rights within existing human rights standards, too many states which are parties to core human rights treaties still

criminalise same-sex acts, thereby weakening the entire international human rights regime. Indeed, the mere criminalisation of same-sex acts is incompatible with the fundamental rights of dignity, equality and non-discrimination which virtually all states around the world have signed up to. In addition, decades of legal jurisprudence, including a lack of evidence underpinning the need for criminalisation regardless of contexts, means decriminalisation is an inevitable outcome. However, rather than ignoring human rights commitments, states instead dissociate the decriminalisation of same-sex acts as being a human right matter in their discourses. Indeed, the analysis of media documents shows that governments justify the criminalisation of same-sex acts but also defend international commitments to equality and non-discrimination, thereby employing a double-discourse exposing the gap between human rights commitment and compliance enabled by postcoloniality. It is understandable then that the social, historical and cultural context of human rights means that they are *de jure* and *de facto* a difficult but necessary vehicle to progress LGBTI rights.

The Western origin of human rights is compounded by its contemporary instrumentalisation from different stakeholders who want to either maintain or assert their power/narrative in an interconnected world. Indeed, states are using the opportunity for human rights change to consolidate or shift their position internationally, including reinforcing global inequalities. For instance, we must interrogate the motivations from the Global North to advocate for human rights in the Global South, including the hierarchisation of human rights in a global and postcolonial context, whereby human rights are traded against one another and selectively applied to the benefit of the Global North, such as is the case of LGBTI rights and refugee rights in Nauru. However, we must also investigate the Global South's politicisation of the criminalisation of same-sex acts for economic and political gains. The instrumentalisation of human rights from any actor, where compliance is justified or denied on the account of asserting power, seriously weakens the international human rights regime which courts rely on to reason on the decriminalisation of same-sex acts, which activists use to argue for dignity, non-violence and non-discrimination, and which states defend when embarking on the decriminalisation process, when they eventually have to do so. Looking at the Commonwealth as an organisation promoting human rights, the assessment is even more dire. Weaknesses inherent to the organisation, including its colonial legacy and its focus on consensus-based decisions, partly explain the Commonwealth's failure to address the rights of LGBTI people. Consequently, LGBTI rights progress often rests on individual applicants seeking redress in both domestic and international courts, with all the financial, emotional and physical risks attached to the publicity of the case and the mandatory disclosing of the applicants' sexuality in countries where it is illegal to engage in same-sex acts.

On a brighter side, human rights mechanisms are successfully used by activists in the Commonwealth to bring about change in their home countries. Indeed, activists are forcing compliance through the 'boomerang effect' (Keck and Sikkink, 1998; Waites, 2019), obtaining international recognition and legitimacy by working transnationally and bringing pressure 'from above' and 'from below' to drive human rights change (Keck and Sikkink, 1998, p.18). Whilst transnational funding and support may come with the strings of coloniality attached, glaringly given the history of the Commonwealth of Nations, it is undeniable that evidence points towards transnationalism opening routes for redress, including holding states accountable to their commitment to human rights. This strategy is particularly effective when activists have

created a space for local-driven narratives on the issue of the decriminalisation of same-sex acts, which emphasises the compatibility of human rights with diverse contexts.

### **Consequences for harnessing the ‘boomerang effect’ in a postcolonial context**

One of the main findings of the thesis is that local activists are successful in using human rights fora to raise issues surrounding LGBTI rights, thereby forcing states to go down the compliance model through harnessing ‘boomerang effects’ (Keck and Sikkink, 1998, p.18; Waites, 2019). In other words, harnessing pressure ‘from above’ and ‘from below’ is needed to ensure states move further down the ‘spiral model’ of human rights change in and despite postcolonial contexts which restrict avenues for human rights claims. Looking at the recent decriminalisation processes, analysis of interviews and media documents highlighted two main paths to decriminalisation, either high profile legal challenges or quiet legislative reform that do not engage queer citizens or the wider population. In fact, decriminalising same-sex acts through the courts is still the preferred route for change, confirming the global trend identified by Hildebrandt (2014) and as governments are reluctant to embark on legislative reform. This has a consequence in relation to the (in)visibility of LGBTI individuals in society, often perpetuating a sense of othering and reinforcement of heteronormativity. Indeed, whilst the publicity brought by domestic litigation is effective in raising public awareness of the issues facing LGBTI individuals in their societies, it also triggers violence and backlash against the claimant and activists involved in the legal challenge, as well as LGBTI individuals in the wider society. Since colonialism, including homophobia, is part of the social fabric and postcolonial societies have embraced the criminal laws after their independence, it is impossible to decriminalise same-sex acts without challenging a complex nexus of beliefs and systems which form part of individuals and communities’ identities. As such, the relationship of LGBTI citizens and the state in postcolonial societies is shaped by past and present legal and social violence which impacts the way advocacy operates on the ground. Thus, when thinking about which strategy is successful in decriminalising same-sex acts, we must think at what cost. Despite the high risks to their own physical and emotional integrity, however, many chose the path of activism including through litigation, compelled by a strong sense of kinship and a motivation to alleviate the suffering of others. In this regard, any opportunity for decriminalisation must be seized given the importance of providing human dignity to LGBTI individuals in all contexts. It is important to recall here that postcolonial actors have strong purpose and agency in articulating and claiming their human rights internationally (Waites, 2019) and awareness of the challenges the coloniality of power brings, including when restricting or constricting avenues for human rights claims. Consequently, the fact that decriminalisation is a necessary but nevertheless insufficient condition for the destigmatisation of LGBTI individuals (Weitzer, 2018) rings particularly true in postcolonial contexts.

When a public debate around the decriminalisation of same-sex acts exists, arguments deployed by opponents to change are particularly coloured by their postcolonial contexts. Indeed, and since the lack of evidence justifying the criminalisation of same-sex acts discussed above, arguments in favour of maintaining the criminalisation are baseless, predominantly portraying LGBT individuals as deviants threatening the *status quo*, and fuelled on ‘ready rhetorics’ which play on wider inequalities and conflicts over social change, political power and global status (McKay and Angotti, 2016), which end up corrupting the human rights

frame used by LGBT activists (Baisley, 2015). Indeed, one of the most effective arguments is tying the decriminalisation to the Global North/ Global South relationship, positioning homosexuality as colonialist, thereby rendering the human rights or Commonwealth framework almost useless as it is presented as furthering cultural imperialism. In effect, this narrative successfully closes the temporal gap in the collective imaginary and ensure the coloniality of power, where older colonial forms of domination are preserved. This framing is rendered even more compelling by the internationalisation of the decriminalisation of same-sex acts. For instance, the media document analysis undertaken in this research shows that the international media treatment of the decriminalisation of same-sex acts is systematic and positions the decriminalisation process in a wider geopolitical context giving the impression that the decriminalisation of same-sex act is a tick-box exercise rather than resulting from domestic circumstances. This fuels anti-LGBTI sentiment based on anti-imperialist resistance as it emphasises a transnational perspective skewed by a Western outlook. On the other side of the argument, and given the violence LGBTI issues' visibility triggers, activists deploy a human rights narrative based on universally agreed principles, such as non-violence. Whilst this narrative will succeed in local contexts where states are materially or socially vulnerable (as defined by Risse, Ropp and Sikkink, 2013), they will fall short in a context where states have the effective means and greater gain to maintain the *status quo*. This observation made under a decolonial analysis has immediate ramifications for the re(definition) of human rights and activists themselves through human rights claiming processes. Indeed, activists and their cause risk becoming articulated within wider narratives that may not serve further rights-claiming or restrict them in rights-claiming processes available to them. In other words, the articulation of the need to decriminalise same-sex acts can bring not only further stigma and backlash given hybrid local contexts but also hinder further progress through the rigidification of negative narratives although these may be necessary to access funding, achieve legalisation (through pre-determined legal categories) given lack of available resources and routes for redress. Under this circumstance, recentring the arguments around the experiences of LGBTI individuals in these societies help prevent the narrative from running away from the issue at stake, by avoiding the imposition of a Western frame unfit to local experiences and exposing the coloniality of power. Crucially, this research shows that domestic reporting has a role to play in relaying the story from the perspective of human rights defenders and queer individuals fighting for their rights, thereby (re)localising the narrative.

### **The necessity of a decolonial approach to human rights compliance in the Commonwealth**

Noting the specific challenges and conditions attached to the enablement of the 'spiral model' in postcolonial societies, there is thus value in adopting a decolonial approach to human rights compliance to better differentiate between the factors preventing or enabling change in these contexts. In this regard, a decolonial approach to human rights compliance allows us to look beyond (but not disregard) states' relations and actions by further centring non-state actors' local experiences and further interrogating the means by which the decriminalisation outcome is (un)achieved. This includes acknowledging the enduring existence of the coloniality of power, which means that international narratives will strongly and negatively resonate in postcolonial societies and consequently undermine discourses for change. It also means taking into consideration the inherent hybridity of postcolonial societies which, whilst helpfully



exposing the power structures and relationships shaping opportunities for action, will fall short of dismantling them as they form part of the sociocultural contexts. Beyond exposing the coloniality of power and its negative consequences in relation to human rights change, taking a decolonial approach to human rights compliance questions the process by which the outcome, in this case the decriminalisation of same-sex acts, is achieved, and the processes by which it is achieved. For instance, this research interrogates the effective participation and agenda-setting of local queer individuals at state-level but also internationally, including through deciding on intervention from international actors and the (re)contextualisation of human rights. Whilst successful examples of decriminalisation in postcolonial societies demonstrate clear agency in the articulation of human rights in postcolonial societies, they cannot dismiss experiences of violence and backlash, setbacks, longer and more arduous than expected lead-in time to change, disappointment in relation to the relative effect of decriminalisation of same-sex acts on queer citizens' lives and experiences of stigma and discrimination or even failures to decriminalise elsewhere. Importantly, one cannot rule out that there may be cases of individuals or communities unable to use human rights as a discourse for resistance given they cannot fit their local contexts or activists retrofitting their local experiences into pre-conceived human rights and international frameworks to get (potentially inadequate) redress and recognition.

Nevertheless, a decolonising approach is a starting point in exposing structures and relationships of power in contexts, to better understand the availability of opportunities for action. Some authors have argued that decolonising human rights will only truly be achieved via their dismantlement given their imperialist, western centric and liberal origins and nature (Mignolo, 2007; Bakshi, Jivraj and Posocco, 2016). However, rejecting human rights as a framework would disregard and deny queer activists' own agency and successes in claiming human rights in their local, postcolonial contexts (Waites, 2019). The same goes for the Commonwealth as an institution. Many authors have criticised the Commonwealth as an inherently colonial institution, lacking effectiveness and human rights enforcement mechanisms (Murphy, 2013; Arimoro, 2021). As an institution that maintains structures of inequality, the Commonwealth is indeed deeply problematic and continues to reproduce colonial hierarchies. Dismantling the Commonwealth would be an important task in confronting and challenging its colonial history based on the oppression and subjugation of marginalised populations and maintenance of coloniality of power. However, the thesis also recognises the complexities associated with such a dismantling process as colonialism has permeated social relations and structures, blending with pre-existing social relations and institutions in which individuals and communities operate in postcolonial societies (Davies, 2002; Chambers and Gilmour, 2024). In addition, and as it stands, the Commonwealth holds regular summits, interventions, and enables transnational activity. In fact, testimonies from interview participants and activists suggest that the organisation provides an imperfect yet useful avenue, allowing for the exchange of information and experiences between queer citizens in postcolonial societies and providing an avenue for transnational advocacy and funding (Kirby, 2013; Waites, 2017; Novak, 2021). Consequently, dismantling the Commonwealth could have the effect of removing a clear avenue for funding and transnational activism. Furthermore, the extent to which institutions like the United Nations or any other multilateral fora channelling funding or enabling local and/or global activism would escape imbalances of power and asymmetries fuelled by historical, economic and socio-political contexts is questioned, as it is

clear these continue to shape centres-peripheries dynamics in our complex world-system (Chambers and Gilmour, 2024). The need then for alternatives is clear. The Commonwealth could play a better role in enabling the articulation of human rights from multiple local, postcolonial contexts, thereby showcasing greater sexual and gender diversity, and broadening the articulation of human rights claims, providing alternative and/or refined avenues for effective transnational cooperation and decolonising the 'boomerang effect' in earnest. A decolonised Commonwealth, however, would open dialogue for the reimagining of the institution and its social relations and practices, prioritising inclusivity, equality and agency. While the Commonwealth has been successful in pushing some decolonial agendas, it has not been successful in totally reshaping outdated, hierarchical power relations, and has showcased its inability to facilitate change in regard to the decriminalisation of same-sex acts. Dismantling the Commonwealth would therefore require radical structural change at both the conceptual and practical level, facilitating the decriminalisation of same-sex acts within its member states by empowering queer citizens to articulate and lead the change they need in its processes. In this regard, a successful decolonial approach to the decriminalisation of same-sex acts in the Commonwealth will be achieved not only by the outcome - the successful decriminalisation of same-sex acts across all Commonwealth countries - but the process by which the outcome is achieved - the empowerment of all citizens to bring about change in their own contexts.

Overall, this research reveals effective use by postcolonial actors of 'transnational strategies to invoke human rights as defined in the UN system' identified by Waites (2019, p.396), which reveal successful 'boomerang effects' in diverse postcolonial contexts and using different human-rights claiming strategies. However, taking a decolonial approach to the 'boomerang effect' also uncover hindrances and obstructions to the 'spiral model' of human rights compliance by critically assessing the specific characteristics of postcolonial sociocultural contexts which impact the availability of social structures and resources to activists willing to 'throw the boomerang', the articulation of human rights and activists themselves who are (re)defined through these claiming processes. Obstacles observed include successful resistance to pressure 'from above' from states to decriminalise same-sex acts, as they are unwilling, powerless or negligent in effectively communicating international human rights norms and practices in their own contexts or empowering their civil society to do so thereby suppressing pressure 'from below', as well as rigid transnational North/South alliance which are effective but imperfect in harnessing change due to the lack of localisation of experiences and their inherent postcolonial baggage which, in turn, prevent local access to networks or knowledge due to local language barriers. However, obstructions to the 'spiral model' in these contexts do not translate to a failure in achieving human rights compliance. This mere observation adds nuances to both Eurocentric and decolonial studies unravelling a complex picture of successful change processes in postcolonial societies where postcoloniality of power is successfully navigated or harnessed by queer citizens and calls for more research on how decolonial approaches to transnationalisms could look like. The latter would investigate whether alternative ways to resistance dismantling the enduring colonial legacy can ever be truly achieved, or whether activists and change-makers should strike the balance between effectively channelling imperfect but existing transnational processes whilst further empowering and amplifying local voices.

## Principles for action: a decolonial approach to decriminalisation

At its core, this research demonstrates that any approach to the decriminalisation of same-sex acts in the Commonwealth should be decolonised to accurately capture the complexity of the legal and social context experienced by LGBTI individuals, and ultimately lead to effective strategies for decriminalisation where it leads to the empowerment of LGBTI individuals in their contexts. Indeed, the decriminalisation of same-sex acts in the Commonwealth does not just mean the repeal of the colonial legacy, if this can be achieved at all, but truly takes its meaning through a full debate on the place of queer individuals in their postcolonial contexts. In other words, taking a decolonial approach to the decriminalisation of same-sex acts contextualises the experiences necessary to expose the coloniality of power, render LGBTI individuals visible in society and appeal to shared identity, and prevents the narrative to overly focus on the Global North/ South relationship whilst acknowledging it. This is even more important when these experiences are not relayed or captured by national or international media and to prevent the corruption of the human rights narrative. This also explains why the litigation is successful in bringing in a public debate, as it personifies LGBTI issues through the claimant's argument in the case. That said, a decolonial approach to the decriminalisation of same-sex acts cannot and should not be prescriptive. Since there is not one way of decriminalising same-sex acts in Commonwealth countries, there cannot be a one-size-fits-all model of decriminalisation, especially as activists often do not have a choice in the matter and act as a result of the inaction of their government. Instead, the research allows for the identification of key principles which can facilitate the decriminalisation of same-sex acts in a postcolonial context, regardless of the path undertaken, by bringing understanding on how to strategise for it.

For activists and lawyers from the Global North, creating space for the Global South to dictate the way forward, whether that is litigation, legislative reform or another strategy altogether, should be the primary focus of their advocacy. Importantly, this collaboration with Global South activists may require Global North activists to be discreet in their advocacy and support behind the scenes. This, of course, comes with challenges as proof of effective allocation of resources will be required by donors although, in this case, delayed gratification where decriminalisation is achieved further down the line, will likely be the best way forward. In a postcolonial context, foreign involvement, either real or perceived, will *always* be criticised and contribute to the slowing down of the 'spiral model'. However, these criticisms will be less effective if properly addressed, and the transnationalism of opponents to the decriminalisation of same-sex acts exposed. Activists from the Global South on the other hand, will be guided by what they deem the most effective approach in their context, and know how to leverage space and time to pragmatically seize any opportunity for change. They will know that visibility of LGBTI advocacy will be key to success and attention must be paid at deploying a communication strategy with local media, to harness the narrative and bring about allyship. However, visibility brings the potential for violence and support should be provided by the Global North as part of their transnational assistance. Other factors to successful activism include strategic planning and the ability to harness international input into local strategies. Indeed, without a careful and coordinated action between international and local activism, strategies for the decriminalisation of same-sex acts may fail as they will no doubt be negatively framed through a colonial lens.

For elected officials from criminalising countries wishing to embark on the decriminalisation process, a first step would be to allow the constitution of a domestic civil society which can frame the issues and centralise the narrative around the local queer contexts. A bold approach could be to pursue a legislative reform by allowing a constructive debate on the place of queer citizens in their societies. This would require vision, leadership and political courage. For elected officials from the Global North, their foreign policy should take into consideration how any stance will negatively impact their relations with criminalising regimes in postcolonial contexts. Similarly to activists from the Global North, governments should provide funding to local civil society to help them pursue the strategy of their choice, including providing the tools to harness citizens' awareness and support for reform. They should also refrain from articulating their actions as part of their foreign policy as it can help fuel anti-imperialistic narratives. Of course, this will be difficult as they would want to show accountability for their work but what could be performative (as understood by Butler, 1993) domestically will not be effective abroad.

This research makes a compelling case for more studies taking a decolonial approach to human rights compliance. In particular, research on effective strategies to decriminalise same-sex acts should take a decolonial approach to human rights compliance given a) the centrality of human rights in the discourse used in the decriminalisation process by activists and states alike, b) the necessity to capture postcolonial dynamics in the Commonwealth, an inherently colonial setting where coloniality perdures and c) the imperative to unravel both domestic and international factors at play, including by centring local experiences. As such, researchers should bear in mind the complexity and diversity of postcolonial contexts. As such, studies which are multidisciplinary are more likely to absorb the different factors at work in any decriminalisation process, and refine the 'spiral model'. This research has also revealed information gaps when looking at the coloniality of power, including the need to investigate the funding streams benefiting opponents to the decriminalisation of same-sex acts, with the view to reharness the postcolonial interference narrative to the benefits of local queer communities. In addition, and with the view to complementing research on precolonial existence of queer individuals, decolonising studies would enable focus on the current stories of queer citizens in their postcolonial contexts and language to help with the visibility necessary to change social attitudes. Finally, longitudinal studies should focus on the social impact of the decriminalisation of same-sex acts to robustly assess the effectiveness of the decriminalisation pursued, which could be measured via social attitudes surveys, LGBTI hate crime rates, state engagement with LGBTI civil society, number of other equality reforms undertaken following decriminalisation, etc., with the view to argue for the most effective way to bring about change. Overall, there is a lack of evidence in regard to what strategies work in decriminalising same-sex acts, and which are actually empowering sexual minorities and LGBTI activists to drive meaningful change in their own societies outside preconceived and external rights and narratives. Whilst this research provides a contribution in this regard, it is still important to add to the evidence so LGBTI rights activists and governments understand which method to adopt to successfully decriminalise same-sex acts in their countries.

# Appendices

## Appendix A: Case Studies

### Mozambique (Africa)

Whilst Mozambique was a Portuguese colony, the administration of much of the country's territory was delegated to large British owned private companies, which, combined with the British Empire's ruling in neighbouring countries meant that Mozambique was strategically important to the British Empire. This led the country to be naturally plugged into an array of international organisations including the Commonwealth after its independence from colonial rule, which has driven a flow of international economic aid and assistance. Mozambique's dependence on international aid also permitted the domestic mobilisation on LGBTI rights to relay its message at an international level and apply pressure for change 'from above' and 'from below' (Keck and Sikkink, 1998, p.18). However, it also appears that the decriminalisation of same-sex acts was a small concession to international creditors as the main LGBTQI organisation, Lambda, is still not allowed to be registered, thereby showing the reluctance from the Government to recognise queer Mozambican identities.

### History, Geography and Economy

Mozambique is a country in the southeast of the African continent, and lies to the northeast of South Africa, east of Zimbabwe, south of Tanzania, and west of Madagascar and the Indian Ocean. The discovery of the ocean route to India by the Portuguese explorer Vasco de Gama in 1498, marked the beginning of the Portuguese colonisation of Mozambique, which until then, was inhabited by Bantu and Swahili people, who respectively migrated to the country in the 1<sup>st</sup> and 11<sup>th</sup> century, and who established an economy based on agriculture and trade (Haight, 1967).

The Portuguese colonial rule was marked by the system of *prazos* (land grants) to settlers. By the middle of the 19<sup>th</sup> century, the slave trade intensified with the colonial powers' need for labour in sugar plantations and in the newly discovered diamond and gold mines of South Africa. As a result, neighbouring European colonial powers – the British Empire, which was present in South Africa and Rhodesia (now Zimbabwe), the German Empire in Tanganyika (now Tanzania) and the French Empire in Madagascar – became increasingly involved in trade and politics in Southern Africa, fighting for the division and occupation of African territories. In the context of these political and economic struggles, also known as the 'Scramble for Africa', and as a result of Portugal's lack of capital to assert its colonial domination in the country, the administration of the northern and central part of Mozambique shifted to large British-owned private companies,<sup>16</sup> which were able to exploit the resources

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<sup>16</sup> Namely the Mozambique Company, Zambezia Company and Niassa Company.

and workforce in exchange for developing the country's economy and infrastructure. In reality, these chartered companies met few of their contractual obligations and, even though slavery had been legally abolished at that time, continued a forced labour policy to supply workforce to the mines and plantations of the nearby British colonies<sup>17</sup> (Funada-Classens and Masako, 2012).

The 1933 coup, which led to the establishment of the *Estado Novo* (New State) regime in Portugal, had important repercussions on Mozambique's politics. The new Portuguese regime, which favoured greater capital accumulation in the hands of fewer settlers, and dealt aggressively with Mozambican political dissent, led to the organisation of a Mozambican opposition from Tanganyika. In 1962, the Marxist–Leninist armed movement 'Frelimo'<sup>18</sup> was formed, and in 1964, the war for an independent Mozambique was launched with funding from the Soviet Union, China and a few Scandinavian countries. Ten years of war against the colonial regime and another coup in Portugal, which led to the removal of the *Estado Novo*, resulted in the independence of Mozambique in 1975, with Frelimo's leader Samora Machel serving as president.

With Frelimo in power, forced labour and ethnic discrimination came to an end, and state-run agriculture centred around communal villages was established. This policy antagonised many Mozambican farmers who had hoped to see land returned to them after the end of the Portuguese rule. In addition, the Frelimo Government's ongoing support to armed opposition movements in Rhodesia and South Africa brought economic and military sanctions from the white regime in South Africa, which in retribution supported Frelimo's newly formed armed opposition 'Renamo',<sup>19</sup> and prolonged the country's civil war.

With a failing agricultural policy, Mozambique joined the World Bank and the International Monetary Fund (IMF) in 1984, which, under a structural adjustment programme, forced the Frelimo Government to release control over the agricultural system and to privatise the economy. With the sudden death of president Machel in 1986, Frelimo founder Joaquim Chissano succeeded to the presidency and initiated sweeping reforms concluding the leap to capitalism, by enacting a new constitution in 1990 which provided for a multiparty political system, free elections based on universal suffrage, and a market-based economy. President Chissano also started peace talks with Renamo, and a peace agreement finally concluded the civil war in 1992. Since then, Mozambique politics are marked by ongoing tensions between Frelimo and Renamo, as the latter never totally disarmed and the former never lost an election since they first took power.

Mozambique's political and economic involvement with neighbour countries, most of them colonised by the British Empire, led to a *rapprochement* with the Commonwealth of Nations. The Commonwealth Fund for Mozambique was established in 1976 to assist Mozambique in

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<sup>17</sup> The chartered companies' contracts were not renewed when their concessions from the Portuguese Government eventually expired between the 1930s and 1950s.

<sup>18</sup> Frelimo: Frente de Libertação de Moçambique (Mozambique Liberation Front)

<sup>19</sup> Renamo: Resistência Nacional Moçambicana (Mozambique National Resistance)

managing the impact of closing its borders with Rhodesia, which the country did in compliance with internationally agreed sanctions. Eleven years later, due to the destabilisation provoked by the apartheid regime in South Africa, a Special Commonwealth Fund for Mozambique was created to compensate the country for its losses, by providing aid and technical assistance for rehabilitating public services, telecommunications and infrastructure. Adding to this support was the financial influence of Britain (Funada-Classsen and Masako, 2012), dating back to the management of most of the country by British-owned chartered companies and reinforced by the assistance of the British Crown Agents sent through Commonwealth funding (Power, 2009), Mozambique's access to Commonwealth membership in 1995 looked inevitable, although it was highlighted at the time to be the first country which had never been part of the British Empire to join the organisation (Andromidas, 1997).

Since independence, and in the context of Mozambique joining a number of international organisations, the country has benefited from a high number of adjustment programmes, development assistance and aid. This bolstered already strong economic growth, ranging from an annual average of 6-8% from 1996 to 2015, as foreign investors were drawn to investments in coal and natural gas. Even when the country suffered several natural disasters, including floods, droughts and earthquakes in the beginning of 2000, Mozambique's economy recovered quickly. In 2015-2016 however, Mozambique faced a major economic downturn due to more natural disasters, a decline in the price for traditional export commodities, and the discovery of a large amount of undeclared debt leading to the suspension of foreign aid from the IMF, the World Bank and other international organisations. Also, the country's economic growth rate does not entirely compensate for its overreliance on donor aid, rampant corruption and unequal distribution of wealth. Indeed, the Mozambican population, which in majority live and work in rural areas (World Bank, 2023), does not reap the benefits of economic growth, with more than half of the country's population living in poverty, high fertility and mortality rates sustained by the prevalence of malaria and 12.3% adults living with HIV/AIDS (Central Intelligence Agency, 2022a) as well as a rapidly growing youthful population with 44.72% of the population being under 15 years old.

### **Institutional framework and political context**

The president appoints the Prime Minister and the Council of Ministers. Frelimo is still the majority political party at the unicameral Assembly of the Republic, making up 184 out of 250 Assembly members. Members are directly elected through a system of party-list with proportional representation and serve for a five-year term. The main political party in the opposition is Renamo, currently holding 60 seats in the Assembly followed by the 6 seats held by the Mozambique Democratic Movement, which was set up in 2009 by former Renamo leader Daviz Simango. Administratively, the country is subdivided into 11 provinces, each having its own government and elected assembly in charge of the implementation of national government policies, and of the administrative supervision of municipalities. Both local and national elections in Mozambique generally bring political crisis and outburst of violence, as Renamo often boycott the elections and regularly contest the validity of the results. International observers also noted irregularities and a lack of transparency in the elections, and questioned the independence of the National Electoral Commission and the Constitutional

Council, the body with final determination on constitutional and electoral matters (European Union Election Observation Mission, 2019).

