

# Engaging with Lesbian, Gay, Bisexual and Transsexual and/or Intersex Policy: Issues and Challenges

The Commonwealth People's Forum (CPF) is a biennial event held prior to the Commonwealth Heads of Government Meeting. CPF 2015 took place on 23-26 November 2015 and was jointly organised by the Government of Malta (host) and the Commonwealth Foundation. CPF 2015 critically explored policy based actions under the theme of "What Makes Resilient Societies?" It provided an innovative opportunity for civil society organisations to share knowledge and learn from each other as well as to interact with governance institutions on key policy issues. The CPF2015 series elaborates on the issues covered in the Malta Declaration on Governance for Resilience.

## The Commonwealth Context

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people face criminalisation, violence, discrimination and exclusion across and beyond the Commonwealth. The Commonwealth Charter makes reference to the right to development for all, without discrimination on any grounds, as the foundation of peaceful, just and stable societies. At the opening session of CPF 2015, Commonwealth Secretary General Kamallesh Sharma said "Being committed to equality and human rights for all, without discrimination on any grounds, we embrace difference, and that includes sexual identity. Discrimination and criminalisation in any form on grounds of sexual orientation is incompatible with our Commonwealth values." This was the first time that the issue of LGBTI had been directly addressed at a CPF by a Commonwealth Secretary General.

Two dedicated sessions at CPF 2015 discussed the protection and recognition of LGBTI minority and marginalized groups as fundamental to resilient societies. The first, a policy dialogue under the title *Resilient societies: Security of all people in all their diversity*, focused on good practice in building

non-violent societies. The second session, not an explicit policy discourse, *Resilient Societies: Celebrating inclusion and diversity*, provided LGBTI perspectives on the progress and approaches across Commonwealth regions on gender identity and expression.

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Both these sessions discussed the intersecting roles of civil society, the Commonwealth and other actors in promoting non-violence and safeguarding minorities and marginalized people and identified several important policy recommendations.

## Issues and Challenges

### Poor understanding and engagement with LGBTI issues and people

Many people in Commonwealth countries, including leaders and officials, do not have the capacity to engage with the LGBTI community. There is a wide gap in understanding of sexual orientation and gender identity. Intersectionality (the interconnected nature of social categorizations such as race, class, and gender as they apply to LGBTI people) and how this creates overlapping and interdependent systems of discrimination and disadvantage is also poorly understood. Where there is misogyny, there is homophobia; where there is racism there is transphobia.

### Decriminalising homosexuality: moving from rhetoric to action

In 36 of the 52 Commonwealth countries, member states still criminalise homosexuality; same sex relationships are illegal. Legal statutes, most of which date back to the colonial era, refer to same-sex relationships as ‘unnatural offences’ with long jail penalties in some countries. While discrimination on the basis of gender identity still continues to be widespread, some member states in Asia have seen an increasing legal recognition of ‘third gender’ status. There has been some slow change over the years to recognize the human rights of LGBTI people, however progress has been inadequate to repeal outdated laws and address the discrimination experienced by LGBTI people on a daily basis. A key challenge remains moving from rhetoric to action and where there has been progress in legal changes, to translate law and policy into lived experience.

As an example, South Africa, in contrast to many other Commonwealth countries, has decriminalized homosexuality. It became the first country in the world to outlaw discrimination based on sexual orientation in its new constitution in 1996. Yet so called ‘corrective rape’ (the use of rape against people who do not conform to perceived social norms regarding human sexuality or gender roles), remains a lived reality. African Union (AU) member states have committed to condemning violence against LGBTI people in Resolution 275 of the AU; similarly the Organisation of American States. Despite these regional and international commitments,

LGBTI people in each of these regions frequently experience acts of abuse, physical assault and violence leading to death.

### Political leaders need to engage with the work of LGBTI actors

Political leadership remains a defining factor in achieving progress. Government leaders need to support the work of LGBTI activists by listening to them, collaborating with LGBTI actors and considering how global strategies can support national and regional strategies. The expertise of LGBTI people needs to be brought into policy spaces and their agency considered. This will provide an opportunity for accountability and shared responsibility to one another. Policy that is responsive to and consultative of LGBTI communities is likely to be far more successful in addressing lived experiences.

“Pressing for change needs to be done very, very adroitly, it needs to be careful, the risk of backlash is real.”

### The Commonwealth’s role

The Commonwealth provides a valuable international context for national issues to be discussed in support of national level advocacy and activism and as a forum for inter-governmental action. It is also a useful space in which good policy practice and lessons can be shared to promote progress.

Among Commonwealth countries, Malta has played – and is continuing to play – an important and progressive role in reducing vulnerabilities faced by LGBTI people. Here the government is acting to recognize, not ignore those who are victims of violence. Australia, where homophobia was widespread in the late 1970s, now advocates very strongly for non-discrimination on the basis of sexual orientation and gender identity. Over time there has been significant change due to a concerted effort by government to embrace respect and diversity not just as part of fundamental human rights but as part of a modern, successful country.