Mozambique has a civil law legal system, meaning that legislation is the primary source of law, and cases do not have a binding authority. The supreme law of the country is the 2004 Constitution of Mozambique, which guarantees fundamental rights and freedoms and the independence of the courts. Whilst Article 35 of the Constitution does not explicitly protect against discrimination based on sexual orientation or gender identity, the article provides that '[a]ll citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference.' Article 43 states that '[t]he constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights.' The Supreme Court is the highest court of justice (art. 225). The Constitution (art. 213) explicitly says that '[t]he courts shall educate citizens and the public administration in the voluntary and conscientious observance of laws, thereby establishing a just and harmonious social community.'

### **Sexual orientation and gender identity in Mozambique**

In 2007, Mozambique introduced non-discrimination in employment on the grounds of sexual orientation and HIV status, a right to privacy regarding personal relationships and sex lives, and equal pay (Labour Law 23/2007, art.4, 5.2 and 108.3). The Mozambique 1886 Penal Code, which was introduced during the Portuguese colonial era, provided for the application of 'security measures' against those who were 'usually engaging in vices against nature'. The measures listed included confinement in asylum, in a workhouse or agricultural colony, being on probation, taking a pledge of good conduct, or being disqualified from the practice of a profession (1886 Penal Code, art. 70 and 71). Although these provisions could have been used to prosecute same-sex conducts, they have not been applied since the country's independence in 1975. Also, when the revised Penal Code removing the criminalising provisions came into force in 2015 ([Lei n.º 35/2014](#)), LGBTI rights activists welcomed a change that was largely symbolic (Jeune Afrique, 2015). Indeed, for most LGBTIQ Mozambicans, the main concerns relate to discrimination and lack of access to services and equal access to justice as Mozambique does not have laws protecting against discrimination in access to public services or against hate crimes based on sexual orientation or gender identity. The Government is also refusing to register the only LGBTIQ organisation in the country. Overall, the Government's position is between not condemning nor condoning discrimination based on minority sexual orientation or gender identity.

Social attitudes surveys differ in their findings but mostly show that Mozambicans are relatively tolerant towards same-sex relationships, especially in comparison to other African countries. A Pew Research Center (2010) study on people's attitudes to religion and morality in Africa, found that 17% of Mozambican respondents considered homosexual behaviour as morally acceptable or not a moral issue, which compares favourably with an average of 8.6% in other African countries. A 2016 Afrobarometer opinion poll also found that 56% of Mozambicans would welcome or would not be bothered by having a homosexual neighbour, which places



Mozambique with only four other African countries polled with a majority of the population saying so (Dulani, Sambo, and Dionne, 2016)<sup>20</sup>. However, according to the main LGBTIQ organisation Lambda, homosexuality is tolerated as long as it does not involve one's own family (Bowser, 2017). Moreover, despite rare evidence of violence based on sexual orientation in Mozambique, a 2011 Biological and Behavioural Survey from the National Institute of Health revealed that, in the year prior to the survey being conducted, some men who have sex with men were victims of physical or sexual violence because of their sexual orientation (INS et al., 2013)<sup>21</sup> which proves that grassroot organisations documenting LGBT violence is necessary to uncover a more balanced picture behind the statistics (Lasky, 2017). Discussing sexual and reproductive health is still taboo in Mozambique, while social and cultural factors support and maintain gender inequalities and contribute in many cases to unprotected sexual behaviours, according to the National Strategic HIV and AIDS Response Plan 2010-2014. Also, it is unsurprising to see high HIV prevalence amongst men having sex with men (Nalá et al., 2015).

Many factors contribute to the shaping of negative social attitudes towards same-sex relations. Religion is one of the most significant factors, with the majority of Mozambicans being either Christian or Muslim.<sup>22</sup> There is also a strong perception that LGBTI issues emanate from a neo-colonialist and imperialist agenda imposed by Western countries and international organisations on African cultural and religious practices (Kaoma, 2016). Not to forget the geographic position of Mozambique in Africa, where same-sex acts are still illegal in 32 out of the 54 African countries and punishable by death in Nigeria and Mauritania (Mendos, 2019). Neighbouring countries' stance on the issue is contrasted, with the political leaders of Zambia and Zimbabwe engaging in strong homophobic rhetoric whilst South Africa allows same-sex marriage (Smith, 2015).

### **Domestic and transnational mobilisation**

Lambda is the only organisation working on sexual orientation and gender identity issues in Mozambique, operating since 2006. The organisation provides counselling, health services and legal assistance to its members, and has been key in articulating the needs of LGBTIQ people in the country. For instance, the National Strategic Plan for HIV/AIDS now focuses on including men having sex with men in prevention efforts, as a result of Lambda's advocacy work. However, Lambda has been fighting for its legal recognition since submitting its first official request for registration in 2008 (Bowser, 2017). Although Lambda has been working with Justice Ministers at an informal level, none have agreed to register the organisation on the basis that its aims 'are contrary to the moral, social, and economic order of the country and offend the rights of others or the public good', which is prohibited by the 1991 Law on Associations (Igual, 2017). Without official registration, Lambda cannot access funding, tax exemptions or workspace (Machado, 2016). Another difficulty faced by the organisation is that

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<sup>20</sup> Other most tolerant countries are Cape Verde (74%), South Africa (67%) and Namibia (55%).

<sup>21</sup> Physical violence based on sexual orientation: 2.6% of men having sex with men in Maputo, 3% in Beira and 2.1% in Nampula/Nacala. Sexual violence: 1% in Maputo, 1.8% in Beira and 1.4% in Nampula/Nacala.

<sup>22</sup> In 2009, 63% of the population declared being Christian, compared to 23% Muslim

Members of Parliament in Mozambique are not directly elected but via party-list proportional representation, making it difficult to gather support from Parliament (Bowser, 2017). In spite of these difficulties, Lambda has been at the forefront of making the case for LGBTI equality in Mozambique, gathering support at an international level but strategically keeping its identity and advocacy distinct. As Lambda's Executive Director Danilo da Silva candidly confessed in an interview with the Washington Blade: 'African governments don't want to appear weak or appear to bow to the Imperialists. It put a target sign on the backs o[f] the African LGBTQ community. Behind the scenes efforts work better. We have learned to be more strategic and diplomatic which is paying off' (Bowser, 2017).

As a result of Lambda's distinct advocacy at the UN, and supported by joint statements from international NGOs (Human Rights Council, 2010a), Mozambique's first UPR in 2011 gathered four recommendations towards reviewing laws criminalising same-sex acts or enabling the registration of NGOs working on sexual orientation and gender identity issues (Human Rights Council, 2011c, para.91.4, 91.5, 91.6 and 91.8). The Mozambican delegation refuted that Mozambique criminalised homosexuality 'as there is no such definition in the Criminal Code so that no one can be sanctioned for homosexuality' and stated that there was no restriction in regard to freedom of association (Human Rights Council, 2011d, para.85).

However, national calls for LGBTI equality kept being echoed internationally in the following year, forcing the Government to act. When the Mozambican Human Rights Commission asked the Government to include sexual orientation as a ground for non-discrimination in the Constitution (Lee, 2013), this was relayed during the visit of the UN Special Rapporteur on extreme poverty and human rights (Human Rights Council, 2014, para.79(d)). Similarly, calls from Lambda to be registered as an organisation has been relayed by a diversity of international organisations such as Human Rights Watch, ILGA, and the UN Human Rights Committee (CCPR, 2013, para.22). These calls gained momentum in the African continent in 2014, when former Mozambican president Joaquim Chissano (2014) wrote an open letter to African Leaders stating that '[Africa] 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.' In May that year, the African Commission on Human and Peoples' Rights adopted its first resolution condemning violence based on sexual orientation and gender identity (ACHPR, 2014). Two months later, the Mozambican Parliament approved Law 35/2014 by consensus, hence removing the criminalising provisions. This change was perceived by some Mozambican LGBTI activists as a concession from the Mozambican Government to appease foreign governments and international organisations rather than a true willingness from the Government to decriminalise same-sex acts (Jeune Afrique, 2015).

At its second UPR in 2016, Mozambique received seven specific recommendations to adopt additional measures to protect discrimination based on sexual orientation or gender identity, or to allow for the registration of civil registration of NGOs working on these issues (Human Rights Council, 2016c, para 129.5, 129.11, 129.12, 129.13, 129.34, 130.12 and 130.13). All of these recommendations have been noted, rather than accepted by the Government, which argued that all citizens are equal before the law in light of Article 35 of the Constitution and that the accreditation of Lambda is 'pending' (Human Rights Council, 2016b, para.20 and 26). In November 2017, the Constitutional Council ruled that the 1991 Law on Associations article

contradicted Article 52 of the Constitution, which states that only 'armed organisations which are military or paramilitary and those which promote violence, racism, xenophobia, or which pursue aims contrary to the law' can be barred from registration, which leaves Lambda hoping for official registration in 2018, 10 years after its first official request (Tsandzana, 2017).

## **Reflections**

After analysing patterns of change in Mozambique, it seems that the country's economic reliance on international aid and assistance makes Mozambique receptive to international pledges for ensuring LGBTI equality. Also, the case study tends to prove the scope and conditions of the 'spiral model' developed by Risse, Ropp and Sikkink (2013) whereby material vulnerability moves countries from human rights commitment to compliance. The case study also confirms that the combination of international advocacy with domestic mobilisation works to drive change. It is unclear however which one is the most crucial to bring about change. It is also unclear whether the reform of the Penal Code is a small concession to international creditors or whether arguments for LGBTI equality start to be performative. Reasons for doubt are that Lambda have been unsuccessful in getting registered for the past decade, although the Constitutional Council ruling may kick-off a stronger domestic-led advocacy in the country.

## **Nauru (Pacific)**

Nauru's history is inextricably linked to the one of colonisation and its economy to the financial assistance coming from Australia, notably via the funding allocated for the maintenance of the Regional Processing Centre for refugees. Also, the decriminalisation of same-sex acts can be read in light of this context and the influence of Australia on Nauru's decriminalisation process cannot be underestimated. Indeed, it seems that decriminalisation was pushed through by the Australian Government to mitigate its devastating refugee policy and uphold its human rights reputation, at low cost.

### **History, Geography and Economy**

Nauru is a small (21 sq. km) pacific island located north-east of Australia and 42 km south of the equator. The island's population is roughly 10,000 inhabitants, divided into 12 traditional tribes. Nauruan is the official language and widely spoken in the island, although English is the language used for official and business purposes. The country uses the Australian dollar as its official currency.

As with other Pacific islands, Nauru's history is linked to the one of colonisation. The island was first colonised by the German Empire in 1888. The island was then jointly administrated by the UK, Australia and New Zealand as a League of Nations Trust Territory after World War I, and a UN Trust Territory after World War II. After two years of self-governance, Nauru finally gained full independence in 1968. Following its independence, Nauru joined the Commonwealth of Nations as a special member before becoming a full member in 2000. Nauru is also a member of the UN, the Asian Development Bank and the Pacific Islands Forum.

Nauru's main natural resource is phosphate, which was discovered in the central plateau of the island in 1900. However, the intensive mining and exportation of phosphate since then means that the resource will be totally depleted within the next three decades, leaving Nauru with a struggling economy (BBC News, 2020). The country's other main source of income, besides the selling of fishing licenses, is the revenue received from the Australian Government for maintaining the Regional Processing Centres for refugees. Given the lack of resources and human capacity to drive the economy, Nauru is heavily reliant on foreign aid. Australia is Nauru's most significant donor, contributing around 15% of Nauru's annual revenue, with AU\$ 25.4 million provided to the country in 2016-2017 (Australian Department of Foreign Affairs and Trade, 2017).

Since 2005, Australia and Nauru have a Memorandum of Understanding on the Enduring Regional Processing Capability in Republic of Nauru (2021), which was subsequently renewed in 2012 and 2021, and which provides the island with financial aid and technical assistance in exchange for the housing of refugees, as they wait for their entry application into Australia to be processed. The Nauruan Government is extremely dependent on the revenue generated by the refugee centres, acknowledging the economic benefit they bring to the island (Human Rights Council, 2010b, para.90). Although Australia's offshore processing of refugees

to Nauru has been consistently criticised by human rights organisations, it seems that the policy is here to stay (Doherty, 2021).<sup>23</sup>

### **Institutional framework and political context**

Nauru's president is both head of state and head of government, and is elected from amongst the 19 members of the unicameral parliament. Following their election, the president appoints four or five members of the parliament to be part of the ministerial cabinet, which *de facto* and *de jure* constitute the executive branch of the state. Although there are political parties in Nauru, candidates often run for election as independents and the electoral behaviour of Nauruans is influenced by the candidates' familial relationships rather than their affiliation to a party (Anckar and Anckar, 2000). The suffrage is universal and mandatory, starting at 20 years of age. Nauru does not have any form of local government, but the island is divided into 14 districts, which all have their own community committee that manages and oversees local projects.

The Constitution of Nauru confers fundamental rights and freedoms, although some of them are quite limited by nature. For instance, Article 3 of the Constitution provides for the equal enjoyment of rights and freedoms but is titled 'Preamble', thereby undermining the substantiality of the rights (Human Rights Council, 2010b).<sup>24</sup> In 2004, the Government started a constitutional review and submitted a new constitution proposal which would confer new rights and protections, as well as changing the voting system so the president is elected directly by the population rather than parliament. The proposal was rejected in 2010 at what was Nauru's first ever referendum. The Supreme Court enforces the fundamental rights and freedoms guaranteed under the Constitution. Although the Supreme Court is the highest court in Nauru and its judgments on constitutional matters are non-revocable, the Supreme Court is not the highest court of appeal, with civil and criminal cases being deferred to the High Court of Australia.

### **Sexual orientation and Gender Identity issues in Nauru**

It is unclear whether Nauru has a precolonial history of tolerance (or lack of thereof) towards homosexuality. What is clear however, is that colonialism has played a central role in shaping the islanders' attitude towards same-sex acts, by imposing laws, religion and redefining means of socialisation.

Nauru introduced the criminalisation of same-sex acts in 1921 when the island adopted the 1899 Criminal Code of Queensland. The Australian state's Criminal Code reflects the laws inherited from the British Empire, which were retained during the federation of Australia (Carbery, 2014). Also, Nauru's Criminal Code (1899, sections 208-209) provided for a 14-year imprisonment 'with hard labour' for anyone who has carnal knowledge 'against the order of

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<sup>23</sup> The Australian detention centre in Manus Island centre was forced to shut down after it was found to be unconstitutional by the Papua New Guinea Supreme Court in 2016.

<sup>24</sup> The debate around how to interpret article 3 is ongoing.

nature', and a 7-year imprisonment for any attempt to commit 'unnatural offences.' These offences include sex with animals, same-sex acts and anal intercourse. Nauru only reformed its 1899 Criminal Code in 2016, resulting in the abolishment of death penalty, decriminalisation of suicide and same-sex acts, as well as the equalisation of the age of consent for sexual intercourse, bringing it to 16-year-old for both different and same-sex acts (Crime Act, 2016). The same year, the state of Queensland became the last Australian state to equalise the age of consent and drop the specific reference to anal intercourse in its Criminal Code. This shows the interconnection between Nauru and Queensland's reforms to their criminal laws, which may be imputed to a political will from the Australian state to dismantle the British Empire legacy. Therefore, it seems that the push for decriminalisation in Nauru came from external interference rather than domestic demand (see below).

Another factor shaping the Nauruans' social attitude towards homosexuality is the introduction of Christianity. The religion was introduced in the Pacific islands by foreign missionaries in the late 19<sup>th</sup> century and is now the primary religion in Nauru. Indeed, the last national census shows that more than 80% of people in Nauru identify themselves as of Christian faith, with the majority of the population affiliated to the Nauru Congregational Church (36%) or the Roman Catholic Church (33%) (Nauru Bureau of Statistics, 2011).<sup>25</sup> The Church operates as a place of socialisation for the islanders and its social and cultural importance in postcolonial Nauru prevent the construction of a positive dialogue around LGBTI issues (Thomsen, 2016).

In addition, and in reaction to the colonial legacy, the Pacific islands are engaged in a process of re-appropriation of their own, precolonial culture and history, to which Nauru is no exception. The imposition of a new, foreign legal and political system, as well as a new religion and patriarchal organisation of the society interfered with the Nauruans' cultural and social identity, which was previously based on a matriarchal system. The process of recovering their identity is entrenched with rejecting 'the West', and what is seen as a colonial discourse and narrative. This can be observed with the reaction that marriage equality in the US provoked in Fiji (Tokona, 2015), or the way the Australian plebiscite on marriage equality is reverberating through the Pacific islands, crystallising tensions and resistance to promoting LGBTQ+ equality in the region (Smith, 2016). Moreover, the human rights discourse on LGBTI rights is oblivious of local and cultural circumstances, which does not connect with the Pacific's culture (Rainbow Papua New Guinea, 2016). For instance, in Samoa, 'fa'afafine' refer to a third gender, which performs a specific social role in the Samoan society. This definition *de jure*<sup>26</sup> and *de facto* excludes the Western and binary definition of 'transgenderism', which implies a transition from one gender to another rather than a complete distinct and third identity (Samuels, 2021). So it is not surprising to see that the LGBTI discourse is not really effective in the Pacific islands. It is interesting to know then, what motivated the process of decriminalisation of same-sex acts.

## Transnational mobilisation

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<sup>25</sup> Followed by the Assembly of God (13%), and the Nauru Independent Church (10%).

<sup>26</sup> In 2013, Samoa repealed the Crime Ordinance 1961 which criminalise men 'impersonating' women whilst homosexuality is still criminalised under the Crimes Act.

The decriminalisation of same-sex acts in Nauru came at a time of increased international focus on both LGBTI equality and refugee rights. In 2015, the UN targeted its Free & Equal Campaign to the Pacific region (United Nations, 2015) whilst the United Nations High Commissioner for Refugees (UNHCR) published a report on the agency's efforts to protect LGBTI asylum seekers and refugees (UNHCR, 2015). The following year, the Kaleidoscope Trust Human Rights Foundation, a global law firm and the US Embassy in Australia organised a LGBTI Pacific Youth Forum bringing together activists from across the Pacific to advance LGBTI rights in the region.

At the same period, the Australian Government came under increased criticisms on their refugee policy, which culminated in 2016, with horrendous reports of abuse in Nauru's two Regional Processing Centres for refugees (Hamilton, 2017). In March, the case of two gay Iranian refugees unable to get out of their house without exposing themselves to harassment and abuse was heavily covered by the international press, where Australia received a lot of criticisms for sending gay asylum seekers to a country where homosexuality was illegal (Hasham, 2016). As a result, the organisations All Out and the Australian Human Rights Law Centre, started a petition calling the Australian president Malcom Turnbull to resettle the refugees to Australia (Hasham, 2016). Damning reports from Amnesty International, Human Rights Watch and the UNHCR also emphasised the dire situation of gay refugees who are forcibly detained in a country criminalising same-sex acts (Human Rights Watch, 2016b). The matter was taken up domestically with the Australian Human Rights Commission, the Senate Select Committee and a government appointed independent expert who all called for the Australian Government to improve the situation of refugees in Nauru and Manus islands (Australian Senate's Legal and Constitutional Affairs References Committee, 2016). Other countries also weighted in the debate and added to the international pressure, with New Zealand and the United States urging Australia to change its refugee policy (MacIlroy, 2016; Karp, 2017).

This transnational 'naming and shaming' dynamic can also be observed at the Universal Period Review (UPR) of Nauru and Australia. Back in 2011, ahead of its first UPR, Nauru submitted its national report to the Human Rights Council stating its intention, with the assistance of the Australian Attorney-General's Department, to introduce a new criminal code which would decriminalise consensual same-sex acts, which was strongly supported by the international civil society (Human Rights Council, 2010b; 2010c). In its first review, a small coalition of EU states<sup>27</sup> made recommendations to decriminalise consensual same-sex acts, which Nauru accepted. The same year, Nauru signed a statement with another 84 countries, which encouraged *Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity* (Human Rights Council, 2011e). Although there were repeated commitments from Nauru to decriminalise, there were not translated into action in the following four years. This led to intensified criticisms at Nauru's second UPR where

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<sup>27</sup> The UK, Slovenia and Sweden.

another seven states, more geographically spread this time, made similar recommendations.<sup>28</sup>

In parallel, Australia received 10 recommendations in regard to protecting the rights of asylum seekers and migrants at its 2011 UPR, which increased to 39 recommendations, with Nauru specifically mentioned in two recommendations in the second reporting cycle. Australia received the visit of the Special Rapporteur on the human rights of migrants who also visited the regional processing centres in Nauru and required from Australia to 'quickly close down the regional processing centres in Papua New Guinea and Nauru and terminate the offshore processing policy, in order to remedy the systemic human rights violations that this policy creates' (Human Rights Council, 2017b. para.118).

## Reflections

When looking at Nauru's country profile, we observe that the country's closeness to Australia, both historically and economically, drives Nauru's decision-making process in relation to the decriminalisation of same-sex acts. It seems that the review of their Criminal Code was pushed through by the Australian Government to mitigate its devastating refugee policy and uphold its human rights reputation, at low cost. Also, Nauru's case study tends to prove the scope and conditions of the 'spiral model' developed by Risse, Ropp and Sikkink (2013) whereby material and social vulnerability move a country from human rights' commitment to compliance. In this case however, and given the interdependence mentioned above, two countries need to be analysed under the 'spiral model'. Australia is clearly socially vulnerable to international pressure in relation to its refugee policy, whilst Nauru is materially vulnerable and therefore more likely to respond to foreign interference to maintain its economy. The Nauruan case study also confirms that transnational mobilisation is crucial to pressure a government 'from the top' and drive human rights change domestically, which is the underlying theory defended by the three authors. Nevertheless, the prerequisite of domestic mobilisation that helps pressure the Government 'from below' as well, is absent in Nauru's case. Therefore, we observe similar dynamics at play when analysing Nauru's path from commitment to compliance with LGBTI rights, with the caveat that not all conditions developed by Risse, Ropp and Sikkink (2013) are met.

It is also important to note that Nauru's decriminalisation of same-sex acts does not mean that the country is committed to further LGBTI equality. Interestingly, Nauru voted against the mandate of the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity, only a few months after decriminalising same-sex acts. Whether this decision reflects voting bloc dynamics and trade-off within the UN or a sign that decriminalisation was only an instrumental commitment in exchange for Australia's economic support, is yet to be determined. Risse, Ropp and Sikkink (2013) still argue that human rights commitments initially adopted for instrumental reasons, commit states to comply with human rights *a fortiori* by raising expectations with the civil society and the new

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<sup>28</sup> US, Australia, France, Spain, Argentina and Chile.



generation. Unfortunately, it is likely that the absence of domestic mobilisation will prevent Nauru from further achievements to take place, although the country's fragile economy and Australia's international reputation are still at play to influence progress. Also, it will be interesting to see whether advancements, for instance in terms of prohibition of discrimination based on sexual orientation or gender identity, will be achieved in the future.

## **Belize (Americas)**

Belize is the only English-speaking country in Central America and it is at odds with its neighbours in regard to its political stance on sexual orientation and gender identity. Indeed, Belize was the last country in Central America to decriminalise same-sex acts. This change was driven by a court case brought about by Caleb Orozco, a prominent LGBT rights activist and director of the first, and at the time sole, LGBT organisation in the country.

### **History, Geography and Economy**

Belize is one of the countries in Central America which saw the development of the Maya civilisation. It is located south of Mexico, east of Guatemala and west of the Caribbean Sea. In the 16<sup>th</sup> century, Belize was declared a Spanish colony by the conquistadores but did not attract Spanish settlement because of the lack of mineral resources and the presence of hostile Maya tribes (Merrill, 1993). In the 17<sup>th</sup> century, English and Scottish pirates known as 'Baymen' settled along the Belizean coast, chasing Maya tribes inland and established a trade colony based on slavery to cut logwood, and later mahogany. In 1667, the Spanish granted British settlers the right to cut logwood in the country in exchange of their help to suppress piracy. However, the Spanish retained sovereignty over the territory and tried to expel British settlers several times until 1798, when a defeat at the Battle of St. George's Caye ultimately settled the rivalry between the two colonial powers. The British Government still waited for the emancipation of Central America from Spanish rule in 1836 to recognise the colony, to avoid any potential retaliation from the Spanish (Merrill, 1993). Britain *de jure* imposed the abolition of slavery in its colonies in 1833, compensating slave owners the highest amount paid in any British territory for their loss of property (Dobson, 1973). However, the capitalisation and concentration of wealth in the hands of a few white settlers meant that access to land and economic freedom was severely limited to the slave descendant population (Merrill, 1993).

Indeed, Britain's delay in asserting its colonial rule allowed the political control of a small elite of wealthy British settlers who owned the majority of lands and slaves, and had a monopoly over the logwood and mahogany trade. Also, settlers established their own laws and forms of government via the system of Public Meeting, which later became a Legislative Assembly. However, dissensions regarding tax and safety issues emerged between merchants living from trade in the city and landowners living in rural areas, who were subject to attacks from the Maya. A lack of consensus brought the members of the Legislative Assembly to demand direct British rule in return for greater security (Merrill, 1993). In 1862, Britain formally declared the settlement as a British Crown Colony, subordinate to Jamaica, and named it the British Honduras, granting the colony with a new constitution and legislature. The British Honduras' new colony status marked the decline of the settler class and the accumulation of capital in the hands of British investors. For instance, the British Honduras Company (later the Belize Estate and Produce Company) eventually acquired half of all privately-owned land.

The conjunction of the 1930's Great Depression, a devastating hurricane and the decision of Britain to devalue the British Honduras dollar in 1949 led to the organisation of the People's Committee (later the People's United Party) which fought for independence. However, calls for independence were hindered by Guatemala's claims to Belize's entire territory. Belizean

leaders made the case for self-determination at various international fora such as the Commonwealth and the UN, and finally succeeded to gain independence in 1981. Guatemala still challenges the border to this day.

Due to its history of slavery and migration, Belize has a diverse population, including Mestizos (both Maya and European heritage), Creole (African descent and European heritage), Maya, Latinos (Spanish descent who migrated from Belize's neighbouring countries), and the Garifuna (descendants of the Antilles displaced by the British Empire). Also, if Belize is the only English-speaking country in Central America, the majority of the population speak Spanish or are bilingual. Belize has a high immigration rate, which compensates for a declining birth rate. Issues of concern include foreign debt burden, unemployment, growing involvement in the Latin American drug trade, and high crime rate. Belize has also one of the highest HIV/AIDS prevalence rates in Central America, and a high prevalence of forced labour and sex trafficking of women and LGBT individuals.

Belize's economy relies on tourism and agriculture, exporting primarily to the US, its primary trading partner, and to Britain. Because of its reliance on agriculture, the country is vulnerable to external shocks, bad local climate conditions and hurricanes, as well as lower commodity and petrol prices, and a weak US and UK economy. Despite Belize being the third highest *per capita* income in Central America (Central Intelligence Service, 2022b), inequalities between rich and poor inherited from the colonial era persist, and particularly affect Maya and Creole communities (Johnson, 2003; Carneiro, 2016).

### **Institutional framework and political context**

Belize's political system is a parliamentary constitutional monarchy based on the British system, with general elections every five years. The UK monarch is represented by the Governor-General. The executive is in the hands of the Cabinet, appointed and led by the Prime Minister. The bicameral National Assembly of Belize is composed of the elected House of Representatives and the Senate, appointed by the Governor-General with advice from the Prime Minister, the Leader of the Opposition and NGOs, the Council of Churches, Chamber of Commerce and Trade Unions. In practice, the majority party also controls the Senate.

The People's United Party (centre-left), which spearheaded the fight for self-governance, was elected in the first 1954 elections and constantly re-elected until 1984, when they were defeated by the main party of opposition, the United Democratic Party (centre-right). Since then, the two parties tend to alternate in power from one national election to another. In 2008, United Democratic Party's leader Dean Barrow was elected as the first black Prime Minister, and has been re-elected twice since.