### An excerpt from the Malta Declaration on Governance for Resilience

**30.** Criminialisation, violence, discrimination and exclusion faced by LGBTI people hinders the resilience of societies. Inclusive societies are stronger, more innovative and therefore more resilient. Commonwealth civil society must forge stronger links across sectoral interests – LGBTI, trade unions, disability, women and faith movements, indigenous people and ageing populations. People in all of their diversity embody multiple identities, face intersecting oppressions and suffer from the same structural and institutional threads to civil society space.

**31.** A number of Commonwealth governments require encouragement to engage with LGBTI civil societies in their own countries. There is a role in sharing good national policy to inform inter-governmental and cross-governmental dialogue to protect the lives of people who experience violence on the grounds of their sexual orientation and gender identity or expression.

**32.** The Commonwealth has a role in assisting the transition of knowledge from national to the intergovernmental and between states, and to facilitate a dialogue to safeguard lives which respects the cross cutting nature of LGBTI issues as they intersect with gender, race, faith, ethnicity, disability, and age.

**33.** We call on Commonwealth leaders to follow the example of the African Commission on Human and People's Rights, the Organisation of American States and UN Human Rights Council, to condemn violence on any and all grounds and we call on Commonwealth Governments to effectively build on the work of the CPF 2015 to ensure that this work remains active in the Commonwealth agenda. Furthermore, Commonwealth leaders and institutions must make concrete efforts to prevent acts of violence and harassment committed against individuals because of their sexual orientation and gender identity.

### Complexity of mobilizing at the national level

LGBTI activists must negotiate between local, national, regional and international levels in their advocacy. LGBTI civil society have agitated over many years in a wide range of policy and decision-making spaces. The Maltese experience has highlighted the vital relationship between national, regional and international activists who have assisted in the formulation of strategies, deciding priorities and accessing international mechanisms. Coalitions across geographic and sectoral borders have been successful in raising awareness in many instances, but it is at the national level where activists need to be most astute.

While decriminalisation is a useful platform issue to press for change for a range of other civil, economic and political rights of LGBTI people, it is not the only issue with regard to the rights and recognition of the LGBTI community. Opponents of LGBTI rights seek to silence activists by framing their opposition as a North/South power imbalance or a cultural imposition, which needs to be carefully challenged. Taking the experience of good national policy from one country to another and from international forums to a national context needs to be fully considered. While several governments have stated that they are willing to look at laws from other countries as an example of good policy, there is the risk that this can be perceived as a reproduction of colonialism.

**“We are not free until each and every one of us is free.”**

CPF Participant

Building allies and relationships across sectoral interests - between LGBTI organisations and other social movements such as trade unions, disability and women's rights, faith movements, indigenous peoples, young adults and minors as well as ageing populations offers the opportunity to build solidarity, to show linkages with every day, well known struggles and to advance sectoral goals. International and regional mechanisms, such as the commitment embedded in the Sustainable Development Goals to 'leave no one behind' and the endorsement by several governments including Australia, Canada, New Zealand and the United Kingdom to the Equal Rights Coalition's commitment to "support

inclusive development for, all persons, regardless of sexual orientation, gender identity or expression, and sex characteristics” will provide LGBTI people with a stronger stake in accessing the benefits of social and economic development. In addition, the UN Human Rights Commission, African Commission and the OAS have played and will continue to play an important role in holding governments to account, particularly where the relationship between national governments and civil society is weak.

## Policy Recommendations

- National and international policy makers should put in place mechanisms to engage and consult more widely with LGBTI civil society. This will require investment to develop such mechanisms to support conversations, consultations and working groups, etc. An increasingly strategic approach will be needed to scale up progress where it has been made; and to most effectively mobilise civil society’s role and voice nationally and across the Commonwealth.
- Political leaders, emboldened by the 2015 CHOGM Communique, need to condemn violence and make concrete efforts, working closely with relevant authorities, to prevent acts of violence and harassment committed against all individuals. Programmes to address ignorance of sexual orientation and gender identity and challenging the language of anti-LGBTI discourse in the public, with faith communities and with relevant law enforcement authorities will help to create a culture of change.
- Governments need to better understand what makes good policy and practice at the national level. Leaders can use examples gained from inter-governmental fora, including Commonwealth spaces, and to translate and adapt to national contexts. Concentrating on what can be achieved, not on what cannot, will maintain the focus on progress.
- The Commonwealth has a role to assist the sharing and transition of knowledge and experience on policy and practice. The Commonwealth can facilitate conversations on the best ways to safeguard the lives of people who experience violence and abuse.
- Leaders need to invest in research on the economic and developmental consequences of discrimination and the costs of failure to promote an inclusive society. Such empirical evidence will strengthen and reinforce the message that LGBTI discrimination has no place in a peaceful, just and successful society.

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