Belize's legal system is based on English common law. There is both a Magistrates' Court and a Court of Appeal, and the highest court is the Supreme Court. Defendants can appeal to the Caribbean Court of Justice, which is the Caribbean regional tribunal having appellate jurisdiction over civil and criminal matters, in addition to interpreting and applying the Revised Treaty of Chaguaramas, the treaty which created the Caribbean Community. The Constitution of Belize (1981) is the supreme law and any law inconsistent with the Constitution should be

void (Preamble, para.a). The first paragraph of the Constitution's preamble states that 'the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator' (art.2). The Constitution guarantees individual fundamental rights and freedoms regardless of 'race, place of origin, political opinions, colour, creed or sex' (art. 3 and 16)), equality before the law (art.6), right to privacy (art. 14) and freedom of expression (art. 12).

### **Sexual orientation and gender identity in Belize**

In regard to sexual orientation and gender identity, Belize's legal framework is at odds with its Latin American counterparts. Indeed, Belize was the last country in Central America to decriminalise consensual same-sex acts, and by that time, five Latin American countries had already recognised same-sex unions, 11 protected LGBT citizens against hate crimes and 14 had banned employment discrimination based on sexual orientation (Mendos, 2019). In this respect, Belize's legal framework is more aligned with those of Caribbean countries, whose laws are also inherited from the British Empire. Also, in 2016 the Supreme Court found in *Orozco v Attorney General* that Section 53 of the Belize's Criminal Code (1981), which stated that '[e]very person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years' (art.53) violated the constitutional rights to equality before the law and non-discrimination on grounds of sex, the right to privacy and freedom of expression. Furthermore, Belize's Immigration Act (1958), which is still in force, provides that 'any prostitute or homosexual or any person who may be living on or receiving or may have been living on or receiving the proceeds of prostitution or homosexual behaviour' (section 5.1(e)) are prohibited immigrants. Maurice Tomlinson, a Jamaican national, brought a case to the Caribbean Court of Justice against Belize and Trinidad and Tobago for having these discriminatory provisions in their Immigration Act (1958) but the Court dismissed the case on the basis that the claimant failed to demonstrate that he had ever been or would be in danger of being prejudiced by the existence of these provisions, which in practice have never been enforced by either country (*Maurice Tomlinson v Belize, Trinidad and Tobago*, 2016).

Religion plays an important role in shaping negative attitudes towards homosexuality (Chadee, et al., 2013), and the majority of the Belizean population is Christian, with 40% of Belizean identifying as Roman Catholic (Statistical Institute of Belize, 2010). The role of religion can be seen during the *Orozco v Attorney General of Belize* case, where the Roman Catholic Church of Belize, the Belize Evangelical Association of Churches and the Anglican Church became interested parties to oppose the case. Their opposition to the case was such that church leaders founded a national campaign to rally against the 'homosexual agenda' (Kelly, 2011). A post-colonial approach is also relevant to analyse the opposition against the case, and homosexuality overall, as the court case was portrayed as a Trojan horse for granting gay marriage, and parallels with LGBT+ record of the UK and the US were made (Kelly, 2011).

A 2013 UNAIDS poll on social attitudes in the Caribbean countries found that Belize was relatively accepting of homosexuals with 68% of respondents saying they were tolerant or accepting of homosexuals (Beck et al. 2017; UNAIDS, 2013). In reality, homophobia and transphobia are widespread with frequent reports of verbal and physical harassment and violence in the public sphere (Littauer, 2014). Also, individuals with a minority sexual orientation or gender identity are not visible in the Belizean society, as socialising places, events or representative public figures are non-existent. Instead, LGBTI Belizeans socialise through house parties or private encounters on social media platforms. None of the political parties had taken positions on the issue of LGBTI rights until the court case. Civil society organisations dealing with specific LGBTI needs were historically underrepresented with most of them focusing exclusively on HIV/AIDS. Created in 2006, the United Belize Advocacy Movement (UniBAM) was the first domestic organisation working on public health for gay men, but initially had a lack of funding and adherents, the latter partially due to the fear of members' names being made public (Scott, 2015). However, the case on the constitutionality of Section 53 encouraged other organisations to advocate for LGBT+ rights and since then, a plethora of organisation have emerged: the Belize Youth Empowerment for Change (Mendez, 2017), Promoting Empowerment Through Awareness for Lesbian and Bisexual Women, Our Circle, Empower Yourself Belize Movement and Tia Belize. A year after the judgment, the first ever Pride event was organised in Belize (Humes, 2017).

### **Internationalisation of domestic mobilisation**

*Orozco v Attorney General* (2016) is a clear case demonstrating the internationalisation of domestic mobilisation. The idea originated in a meeting between Caleb Orozco and two Caribbean academics from the University of the West Indies' Rights Advocacy Project, who had studied the criminalisation of same-sex acts in the region and thought Belize to be the ideal test case, as the country's Constitution provided stronger privacy and equality protections than other Caribbean countries. Then, the Commonwealth Lawyers Association, the Human Dignity Trust and the International Commission of Jurists joined the claimants as interested parties. Whilst the support from the international community was welcomed at first, it soon poisoned the national debate as opponents used this to frame the case as a fight against interference from the West (Scott, 2015). In response to the US President Barack Obama's criticism about countries which persecuted LGBT individuals (The White House, 2011), Prime Minister Dean Barrow declared that Belize was to decide on its own internal affairs (Trapp, 2011). However, a year later, the Belizean Prime Minister gave a speech in which he hinted at the Government's support for LGBTI rights saying that what the 'Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law' (Barrow, 2013). This underlies the problems associated with the internationalisation of the domestic struggle for LGBTI rights and what prompted Caleb Orozco to frame its victory as follows: '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' (Sopelsa, 2016).

Another example of issues around the internationalisation of domestic affairs regarding sexual orientation and gender identity was the backlash provoked by the Supreme Court judgment, which found that international treaty obligations, such as the International Covenant on Civil

and Political Rights (ICCPR), must inform the interpretation of the constitutional rights. The problem highlighted by opponents to the decriminalisation of same-sex acts, is that at the time of Belize's accession to the ICCPR, the UN Commission on Human Rights had not yet declared that the prohibition against discrimination based on sex included discrimination on the basis of sexual orientation, thereby undermining the democratic process in Belize. In addition, they argue that UN treaty bodies' recommendations and foreign states' calls to decriminalise through the Universal Periodic Review process account for international pressure (Ramos, 2016). This led to the Government appealing the decision on the point of whether 'sex' could be interpreted to prohibit discrimination on the basis of sexual orientation, under the Belizean Constitution. The consequences of the internationalisation of the domestic case are therefore twofold: on one hand, it allows a domestic organisation, in that case UniBAM, to promote change through a 'multi-layered transnational strategy' (UniBAM, 2018). On the other, it crystallises the domestic opposition to LGBTI rights by helping them making the case of a neo-colonial foreign interference.

## Reflections

Belize case study demonstrates that changing the law can bring change in social attitudes, by creating a national debate on the issue of sexual orientation and gender identity, making a community visible to the rest of the society, as well as creating and legitimising space for LGBTI civil society organisations to operate. The case study also proves that, as a tool for change, international pressure has not much weight compared to domestic-led mobilisation. As Simmons (as cited in Risse, Ropp and Sikkink, 2013) observes: 'external norms and even external political pressure cannot be expected to sustain significant rights improvement unless there are fundamental changes in the domestic institutions of accountability and governance' (p.44). In that respect, Belize's rule of law has allowed LGBTI Belizeans to successfully challenge the criminalisation of homosexuality in national courts. However, the support of the international community might have helped UniBAM to win the case, by providing resources and capital to the organisation. It would also be interesting to investigate whether Belize's ratification of the ICCPR was a mere tactical concession, which prompted the Government to appeal the *Orozco v Attorney General* (2016) judgement.

## Cyprus (Europe)

Cyprus is an interesting case study as the country decriminalised private consensual same-sex acts when under the rule of the Ottoman Empire, but retained the (re)criminalisation after its independence from the British Empire. Furthermore, the criminalisation endured the division of the country into two communities with different religious traits. The decriminalisation of same-sex acts in both Southern and Northern Cyprus was dictated by discussions around access to the European Union (EU). Although a legal case to decriminalise same-sex acts brought to the European Court of Human Rights (ECtHR) was won by a LGBTI rights activist in 1992, it took threats from the EU to refuse Cyprus membership for the country to comply with the ruling. In Northern Cyprus, the decriminalisation took place in face of heavy lobbying from Members of European Parliament and Turkey, which at the time was also attempting to join the EU.

### History, Geography and Economy

Cyprus is an island in the Eastern Mediterranean, located west of Syria and Lebanon, north of Egypt, south of Turkey and southeast of Greece. The country has an estimated population of 1,255,468 inhabitants divided into two main ethnic communities, the Greek Cypriots and Turkish Cypriots (UN Secretariat, 2022a). Whilst human activity in the island can be traced back to 10,000 BCE, Cyprus was first settled by Mycenaean Greeks in 1400-1200 BCE before being occupied by successive foreign powers, who were attracted by the country's strategic position in the Middle East.<sup>29</sup> Also, Cyprus was successively ruled by the Neo-Assyrian Empire, Ancient Egypt, Persian Empire and Ptolemaic Egypt, the latter completing the Hellenisation of the island. In 58 BCE, the country was under the administration of the Roman Empire, under which Christianity was introduced, before being ruled by the Byzantine Empire, and a joint Arab-Byzantine administration. In the 12<sup>th</sup> century, Cyprus became the target of crusaders and was occupied by Richard I, King of England, before being sold to the Knight Templars, and ruled by the French Lusigns and the Venetians. The Ottoman assault of 1570 brought the country under the rule of the Ottoman Empire until 1878, thereby changing the island's demographics with the formation of a new Muslim community. The Ottomans also abolished the feudal system and introduced the millet system, which allow for communities to be governed under their own laws and religious authorities.

In 1821, Greek Cypriots left the country to join the war for independence in Greece. In response, the Ottoman governor of Cyprus decided to execute 486 Greek Cypriot figures, including the Archbishop of Cyprus. In 1828, the first president of independent Greece called for the *enosis*, the union between Cyprus and Greece. This led to several uprisings in Cyprus, fuelled by the Ottoman misrule and ongoing poverty, although none of the insurrections ended successfully. After the war between Russia and the Ottoman Empire in 1878, Cyprus was leased to the British Empire in exchange of Britain's use of the island as a base to protect the Ottoman Empire against Russian invasion. Since then, the British Empire was *de facto* ruling

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<sup>29</sup> The Middle East is a transcontinental area encompassing south-western Asia and northern Africa, stretching from the Mediterranean to Pakistan and including the Arabian Peninsula.

the island although *de jure* Cyprus was an Ottoman territory until 1914, when Britain formally annexed Cyprus after opposing the Ottoman Empire during World War I. Consequently, British ownership of the island was formally recognised in the 1923 Treaty of Lausanne.

By the 1950's, Turkey and Greece had both made the annexation of Cyprus their national policy, Turkey stating that Cyprus was an extension of Anatolia whilst Greece claimed the Greek Cypriot population and its Orthodox Church had pursued a union with Greece since the 19<sup>th</sup> century. The British administration aggravated the situation, most notably by allowing the creation of the Turkish Resistance Organisation. Following nationalist violence displacing more than 25,000 Turkish Cypriots, Cyprus was granted independence in 1960, although the UK maintained two Sovereign Base Areas under its control. Cyprus integrated the Commonwealth of Nations immediately after independence.

In 1974, a coup led by Greek Cypriot nationalists and supported by the military junta in Greece, provoked the invasion of Cyprus by Turkey, leading to the division of the country and the establishment of a United Nations buffer zone. In 1983, the Turkish Cypriots unilaterally declared an independent Turkish Republic of Northern Cyprus, which covers 36% of the northern part of the island. The Turkish Republic of Northern Cyprus is only recognised by Turkey and has observer member status at the Organisation of Islamic Cooperation and the Economic Cooperation Organisation. The Republic of Cyprus administers the southern part of the country, although the regime is recognised by the international community and has *de jure* sovereignty over the entire territory. The last effort to settle this dispute was the Annan Plan in 2004, which was put to referendum but rejected by a majority of Greek Cypriots (although a majority of Turkish Cypriots voted in favour). In 2004, Cyprus was accepted into the EU as a whole country, although EU legislation is suspended in Northern Cyprus until final settlement of the dispute.

### **Institutional framework and political context**

Cyprus is a presidential republic, with the head of state elected by universal suffrage for a five-year term. The president appoints its Council of Ministers, which forms the executive. The 1960 Constitution of Cyprus ensures a system of checks and balances between representatives from the two communities, providing for Turkish Cypriot representation in the executive, legislative and judicial branches. For instance, three out of ten positions in the Council of Ministers as well as the role of vice-president are reserved for Turkish Cypriot citizens (Constitution, 1960, art.62 and 1). The 59 members of the House of Representatives are elected by proportional representation based on a separate voters' roll for a five-year term, with 24 seats reserved to Turkish Cypriots and three observer members seats representing the Armenian, Latin and Maronite minorities. However, all seats reserved for Turkish Cypriots in the executive, legislative and judicial branches have been vacant since 1964.

Indeed, the Turkish Republic of Northern Cyprus adopted their own 'Constitution' in 1983 and the territory has been holding presidential and legislative elections every five years. The 50 members of the unicameral Assembly of the Republic are elected by mitigated proportional representation.



The judiciary system in either Northern Cyprus or the Republic of Cyprus is independent of both executive and legislature, and derived from a mixed legal system of English common and civil law. In the Republic of Cyprus, EU law has supremacy.

### **Decriminalisation of same-sex acts in Cyprus**

In 1858, as part of the Tanzimat Reforms, the Ottoman Empire decriminalised consensual same-sex acts in private throughout its whole territory including Turkey and Cyprus (Hussain, 2011), although it reinforced the criminalisation of homosexuality in the public sphere (Ozsoy, 2021). However, same-sex acts were criminalised again in Cyprus in 1929, when the British Empire transposed its 1885 Criminal Law Amendment Act into Cyprus law. When Cyprus gained independence in 1960, the colonial provisions criminalising same-sex acts were retained, and endured the division between the northern and southern part of the country. Also, someone who had 'carnal knowledge of any person against the order of nature' or allowed 'a male person to have carnal knowledge of him against the order of nature' was liable to a five-year imprisonment, which was extended to 14 years if committed with violence (Criminal Code, 1959, art.171-172). Any individual attempting to commit said offence was liable for a three-year imprisonment, and seven years if the attempt was accompanied with violence (Criminal Code, 1959, art.173).

In 1992, gay rights activist Alecos Modinos, who founded the first Gay Liberation Movement of Cyprus<sup>30</sup> in 1987, brought a case to the ECtHR stating his fear of prosecution under section 171 of the Criminal Code. The ECtHR found a year later that the state violated the claimant's right to private life (*Modinos v Cyprus*, 1993). However, the Republic of Cyprus did not immediately comply with the ruling and only revised its Criminal Code (1959) in 1998, when the country's accession to the EU was jeopardised for non-compliance. The revised Criminal Code however provided an unequal age of consent at 18, compared to 16 for heterosexual acts, until another revision in 2002 brought the age of consent for both different and same-sex acts to 17 (Kamenou, 2012; Tryfounidou, 2018).

The situation in the Turkish Republic of Northern Cyprus is different, as the northern territory lies outside the EU's jurisdiction. Attempts to decriminalise started in 2006, notably due to a lobbying campaign from Turkey to integrate the EU (Bowcott, 2014). The Initiative Against Homophobia (now Queer Cyprus Association) was established in 2007 as the first LGBTI organisation in Northern Cyprus and started its campaign for the decriminalisation of same-sex acts. However, after successive arrests for homosexuality in Northern Cyprus in 2011, including the infamous arrest of a former Finance Minister, the Initiative Against Homophobia escalated the concerns, thereby mobilising Members of the European Parliament (MEPs) and international human rights organisations on this issue. British Conservative MEP Marina Yannakoudakis publicly campaigned for the decriminalisation of same-sex acts in Northern Cyprus since the time of the arrests (Evripidou, 2013). Despite reinsurance from Northern Cyprus President Derviş Eroğlu that he would sign a bill decriminalising same-sex acts into

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<sup>30</sup> Apeleftherotiko Kinima Omofilofilon Kiprou (AKOK)

law, consistent delays in bringing words to action led to two cases being brought to the Constitutional Court in Northern Cyprus and ECtHR by the Human Dignity Trust, leaving Turkey to defend the legacy of British colonialism. The threat of a legal challenge motivated prompt change, and the Turkish Republic of Northern Cyprus finally abolished the remaining provisions in 2014 (*H.Ç. v. Turkey*, 2014).

### **The role of the EU in promoting LGBTI rights**

Since its accession to the EU, Cyprus has had to bring its human rights laws in line with the rest of the EU countries. One of the first EU directives transposed related to anti-discrimination, and set up an equality body to investigate discrimination based on sexual orientation and gender identity (Council Directive 2000/43/EC, 2000a; Council Directive 2000/78/EC, 2000b). At first, no complaints had been raised to the Ombudsman office as LGB Cypriots were reluctant to disclose their sexual orientation publicly in face of a very homophobic society (Danish Institute for Human Rights and COWI, 2009). The first complaint received on the issue of sexual orientation was raised by a UK national who was declined the right to have their same-sex partner join them in Cyprus. The state position at that time was to leave the matter unregulated until a complaint arose. In 2010, the equality body filed two reports on the need to legally recognise same-sex relationships, which led to the creation of the first LGBTQI NGO *Accept* in Southern Cyprus. The reports created some homophobic backlash, notably from Members of Parliament. This led to another report from the Ombudsman on the prevention and handling of homophobic rhetoric in 2012, which led to the criminalisation of homophobic rhetoric as hate speech in 2015. The Republic of Cyprus made civil partnerships available to same-sex couples that same year.

Since the international community does not recognise the Turkish Republic of Northern Cyprus, monitoring of the implementation of international human rights instruments in Northern Cyprus is limited. Consequently, little improvement has been made since Northern Cyprus had decriminalised same-sex acts in 2014 (Human Dignity Trust, 2020d).

### **Social attitudes towards homosexuality in Cyprus**

Cypriot's social attitudes towards homosexuality are greatly influenced by religion, as 89% of citizens living in the Republic of Cyprus are members of the Orthodox Church (Pew Research Center, 2015).<sup>31</sup> Church representatives have frequently made homophobic declarations, notably stating that homosexuality is a 'sin' or 'unnatural' (Fenwick, 2016). The Church also has strong ties in politics, the economy and the media, which give them a significant platform to communicate on the issue of 'morals', sexuality and same-sex relationships. Moreover, the Cypriot society is very conservative, with traditional views on sexual and gender norms, and where sexuality is taboo. Consequently, the majority of LGBT Cypriots are not willing to disclose their sexual orientation for fear of prejudice (Danish Institute for Human Rights and COWI, 2009; Jansen and Spijkerboer, 2011).

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<sup>31</sup> According to a 2011 census.

A 2006 survey of EU countries revealed that only 14% of (Southern) Cypriots thought that same-sex couples should be allowed to marry throughout Europe, and 10% thought they should be allowed to adopt. This compares to an average of 44% and 32% respectively for other EU countries (European Commission, 2007, pp.43-46). However, in 2015, 37% of Cypriots considered that same-sex marriage should be allowed throughout Europe (European Commission, 2015, p.51),<sup>32</sup> showing an improvement in social attitudes towards homosexuality. Attitudes and public discourse towards same-sex relationships are indeed improving, with pride events held annually since 2014 and candidates to the presidential elections now meeting with LGBTI civil society. The work of domestic civil society and the Ombudsman is slowly contributing to the shifting of social attitudes on homosexuality towards a less conservative model by bringing more visibility to the experiences of LGBTI Cypriots. However, there is still more work to be done, as an analysis of LGBT content in Greek Cypriots newspapers between 2011 and 2015 demonstrated an overrepresentation of public figures' statements in newspapers (Kadianaki, Panagiotou and Avraamidou, 2018), which prevent LGBT voices and civil society to be heard. Cyprus is ranked 29 out of 49 European countries by ILGA Europe (2022), notably because homophobic rhetoric is still a problem in both territories.

## Reflections

The case study of Cyprus demonstrates two important levers for decriminalisation. First, membership to international organisations can be a key bargaining point to promote LGBTI rights. This has been the main driver for decriminalisation of same-sex acts in both Southern and Northern Cyprus. In this context, the Cyprus case study is also a good example of the 'boomerang effect' described by Keck and Sikkink (1998), whereby domestic activists seek international allies to change the state behaviour. Secondly, membership to international organisations can be essential to drive change and ensure human rights compliance by providing scrutiny, reporting mechanisms and legitimising space for LGBTI civil society organisations to operate (Kamenou et al., 2019). One of the most flagrant examples is the time it took for Northern Cyprus, the territory belonging outside of EU jurisdiction to decriminalise same-sex conduct in comparison to the southern part of the country. The institutionalisation of human rights organisations, through the Ombudsman's office for instance, and the socialisation of Cyprus officials through the EU had empowered the civil society to use these channels to promote change domestically. It would be interesting to see to what extent membership to the EU furthers the LGBTI rights gap between the two territories or whether progress in the Republic of Cyprus will drive change in Northern Cyprus, especially in the context of social attitudes towards homosexuality improving, and LGBTI issues being more visible in the island.

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<sup>32</sup> This compares to an average of 61% of EU countries saying same-sex marriages should be allowed throughout Europe.

## **Sri Lanka (Asia)**

Sri Lanka's recent disasters, a deadly civil war and tsunami, have deeply affected the political, economic and social make-up of the country. Despite a strong advocacy operating at both domestic and international levels for more than a decade, the decriminalisation of same-sex acts is not yet in sight. This situation begs us to ask the following questions: what are the factors allowing Sri Lanka to resist change? Will the recent CEDAW Committee ruling against Sri Lanka favour the decriminalisation of same-sex acts in the country or will the India's Supreme Court judgement act as a catalyst for change instead?

### **History, Geography and Economy**

Sri Lanka is an island located south of India, and is strategically positioned in the Silk Road, making the country a centre for trade. The country counts around 21,861,292 inhabitants, ethnically divided between the Sinhalese (75%) Sri Lankan Tamils (12%) and Indian Tamils (6%) (UN Secretariat, 2022b). Sinhalese people are in majority Buddhist, whilst Tamils follow Hinduism. Other religions practised in Sri Lanka include Islam and Christianity (Department of Census and Statistics, 2012). The two official languages are Sinhala and Tamil, although English is referred to as a 'link language' in the Sri Lankan Constitution (2015, art.18(3)) and is spoken by about 10% of the population, including government officials (Central Intelligence Agency, 2022b).

Evidence of human settlements found in the island date back to 125,000 BCE although the first Sinhalese arrived from northern India in the 6<sup>th</sup> century BCE. In 250 BCE, the Buddhist monk Arahata Mahinda converted the monarch of the Anuradhapura kingdom to Buddhism, thereby introducing the religion to the island (Arasaratnam and Peiris, 2022). Tamils are said to descend from the Jaffna Kingdom established by the Aryacakravarti dynasty at the beginning of the 13<sup>th</sup> century, although some researchers argue that the Kingdom was established before then (Arunthavarajah, 2014).

Sri Lanka has known the occupation of three different colonial powers. The country was first settled by the Portuguese Empire when the explorer Lourenço de Almeida arrived in the island in 1505. The Portuguese settled in Colombo and gradually extended their control over the coastal areas, fighting off the Kingdom of Kandy. Dutch explorers reached the island a century later, when the Dutch East India Company signed a treaty with the king of Kandy to chase off the Portuguese from the coast. However, the Dutch East India Company retained an area as compensation for the cost of war and gradually extended their land (Arasaratnam and Peiris, 2022).

Fearing an invasion of Sri Lanka by Napoleon who had already seized the Netherlands, the British Empire decided to occupy the coastal areas of Sri Lanka in 1796, and renamed the island Ceylon. In 1802, the Treaty of Amiens ended the hostilities between the French and British Empire, and conceded the entirety of the coastal areas to the British East India Company. Numerous internal rebellions were fought off by the British Empire and finally concluded with the exile of Vikrama Rajasingha, the last monarch of Kandy. In 1833, reforms were implemented in Ceylon, introducing a liberal political culture, the rule of law and a

capitalistic agriculture based on the plantation industry, with the cultivation of coffee, tea, rubber and coconut (Arasaratnam and Peiris, 2022). In 1948, Sri Lanka was granted independence with dominion status within the British Commonwealth. Following its independence, Sri Lanka obtained membership to an array of international organisations such as the Commonwealth, the International Monetary Fund, the World Bank and the United Nations (UN).

In 1956, the second Prime Minister of Sri Lanka, S.W.R.D. Bandanaraikē introduced the Sinhala Only Bill, which replaced English with Sinhalese as the only official language of the Government. This measure antagonised the Tamil community and tensions between the Sinhalese and Tamil communities emerged with protests from the opposition and the Buddhist clergy, until Prime Minister Bandanaraikē was assassinated by a Buddhist monk in 1959. The widow of Bandanaraikē became Prime Minister, thereby becoming the first woman in the world to be elected head of government. Her government introduced socialist economic policies, promoting ties with the Soviet Union and China whilst pursuing a policy of non-alignment. The introduction of an affirmative action policy allowing disadvantaged students to access tertiary education resulted in reducing the ratio of Tamil students at university and gave grounds for the establishment of a Tamil militancy. In 1975, the Mayor of Jaffna was assassinated for being considered a government collaborator by men who would form a year later, the Tamil militant organisation 'Liberation Tigers of Tamil Eelam' (LTTE). In 1977, the Government of J.R. Jayawardene broke with the socialism of the previous government and introduced a new constitution, a free-market economy and an executive presidency. Sri Lanka became then the first South Asian country to liberalise its economy (Arasaratnam and Peiris, 2022).

The Sri Lankan civil war started in 1983 when the LTTE initiated insurgencies against the Government. Although peace negotiations led by Norway resulted in a ceasefire in 2002, the civil war only ended in 2009, when President Mahinda Rajapaksa's government finally defeated the LTTE and regained control over the whole territory. In these years of conflict, it is estimated that between 80,000 and 100,000 people died, and 800,000 people were displaced at the peak of the conflict in 2001 (Human Rights Instrument, 2008, para.55). In 2004, Sri Lanka faced a devastating tsunami which killed over 35,000 people in the country and displaced over 500,000 people (Human Rights Instrument, 2008, para.55). Both disasters had severe impact at individual, family and collective levels, with post-traumatic stress disorder, alcohol misuse, high suicide rate and a tearing of the social fabric (Somasundaram, 2013).

In the post-conflict years, the Sri Lankan Government committed to improve good governance and accountability for human rights violations, following a UN report on alleged war crimes from both the Government and LTTE during the last years of conflict (United Nations Secretary-General, 2011). This included a programme of constitutional reform and a decrease in executive powers. In 2015, the Government of Sirisena backed a UN resolution setting out transitional justice mechanisms but implementation has been slow and uneven. As a result, Sri Lanka has been ranked 'partially free' by the Freedom House (Freedom House, 2022), whilst impunity for human rights violations and corruption remain a problem in the country, with the country ranking 91 out of 180 in the 2017 corruption perceptions index (Transparency International, 2021).

Sri Lanka is one of the fastest growing economies of the world, and ranks above other South Asian countries in the Human Development Index. The main country's economic sectors are tourism, tea export, clothing and rice production. However, the country's debt is high, notably due to overinvestment in infrastructure development projects, to the point of requiring a bailout from the International Monetary Fund in 2017 (Central Intelligence Agency, 2022b).

### **Institutional framework and political context**

Former President Maithripala Sirisena's manifesto included setting up a 100-day reform programme, including constitutional reform and implementation of accountability mechanisms. Some of the measures were carried out but the current Constitution still does not contain any provisions recognising the separation of powers or guaranteeing the independence of the judiciary.<sup>33</sup> International organisations and observers have welcomed the reforms but thought they fell short to ensure 'meaningful and participatory transitional justice mechanisms' (UNGA, 2017a, para.97). Since then, the Constitution was amended with the view to curb the executive powers of the President and to empower the parliament.

Sri Lanka's legal system reflects its cultural diversity, with civil law emanating from Roman-Dutch law, criminal law from English common law whilst family law (e.g., marriage) is emanating from Kandyan and Jaffna Tamil customary law and Muslim personal law (Human Rights Instrument, 2008, para.74). Some authors have argued that personal laws are a reason for the continuous criminalisation of same-sex acts (Panditaratne, 2016, p.181). The highest court is the Supreme Court, which is the final court of appeal and which has constitutional jurisdiction. Article 12(2) of the Sri Lankan Constitution (2015) states that 'no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.' In the case *Wimalasiri v Maradana Police Station OIC and Another* (2016), involving an 'act of gross indecency', the Supreme Court stated:

The contemporary thinking, that consensual sex between adults should not be policed by the state nor should it be grounds for criminalisation appears to have developed over the years and may be the rationale that led to repealing of the offence of gross indecency and buggery in England. The offence however remains very much a part of our law (p.12).

In 2022, a parliamentarian introduced a Private Member's Bill to with the view to decriminalise same-sex acts. Current President Ranil Wickremesinghe said his government would not oppose the bill but does not support its passage either, as he called on parliamentarians to vote on their private conscience (Lavers, 2022).

### **Sexual orientation and gender identity in Sri Lanka**

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<sup>33</sup> Although independence of judiciary is set out in the preamble.

There is some evidence pointing towards tolerant social attitudes in regard to homosexuality prior to colonisation of the island. Indeed, accounts from Portuguese and Dutch colonisers reported the 'sinful' acceptance of same-sex conducts in the country. In 1547, the Portuguese wrote to the Governor of Goa stating that 'the sin of sodomy is so prevalent in this kingdom of Cota that it almost frightens us to live here' (Perniola, 2017, p.239). Sri Lanka inherited from the laws of its last occupier, the British Empire, and retained these laws after independence.

Also, Article 365 of the Sri Lankan Penal Code (1885) states that 'whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine'. Article 365(a) criminalises acts of gross indecency between persons, whether attempted or committed, in public or in private. This offence can be punished with up to a two-year imprisonment sentence and a fine. Since 1995, in an attempt to prevent child sex tourism, both articles were amended to provide for stiffer sanctions in case of offences involving a minor, applying a prison sentence between ten and twenty years, a fine and compensation for the victim (Panditaratne, 2016, p.192-193). Article 365(a) was also amended to replace the word 'males' with 'persons', *de jure* and *de facto* criminalising same-sex acts between women (Women's Support Group, 2011, p.2). The Sri Lankan Penal Code (1885) also states that someone pretending to be someone else, i.e., 'cheat by personation', should be punished with imprisonment and/or fine (art. 399 and 400). This law is coexisting with the right for transgender persons to legally change their gender or undergo sex reassignment surgery.

Although there has been no conviction under Articles 365 and 365(a) since Sri Lanka's independence (Equal Ground & Others, 2013), human rights organisations have reported that the police use the legal framework and 'the threat of arrest to assault, harass, and sexually and monetarily extort LGBTI individuals' (US Department of State, 2017). In 2011, an NGO Shadow report to the Committee on Convention on the Elimination of Discrimination against Women (CEDAW) reported that some women in same-sex relationships had committed suicide because of their inability to live openly, as well as arrests of transwomen and transmen for 'misleading the public' about their 'true sexual identity' (Women's Support Group, 2011, p.4). A report published by Human Rights Watch (2016) found that a general lack of acceptance of gender non-conformity as well as a repressive legal framework enabled abuses by state officials, including the police, and the general public (Human Rights Watch, 2016a). Annual pride events in Colombo have been taking place since 2002 but organisers are still receiving death and violence threats (Barker, 2016).

### **Government's position on LGBTI rights**

Successive governments have issued conflicting stances in regard to LGBTI rights. Statements from heads of state have varied from encouraging dialogue with LGBTI organisations and openly considering decriminalisation of same-sex acts to blatant homophobia (Ibrahim, 2017). Recent positive steps include the Government stating that the Constitution bans discrimination based on sexual orientation in a written communication to the UN (OutRight Action International, 2014). In November 2016, Sri Lanka also voted against the plan to get rid of the UN Independent Expert on violence and discrimination based

on sexual orientation and gender identity, becoming one of the only two countries supporting the mandate that still criminalises same-sex acts (Erasing 76 crimes, 2016). However, at the beginning of 2017, Cabinet members from the Sri Lankan government made public they had rejected plans to decriminalise same-sex acts (PinkNews, 2017). A month later, a joint statement issued by 12 members of the civil society stated that the Government had stopped consulting the civil society and that revisions were made to the National Human Rights Action Plan 2017-2021 in relation to decriminalisation of same-sex acts and sex work without their input (Sri Lanka Brief, 2017). In November 2017, the Government launched the National Action Plan but failed to include the decriminalisation of same-sex acts in the plan or to set out steps to tackle discrimination against sexual orientation. The only commitment referring to sexual orientation is the commitment to 'eliminate discriminatory practices within healthcare settings based on perceived or actual HIV status, sexual orientation and gender identity including steps to remove structural and systemic barriers, through in-service training programmes for healthcare staff' (Sri Lanka Government, 2017). However, the Plan commits to review and 'amend the Constitution to guarantee the right to non-discrimination on any prohibited basis including sex, race, ethnicity, religion, caste, place of origin, gender identity, disability or any other status' (Sri Lanka Government, 2017).

In 2017, Sri Lanka also negotiated its accession to the EU Generalised System of Preferences Plus (GSP+), which provides for preferential trade incentives to implement conventions on human rights, labour rights, good governance and sustainable environment (European Commission, 2017). However, the country has been allowed to access the scheme without decriminalising same-sex acts, which means Sri Lanka is at odds with the scheme's requirement to comply with the International Covenant on Civil and Political Rights (Thapa, 2017; Wickramasinghe, 2017).

According to an analysis from Panditaratne (2016), factors preventing the decriminalisation of same-sex acts in South Asian countries include the assumption that the criminalising provisions are not enforced in practice and that they are necessary to prevent child abuse. Other factors include a 'popular and political desire, borne out of the experiences of colonialism, to assert a 'cultural' and 'moral' independence from the West', legal frameworks and discourses focusing on addressing religious and ethnic divisions rather than focusing on equality, and the existence of extended family networks and multigenerational households, which counteracts the notions of intimacy and privacy (Panditaratne, 2016, p.174).

### **Internationalisation of domestic mobilisation**

The civil society in Sri Lanka has been efficient in using UN human rights mechanisms and drawing attention to the fact that the state was criminalising same-sex acts for more than a decade. Shadow reports have been submitted by domestic and international NGOs to UN treaty bodies (e.g., Women's Support Group, 2011) and during Sri Lanka's Universal Periodic Review (UPR). In Sri Lanka's first UPR (UNGA, 2008a), national and international civil society organisations submitted evidence showing the negative consequences of the criminalisation of same-sex acts for LGBTIQ persons. However, no recommendations had been made by other UN member states, the recommendations made largely focusing on ensuring human rights and accountability mechanisms are in place to address gross human rights violations



committed during the Sri Lankan civil war (UNGA, 2008b). In its second UPR, Sri Lanka rejected member states' recommendations to decriminalise same-sex acts and eliminate discriminatory treatment against gender identity and sexual orientation (UNGA, 2012, 128.24 and 128.53). In its third UPR, the country has accepted all six recommendations to combat discrimination against LGBTI people and has noted the seven recommendations to decriminalise same-sex conducts (UNGA, 2017b, 116.37 to 116.39 and 117.24 to 117.25). The Government representative at the UPR stated that '[d]espite social, political and cultural challenges that remain with respect to reforming law, Sri Lanka remains committed to law reform and guaranteeing non-discrimination on the grounds of sexual orientation and gender identity' (Moore, 2017).

The statement from Equal Ground (Moore, 2017), one of the main LGBTIQ organisations in Sri Lanka, speaks volumes of the importance put in human rights mechanisms and the domestic organisation's connection to the international community:

We welcome the Government of Sri Lanka's willing and continued engagement with the Human Rights Council and the UPR process, and commend in particular our government's commitment to the full realisation of human rights for all citizens in the country. [...] We are very grateful for the efforts of the international community who continue to raise their concerns over the treatment of the LGBTIQ community in Sri Lanka and greatly appreciate the recommendations that have been made today.

## Reflections

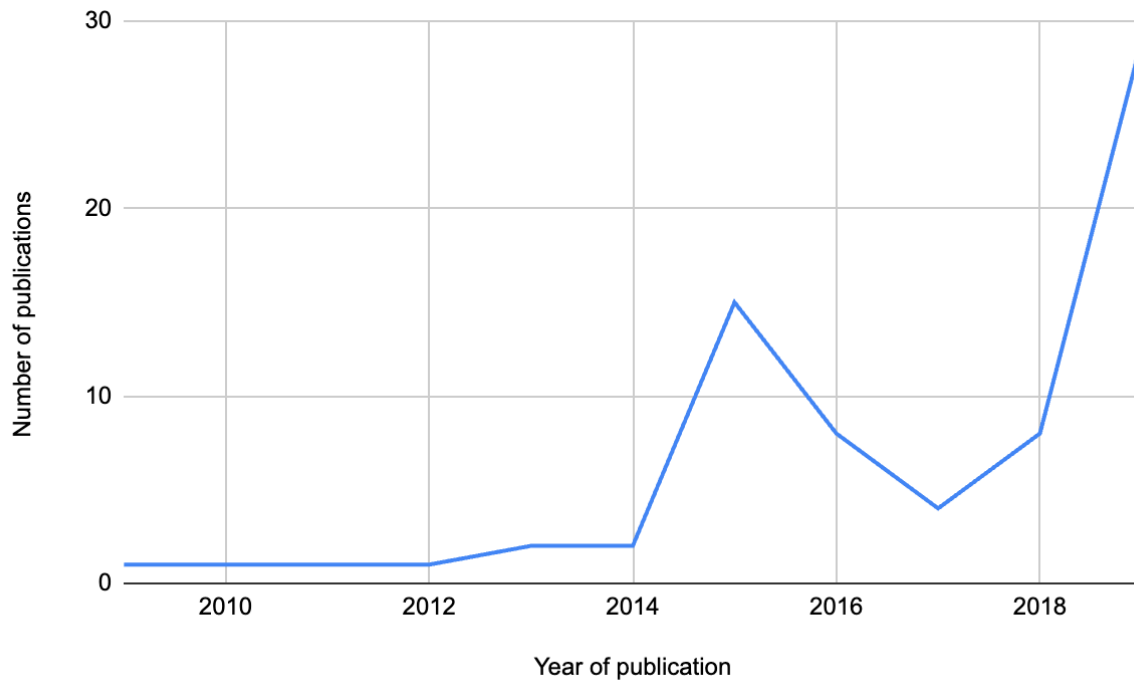
The development of strong advocacy for the decriminalisation of same-sex acts in Sri Lanka shows that the civil society uses all international human rights mechanisms at their disposal to leverage their government. However, decriminalisation is still not in sight. It can be argued that it is difficult to focus the attention of the Government on this specific issue whilst the priority is given to rebuilding a country torn by a deadly civil war and natural disaster. Nevertheless, such recurring calls to decriminalise could have equally been acted on by now, especially when the Government is assuring its commitment to human rights at the international level. Risse, Ropp and Sikkink (2013) argue that in order for states to move towards compliance with human rights, some pre-conditions need to be met, such as the existence of a democratic regime and the state's capability to implement rules over its entire territory (Risse, Ropp, and Sikkink, 2013). However, Sri Lanka is deemed to be a 'flawed democracy' according to the Democracy Index 2021, with remaining issues of corruption and impunity for human rights violations (The Economist intelligence Unit, 2021). Furthermore, in order to appease relations with minority ethnic communities, the Sri Lankan Government has allowed minorities to preserve their own personal laws. By doing so however, the state influence and power to implement rules is more limited (Panditaratne, 2016, p.181-182), thereby giving credence to the prerequisites leading to human rights compliance developed by Risse, Ropp, and Sikkink (2013).

The recent India's Supreme Court ruling in favour of the decriminalisation of same-sex acts may have an impact on Sri Lanka, given the similarity of the criminalising provisions.

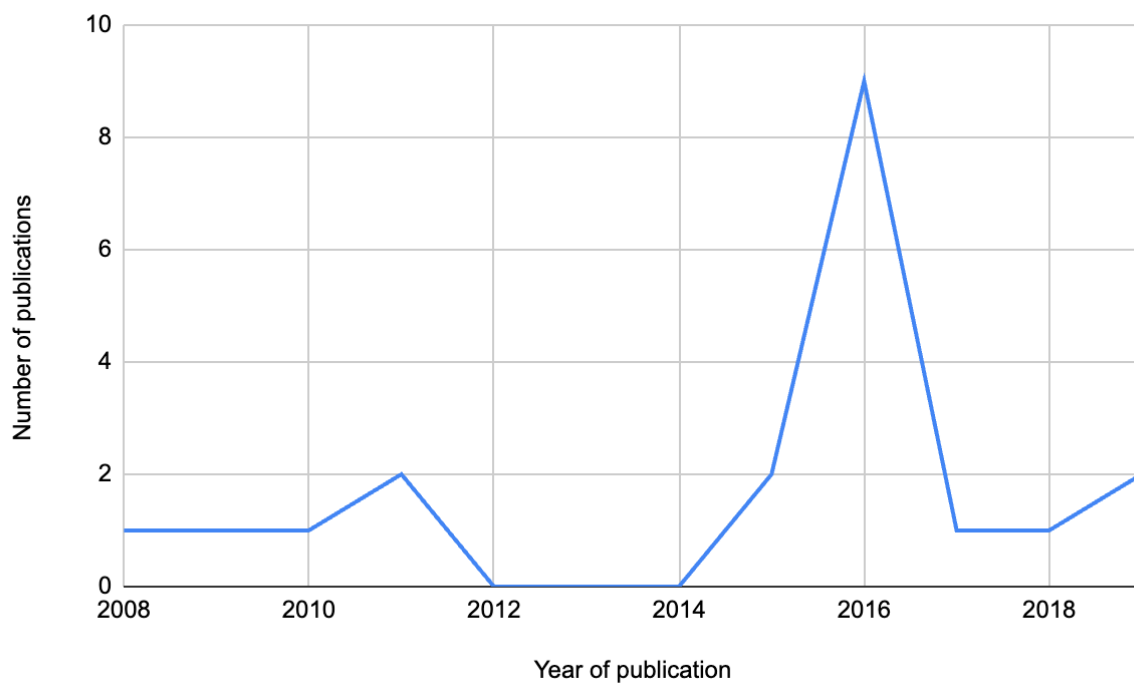
Moreover, the CEDAW Committee found in *Flamer-Caldera v Sri Lanka* (2022) that the criminalisation of consensual same-sex acts between women violated the claimant's right to non-discrimination, to be protected from gender-based violence, to participate in the public and political life of the country, to equality before the law, and her family rights. It will be interesting to see whether the path towards decriminalisation will result from international mechanisms and pressure, including via the upcoming passage of a Private Members' Bill (Lavers, 2022) or whether the civil society will take it to the courts, with the hope of a similar ruling.

## Appendix B: List of Figures

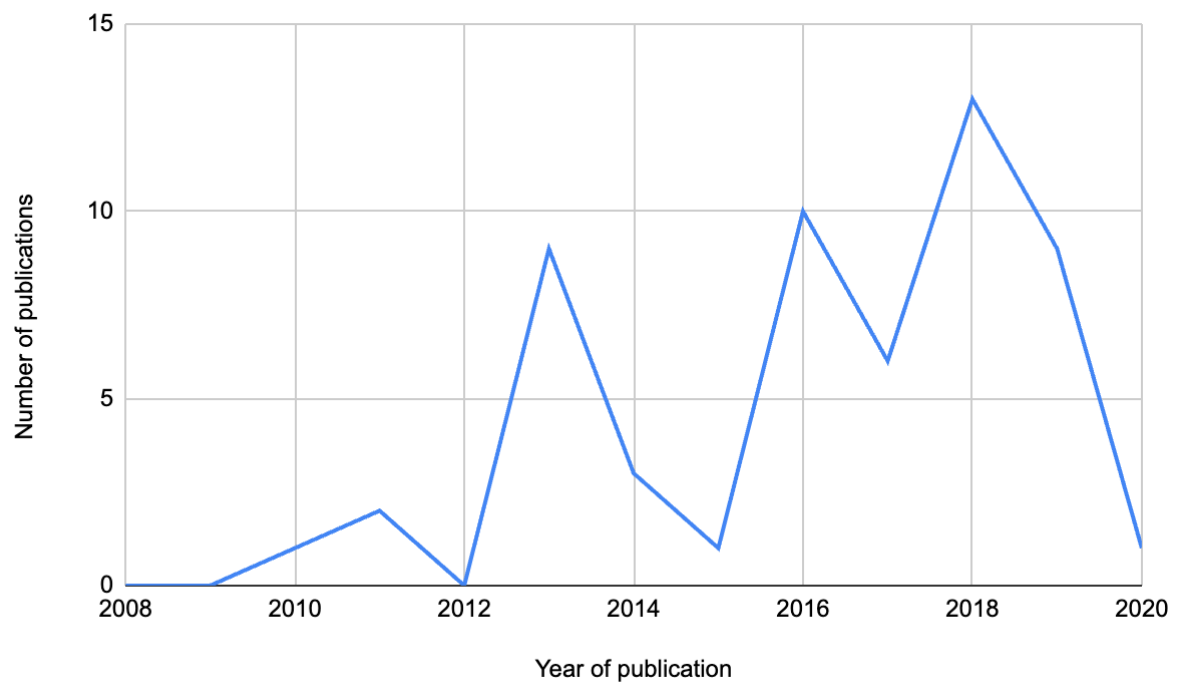
**Figure 1: Number of publications mentioning Mozambique in relation to the decriminalisation of same-sex acts or LGBT rights per year**



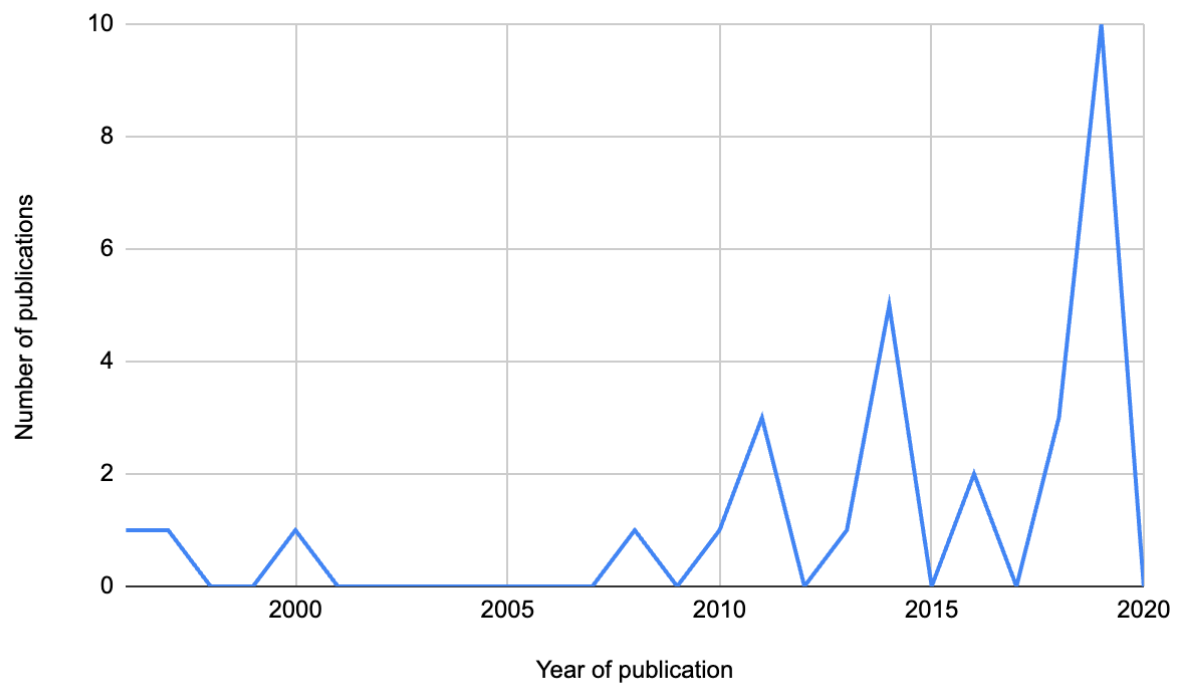
**Figure 2: Number of publications mentioning Nauru in relation to the decriminalisation of same-sex acts or LGBT rights per year**



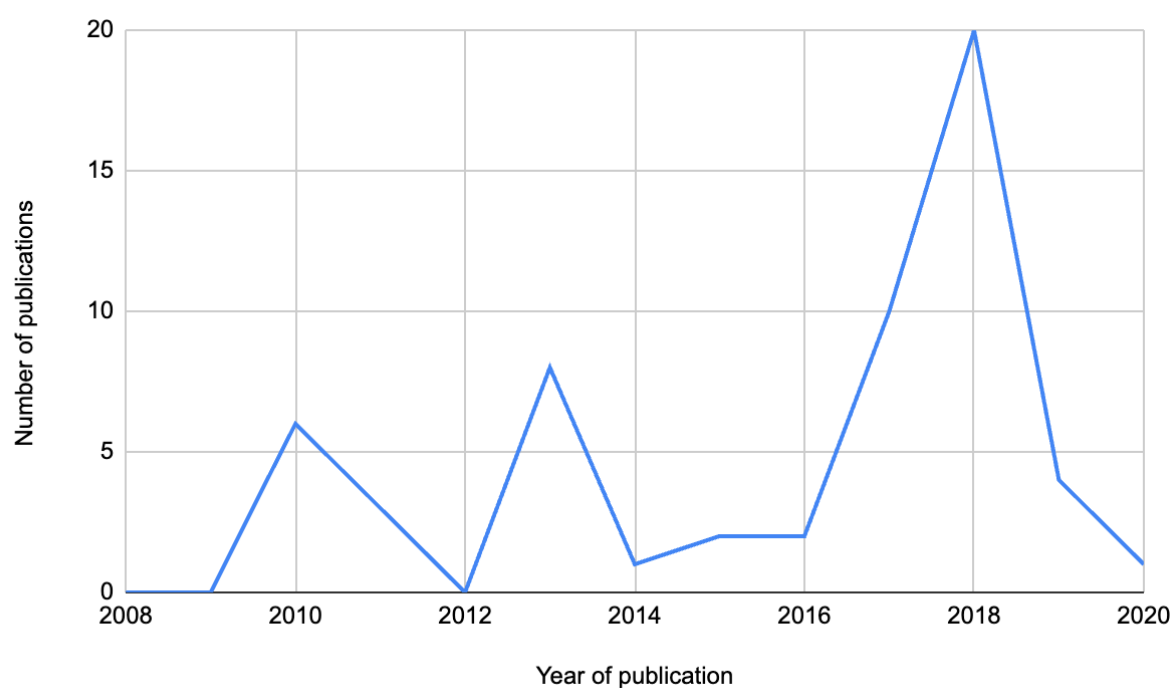
**Figure 3: Number of publications mentioning Belize in relation to the decriminalisation of same-sex acts or LGBT rights per year**



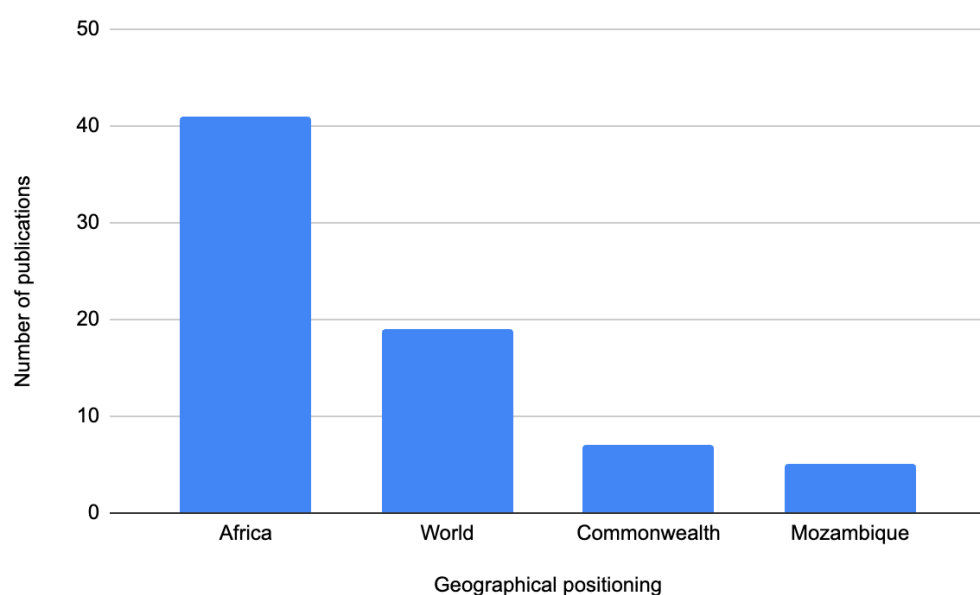
**Figure 4: Number of publications mentioning Cyprus in relation to the decriminalisation of same-sex acts or LGBT rights per year**



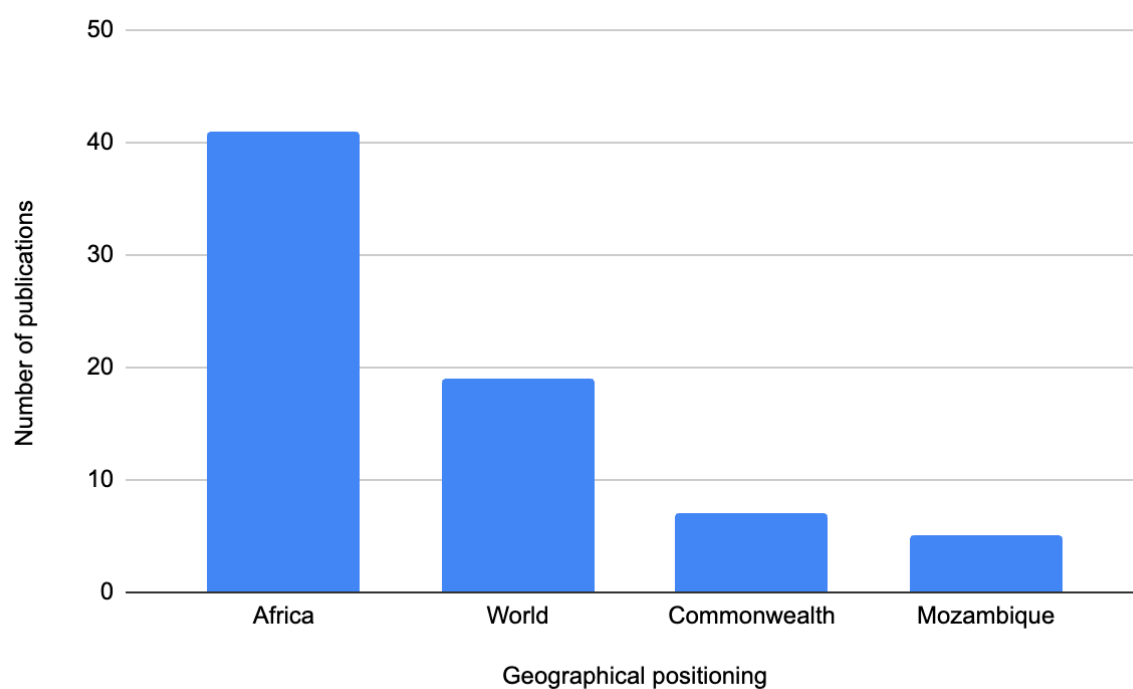
**Figure 5: Number of publications mentioning Sri Lanka in relation to the decriminalisation of same-sex acts or LGBT rights per year**



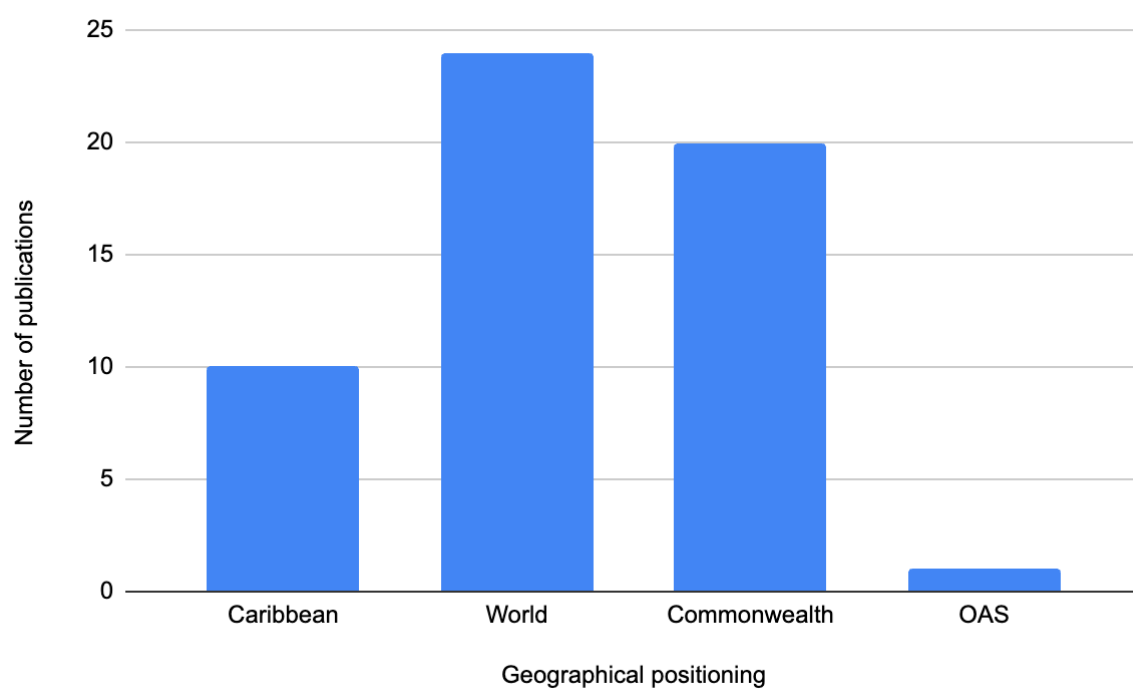
**Figure 6: Mozambique's geographical positioning in publications covering Mozambique and the decriminalisation of same-sex acts or LGBT rights**



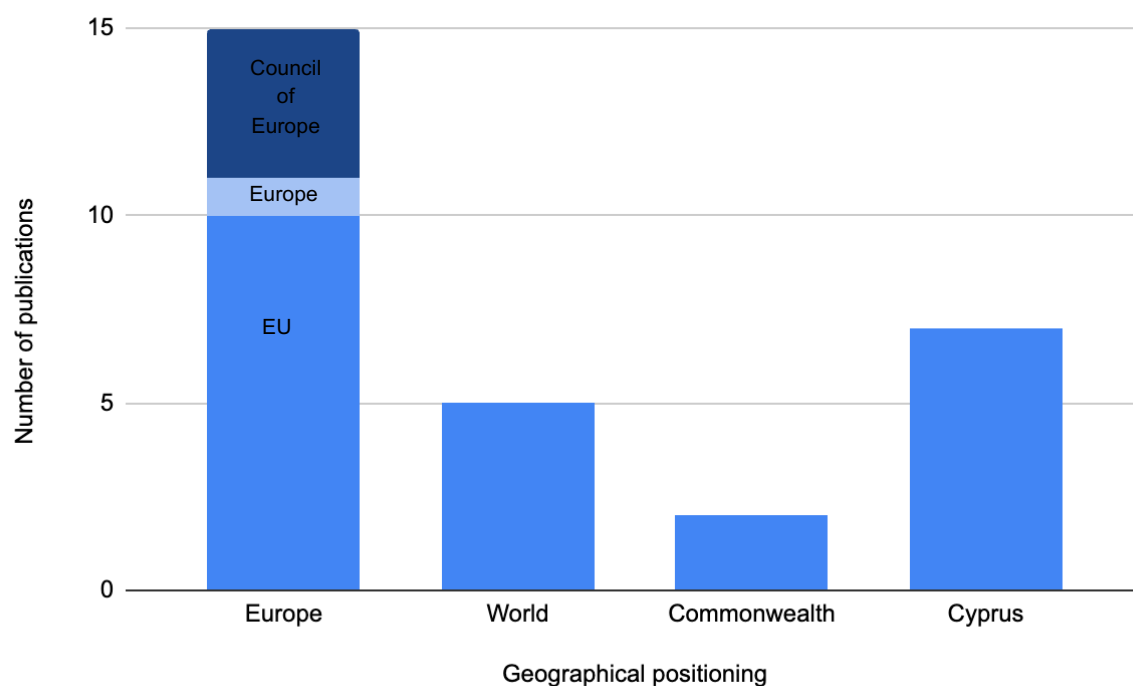
**Figure 7: Nauru's geographical positioning in publications covering Nauru and the decriminalisation of same-sex acts or LGBT rights**



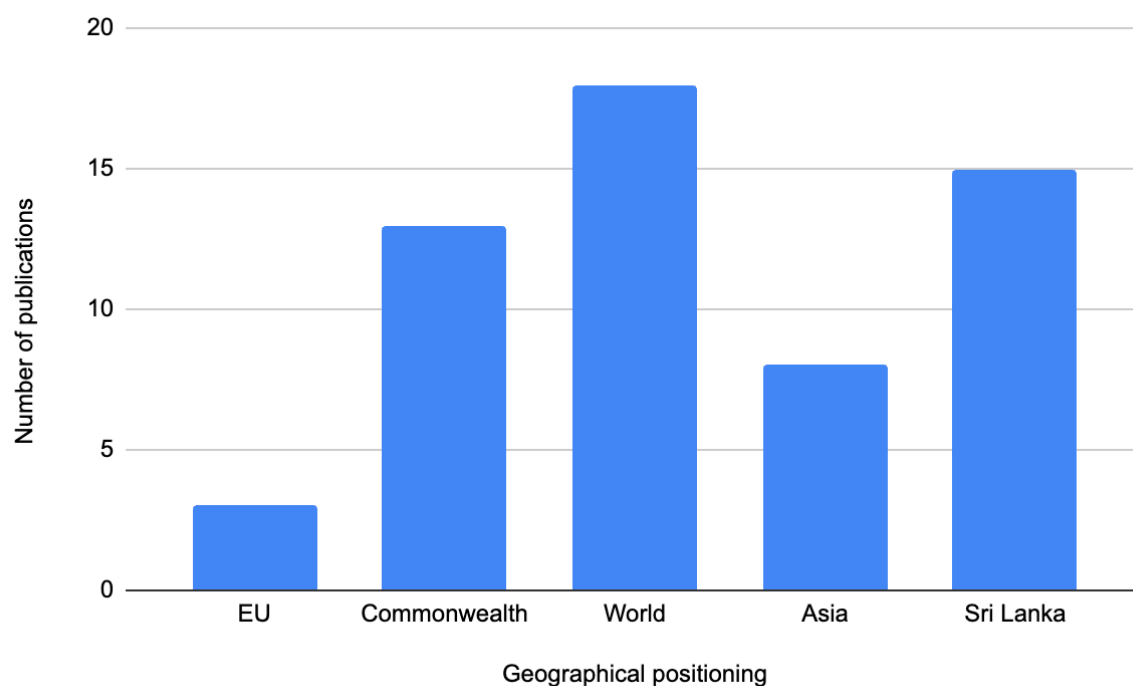
**Figure 8: Belize's geographical positioning in publications covering Belize and the decriminalisation of same-sex acts or LGBT rights**



**Figure 9: Cyprus' geographical positioning in publications covering Cyprus and the decriminalisation of same-sex acts or LGBT rights**



**Figure 10: Sri Lanka's geographical positioning in publications covering Sri Lanka and the decriminalisation of same-sex acts or LGBT rights**



## Appendix C: Document analysis sources

### Mozambique

Ref.	Date	Author(s) & Source(s)	Title	Qualitative Analysis - Theme	Quantitative Analysis - Positioning	Link	Last accessed
<b>M1</b>	05 August 2009	Christi Van Der Westhuizen, Inter Press Service, Africa News	Rights: Outspoken Activists Defend Continent's Sexual Diversity	Mozambique criminalising same sex acts amongst other African countries	Africa	<a href="https://www.ipsnews.net/2009/08/rights-outspoken-activists-defend-africas-sexual-diversity/">https://www.ipsnews.net/2009/08/rights-outspoken-activists-defend-africas-sexual-diversity/</a>	27 May 2023
<b>M2</b>	10 June 2010	Human Rights Council, ReliefWeb; States News Service	Human Rights Council adopts outcomes of universal periodic review of Angola, Iran and Madagascar	Mozambique and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://reliefweb.int/report/angola/human-rights-council-adopts-outcomes-universal-periodic-review-angola-iran-and">https://reliefweb.int/report/angola/human-rights-council-adopts-outcomes-universal-periodic-review-angola-iran-and</a>	27 May 2023
<b>M3</b>	19 November 2010	Lurleen, Pam's House Blend	Gays on safari in Kenya are now themselves fair game	Mozambique and human rights mechanisms	World	Available on Nexis' database	27 May 2023
<b>M4</b>	10 July 2011	Right Vision News	Pakistan: Homosexuality permitted in 113 countries, illegal in 76	Mozambique criminalising same sex	World	Available on Nexis' database	27 May 2023
<b>M5</b>	25 June 2012	Jocelyne Sambira, Africa Renewal (United Nations); Africa News	Making Waves: Malawi revives debate on gay rights	Mozambique softening laws on criminalisation	Africa	<a href="https://www.un.org/africarenewal/web-features/making-waves-malawi-revives-debate-gay-rights">https://www.un.org/africarenewal/web-features/making-waves-malawi-revives-debate-gay-rights</a>	27 May 2023



				of same sex acts			
<b>M6</b>	27 June 2013	CNN International Connect the world 4pm EST	Barack Obama Visits Slave Outpost Goree Island	US speech	Africa	Available on Nexis' database	27 May 2023
<b>M7</b>	25 June 2013	Gabriel Hoosain Khan, Gender Links, Africa News	Human Rights; Thinking Beyond the Boxes	Mozambique soft acceptance amongst other African countries	Africa	Available on Nexis' database	27 May 2023
<b>M8</b>	26 February 2014	Mark Epprecht, CNN.com	Opinion: Is Africa the most homophobic continent?	Mozambique soft acceptance amongst other African countries	Africa	<a href="https://edition.cnn.com/2014/02/28/opinion/uganda-anti-gay-law-marc-epprecht/index.html">https://edition.cnn.com/2014/02/28/opinion/uganda-anti-gay-law-marc-epprecht/index.html</a>	27 May 2023
<b>M9</b>	06 March 2014	The Independent; Africa News	Uganda; Will homosexuals bring down Museveni?	Mozambique soft acceptance amongst other African countries	Africa	<a href="https://www.independent.co.ug/will-homosexuals-bring-museveni/">https://www.independent.co.ug/will-homosexuals-bring-museveni/</a>	27 May 2023
<b>M10</b>	20 March 2014	Premium Official News; States News Service; OHCHR	Human Rights Council adopts outcomes of the Universal Periodic Review of Nigeria, Mexico and Mauritius	Mozambique and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-outcomes-universal-periodic-review-nigeria">https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-outcomes-universal-periodic-review-nigeria</a>	27 May 2023

<b>M11</b>	20 March 2014	Premium Official News; States News Service	Human Rights Council adopts universal periodic review outcomes of Jordan, Malaysia and Central African Republic	Mozambique and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-jordan">https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-jordan</a>	27 May 2023
<b>M12</b>	25 June 2015	Agence France Press	AFPTV Agenda for the week ahead	Mozambique decriminalise same sex acts	Mozambique	Available on Nexis' database	27 May 2023
<b>M13</b>	29 June 2015	Freedom House, Targeted News Service; States News Service	Mozambique Hailed for Decriminalizing Homosexuality	Mozambique referenced as a positive development in Africa	Africa	<a href="https://freedomhouse.org/article/mozambique-hailed-decriminalizing-homosexuality#:~:text=The%20decriminalization%20is%20part%20of,homosexuality%20laws%20on%20the%20continent.">https://freedomhouse.org/article/mozambique-hailed-decriminalizing-homosexuality#:~:text=The%20decriminalization%20is%20part%20of,homosexuality%20laws%20on%20the%20continent.</a>	27 May 2023
<b>M14</b>	29 June 2015	TVeyes, BBC World	Focus on Africa 5.37pm GMT	Mozambique decriminalise same sex acts	Mozambique	Available on Nexis' database	27 May 2023
<b>M15</b>	30 June 2015	Federal News Feed International, Business Time News	Zimbabwe President To Obama: Will You Marry Me?	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M16</b>	01 July 2015	David Smith, The Guardian	Mozambique LGBT activists move on to next battle after anti-gay law scrapped; New code erases colonial-era threat but group that lobbied for	Mozambique referenced as a positive development in Africa + lack of progress	Africa	<a href="https://www.theguardian.com/world/2015/jun/30/mozambique-lgbt-activists-anti-gay-law-scrapped">https://www.theguardian.com/world/2015/jun/30/mozambique-lgbt-activists-anti-gay-law-scrapped</a>	27 May 2023

			change does not yet have official recognition from government	within Mozambique			
<b>M17</b>	03 July 2015	Agencia de Informacao de Mocambique, Africa News	Mozambique; The Hopes of Gay Mozambicans	Mozambique soft acceptance	Mozambique	Available on Nexis' database	27 May 2023
<b>M18</b>	01 July 2015	John Hall, Mail Online; Nehanda Radio	Will you marry me, Mugabe mocks Obama	Mozambique referenced as a positive development in Africa + foreign interference	Africa	<a href="https://nehandaradio.com/2015/06/30/will-you-marry-me-mugabe-mocks-obama/?fbclid=IwAR2qG2wtbLUuF_Dv3cegQL4rtbkPhzofZa_8Pygfn75mo0AFSQ8rczMoSYY">https://nehandaradio.com/2015/06/30/will-you-marry-me-mugabe-mocks-obama/?fbclid=IwAR2qG2wtbLUuF_Dv3cegQL4rtbkPhzofZa_8Pygfn75mo0AFSQ8rczMoSYY</a>	27 May 2023
<b>M19</b>	19 July 2015	PM News; Business Day; Premium Times Nigeria; News Express Nigeria	Don't listen to Obama on gay issues- Group urges Buhari	Foreign interference in Africa	Africa	<a href="https://businessday.ng/exclusives/article/dont-listen-to-obama-on-gay-issues-group-tells-buhari/">https://businessday.ng/exclusives/article/dont-listen-to-obama-on-gay-issues-group-tells-buhari/</a>	27 May 2023
<b>M20</b>	20 July 2015	John Shiklam, This Day	CAN, Group Urge Buhari Not to Succumb to Pressure On Same Sex-Marriage As He Meets With Obama	Foreing interference in Africa	Africa	<a href="https://www.pressreader.com/nigeria/thisday/20150720/281612419090016">https://www.pressreader.com/nigeria/thisday/20150720/281612419090016</a>	27 May 2023
<b>M21</b>	23 July 2015	Newstex Blogs, Federal News, Feed International Business; Times News	More Vocal, More Organized And Much More Visible	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023

<b>M22</b>	10 September 2015	US Official News	Global Equality Report Highlights Opportunities and Challenges for LGBT People	Mozambique referenced as a positive development	World	Available on Nexis' database	27 May 2023
<b>M23</b>	14 September 2015	Cheikh Traore, Africa is a country	Reflections on the state of LGBT activism in Africa	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M24</b>	09 December 2015	UK Government News; Premium Official News	Rt Hon Anelay speech for International Human Rights Day	Foreing interference in Africa	Commonwealth	<a href="https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day">https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day</a>	27 May 2023
<b>M25</b>	18 December 2015	Charles Kenny, Atlantic Online	2015: The Best Year in History for the Average Human Being	Mozambique referenced as a positive development	World	<a href="https://www.theatlantic.com/international/archive/2015/12/good-news-in-2015/421200/">https://www.theatlantic.com/international/archive/2015/12/good-news-in-2015/421200/</a>	27 May 2023
<b>M26</b>	21 December 2015	Human Rights Watch; States News Service	Malawi: Moratorium on Anti-Gay Arrests Reaffirmed	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.hrw.org/news/2015/12/21/malawi-moratorium-anti-gay-arrests-reaffirmed">https://www.hrw.org/news/2015/12/21/malawi-moratorium-anti-gay-arrests-reaffirmed</a>	27 May 2023
<b>M27</b>	07 January 2016	Graeme Reid, World Economic Forum; Human Rights Watch; States News Service	Equality to brutality: global trends in LGBT rights	Mozambique referenced as a positive development	World	<a href="https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights">https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights</a>	27 May 2023

<b>M28</b>	25 January 2016	Zenaida Machado	Dispatches: Double Speak on LGBT rights	Lack of progress in Mozambique	Mozambique	<a href="https://www.hrw.org/news/2016/01/25/dispatches-mozambiques-double-speak-lgbt-rights">https://www.hrw.org/news/2016/01/25/dispatches-mozambiques-double-speak-lgbt-rights</a>	27 May 2023
<b>M29</b>	27 January 2016	Human Rights Watch; Targeted News Service	World Report 2016: 'Politics of Fear' Threatens Rights	Mozambique referenced as a positive development	World	<a href="https://www.hrw.org/news/2016/01/28/world-report-2016-politics-fear-threatens-rights">https://www.hrw.org/news/2016/01/28/world-report-2016-politics-fear-threatens-rights</a>	27 May 2023
<b>M30</b>	11 March 2016	State News Service	Human Rights Council holds panel discussion on human rights and HIV/AIDS	Mozambique and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2016/03/human-rights-council-holds-panel-discussion-human-rights-and-hiv-aids">https://www.ohchr.org/en/press-releases/2016/03/human-rights-council-holds-panel-discussion-human-rights-and-hiv-aids</a>	27 March 2023
<b>M31</b>	14 March 2016	Catherine Scott, Daily Dot; Newstex	Kenyan authorities try to censor gay music video, fail	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.dailydot.com/irl/google-kenya-anti-lgbt-music-video/">https://www.dailydot.com/irl/google-kenya-anti-lgbt-music-video/</a>	27 March 2023
<b>M32</b>	09 June 2016	States News Service; Africa Newswire	Eradicating AIDS by 2030 Requires Balanced Prevention, Treatment, Care Policies, Speakers Say as High-Level General Assembly Meeting Continues	Progress in HIV/AIDS reduction in Mozambique	Not counted in the quantitative analysis	<a href="https://press.un.org/en/2016/ga11788.doc.htm">https://press.un.org/en/2016/ga11788.doc.htm</a>	27 May 2023
<b>M33</b>	20 June 2016	European Union News	Council of the European Union: EU Annual Report on Human Rights and Democracy in the World in 2015	Mozambique referenced as a positive development	World	<a href="https://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf">https://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf</a>	27 May 2023

<b>M34</b>	30 June 2016	UN Foundation; Plus Company Updates	The Fight for Global LGBT Justice Cannot Wait	Mozambique referenced as a positive development	World	<a href="https://unfoundation.org/blog/post/the-fight-for-global-lgbt-justice-cannot-wait/">https://unfoundation.org/blog/post/the-fight-for-global-lgbt-justice-cannot-wait/</a>	27 May 2023
<b>M35</b>	21 September 2016	UN News; States News Service; US States News; Premium Official News	Ban calls for continued efforts to secure equal rights for LGBT community	Mozambique referenced as a positive development	World	<a href="https://news.un.org/en/story/2016/09/539942">https://news.un.org/en/story/2016/09/539942</a>	27 May 2023
<b>M36</b>	17 May 2017	Joe Biden, Washington Post Blogs	Joe Biden: Americans must stand with LGBT people around the world; LGBT rights have made progress around the world, but important work remains.	Mozambique referenced as a positive development	World	<a href="https://www.washingtonpost.com/opinions/joe-biden-americans-must-stand-with-lgbt-people-around-the-world/2017/05/16/3d42d360-3a51-11e7-8854-21f359183e8c_story.html">https://www.washingtonpost.com/opinions/joe-biden-americans-must-stand-with-lgbt-people-around-the-world/2017/05/16/3d42d360-3a51-11e7-8854-21f359183e8c_story.html</a>	27 May 2023
<b>M37</b>	28 October 2017	St. Louis Post- Dispatch	World Briefs	Mozambique referenced as a positive development	World	Available on Nexis' database	27 May 2023
<b>M38</b>	28 November 2017	Liam Anderson, Global Voices	After 10 Years of Legal Battles, Mozambique's Only LGBT Organization Takes a Step Closer to Legal Recognition	Mozambique referenced as a positive development	World	<a href="https://www.scribd.com/article/365782424/After-10-Years-Of-Legal-Battles-Mozambique-s-Only-Lgbt-Organization-Takes-A-Step-Closer-To-Legal-Recognition">https://www.scribd.com/article/365782424/After-10-Years-Of-Legal-Battles-Mozambique-s-Only-Lgbt-Organization-Takes-A-Step-Closer-To-Legal-Recognition</a>	27 May 2023
<b>M39</b>	15 December 2017	Eturbo News	East Africa: A threatening destination for LGBTQ	Lack of progress in Mozambique	Africa	Available on Nexis' database	27 May 2023

<b>M40</b>	03 March 2018	Mark Gevisser, The Guardian	House of Rainbow: the new pink line dividing the world	Mozambique as part of the Commonwealth	Commonwealth	<a href="https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world">https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world</a>	27 May 2023
<b>M41</b>	16 April 2018	Human Rights Watch, The Advocate; US Official News; Africa News	Commonwealth Should Address LGBT Rights	Mozambique as part of the Commonwealth	Commonwealth	<a href="https://www.hrw.org/news/2018/04/16/commonwealth-should-address-lgbt-rights">https://www.hrw.org/news/2018/04/16/commonwealth-should-address-lgbt-rights</a>	27 May 2023
<b>M42</b>	18 April 2018	BBC Radio 4	BBC Radio 4 - 9:35 PM GMT	Mozambique referenced as a positive development as part of the Commonwealth	Commonwealth	Available on Nexis' database	27 May 2023
<b>M43</b>	19 April 2018	BBC Radio 5	BBC Radio 5 Live - 1:00 PM GMT	Mozambique referenced as a positive development as part of the Commonwealth	Commonwealth	Available on Nexis' database	27 May 2023
<b>M44</b>	19 April 2018	BBC World	Global With Matthew Amroliwala - 3:40 PM GMT	Mozambique referenced as a positive development as part of the Commonwealth	Commonwealth	Available on Nexis' database	27 May 2023

<b>M45</b>	14 July 2018	Adam Withnall, The Independent	India on brink of biggest gay rights victory as Supreme Court prepares to rule on gay sex ban; Landmark ruling will have far-reaching and direct implications for other Commonwealth nations that still outlaw homosexuality	Mozambique referenced as a positive development as part of the Commonwealth	Commonwealth	<a href="https://www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html">https://www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html</a>	27 May 2023
<b>M46</b>	04 September 2018	States News Service	The future is not in front of us, it's inside us	Mozambique referenced as a positive development	World	Available on Nexis' database	27 May 2023
<b>M47</b>	25 October 2018	UN Press; States News Service	First united nations expert on sexual orientation presents inaugural human rights report to third committee, as others tackle justice, environment concerns	Mozambique and human rights mechanisms	World	<a href="https://press.un.org/en/2018/gashc4243.doc.htm">https://press.un.org/en/2018/gashc4243.doc.htm</a>	27 May 2023
<b>M48</b>	24 January 2019	Bukola Adebayo, CNN Wire; IANS-English; Human Rights Watch	Angola has decriminalized same-sex relationships, rights group says	Mozambique referenced as a positive development in Africa	Africa	<a href="https://edition.cnn.com/2019/01/24/africa/angola-strikes-out-anti-gay-laws-intl/index.html">https://edition.cnn.com/2019/01/24/africa/angola-strikes-out-anti-gay-laws-intl/index.html</a>	27 May 2023
<b>M49</b>	25 January 2019	Kylie Kiunguyu, This is Africa	Love Wins - Angola Decriminalises Same-Sex Relationships	Mozambique referenced as a positive development + colonial laws	World	<a href="https://thisisafrica.me/african-identities/love-wins-angola-decriminalises-same-sex-relationships/">https://thisisafrica.me/african-identities/love-wins-angola-decriminalises-same-sex-relationships/</a>	27 May 2023



<b>M50</b>	26 January 2019	UN News; Impact News Service; India Blooms News Service	UN welcomes Angola's repeal of anti-gay law, and ban on discrimination based on sexual orientation	Mozambique referenced as a positive development + colonial laws	World	<a href="https://news.un.org/en/story/2019/01/1031292">https://news.un.org/en/story/2019/01/1031292</a>	27 May 2023
<b>M51</b>	28 January 2019	Legal Monitor Worldwide	Angola decriminalizes homosexuality, bans discrimination	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M52</b>	14 March 2019	Agence France Presse; France24	Botswana court hears bid to scrap anti-gay laws	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.france24.com/en/20190314-botswana-court-hears-bid-scrap-anti-gay-laws-0">https://www.france24.com/en/20190314-botswana-court-hears-bid-scrap-anti-gay-laws-0</a>	27 May 2023
<b>M53</b>	24 May 2019	Agence France Presse; The Daily Monitor; France24	Dismay as Kenyan court refuses to scrap anti-gay laws	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.france24.com/en/20190524-dismay-kenyan-court-refuses-scrap-anti-gay-laws">https://www.france24.com/en/20190524-dismay-kenyan-court-refuses-scrap-anti-gay-laws</a>	27 May 2023
<b>M54</b>	25 May 2019	Federal News Feed, Voice of America	Kenya Upholds Ban on Same-Sex Relations	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.voanews.com/a/kenya-upholds-ban-on-same-sex-relations/4932182.html">https://www.voanews.com/a/kenya-upholds-ban-on-same-sex-relations/4932182.html</a>	27 May 2023
<b>M55</b>	28 May 2019	Adriaan Van Klinken, Bhekisisa	This Country Has Upheld Its Ban On Gay Sex. Here's Why It Could Be Deadly	Mozambique referenced as a positive development in Africa	Africa	<a href="https://bhekisisa.org/opinion/2019-05-28-00-kenya-lgbt-hiv-court-case-criminalised-populations/">https://bhekisisa.org/opinion/2019-05-28-00-kenya-lgbt-hiv-court-case-criminalised-populations/</a>	27 May 2023

<b>M56</b>	30 May 2019	Eturbo News	Court ruling: LGBTQ people are not born that way	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M57</b>	11 June 2019	Reuters, The Jerusalem Post	Botswana's High Court decriminalizes homosexuality	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.reuters.com/article/us-botswana-lgbt-idUSKCN1TC1EP">https://www.reuters.com/article/us-botswana-lgbt-idUSKCN1TC1EP</a>	27 May 2023
<b>M58</b>	11 June 2019	Adrian Blomfield, The Telegraph	Cheers as Botswana's high court decriminalises gay sex	Mozambique referenced as a positive development in Africa + colonial laws	Africa	Available on Nexis' database	27 May 2023
<b>M59</b>	11 June 2019	Human Rights Watch; Targeted News Service	Botswana: High Court Strikes Down Sodomy Laws	Mozambique referenced as a positive development	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023
<b>M60</b>	11 June 2019	David Mckenzie, CNN international Connect the World 11am EST; CNN international Hala Gorani tonight 2pm EST	Botswana's High Court Decriminalizes Gay Sex	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M61</b>	11 June 2019	Agence France Presse; Seychelles News Agency	Botswana scraps anti-gay laws in landmark decision	Mozambique referenced as a positive	Africa	<a href="http://www.seychellesnewsagency.com/articles/11128/Botswana+scraps+anti-">http://www.seychellesnewsagency.com/articles/11128/Botswana+scraps+anti-</a>	27 May 2023

				development in Africa		<a href="#">gay+laws+in+landmark+decision</a>	
<b>M62</b>	11 June 2019	Alan Yuhas, The New York Times	A Win for Gay Rights in Botswana Is a 'Step Against the Current' in Africa	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.nytimes.com/2019/06/11/world/africa/botswana-a-gay-homosexuality.html">https://www.nytimes.com/2019/06/11/world/africa/botswana-a-gay-homosexuality.html</a>	27 May 2023
<b>M63</b>	11 June 2019	Jason Burke, The Guardian	Botswana judges rule laws criminalising gay sex are unconstitutional; Major victory for LGBT rights campaigners after judges rule laws are unconstitutional	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.theguardian.com/world/2019/jun/11/botswana-high-court-decriminalises-gay-sex#:~:text=Botswana%20judges%20rule%20laws%20criminalising%20gay%20sex%20are%20unconstitutional,-This%20article%20is&amp;text=High%20court%20judges%20in%20Botswana,gay%20rights%20campaigners%20in%20Africa.">https://www.theguardian.com/world/2019/jun/11/botswana-high-court-decriminalises-gay-sex#:~:text=Botswana%20judges%20rule%20laws%20criminalising%20gay%20sex%20are%20unconstitutional,-This%20article%20is&amp;text=High%20court%20judges%20in%20Botswana,gay%20rights%20campaigners%20in%20Africa.</a>	27 May 2023
<b>M64</b>	11 June 2019	Chude Jideonwo, CNN.com	Africa is doing better on LGBTQ rights than you think	Mozambique referenced as a positive development in Africa	Africa	<a href="https://edition.cnn.com/2019/06/12/opinions/botswana-africa-lgbt-opinion/index.html">https://edition.cnn.com/2019/06/12/opinions/botswana-africa-lgbt-opinion/index.html</a>	27 May 2023
<b>M65</b>	11 June 2019	Jane Flanagan, The Times	Botswana scraps law banning gay sex	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.thetimes.co.uk/article/botswana-scraps-law-banning-gay-sex-h90vv3f55">https://www.thetimes.co.uk/article/botswana-scraps-law-banning-gay-sex-h90vv3f55</a>	27 May 2023

<b>M66</b>	11 June 2019	BBC Radio 4	BBC Radio 4 - 11:18 PM; GMT' 5:18pm GMT	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M67</b>	11 June 2019	Komla Dumor, BBC World	Focus On Africa - 5:30 PM GMT	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M68</b>	11 June 2019	BBC News	Outside Source - 8:50 PM GMT; 3:10am GMT; 01:10 AM GMT	Mozambique referenced as a positive development in Africa + colonial laws	Africa	Available on Nexis' database	27 May 2023
<b>M69</b>	11 June 2019	Human Rights Watch; Impact News Service	Botswana: High Court Strikes Down Sodomy Laws	Mozambique referenced as a positive development	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023
<b>M70</b>	12 June 2019	BBC Radio 4	BBC Radio 4 - 00:22 AM GMT	Mozambique referenced as a positive development in Africa	Africa	Available on Nexis' database	27 May 2023
<b>M71</b>	23 June 2019	Jemima Beukes, Namibian Sun	Chissano calls for LGBTI inclusion	Mozambique referenced as a positive development in Africa	Africa	<a href="https://www.namibiansun.com/news/chissano-calls-for-lgbti-inclusion2019-06-23">https://www.namibiansun.com/news/chissano-calls-for-lgbti-inclusion2019-06-23</a>	27 May 2023

<b>M72</b>	24 June 2019	OHCHR; States News Service	Human Rights Council discusses violence based on sexual orientation and gender identity, and the independence of judges and lawyers	Mozambique and human rights mechanisms	Mozambique	<a href="https://www.ohchr.org/en/press-releases/2019/06/human-rights-council-discusses-violence-and-discrimination-based-sexual">https://www.ohchr.org/en/press-releases/2019/06/human-rights-council-discusses-violence-and-discrimination-based-sexual</a>	27 May 2023
<b>M73</b>	06 July 2019	Channel NewsAsia; National Post Canada; Reuters	Botswana seeks to overturn court ruling allowing gay sex	Mozambique referenced as a positive development in Africa + colonial laws	Africa	<a href="https://www.reuters.com/article/botswana-lgbt-idAFL8N24705U">https://www.reuters.com/article/botswana-lgbt-idAFL8N24705U</a>	27 May 2023
<b>M74</b>	11 June 2019	BBC News; Daily Nation (Kenya)	Botswana decriminalises homosexuality in landmark ruling	Mozambique referenced as a positive development in Africa + colonial laws	Africa	<a href="https://www.bbc.co.uk/news/world-africa-48594162">https://www.bbc.co.uk/news/world-africa-48594162</a>	27 May 2023
<b>M75</b>	11 July 2019	Nqobani Ndlovu, Newsday	GALZ hopeful Zim will change heart	Mozambique referenced as a positive development in Africa + colonial laws	Africa	<a href="https://docs.google.com/spreadsheets/d/1G6iInvSO50hds aT5u8trPxKnHcesjOB4Uwg hJky5OA/edit#gid=0">https://docs.google.com/spreadsheets/d/1G6iInvSO50hds aT5u8trPxKnHcesjOB4Uwg hJky5OA/edit#gid=0</a>	27 May 2023
<b>M76</b>	29 January 2019	Marc Epprecht, The Conversation Canada; Global English; The Canadian Press	Botswana recognizes LGBTQ rights, leading the way in southern Africa	Colonial past	Africa	<a href="https://theconversation.com/botswana-recognizes-lgbtq-rights-leading-the-way-in-southern-africa-119277">https://theconversation.com/botswana-recognizes-lgbtq-rights-leading-the-way-in-southern-africa-119277</a>	27 May 2023

## Nauru

Ref.	Date	Author(s) & Source(s)	Title	Qualitative Analysis - Theme	Quantitative Analysis - Positioning	Link	Last accessed
N1	21 September 2008	The Observer	Review: Human Rights Special: Human rights in 2008: here's what it looks like: Despite the best attempts of campaigners and international organisations, human-rights abuses persist right across the world. From sex-trafficking to the murder of journalists, here is a guide to some of the worst flashpoints - along with a few encouraging signs of progress	Refugee	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
N2	21 October 2008	John Witte and Ruth Pollard, Sydney Morning Herald	Gay rebel won fights against injustice	Refugee	Not counted in the quantitative analysis	<a href="https://www.smh.com.au/national/gay-rebel-won-fights-against-injustice-20081021-gdszmi.html">https://www.smh.com.au/national/gay-rebel-won-fights-against-injustice-20081021-gdszmi.html</a>	27 May 2023
N3	17 December 2008	Human Rights Watch; Targeted News Service	Sodomy' Laws Show Survival of Colonial Injustice	Colonial laws	World	<a href="https://www.hrw.org/news/2008/12/17/sodomy-laws-show-survival-colonial-injustice">https://www.hrw.org/news/2008/12/17/sodomy-laws-show-survival-colonial-injustice</a>	27 May 2023
N4	02 July 2009	Steve Rothaus, Newstex	Human Rights Watch: India ruling 'a victory for basic	Colonial laws	World	Available on Nexis' database	27 May 2023

			rights to privacy, non-discrimination, and liberty'				
<b>N5</b>	19 September 2010	27 May 2023	Gays on safari in Kenya are now themselves fair game	Nauru and human rights mechanisms	World	Available on Nexis' database	27 May 2023
<b>N6</b>	10 July 2011	Right Vision News	Pakistan: Homosexuality permitted in 113 countries, illegal in 76	Nauru criminalises same sex acts	World	Available on Nexis' database	27 May 2023
<b>N7</b>	21 October 2011	PNG Post-Courier, Nationwide News	Equal rights for gays	Nauru and human rights mechanisms	Pacific	Available on Nexis' database	27 May 2023
<b>N8</b>	04 November 2015	Ben Doherty, The Guardian, World News	Australia urges Nauru to uphold rule of law and stop censorship	Nauru and human rights mechanisms/ relationship with Australia	Australia	<a href="https://www.theguardian.com/world/2015/nov/04/australia-urges-nauru-to-uphold-rule-of-law-and-stop-censorship">https://www.theguardian.com/world/2015/nov/04/australia-urges-nauru-to-uphold-rule-of-law-and-stop-censorship</a>	27 May 2023
<b>N9</b>	04 November 2015	Nicole Hasham, WA Today, Fairfax Media Publications; The Sydney Morning Herald	Internet ban to stop bullying, not free speech: Nauruan government	Nauru and human rights mechanisms/ relationship with Australia	World	<a href="https://www.smh.com.au/politics/federal/internet-ban-to-stop-bullying-not-free-speech-nauruan-government-20151104-gkqggm.html">https://www.smh.com.au/politics/federal/internet-ban-to-stop-bullying-not-free-speech-nauruan-government-20151104-gkqggm.html</a>	27 May 2023
<b>N10</b>	16 March 2016	OHCHR; States News Service; Premium Official news	Human Rights Council adopts outcomes of Universal Periodic Review of Micronesia, Lebanon, Mauritania and Nauru	Nauru and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2016/03/human-rights-council-adopts-outcomes-universal-periodic-review-micronesia">https://www.ohchr.org/en/press-releases/2016/03/human-rights-council-adopts-outcomes-universal-periodic-review-micronesia</a>	27 May 2023
<b>N11</b>	06 April 2016	Amrita Singh, Youth Ki Awaaz, Mouthpiece for the	9 Countries With Extremely Absurd LGBTQ+ Laws	Nauru relationship	Australia	<a href="https://www.youthkiawaaz.com/2016/04/9-countries-with-absurd-lgbt-laws/">https://www.youthkiawaaz.com/2016/04/9-countries-with-absurd-lgbt-laws/</a>	27 May 2023

		Youth, HT Syndication	That'll Make You Go "What The.!"	with Australia/ refugee			
<b>N12</b>	27 May 2016	Crikey, First Digital Media	Tips and Rumours	Refugee	Nauru	Available on Nexis' database	27 May 2023
<b>N13</b>	03 June 2016	European Commission, Thai News Services, General News	European Union: Statement by the Spokesperson on the abolition of death penalty and decriminalisation of homosexuality in Nauru	Nauru referenced as a positive development	Pacific	Available on Nexis' database	27 May 2023
<b>N14</b>	30 June 2016	UN Foundation; Plus Company Updates	The Fight for Global LGBT Justice Cannot Wait	Nauru referenced as a positive development	World	<a href="https://unfoundation.org/blog/post/the-fight-for-global-lgbt-justice-cannot-wait/">https://unfoundation.org/blog/post/the-fight-for-global-lgbt-justice-cannot-wait/</a>	27 May 2023
<b>N15</b>	10 August 2016	Elliott Kozuch, Human Rights Campaign; Targeted News Service; US Official News	Belize's Highest Court Decriminalizes Same-Sex Activity	Nauru referenced as a positive development	World	<a href="https://www.hrc.org/press-releases/belizes-highest-court-decriminalizes-same-sex-activity">https://www.hrc.org/press-releases/belizes-highest-court-decriminalizes-same-sex-activity</a>	27 May 2023
<b>N16</b>	21 September 2016	UN News, States News Service	Ban calls for continued efforts to secure equal rights for LGBT community	Nauru referenced as a positive development	World	<a href="https://news.un.org/en/story/2016/09/539942">https://news.un.org/en/story/2016/09/539942</a>	27 May 2023
<b>N17</b>	21 September 2016	United Nations; US State News; States News Service; Premium Official News	Secretary General remarks at High-Level side event of the LGBT Core Group: 'Path2Equality: Global leaders discuss progress towards LGBT equality'	Nauru referenced as a positive development/ Nauru and	World	<a href="https://www.un.org/sg/en/content/sg/statement/2016-09-21/secretary-generals-remarks-high-level-side-event-lgbt-core-group">https://www.un.org/sg/en/content/sg/statement/2016-09-21/secretary-generals-remarks-high-level-side-event-lgbt-core-group</a>	27 May 2023



				human rights mechanisms			
<b>N18</b>	22 December 2016	The Peninsula; Reuters	From beauty pageants to bathroom battles, 5 major gains for LGBTI rights in 2016	Nauru referenced as a positive reference	World	<a href="https://www.reuters.com/article/us-lgbt-rights-2016-idUSKBN14900D">https://www.reuters.com/article/us-lgbt-rights-2016-idUSKBN14900D</a>	27 May 2023
<b>N19</b>	23 June 2017	State News Service	Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity	Nauru referenced as a positive reference/ relationship with Australia	Australia	<a href="https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity">https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity</a>	27 May 2023
<b>N20</b>	03 March 2018	Mark Gevisser, The Guardian	House of Rainbow: the new pink line dividing the world	Nauru referenced as a positive statement	Commonwealth	<a href="https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world">https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world</a>	27 May 2023
<b>N21</b>	25 January 2019	Kylie Kiunguyu, This is Africa	Love Wins - Angola Decriminalises Same-Sex Relationships	Nauru referenced as a positive statement	World	<a href="https://thisisafrica.me/african-identities/love-wins-angola-decriminalises-same-sex-relationships/">https://thisisafrica.me/african-identities/love-wins-angola-decriminalises-same-sex-relationships/</a>	27 May 2023
<b>N22</b>	11 June 2019	Targeted News Service; Impact News Service	Human Rights Watch: Botswana - High Court Strikes Down Sodomy Laws	Nauru referenced as a positive statement	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023

## Belize

<b>Ref.</b>	<b>Date</b>	<b>Author(s) &amp; Source(s)</b>	<b>Title</b>	<b>Qualitative Analysis - Theme</b>	<b>Quantitative Analysis - Positioning</b>	<b>Link</b>	<b>Last accessed</b>
<b>B1</b>	19 November 2010	Lurleen, Pam's House Blend, Newstex	Gays on safari in Kenya are now themselves fair game	Belize and human rights mechanisms	World	Available on Nexis' database	27 May 2023
<b>B2</b>	10 July 2011	Right Vision News	Pakistan: Homosexuality permitted in 113 countries, illegal in 76	Belize criminalises same sex acts	World	Available on Nexis' database	27 May 2023
<b>B3</b>	17 November 2011	Owen Bowcott, The Guardian	Global campaign to decriminalise homosexuality to kick off in Belize court	Foreign interference + reference to colonial law	Commonwealth	<a href="https://www.theguardian.com/world/2011/nov/16/global-campaign-decriminalise-homosexuality-belize-court">https://www.theguardian.com/world/2011/nov/16/global-campaign-decriminalise-homosexuality-belize-court</a>	27 May 2023
<b>B4</b>	03 May 2013	Owen Bowcott, The Guardian	Belize gay rights activist in court battle to end homophobic colonial-era laws	Foreign interference/ violence against claimant/ church/ reference to colonial law	Caribbean	<a href="https://www.theguardian.com/world/2013/may/02/belize-gay-rights-supreme-court">https://www.theguardian.com/world/2013/may/02/belize-gay-rights-supreme-court</a>	27 May 2023
<b>B5</b>	05 May 2013	Cathy Kristofferson, oblogdee.blog; American Banking and Market News, Legal Monitor Worldwide	Belize government and christian right fight supreme court challenge to decriminalise homosexuality	Foreign interference/ colonial past	Commonwealth	<a href="https://oblogdee.blog/2013/05/05/belize-government-and-christian-right-fight-supreme-court-challenge-to-decriminalize-homosexuality/">https://oblogdee.blog/2013/05/05/belize-government-and-christian-right-fight-supreme-court-challenge-to-decriminalize-homosexuality/</a>	27 May 2023

<b>B6</b>	07 May 2013	Mark Stephens, The Huffington Post	Caleb Orozco v. Attorney General of Belize: Upholding Human Rights for All?	Church/ Foreign interference/ court case/ violence against claimant/ reference to colonial law and apartheid	Commonwealth	<a href="https://www.huffpost.com/entry/caleb-orozco-v-attorney-general-of-belize_b_3230589">https://www.huffpost.com/entry/caleb-orozco-v-attorney-general-of-belize_b_3230589</a>	27 May 2023
<b>B7</b>	10 May 2013	Owen Bowcott, The Guardian	Caleb Orozco, fighting to overturn country's anti-gay laws, is said to have faced more threats of violence since start of court case	Violence against Claimant	Commonwealth	<a href="https://www.theguardian.com/world/2013/may/10/belize-gay-rights-campaigner-threats">https://www.theguardian.com/world/2013/may/10/belize-gay-rights-campaigner-threats</a>	27 May 2023
<b>B8</b>	20 May 2013	Charles Radcliffe, The Huffington Post	The Global LGBT Rights Kaleidoscope (VIDEO)	Violence against claimant/ media	World	<a href="https://www.huffpost.com/entry/the-global-lgbt-rights-kaleidoscope_b_3303565">https://www.huffpost.com/entry/the-global-lgbt-rights-kaleidoscope_b_3303565</a>	27 May 2023
<b>B9</b>	03 August 2013	Alec Scott, Special to The Globe and Mail	Back in the USSR?; As an undergrad, Alec Scott loved Russian literature, studied in St. Petersburg and vacationed in Sochi. But in light of new anti-gay laws, he reconsiders his plans to return	Belize criminalises same sex acts	World	Available on Nexis' database	23 May 2023
<b>B10</b>	11 November 2013	Kunal Dutta, i- Independent	Homophobia rife in Commonwealth nations; SRI LANKA SUMMIT	Violence against claimant/	Commonwealth	Available on Nexis' database	27 March 2023

				reference to colonial law			
<b>B11</b>	13 November 2013	Paul Osborne, AAP Newsfeed	ASIA:Gay activists seek end to criminality	Violence against claimant	Commonwealth	Available on Nexis' database	27 May 2023
<b>B12</b>	21 November 2013	Targeted News Service	IACHR Acknowledges Recent Steps Taken By Several OAS Member States to Further Equality for LGBTI Persons	Belize and human rights mechanisms	OAS	<a href="https://www.oas.org/en/iachr/media_center/PReleases/2013/089.asp">https://www.oas.org/en/iachr/media_center/PReleases/2013/089.asp</a>	27 May 2023
<b>B13</b>	20 March 2014	States News Service; Premium Official News	Human Rights Council adopts Universal Periodic Review outcomes of Belize, Chad and China	Belize and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-belize-chad">https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-belize-chad</a>	27 May 2023
<b>B14</b>	28 May 2014	CANA News; CARICOM	GUYANA-EDUCATION-PANCAP says stigma and discrimination driving HIV in the Caribbean	Court case	Caribbean	<a href="https://caricom.org/stigma-and-discrimination-driving-the-hiv-epidemic-in-the-caribbean-pancap-statement/">https://caricom.org/stigma-and-discrimination-driving-the-hiv-epidemic-in-the-caribbean-pancap-statement/</a>	27 May 2023
<b>B15</b>	29 May 2014	Matthew Hunte, Global Voices; Cecilia Cárdenas, Global Voices Online - Spanish	Shooting the Messenger: Jamaica's Brendan Bain Controversy Continues	Court case	Caribbean	<a href="https://globalvoices.org/2014/05/29/shooting-the-messenger-jamaicas-brendan-bain-controversy-continues/">https://globalvoices.org/2014/05/29/shooting-the-messenger-jamaicas-brendan-bain-controversy-continues/</a>	27 May 2023
<b>B16</b>	09 December 2015	UK Government News; Premium Official News	Rt Hon Anelay speech for International Human Rights Day	Foreign interference	Commonwealth	<a href="https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day">https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day</a>	27 May 2023

<b>B17</b>	27 January 2016	Josh Taylor, Crikey	Abbott to speak at US homophobic 'freedom' group	Foreign interference/ court case	World	<a href="https://www.crikey.com.au/2016/01/27/abbott-to-speak-at-us-homophobic-freedom-group/">https://www.crikey.com.au/2016/01/27/abbott-to-speak-at-us-homophobic-freedom-group/</a>	27 May 2023
<b>B18</b>	20 June 2016	European Union News	Council of the European Union: EU Annual Report on Human Rights and Democracy in the World in 2015: Thematic Part ST 10255 2016 INIT	Foreign interference	World	<a href="https://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf">https://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf</a>	27 May 2023
<b>B19</b>	27 June 2016	Dhananjayan Sriskandarajah, The Guardian	We must step up the struggle for LGBTI rights; Civil society groups are winning important rights victories, but we need a broad-based alliance to end discrimination	Belize criminalises same sex acts	World	<a href="https://www.theguardian.com/global-development/2016/jun/27/we-must-step-up-the-struggle-for-lgbti-rights">https://www.theguardian.com/global-development/2016/jun/27/we-must-step-up-the-struggle-for-lgbti-rights</a>	28 May 2023
<b>B20</b>	10 August 2016	Elliott Kozuch, Human Rights Campaign; Targeted News Service; US Official News	Belize's Highest Court Decriminalizes Same-Sex Activity	Belize decriminalises same sex acts	World	<a href="https://www.hrc.org/press-releases/belizes-highest-court-decriminalizes-same-sex-activity">https://www.hrc.org/press-releases/belizes-highest-court-decriminalizes-same-sex-activity</a>	28 May 2023
<b>B21</b>	13 August 2016	Legal Monitor Worldwide	Anti-sodomy rule in court case faced by America-based anti-LGBT groups struck down by SC of Belize	Belize decriminalises same sex acts	Caribbean	Available on Nexis' database	28 May 2023

<b>B22</b>	20 August 2016	The Economist Intelligence Unit ViewsWire	Belize politics: Belize blazes a trail	Belize decriminalises same sex acts	Caribbean	<a href="https://www.economist.com/the-americas/2016/08/18/belize-blazes-a-trail">https://www.economist.com/the-americas/2016/08/18/belize-blazes-a-trail</a>	28 May 2023
<b>B23</b>	24 November 2016	Legal Monitor Worldwide	UN rights expert condemns proliferation of LGBTI discrimination, attacks	Belize decriminalises same sex acts	World	Available on Nexis' database	28 May 2023
<b>B24</b>	01 December 2016	Legal Monitor Worldwide	UN rights expert urges end to LGBT violence and discrimination	Belize decriminalises same sex acts	World	Available on Nexis' database	28 May 2023
<b>B25</b>	22 December 2016	Kieran Guilbert, Reuters; The Peninsula	From beauty pageants to bathroom battles, 5 major gains for LGBTI rights in 2016	Belize decriminalises same sex acts	World	<a href="https://www.reuters.com/article/us-lgbt-rights-2016-idUSKBN14900D">https://www.reuters.com/article/us-lgbt-rights-2016-idUSKBN14900D</a>	28 May 2023
<b>B26</b>	24 December 2016	Margaret Wenthe, The Globe and Mail	Need a little holiday cheer? Here you are; Try to forget about Donald Trump and other daily disasters. We're in the midst of a giant surge in human progress	Belize decriminalises same sex acts	World	Available on Nexis' database	28 May 2023
<b>B27</b>	23 May 2017	Prime Minister Erna Solberg, Nordic Daily	Opening remarks at Oslo Freedom Forum	Belize decriminalises same sex acts/ violence against Caleb	Caribbean	Available on Nexis' database	28 May 2023
<b>B28</b>	23 June 2017	Human Rights Watch; State News Service	Country Profiles: Sexual Orientation and Gender Identity	Belize decriminalises same sex acts	World	<a href="https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity">https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity</a>	28 May 2023

<b>B29</b>	15 August 2017	Crikey	Leading Australian marriage equality opponent endorses US hate group	The church	World	<a href="https://www.theguardian.com/world/2020/feb/20/alliance-defending-freedom-multimillion-dollar-conservative-christian-group-attacking-lgbtq-rights">https://www.theguardian.com/world/2020/feb/20/alliance-defending-freedom-multimillion-dollar-conservative-christian-group-attacking-lgbtq-rights</a>	
<b>B30</b>	05 September 2017	Human Rights Campaign; US Official News	Inside Caleb Orozco's Fight to Overturn Belize's Anti-Gay Laws	court case	Caribbean	<a href="https://www.hrc.org/news/inside-caleb-orozcos-fight-to-overturn-belizes-anti-gay-laws">https://www.hrc.org/news/inside-caleb-orozcos-fight-to-overturn-belizes-anti-gay-laws</a>	28 May 2023
<b>B31</b>	25 September 2017	Scott Busby, US Department of State; Targeted News Service	Public Hearing on Rights of LGBTI People Outside EU	Belize decriminalises same sex acts	World	<a href="https://2017-2021.state.gov/public-hearing-on-the-rights-of-lgbti-people-outside-the-eu-and-implementation-of-the-eu-guidelines-on-the-topic/index.html">https://2017-2021.state.gov/public-hearing-on-the-rights-of-lgbti-people-outside-the-eu-and-implementation-of-the-eu-guidelines-on-the-topic/index.html</a>	27 May 2023
<b>B32</b>	28 October 2017	St. Louis Post-Dispatch	World Briefs	Belize decriminalises same sex acts	World	Available on Nexis' database	27 May 2023
<b>B33</b>	03 March 2018	Mark Gevisser, The Guardian	House of Rainbow: the new pink line dividing the world; Cecil John Rhodes vowed to paint a pink line - the colour of British dominion - across the world. Now a new pink line has been drawn, a human rights frontier around sexuality and gender identity that	Belize decriminalises same sex acts	Commonwealth	<a href="https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world">https://www.theguardian.com/world/2018/mar/04/house-of-rainbow-the-new-pink-line-dividing-the-world</a>	27 May 2023

			divides the globe in a new way				
<b>B34</b>	13 April 2018	Louis Staples, Indy100	What Trinidad and Tobago's historic gay sex ruling means for LGBT+ rights worldwide; 'This is a big win for Trinidad and Tobago and the Caribbean'	Belize decriminalises same sex acts	Commonwealth	<a href="https://www.indy100.com/news/trinidad-tobago-gay-sex-ruling-lgbt-rights-caribbean-commonwealth-8302931">https://www.indy100.com/news/trinidad-tobago-gay-sex-ruling-lgbt-rights-caribbean-commonwealth-8302931</a>	27 May 2023
<b>B35</b>	14 April 2018	CANA News	CARIBBEAN-RIGHTS-PANCAP welcomes High Court ruling in Trinidad and Tobago	Belize decriminalises same sex acts	Caribbean	Available on Nexis' database	27 May 2023
<b>B36</b>	16 April 2018	Human Rights Watch, The Advocate; Africa News	Commonwealth Should Address LGBT Rights	Belize as part of the Commonwealth	Commonwealth	<a href="https://www.hrw.org/news/2018/04/16/commonwealth-should-address-lgbt-rights">https://www.hrw.org/news/2018/04/16/commonwealth-should-address-lgbt-rights</a>	27 May 2023
<b>B37</b>	14 May 2018	Daily Mirror	Commonwealth values an enigma in Sri Lanka	Belize referenced as a positive development	Commonwealth	<a href="https://www.dailymirror.lk/article/Commonwealth-values-an-enigma-in-Sri-Lanka-149862.html">https://www.dailymirror.lk/article/Commonwealth-values-an-enigma-in-Sri-Lanka-149862.html</a>	27 May 2023
<b>B38</b>	15 May 2018	The Conversation; Global English	How Britain's colonial legacy still affects LGBT politics around the world	Belize referenced as a positive development	Commonwealth	<a href="https://theconversation.com/how-britains-colonial-legacy-still-affects-lgbt-politics-around-the-world-95799">https://theconversation.com/how-britains-colonial-legacy-still-affects-lgbt-politics-around-the-world-95799</a>	27 May 2023
<b>B39</b>	19 May 2018	Daily News	Mutual respect, the key to equality	Belize referenced as a positive development	Commonwealth	<a href="https://www.dailynews.lk/2018/05/19/features/151375/mutual-respect-key-equality">https://www.dailynews.lk/2018/05/19/features/151375/mutual-respect-key-equality</a>	27 May 2023



<b>B40</b>	18 June 2018	Global Voices	Guyana's LGBT community hosts its first ever gay pride parade	Belize referenced as a positive development	Commonwealth	<a href="https://globalvoices.org/2018/06/18/guyanas-lgbt-community-hosts-its-first-ever-gay-pride-parade/">https://globalvoices.org/2018/06/18/guyanas-lgbt-community-hosts-its-first-ever-gay-pride-parade/</a>	27 May 2023
<b>B41</b>	14 July 2018	Adam Withnall, The Independent	India on brink of biggest gay rights victory as Supreme Court prepares to rule on gay sex ban; Landmark ruling will have far-reaching and direct implications for other Commonwealth nations that still outlaw homosexuality	Belize referenced as a positive development	Commonwealth	<a href="https://www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html">https://www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html</a>	27 May 2023
<b>B42</b>	04 September 2018	States News Service	The future is not in front of us, it's inside us	Belize referenced as a positive development	Commonwealth	Available on Nexis' database	27 May 2023
<b>B43</b>	07 September 2018	Menaka Guruswamy, Hindustan Times	Section 377: SC has distinguished itself as an institution invested in protection of all Indians	Belize referenced as a positive development	Commonwealth	<a href="https://www.hindustantimes.com/analysis/section-377-sc-has-distinguished-itself-as-an-institution-invested-in-protection-of-all-indians/story-QPuv2fxzE4RQE3GEIh2vnL.html">https://www.hindustantimes.com/analysis/section-377-sc-has-distinguished-itself-as-an-institution-invested-in-protection-of-all-indians/story-QPuv2fxzE4RQE3GEIh2vnL.html</a>	27 May 2023
<b>B44</b>	09 September 2018	The Economic Times	A long & hard battle of a Sri Lankan activist for gay rights	Belize referenced as a positive development	Commonwealth	<a href="https://economictimes.indiatimes.com/news/politics-and-nation/a-long-hard-battle-of-a-sri-lankan-activist-for-gay-">https://economictimes.indiatimes.com/news/politics-and-nation/a-long-hard-battle-of-a-sri-lankan-activist-for-gay-</a>	27 May 2023

						<a href="https://www.bild.de/politik/kolumnen/kolumne/ambassador-grenell-the-hanging-of-a-gay-man-in-iran-should-be-a-wakeup-call-59900136.bild.html">rights/articleshow/65736301.cms</a>	
<b>B45</b>	19 October 2018	Global English	A Seventh Day Adventist Defends Buggery By Anesia Baptiste	Opposition to court ruling	Caribbean	Available on Nexis' database	27 May 2023
<b>B46</b>	01 February 2019	Richard Grenell, BILD International	Comment by U.S. Ambassador Richard Grenell; The hanging of a gay man in Iran should be a wakeup call	Belize referenced as a positive development	World	<a href="https://www.bild.de/politik/kolumnen/kolumne/ambassador-grenell-the-hanging-of-a-gay-man-in-iran-should-be-a-wakeup-call-59900136.bild.html">https://www.bild.de/politik/kolumnen/kolumne/ambassador-grenell-the-hanging-of-a-gay-man-in-iran-should-be-a-wakeup-call-59900136.bild.html</a>	27 May 2023
<b>B47</b>	05 February 2019	Benjamin Weinthal, The Jerusalem Post	US ambassador to Germany: "horrific actions" of Iran equal to ISIS	Belize referenced as a positive development	World	<a href="https://www.jpost.com/diaspora/us-ambassador-to-germany-horrific-actions-of-iran-equal-to-isis-579692">https://www.jpost.com/diaspora/us-ambassador-to-germany-horrific-actions-of-iran-equal-to-isis-579692</a>	27 May 2023
<b>B48</b>	19 February 2019	Benjamin Weinthal, The Jerusalem Post	Trump launches global campaign to decriminalize homosexuality	Belize referenced as a positive development	World	<a href="https://www.jpost.com/international/trump-launches-global-campaign-to-decriminalize-homosexuality-581162">https://www.jpost.com/international/trump-launches-global-campaign-to-decriminalize-homosexuality-581162</a>	27 May 2023
<b>B49</b>	12 March 2019	CQ Transcriptions	House Appropriations Subcommittee on State and Foreign Operations Holds Hearing on Fiscal 2020 Appropriations for State-Foreign Operations	Belize referenced as a positive development	World	Available on Nexis' database	27 May 2023
<b>B50</b>	16 May 2019	Louis Staples, The Independent	Inside the fight for LGBT+ rights across the Commonwealth; Bound together by optimism and	Belize referenced as a positive development/	Commonwealth	<a href="https://www.independent.co.uk/news/long_reads/lgbt-gay-rights-commonwealth-">https://www.independent.co.uk/news/long_reads/lgbt-gay-rights-commonwealth-</a>	27 May 2023

			Britain's colonial legacy of homophobia and white supremacy, a group of Commonwealth LGBT+ activists gather in Mauritius. Can they find new, intersectional ways to tackle systemic discrimination and violence? Louis Staples went to find out	cost of activism		<a href="https://www.mauritiuspost.com/story/mauritius-homosexuality-british-empire-a8912641.html">mauritius-homosexuality-british-empire-a8912641.html</a>	
<b>B51</b>	11 June 2019	Human Rights Watch; Targeted News Service	Botswana: High Court Strikes Down Sodomy Laws	Belize referenced as a positive development	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023
<b>B52</b>	11 June 2019	Kimon de Greef, The New York Times	Botswana's High Court Decriminalizes Gay Sex	Belize referenced as a positive development	Commonwealth	<a href="https://www.nytimes.com/2019/06/11/world/africa/botswana-a-ruling-criminalize-gay-sex.html">https://www.nytimes.com/2019/06/11/world/africa/botswana-a-ruling-criminalize-gay-sex.html</a>	27 May 2023
<b>B53</b>	11 June 2019	UN News; State News Service	Tuesday's Daily Brief: Disability inclusion, minimum wage, and LGBTI rights in Botswana	Belize referenced as a positive development	World	<a href="https://news.un.org/en/story/2019/06/1040261">https://news.un.org/en/story/2019/06/1040261</a>	27 May 2023
<b>B54</b>	11 June 2019	Impact News Service	Botswana: High Court Strikes Down Sodomy Laws	Belize referenced as a positive development	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023
<b>B55</b>	20 January 2010	Nordic Daily	Opening remarks at Oslo Freedom Forum	Belize decriminalises same sex	Caribbean	Available on Nexis' database	27 May 2023

				acts/ violence against claimant			
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## Cyprus

Ref.	Date	Author(s) & Source(s)	Title	Qualitative Analysis - Theme	Quantitative Analysis - Positioning	Link	Last accessed
C1	15 March 1996	Michael Theodoulou, The Times	Cypriots riot as priest is tried for immorality	Church/ Activism	Cyprus	Available on Nexis' database	27 May 2023
C2	09 May 1997	Agence France Press - English	Cypriot church calls for MPs to reject homosexual bill	EU/ Decriminalisation	EU	Available on Nexis' database	27 May 2023
C3	04 October 2000	Alexandru Alexe, Associated Press International	Lesbian and Gay international conference begins in Bucharest	Church	Council of Europe	Available on Nexis' database	23 May 2023
C4	05 January 2008	Felix Corley, The Independent	Archbishop Chrysostomos I; Leading cleric in Cyprus	Church	EU	<a href="https://www.independent.co.uk/news/obituaries/archbishop-chrysostomos-i-leading-cleric-in-cyprus-768356.html">https://www.independent.co.uk/news/obituaries/archbishop-chrysostomos-i-leading-cleric-in-cyprus-768356.html</a>	23 May 2023
C5	19 November 2010	Lurleen, Pam's House Blend	Gays on safari in Kenya are now themselves fair game	Cyprus and human rights mechanisms	World	Available on Nexis' database	27 May 2023
C6	10 July 2011	Right Vision News	Pakistan: Homosexuality permitted in 113 countries, illegal in 76	Cyprus criminalising same sex	World	Available on Nexis' database	27 May 2023

<b>C7</b>	26 October 2011	Graeme Reid, Evelyne Paradis, Jessica Stern and Reşat Şaban, Human Rights Watch; States News Service	Joint statement to Northern Cyprus regarding arrests under article 171	Arrest	Council of Europe	<a href="https://www.hrw.org/news/2011/10/26/joint-statement-northern-cyprus-regarding-arrests-under-article-171">https://www.hrw.org/news/2011/10/26/joint-statement-northern-cyprus-regarding-arrests-under-article-171</a>	27 May 2023
<b>C8</b>	17 November 2011	Owen Bowcott, The Guardian	Global campaign to decriminalise homosexuality to kick off in Belize court	Foreign interference	Commonwealth	<a href="https://www.theguardian.com/world/2011/nov/16/global-campaign-decriminalise-homosexuality-belize-court">https://www.theguardian.com/world/2011/nov/16/global-campaign-decriminalise-homosexuality-belize-court</a>	27 May 2023
<b>C9</b>	03 May 2013	Owen Bowcott, The Guardian	Belize gay rights activist in court battle to end homophobic colonial-era laws	Foreign interference	Commonwealth	<a href="https://oblogdee.blog/2013/05/05/belize-government-and-christian-right-fight-supreme-court-challenge-to-decriminalize-homosexuality/">https://oblogdee.blog/2013/05/05/belize-government-and-christian-right-fight-supreme-court-challenge-to-decriminalize-homosexuality/</a>	27 May 2023
<b>C10</b>	28 January 2014	ANSA English	Cyprus: Turkish-Cypriots vote to decriminalise homosexuality; Law inherited from the British colonial period	Cyprus decriminalises	EU	Available on Nexis' database	23 May 2023
<b>C11</b>	28 January 2014	Uri Friedman, Atlantic Online	How Sochi Became the Gay Olympics	Cyprus as a positive reference	Europe	<a href="https://www.theatlantic.com/international/archive/2014/01/how-sochi-became-the-gay-olympics/283398/">https://www.theatlantic.com/international/archive/2014/01/how-sochi-became-the-gay-olympics/283398/</a>	23 May 2023
<b>C12</b>	10 April 2014	Wandera Ogalo, The Observer; Africa News	For 300 Years Britain Hanged Homosexuals [opinion]	Cyprus as a positive reference	World	<a href="https://www.observer.ug.com/ponent/content/article?id=31169:-for-300-years-britain-hanged-homosexuals">https://www.observer.ug.com/ponent/content/article?id=31169:-for-300-years-britain-hanged-homosexuals</a>	23 May 2023

<b>C13</b>	15 May 2014	News Europe, The Associated Press; The Canadian Press	Cyprus' gay, bisexual, transsexual community to hold first pride festival; Cyprus to hold first gay pride festival	Post-decriminalisation/ Church	EU	<a href="https://www.neweurope.eu/article/cyprus-gay-bisexual-transsexual-community-hold-first-pride-festival/">https://www.neweurope.eu/article/cyprus-gay-bisexual-transsexual-community-hold-first-pride-festival/</a>	23 May 2023
<b>C14</b>	31 May 2014	Menelaos Hadjicostis, The Associated Press, The Canadian Press	Thousands take part in Cyprus' 1st gay pride parade; small protest denounces event; Thousands march in Cyprus' 1st gay pride parade	Post-decriminalisation/ Church	EU	<a href="https://apnews.com/article/ddfe508637d1468aa5d2ecd665c1d9ab#:~:text=NICOSIA%2C%20Cyprus%20(AP)%20%E2%80%94,are%20shedding%20their%20conservative%20attitudes.">https://apnews.com/article/ddfe508637d1468aa5d2ecd665c1d9ab#:~:text=NICOSIA%2C%20Cyprus%20(AP)%20%E2%80%94,are%20shedding%20their%20conservative%20attitudes.</a>	23 May 2023
<b>C15</b>	12 January 2016	Cyprus News Agency	EC Vice-Chairman discuss Cyprus problem and energy issues in Nicosia	Cyprus and human rights mechanisms	Council of Europe	Available on Nexis' database	23 May 2023
<b>C16</b>	04 March 2016	Menelaos Hadjicostis, Associated Press Online; Seattle Times; New Delhi Times	Cyprus' first public gay wedding takes aim at prejudices	Post-decriminalisation/ Church	Cyprus	<a href="https://www.seattletimes.com/nation-world/cyprus-first-public-gay-wedding-takes-aim-at-prejudices/">https://www.seattletimes.com/nation-world/cyprus-first-public-gay-wedding-takes-aim-at-prejudices/</a>	23 May 2023
<b>C17</b>	09 June 2016	States News Service; Africa Newswire	Eradicating AIDS by 2030 Requires Balanced Prevention, Treatment, Care Policies, Speakers Say as High-Level General Assembly Meeting Continues	Cyprus and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://press.un.org/en/2016/ga11788.doc.htm">https://press.un.org/en/2016/ga11788.doc.htm</a>	27 May 2023
<b>C18</b>	19 April 2018	TVEyes - BBC Radio 5 Live	BBC Radio 5 Live - 1:00 PM GMT	Court case	World	Available on Nexis' database	23 May 2023

<b>C19</b>	21 July 2018	Impact News Service	Register of Commission documents: The rights of LGBTI people in the European Union Document date: 2018-06-12 EPRS_BRI(2018)621877 Briefing		EU	Available on Nexis' database	23 May 2023
<b>C20</b>	13 September 2018	Parikiaki; Cyprus News Agency	Cypriot citizens the real winners from the application of the European Convention on Human Rights, jurists tell CNA	Cyprus and human rights mechanisms/ relationship with Turkey	Council of Europe	<a href="https://www.parikiaki.com/2018/09/cypriot-citizens-the-real-winners-from-the-application-of-the-european-convention-on-human-rights-jurists-tell-cna/">https://www.parikiaki.com/2018/09/cypriot-citizens-the-real-winners-from-the-application-of-the-european-convention-on-human-rights-jurists-tell-cna/</a>	27 May 2023
<b>C21</b>	17 May 2019	European Union News; Impact News Service	Register of Commission documents: The rights of LGBTI people in the European Union Document date: 2019-05-16 EPRS_BRI(2019)637950 Briefing	Cyprus post-decriminalisation	EU	Available on Nexis' database	23 May 2027
<b>C22</b>	11 June 2019	Human Rights Watch, Targeted News Service	Botswana: High Court Strikes Down Sodomy Laws	Cyprus referenced as a positive development	World	<a href="https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws">https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws</a>	27 May 2023
<b>C23</b>	26 July 2019	John Lockett, The Sun	A DESIRE IS BORN' Gay people exist because pregnant women had 'anal sex' claims orthodox bishop in Cyprus	Cyprus post-decriminalisation/ The Church	Cyprus	<a href="https://www.thesun.co.uk/news/9595762/gay-pregnant-women-anal-sex-bishop-cyprus/">https://www.thesun.co.uk/news/9595762/gay-pregnant-women-anal-sex-bishop-cyprus/</a>	27 May 2023

<b>C24</b>	27 July 2019	Latifa Yedroudj, The Mirror	Outrage as bishop says gay people exist because pregnant women have anal sex; Church of Cyprus bishop Neophytos Masouras made the shocking statement during a speech at a primary school on the Greek Island of Morphou	Cyprus post-decriminalisation/ The Church	Cyprus	<a href="https://www.mirror.co.uk/news/world-news/outrage-bishop-says-gay-people-18785830">https://www.mirror.co.uk/news/world-news/outrage-bishop-says-gay-people-18785830</a>	27 May 2023
<b>C25</b>	31 July 2019	Bridie Pearson-jones, Mail Online	Controversial Cypriot bishop declares it's hypocritical to mourn serial killer's child victims given country's abortion rate... days after telling congregation that gay people exist because pregnant women have anal sex	Cyprus post-decriminalisation/ The Church	Cyprus	<a href="https://www.dailymail.co.uk/news/article-7305229/Cypriot-bishop-says-hypocritical-mourn-child-victims-serial-killer-abortion.html">https://www.dailymail.co.uk/news/article-7305229/Cypriot-bishop-says-hypocritical-mourn-child-victims-serial-killer-abortion.html</a>	23 May 2023
<b>C26</b>	01 August 2019	France24, Agence France Presse - English	Cyprus probes bishop for possible gay hate speech	Cyprus post-decriminalisation/ The Church/ role of activist	EU	<a href="https://www.france24.com/en/20190801-cyprus-probes-bishop-possible-gay-hate-speech">https://www.france24.com/en/20190801-cyprus-probes-bishop-possible-gay-hate-speech</a>	23 May 2023
<b>C27</b>	01 August 2019	Financial Mirror	CYPRUS: Police probe into homophobic rant of Orthodox bishop	Cyprus post-decriminalisation/ The Church/ role of activist	Cyprus	<a href="https://www.financialmirror.com/2019/08/01/cyprus-police-probe-into-homophobic-rant-of-orthodox-bishop/">https://www.financialmirror.com/2019/08/01/cyprus-police-probe-into-homophobic-rant-of-orthodox-bishop/</a>	23 May 2023



<b>C28</b>	04 August 2019	Helena Smith, The Guardian	Cypriot bishop faces hate speech inquiry over homophobic remarks	Cyprus post-decriminalisation/ The Church/ role of activist	EU	<a href="https://www.theguardian.com/world/2019/aug/04/cypriot-bishop-faces-hate-speech-inquiry-over-homophobic-remarks">https://www.theguardian.com/world/2019/aug/04/cypriot-bishop-faces-hate-speech-inquiry-over-homophobic-remarks</a>	23 May 2023
<b>C29</b>	22 August 2019	Tariq Tahir, The Sun	UNHOLY ROW Cops investigate Cypriot bishop who told kids 'mums having anal sex make their sons gay' - as he's accused of faking academic letter backing his claims with 'science'	Cyprus post-decriminalisation/ The Church/ role of activist	EU	<a href="https://www.thesun.co.uk/news/9779580/cops-investigate-cypriot-bishop-who-told-kids-mums-having-anal-sex-make-their-sons-gay-as-hes-accused-of-faking-academic-letter-backing-his-claims-with-science/">https://www.thesun.co.uk/news/9779580/cops-investigate-cypriot-bishop-who-told-kids-mums-having-anal-sex-make-their-sons-gay-as-hes-accused-of-faking-academic-letter-backing-his-claims-with-science/</a>	23 May 2023
<b>C30</b>	09 September 2019	France24; Agence France Press - English	Cyprus bishop cleared of hate speech over 'gay sex and pregnant women'	Cyprus post-decriminalisation/ The Church/ role of activist	Cyprus	<a href="https://www.france24.com/en/20190909-cyprus-bishop-cleared-of-hate-speech-over-gay-sex-and-pregnant-women">https://www.france24.com/en/20190909-cyprus-bishop-cleared-of-hate-speech-over-gay-sex-and-pregnant-women</a>	23 May 2023

## Sri Lanka

Ref.	Date	Author(s) & Source(s)	Title	Qualitative Analysis - Theme	Quantitative Analysis - Positioning	Link	Last accessed
<b>S1</b>	10 May 2010	Human Rights watch, Africa News	Africa; UN - Demand Improvements by Human Rights Council Candidates	Sri Lanka and human rights mechanisms	World	<a href="https://www.hrw.org/news/2010/05/10/un-demand-improvements-human-rights-council-candidates">https://www.hrw.org/news/2010/05/10/un-demand-improvements-human-rights-council-candidates</a>	27 May 2023

<b>S2</b>	07 July 2010	OHCHR, States News Service	Human Rights Council conclude interactive dialogue on right to health, human rights and extreme poverty, and violence against women	Sri Lanka and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2010/06/human-rights-council-concludes-interactive-dialogue-right-health-human">https://www.ohchr.org/en/press-releases/2010/06/human-rights-council-concludes-interactive-dialogue-right-health-human</a>	27 May 2023
<b>S3</b>	08 June 2010	OHCHR, States News Service	Human Rights Council holds general debate on the promotion and protection of all human rights		World	<a href="https://www.ohchr.org/en/press-releases/2010/06/human-rights-council-holds-general-debate-promotion-and-protection-all-human">https://www.ohchr.org/en/press-releases/2010/06/human-rights-council-holds-general-debate-promotion-and-protection-all-human</a>	27 May 2023
<b>S4</b>	06 July 2010	Daily Mirror	Let's broaden	Social attitudes	Sri Lanka	Available on Nexis' database	27 May 2023
<b>S5</b>	07 July 2010	Sherwani Synon, Daily Mirror	Rosanna Flamer-Caldera speaks out on equal rights	Social attitudes	Sri Lanka	Available on Nexis' database	27 May 2023
<b>S6</b>	22 September 2010	States News Service	Human Rights Council adopts outcomes of Universal Periodic Review of Kenya and Armenia	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2010/09/human-rights-council-adopts-outcomes-universal-periodic-review-kenya-and">https://www.ohchr.org/en/press-releases/2010/09/human-rights-council-adopts-outcomes-universal-periodic-review-kenya-and</a>	27 May 2023
<b>S7</b>	19 November 2010	Lurleen, Pam's House Blend	Gays on safari in Kenya are now themselves fair game	Sri Lanka and human rights mechanisms	World	Available on Nexis' database	27 May 2023
<b>S8</b>	03 March 2011	OHCHR; States News Service	Human Rights Council holds interactive dialogue with High Commissioner for Human Rights on her annual report	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2011/03/human-rights-council-holds-interactive-dialogue-high-commissioner-human">https://www.ohchr.org/en/press-releases/2011/03/human-rights-council-holds-interactive-dialogue-high-commissioner-human</a>	27 May 2023

<b>S9</b>	07 June 2011	States News Service	Human Rights Council adopts outcomes of Universal Periodic Review on Saint Lucia, Oman and Austria	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2011/06/human-rights-council-adopts-outcomes-universal-periodic-review-saint-lucia">https://www.ohchr.org/en/press-releases/2011/06/human-rights-council-adopts-outcomes-universal-periodic-review-saint-lucia</a>	27 May 2023
<b>S10</b>	16 June 2011	States News Service	Council holds interactive dialogue with Independent Experts on situation of human rights in Burundi and in Haiti concludes general debate on human rights situations that require the Council's attention	Situation in Sri Lanka	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S11</b>	10 July 2011	Right Vision News	Pakistan: Homosexuality permitted in 113 countries, illegal in 76	Sri Lanka criminalising same sex	World	Available on Nexis' database	27 May 2023
<b>S12</b>	22 October 2011	The West Australian	Time to map path to reform	Situation in Sri Lanka/ Foreign interference	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S13</b>	25 October 2011	Sri Lankan Government News	India to oppose Commonwealth report	Foreign interference	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S14</b>	30 October 2011	States News Service	Transcript of joint press conference with Commonwealth Secretary General Sharma	Situation in Sri Lanka	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S15</b>	30 October 2011	The New Indian Express; Indo-	Commonwealth fails to pass the reforms test	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.newindianexpress.com/world/2011/oct/30/com">https://www.newindianexpress.com/world/2011/oct/30/com</a>	27 May 2023

		Asian News Service				<a href="https://www.monwealth-fails-to-pass-the-reforms-test-305135.html">monwealth-fails-to-pass-the-reforms-test-305135.html</a>	
<b>S16</b>	31 October 2011	Steven Scott, The Courier Mail	CHOGM skips hard calls	Situation in Sri Lanka	Commonwealth	Available on Nexis' database	27 May 2023
<b>S17</b>	09 November 2011	Nugawela, Daily Mirror	Where Do We Stand On Gay Rights?	Criminalisation in Sri Lanka/ social attitudes	Commonwealth	<a href="https://www.dailymirror.lk/opinion/where-do-we-stand-on-gay-rights/172-14644">https://www.dailymirror.lk/opinion/where-do-we-stand-on-gay-rights/172-14644</a>	27 May 2023
<b>S18</b>	05 March 2013	States News Service	Human Rights Council concludes interactive dialogue with Special Rapporteurs on Torture and on Human Rights defenders	Situation in Sri Lanka/ Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S19</b>	14 March 2013	States News Service	Human Rights Council adopts outcomes of the Universal Periodic Review of Pakistan, Zambia and Japan	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2013/03/human-rights-council-adopts-outcomes-universal-periodic-review-pakistan">https://www.ohchr.org/en/press-releases/2013/03/human-rights-council-adopts-outcomes-universal-periodic-review-pakistan</a>	27 May 2023
<b>S20</b>	15 March 2013	OHCHR; States News Service	Human Rights Council adopts outcomes of the Universal Periodic Review on Peru and Sri Lanka	Sri Lanka and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2013/03/human-rights-council-adopts-outcomes-universal-periodic-review-peru-and-sri">https://www.ohchr.org/en/press-releases/2013/03/human-rights-council-adopts-outcomes-universal-periodic-review-peru-and-sri</a>	27 May 2023
<b>S21</b>	17 May 2013	Gov.uk; Asian Tribune	British High Commission in Colombo Marks the Day Against Homophobia and Transphobia	Foreign interference	Sri Lanka	<a href="https://www.gov.uk/government/news/british-high-commission-marks-international-day-against-homophobia-and-transphobia">https://www.gov.uk/government/news/british-high-commission-marks-international-day-against-homophobia-and-transphobia</a>	27 May 2023

<b>S22</b>	06 June 2013	OHCHR; Targeted News Service	Human Rights Council Adopts Outcomes of the Universal Periodic Review of France, Tonga and Romania	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2013/06/human-rights-council-adopts-outcomes-universal-periodic-review-france-tonga">https://www.ohchr.org/en/press-releases/2013/06/human-rights-council-adopts-outcomes-universal-periodic-review-france-tonga</a>	27 May 2023
<b>S23</b>	06 June 2013	OHCHR; States News Service	Human Rights Council adopts outcomes of the Universal Periodic Review of Mali, Botswana and the Bahamas	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2013/06/human-rights-council-adopts-outcomes-universal-periodic-review-mali-botswana">https://www.ohchr.org/en/press-releases/2013/06/human-rights-council-adopts-outcomes-universal-periodic-review-mali-botswana</a>	27 May 2023
<b>S24</b>	20 September 2013	Targeted News Service	Human Rights Council Adopts Outcomes of the Universal Periodic Review of the Russian Federation, Cameroon and Cuba	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2013/09/human-rights-council-adopts-outcomes-universal-periodic-review-russian">https://www.ohchr.org/en/press-releases/2013/09/human-rights-council-adopts-outcomes-universal-periodic-review-russian</a>	27 May 2023
<b>S25</b>	11 October 2013	Federal Newsfeed	Gates of Vienna News Feed 10/10/2013	CHOGM	Not counted in the quantitative analysis	Available on Nexis' database	27 May 2023
<b>S26</b>	06 November 2013	Soraya Kishtwari, Press Association Mediapoint	Act on gay rights at summit: Evans	CHOGM/ Situation in Sri Lanka/ Foreign interference	Commonwealth	Available on Nexis' database	27 May 2023
<b>S27</b>	07 November 2013	European Union News	Nigel speaks in Westminster Hall debate on Sri Lanka and the Commonwealth Heads of Government Meeting	CHOGM/ Situation in Sri Lanka/ Foreign interference	Commonwealth	<a href="https://www.nigel-evans.org.uk/news/nigel-speaks-westminster-hall-debate-sri-lanka-and-commonwealth-heads-government-meeting">https://www.nigel-evans.org.uk/news/nigel-speaks-westminster-hall-debate-sri-lanka-and-commonwealth-heads-government-meeting</a>	27 May 2023

<b>S28</b>	11 November 2013	Kunal Dutta, i-Independent	Homophobia rife in Commonwealth nations; SRI LANKA SUMMIT	Foreign interference	Commonwealth	Available on Nexis' database	27 March 2023
<b>S29</b>	13 November 2013	Paul Osborne, AAP Newsfeed	ASIA:Gay activists seek end to criminality	Foreign interference	Commonwealth	Available on Nexis' database	27 May 2023
<b>S30</b>	13 November 2013	UK Government News	Commonwealth's People Forum	Foreign interference	Commonwealth	<a href="https://www.gov.uk/government/speeches/commonwealth-peoples-forum">https://www.gov.uk/government/speeches/commonwealth-peoples-forum</a>	27 May 2023
<b>S31</b>	13 December 2013	Reeba Zachariah & Anshul Dhamija, Time of India	SC order will hurt Pink tourism growth	Social attitudes	Asia	<a href="https://timesofindia.indiatimes.com/business/india-business/sc-order-will-hurt-pink-tourism-growth/articleshow/27262729.cms">https://timesofindia.indiatimes.com/business/india-business/sc-order-will-hurt-pink-tourism-growth/articleshow/27262729.cms</a>	27 May 2023
<b>S32</b>	20 March 2014	OHCHR; States News Service; Premium Official News	Human Rights Council adopts outcomes of the Universal Periodic Review of Nigeria, Mexico and Mauritius	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-outcomes-universal-periodic-review-nigeria">https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-outcomes-universal-periodic-review-nigeria</a>	27 May 2023
<b>S33</b>	2 March 2014	States News Service; Premium Official News	Human Rights Council adopts the Universal Periodic Review of Jordan, Malaysia and Central African Republic	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-jordan">https://www.ohchr.org/en/press-releases/2014/03/human-rights-council-adopts-universal-periodic-review-outcomes-jordan</a>	27 May 2023
<b>S34</b>	19 June 2014	OHCHR; States News Service; US Official News	Human Rights Council adopts outcomes of the Universal Periodic Review of New Zealand, Afghanistan and Chile	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/06/human-rights-council-adopts-outcomes-universal-periodic-review-new-zealand">https://www.ohchr.org/en/press-releases/2014/06/human-rights-council-adopts-outcomes-universal-periodic-review-new-zealand</a>	27 May 2023

<b>S35</b>	14 August 2014	The New Humanitarian; UN Integrated Regional Information Networks (Nairobi); IRIN Middle East Service	LGBTI rights still not there yet	Social attitudes	World	<a href="https://www.thenewhumanitarian.org/analysis/2014/08/14/lgbti-rights-still-not-there-yet">https://www.thenewhumanitarian.org/analysis/2014/08/14/lgbti-rights-still-not-there-yet</a>	27 May 2023
<b>S36</b>	19 September 2014	Targeted News Service	Human Rights Council Adopts Outcomes of Universal Periodic Review of Costa Rica, Equatorial Guinea And Ethiopia	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2014/09/human-rights-council-adopts-outcomes-universal-periodic-review-costa-rica">https://www.ohchr.org/en/press-releases/2014/09/human-rights-council-adopts-outcomes-universal-periodic-review-costa-rica</a>	27 May 2023
<b>S37</b>	18 March 2015	Targeted News Service	Human Rights Council Adopts Outcomes of Universal Periodic Review of Bolivia, Fiji, and San Marino	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2015/03/human-rights-council-adopts-outcomes-universal-periodic-review-bolivia-fiji">https://www.ohchr.org/en/press-releases/2015/03/human-rights-council-adopts-outcomes-universal-periodic-review-bolivia-fiji</a>	27 May 2023
<b>S38</b>	26 March 2015	MINT	The Sex Talk: Time to make your stand clear, India	Sri Lanka and human rights mechanisms	World	<a href="https://www.livemint.com/Leisure/IPTCHvSCxuOcRZmAicKoWM/The-Sex-Talk-Time-to-make-your-stand-clear-India.html">https://www.livemint.com/Leisure/IPTCHvSCxuOcRZmAicKoWM/The-Sex-Talk-Time-to-make-your-stand-clear-India.html</a>	27 May 2023
<b>S39</b>	18 April 2015	Alisa Tang, Reuters; The Nation	Asia's LGBT people migrate to escape violence at home	Sri Lanka criminalising same sex	Asia	<a href="https://www.reuters.com/article/us-gay-rights-asia-idUSKBN0N000D20150409">https://www.reuters.com/article/us-gay-rights-asia-idUSKBN0N000D20150409</a>	27 May 2023
<b>S40</b>	25 June 2015	OHCHR; Targeted News Service; Premium Official News	Human Rights Council Adopts Outcomes of Universal Periodic Review of Lao People's Democratic	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2015/06/human-rights-council-adopts-outcomes-universal-periodic-review-lao-peoples">https://www.ohchr.org/en/press-releases/2015/06/human-rights-council-adopts-outcomes-universal-periodic-review-lao-peoples</a>	27 May 2023

			Republic, Spain and Lesotho				
<b>S41</b>	26 June 2015	OHCHR; Premium Official News; Targeted News Service	Human Rights Council adopts outcomes of Universal Periodic Review of Sweden, Grenada, Turkey and Kuwait	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2015/06/human-rights-council-adopts-outcomes-universal-periodic-review-sweden">https://www.ohchr.org/en/press-releases/2015/06/human-rights-council-adopts-outcomes-universal-periodic-review-sweden</a>	27 May 2023
<b>S42</b>	27 November 2015	The Times	Queen walks Malta's memory lane	Situation in Sri Lanka	Not counted in the quantitative analysis	<a href="https://www.thetimes.co.uk/article/queen-walks-maltas-memory-lane-tks6nq29l87">https://www.thetimes.co.uk/article/queen-walks-maltas-memory-lane-tks6nq29l87</a>	27 May 2023
<b>S43</b>	09 December 2015	UK Government News; Premium Official News	Baroness Anelay speech for International Human Rights Day	Foreign interference	Not counted in the quantitative analysis	<a href="https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day">https://www.gov.uk/government/speeches/baroness-anelay-speech-for-international-human-rights-day</a>	27 May 2023
<b>S44</b>	16 May 2016	Daily Mirror	Is equality a mere slogan?	Social attitudes	Sri Lanka	<a href="https://www.dailymirror.lk/109593/IS-EQUALITY-A-MERE-SLOGAN-">https://www.dailymirror.lk/109593/IS-EQUALITY-A-MERE-SLOGAN-</a>	27 May 2023
<b>S45</b>	23 July 2016	Laura Davies, UK Government News	Taking pride in pride	Foreign interference	Sri Lanka	<a href="https://blogs.fcdo.gov.uk/lauradavies/2016/06/23/taking-pride-in-pride/">https://blogs.fcdo.gov.uk/lauradavies/2016/06/23/taking-pride-in-pride/</a>	27 May 2023
<b>S46</b>	17 January 2017	Ada Derana	Govt. comments on decriminalizing homosexuality in SL	GSP	EU	Available on Nexis' database	27 May 2023
<b>S47</b>	19 January 2017	Daily Financial Times	Govt. defends decision on homosexuality	GSP	EU	Available on Nexis' database	27 May 2023
<b>S48</b>	26 January 2017	Daily Financial Times	President takes credit for sacking Arjuna Mahendran	GSP	Sri Lanka	<a href="https://www.ft.lk/Front-Page/president-takes-credit-">https://www.ft.lk/Front-Page/president-takes-credit-</a>	27 May 2023



						<a href="#">for-sacking-arjuna-mahendran/44-593929</a>	
<b>S49</b>	27 January 2017	Daily News	All rights reserved	Social attitudes	Sri Lanka	Available on Nexis' database	27 May 2023
<b>S50</b>	30 January 2017	Daily Mirror	Decriminalize sexual orientations in homo-sapiens	Social attitudes	Sri Lanka	<a href="https://www.dailymirror.lk/news-features/Decriminalize-sexual-orientations-in-HOMO-sapiens/131-122910">https://www.dailymirror.lk/news-features/Decriminalize-sexual-orientations-in-HOMO-sapiens/131-122910</a>	27 May 2023
<b>S51</b>	22 February 2017	Daily Financial Times	At CEDAW, Lankan women activists call for equality and end to discrimination	Sri Lanka and human rights mechanisms	Sri Lanka	<a href="https://www.ft.lk/article/599435/At-CEDAW--Lankan-women-activists-call-for-equality-and-end-to-discrimination">https://www.ft.lk/article/599435/At-CEDAW--Lankan-women-activists-call-for-equality-and-end-to-discrimination</a>	27 May 2023
<b>S52</b>	23 June 2017	State News Service	Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity	Sri Lanka criminalising same sex	World	<a href="https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity">https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity</a>	27 May 2023
<b>S53</b>	18 July 2017	Benjamin Cohen, The Times	50 years on, Britain is a beacon for LGBT rights	Sri Lanka criminalising same sex	World	<a href="https://www.thetimes.co.uk/article/50-years-on-britain-is-a-beacon-for-lgbt-rights-0twgp6xjw">https://www.thetimes.co.uk/article/50-years-on-britain-is-a-beacon-for-lgbt-rights-0twgp6xjw</a>	27 May 2023
<b>S54</b>	21 September 2017	Targeted News Service	Human Rights Council Adopts Universal Periodic Review Outcomes of United Kingdom, India and Brazil	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2017/09/human-rights-council-adopts-universal-periodic-review-outcomes-united">https://www.ohchr.org/en/press-releases/2017/09/human-rights-council-adopts-universal-periodic-review-outcomes-united</a>	27 May 2023
<b>S55</b>	10 November 2017	Ada Derena, Colombo Gazette; Daily News; Global	UPR to review wide ranging human rights issues on Sri Lanka	Sri Lanka and human rights mechanisms	World	<a href="https://colombogazette.com/2017/11/10/upr-to-review-">https://colombogazette.com/2017/11/10/upr-to-review-</a>	27 May 2023

		English (Middle East and North Africa Financial Network)				<a href="#">wide-ranging-human-rights-issues-on-sri-lanka/</a>	
<b>S56</b>	15 November 2017	Ada Derana	US Democrats hesitant to further military ties with Sri Lanka	Foreign interference/ Sri Lanka and human rights mechanisms	World	<a href="http://www.adaderana.lk/news/44191/us-democrats-hesitant-to-further-military-ties-with-sri-lanka-">http://www.adaderana.lk/news/44191/us-democrats-hesitant-to-further-military-ties-with-sri-lanka-</a>	27 May 2023
<b>S57</b>	09 January 2018	Targeted News Service	Mercy Student Samantha Hernandez Speaks to World	Sri Lanka and human rights mechanisms	World	Available on Nexis' database	27 May 2023
<b>S58</b>	19 March 2018	OHCHR; Premium Official News	Human Rights Council adopts Universal Periodic Review Outcomes of Japan, Ukraine and Sri Lanka	Sri Lanka and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2018/03/human-rights-council-adopts-universal-periodic-review-outcomes-japan-ukraine">https://www.ohchr.org/en/press-releases/2018/03/human-rights-council-adopts-universal-periodic-review-outcomes-japan-ukraine</a>	27 May 2023
<b>S59</b>	13 April 2018	Louis Staples, Indy100	What Trinidad and Tobago's historic gay sex ruling means for LGBT+ rights worldwide; 'This is a big win for Trinidad and Tobago and the Caribbean	Sri Lanka criminalising same sex	Commonwealth	<a href="https://www.indy100.com/news/trinidad-tobago-gay-sex-ruling-lgbt-rights-caribbean-commonwealth-8302931">https://www.indy100.com/news/trinidad-tobago-gay-sex-ruling-lgbt-rights-caribbean-commonwealth-8302931</a>	27 May 2023
<b>S60</b>	14 May 2018	Daily Mirror	Commonwealth values an enigma in Sri Lanka	Sri Lanka criminalising same sex	Commonwealth	<a href="https://www.dailymirror.lk/article/Commonwealth-values-an-enigma-in-Sri-Lanka-149862.html">https://www.dailymirror.lk/article/Commonwealth-values-an-enigma-in-Sri-Lanka-149862.html</a>	27 May 2023
<b>S61</b>	19 May 2018	Daily News	Mutual respect, the key to equality	Sri Lanka criminalising same sex	Commonwealth	<a href="https://www.dailynews.lk/2018/05/19/features/151375/mutual-respect-key-equality">https://www.dailynews.lk/2018/05/19/features/151375/mutual-respect-key-equality</a>	27 May 2023

<b>S62</b>	01 June 2018	Colombo Gazette	Police admit isolated incidents reported targeting LGBT persons	Social attitudes/ Sri Lanka and human rights mechanisms	Sri Lanka	Available on Nexis' database	27 May 2023
<b>S63</b>	28 June 2018	Impact News Service; Premium Official News	Human Rights Council adopts Universal Periodic Review outcomes of France, Tonga, Romania, and Mali	Sri Lanka and human rights mechanisms	Not counted in the quantitative analysis	<a href="https://www.ohchr.org/en/press-releases/2018/06/human-rights-council-adopts-universal-periodic-review-outcomes-france-tonga">https://www.ohchr.org/en/press-releases/2018/06/human-rights-council-adopts-universal-periodic-review-outcomes-france-tonga</a>	27 May 2023
<b>S64</b>	06 September 2018	Lanka Business Online	India's Supreme Court strikes down gay sex ban, Sri Lanka's ban remains in place	Sri Lanka criminalising same sex	Asia	Available on Nexis' database	27 May 2023
<b>S65</b>	06 September 2018	Sommer Brokaw, United Press International	India Supreme Court decriminalizes same-sex relations in historic ruling	Sri Lanka criminalising same sex / colonial import	Asia	Available on Nexis' database	27 May 2023
<b>S66</b>	06 September 2018	CE Noticias Financieras English	Court of India decriminalizes homosexuality	Social attitudes	Asia	Available on Nexis' database	27 May 2023
<b>S67</b>	07 September 2018	Gladwin Emmanuel, Mirror Publications	Section 377 verdict: Everyone will have their basic rights guaranteed once again for the first time in centuries, says founder of Srishti Madurai	Sri Lanka criminalising same sex	Asia	<a href="https://mumbaimirror.indiatimes.com/news/india/section-377-verdict-everyone-will-have-their-basic-rights-guaranteed-once-again-for-the-first-time-in-centuries-says-founder-of-srishti-madurai/articleshow/65702950.cms">https://mumbaimirror.indiatimes.com/news/india/section-377-verdict-everyone-will-have-their-basic-rights-guaranteed-once-again-for-the-first-time-in-centuries-says-founder-of-srishti-madurai/articleshow/65702950.cms</a>	27 May 2023

<b>S68</b>	07 September 2018	Menaka Guruswamy, Hindustan Times	This is what real freedom feels like	Sri Lanka criminalising same sex	Commonwealth	<a href="https://www.hindustantimes.com/analysis/section-377-sc-has-distinguished-itself-as-an-institution-invested-in-protection-of-all-indians/story-QPuv2fxzE4RQE3GEIh2vnL.html">https://www.hindustantimes.com/analysis/section-377-sc-has-distinguished-itself-as-an-institution-invested-in-protection-of-all-indians/story-QPuv2fxzE4RQE3GEIh2vnL.html</a>	27 May 2023
<b>S69</b>	09 September 2018	The Economic Times	A long & hard battle of a Sri Lankan activist for gay rights	Social attitudes	Commonwealth	<a href="https://economictimes.indiatimes.com/news/politics-and-nation/a-long-hard-battle-of-a-sri-lankan-activist-for-gay-rights/articleshow/65736301.cms">https://economictimes.indiatimes.com/news/politics-and-nation/a-long-hard-battle-of-a-sri-lankan-activist-for-gay-rights/articleshow/65736301.cms</a>	27 May 2023
<b>S70</b>	10 September 2018	Vijay Tagore, Mirror Publications	#377 not out: Aussie legend says good beginning but lot more to be done	Social attitudes	World	Available on Nexis' database	27 May 2023
<b>S71</b>	16 September 2018	Gamini Weerakoon, Sunday Times	Demo-crazy in Lanka	Situation in Sri Lanka/ Sri Lanka criminalising same sex	Sri Lanka	<a href="https://www.sundaytimes.lk/180916/sunday-times-2/demo-crazy-in-lanka-311566.html">https://www.sundaytimes.lk/180916/sunday-times-2/demo-crazy-in-lanka-311566.html</a>	27 March 2023
<b>S72</b>	22 September 2018	OHCHR; Premium Official News	Human Rights Council adopts Universal Periodic Review outcomes of Cameroon, Bangladesh and Uzbekistan	Sri Lanka and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2018/09/human-rights-council-adopts-universal-periodic-review-outcomes-cameroon">https://www.ohchr.org/en/press-releases/2018/09/human-rights-council-adopts-universal-periodic-review-outcomes-cameroon</a>	27 May 2023
<b>S73</b>	23 September 2018	Sunday Observer	The battle against homophobia in Sri Lanka	Social attitudes	Sri Lanka	<a href="https://www.sundayobserver.lk/2018/09/23/issues/battle-">https://www.sundayobserver.lk/2018/09/23/issues/battle-</a>	27 May 2023

						<a href="#">against-homophobia-sri-lanka</a>	
<b>S74</b>	25 October 2018	UN Press; States News Service	First United Nations expert on sexual orientation presents inaugural human rights report to third committee, as other tackles justice, environment concerns	Sri Lanka and human rights mechanisms	World	<a href="https://press.un.org/en/2018/gashc4243.doc.htm">https://press.un.org/en/2018/gashc4243.doc.htm</a>	27 May 2023
<b>S75</b>	05 November 2018	TVEyes - BBC Radio 4	BBC Radio 4 - 03:30 AM GMT	Social attitudes	Asia	Available on Nexis' database	27 May 2023
<b>S76</b>	16 November 2018	Thiyagaraja Waradas , Colombo Telegraph; Daily Mirror	JVP stands for non-discrimination of LGBTIQ persons	LGBT issues in politics	Sri Lanka	<a href="https://www.colombotelegraph.com/index.php/jvp-stands-for-non-discrimination-of-lgbtq-persons/">https://www.colombotelegraph.com/index.php/jvp-stands-for-non-discrimination-of-lgbtq-persons/</a>	27 May 2023
<b>S77</b>	12 December 2018	Daily Mirror	Butterflies' continue their fight for democracy	LGBT issues in politics/ social attitudes	Sri Lanka	<a href="https://www.dailymirror.lk/article/-Butterflies-continue-their-fight-for-democracy-159649.html">https://www.dailymirror.lk/article/-Butterflies-continue-their-fight-for-democracy-159649.html</a>	27 May 2023
<b>S78</b>	16 May 2019	Louis Staples, The Independent	Inside the fight for LGBT+ rights across the Commonwealth; Bound together by optimism and Britain's colonial legacy of homophobia and white supremacy, a group of Commonwealth LGBT+ activists gather in Mauritius. Can they find	Activism/ Sri Lanka criminalises same sex	Commonwealth	<a href="https://www.independent.co.uk/news/long_reads/lgbt-gay-rights-commonwealth-mauritius-homosexuality-british-empire-a8912641.html">https://www.independent.co.uk/news/long_reads/lgbt-gay-rights-commonwealth-mauritius-homosexuality-british-empire-a8912641.html</a>	27 May 2023

			new, intersectional ways to tackle systemic discrimination and violence? Louis Staples went to find out				
<b>S79</b>	09 June 2019	The Associated Press, Canadian Press	Rights group cheers Bhutan's move toward legalizing gay sex; Rights group cheers Bhutan's move toward legalizing gay sex	Sri Lanka criminalises same sex acts	Asia	<a href="https://apnews.com/article/b23465f91806466d96ad5b106347b7cf">https://apnews.com/article/b23465f91806466d96ad5b106347b7cf</a>	27 May 2023
<b>S80</b>	24 June 2019	States News Service	Human Rights Council discusses violence based on sexual orientation and gender identity, and the independence of judges and lawyers	Sri Lanka and human rights mechanisms	World	<a href="https://www.ohchr.org/en/press-releases/2019/06/human-rights-council-discusses-violence-and-discrimination-based-sexual">https://www.ohchr.org/en/press-releases/2019/06/human-rights-council-discusses-violence-and-discrimination-based-sexual</a>	27 May 2023
<b>S81</b>	05 November 2019	Ifham Nizam, Asia News Network; InfoLanka	Lankan LGBT community hails JVP leader, promises 2 million votes	LGBT issue sin politics	Sri Lanka	<a href="https://www.infolanka.com/news/2019/nov/index7.html">https://www.infolanka.com/news/2019/nov/index7.html</a>	27 May 2023
<b>S82</b>	10 February 2020	Impact News Service	Council of the European Union: JOINT STAFF WORKING DOCUMENT The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Sri Lanka covering the period 2018 - 2019 Accompanying the document Joint Report	GSP	EU	<a href="https://op.europa.eu/en/publication-detail/-/publication/ec88a77e-5327-11ea-aece-01aa75ed71a1/language-en">https://op.europa.eu/en/publication-detail/-/publication/ec88a77e-5327-11ea-aece-01aa75ed71a1/language-en</a>	27 May 2023

			to the European Parliament and the Council Report on the Generalised Scheme of Preferences covering the period 2018-2019 PDF document ST 5949 2020 ADD 1011-02-2020				
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## Appendix D: Participant Information Sheet and Informed Consent Form



### WHAT WORKS IN PROMOTING THE DECRIMINALISATION OF SAME-SEX ACTS IN THE COMMONWEALTH

#### Participant Information Sheet

*Please read the following information carefully before filling out the Informed Consent Form.*

#### **Purpose of this research**

My research looks at what works in promoting equality for people with a minority sexual orientation or gender identity in international relations. I am particularly focusing on the Commonwealth countries which have recently decriminalised same-sex acts, to understand what triggered change in this area. I believe that this research will positively contribute to making the case for ending violence against LGBT people and give effective tools to policy officials and decision makers who would like to advocate for change at home or abroad.

#### **Who is doing this research?**

The research is conducted by Morgane Donse, Senior Policy Advisor at the UK Government Equalities Office and PhD candidate at the Department of Sociology at the University of York. The study is partially funded by the Government Equalities Office (Department for Education).

#### **What I will be asked to do?**

I would like to interview you because you have contributed to the decriminalisation of same-sex acts in your home country or abroad. I have a questionnaire prepared and we will set up a time which is convenient to you for the interview (either in person or over the phone). The interview will be taped to ensure that the information is accurately recorded and transcribed. If you would prefer not to be tape recorded, I will take notes. You will remain anonymous; no one other than myself and my two supervisors will know your name or that you have participated in the project. You can contact me at [md1175@york.ac.uk](mailto:md1175@york.ac.uk) to discuss your participation further.

#### **Why should I take part?**

This research is looking at bridging the gap between academia, policy and practice and provide experts and policy officials with concrete recommendations to successfully advance LGBT equality globally. To date, 73 states still criminalise same-sex acts. Sharing your experience is extremely important for this research to be meaningful and helpful to others who would like to end violence and discrimination against LGBT people.

#### **Do I have to take part?**

You are under no obligation to take part in this research. If you do decide to take part and later change your mind, you can withdraw at any time. You do not have to give a reason.

#### **What will happen to the information?**



All data will be collected and stored in accordance with the [Data Protection Act 1998](#). This means that all of the personal information you will provide at the interview will be treated as confidential. The information provided will only be used for the purposes of the research and will not be available to anyone other than myself and my two supervisors. The data will also be stored on a secure computer.

When answering the interview questions, you might provide information which are of organisational sensitivity. I will make sure that such information won't be disclosed in the final report, provided the information is still sensitive by the end of the project.

When the research will be completed, I will produce a report on what works to promote LGBT equality in international relations. The report will include recommendations for state and elected officials who wish to advance LGBT equality. I will share with you the report and any other published outputs from this research.

### **Giving Informed Consent**

If you are still interested in participating in the research, please do read, fill out and sign the Informed Consent Form below and send it to me at [md1175@york.ac.uk](mailto:md1175@york.ac.uk).

If you have any queries in regard to your participation or the research project, please contact me at [md1175@york.ac.uk](mailto:md1175@york.ac.uk) +44 (0)7523378869 or either of my supervisors Professor Paul Johnson at [paul.johnson@york.ac.uk](mailto:paul.johnson@york.ac.uk) / +44 (0)1904 32 2624 or Doctor Katy Sian at [katy.sian@york.ac.uk](mailto:katy.sian@york.ac.uk) / + 44 (0)1904 324738.

Alternatively, you can contact Professor Tony Royle, Chair of the Economics, Law, Management, Politics and Sociology Ethics (ELMPS) Committee at the University of York, at [tony.royle@york.ac.uk](mailto:tony.royle@york.ac.uk) / +44 (0)1904 325061.

### **Informed Consent Form**

Thank you for your interest in taking part in this research. Before you agree to take part, you must read the Participant Information Sheet above and be clear about what the project involves. If you have any queries, please contact the researcher Morgane Donse at [md1175@york.ac.uk](mailto:md1175@york.ac.uk).

If you complete this form you are giving your consent to take part in an interview on your perceptions of what works in promoting the decriminalisation of same-sex acts in international relations.

Please tick **all**:

	YES	NO
I have read the Participant Information Sheet	<input type="checkbox"/>	<input type="checkbox"/>
I have had the chance to ask questions about the research and the answers provided were satisfying	<input type="checkbox"/>	<input type="checkbox"/>

I understand what the research is about and what is involved	<input type="checkbox"/>	<input type="checkbox"/>
I understand that my name and contact details will remain anonymous. The information I give will only be available to the researcher and her supervisors and if referenced, this information will not be able to identify me.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that the information I give will be treated as strictly confidential and handled in accordance with the provisions of the <a href="#">Data Protection Act 1998</a> .	<input type="checkbox"/>	<input type="checkbox"/>
I understand that I can choose whether to participate or not, and that I can withdraw at any time without having to give a reason and without any adverse consequences.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that the information I have divulged will be used to produce a PhD research project and may be published.	<input type="checkbox"/>	<input type="checkbox"/>

Please tick **one**:

I would like to remain anonymous and for it to be assured that it will not be possible to identify me from any publications	<input type="checkbox"/>
I give my permission for my name to be used in relation to the information given within this questionnaire in any publications resulting from this project.	<input type="checkbox"/>

Please tick **one**:

I agree for the interview to be recorded	<input type="checkbox"/>
I agree for the researcher to take notes	<input type="checkbox"/>

*Participant    Researcher*

Name:            Name:

Date:            Date:

Signature:    Signature:

## **Appendix E: Interview Questionnaire**

### ***Scenery setting***

- Could you please tell me a bit about yourself, your career/work and how did this lead you to working on the decriminalisation of same-sex acts in [insert country]?

### ***Before criminalisation***

- To your knowledge, what was the position regarding same-sex acts and/or same-sex relationships or existence of a third gender in [insert country] prior to its colonisation?

### ***Before decriminalisation***

- What were the social/political attitudes in [insert countries] before the debate/process of decriminalisation started?
- What was the role of the Church/ Christian faith in [insert country]'s society? In politics?

### ***Working towards decriminalisation***

- How did your work on the decriminalisation started?
- What strategies, evidence, arguments did you use to drive change?
- Who did you talk to, to help you work on decriminalising same-sex acts?
- What was the most helpful in making the case for decriminalisation?
- What was the most challenging?
- Did the Government face domestic or international pressure for change? From whom? In what forms?
- If you had to do it again, what would you do differently?

### ***After decriminalisation***

- Has decriminalising same-sex acts changed anything in the makeup of [insert country]'s society, politics, etc.?

### ***Recommendations***

- In your opinion, what prompted change in [insert country]?
- What do you think would help policy makers/ decision makers decriminalise same-sex acts specifically?

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