



REFORM
OF DISCRIMINATORY
SEXUAL OFFENCES LAWS
IN THE COMMONWEALTH
AND OTHER JURISDICTIONS

Case Study of Seychelles



THE HUMAN DIGNITY TRUST

The Human Dignity Trust is an organisation of international lawyers supporting local partners to uphold international and constitutional human rights law in countries where private, consensual sexual conduct between adults of the same-sex is criminalised. Over 70 jurisdictions globally criminalise consensual same-sex intimacy, putting lesbian, gay, bisexual and transgender ('LGBT') people beyond the protection of the law and fostering a climate of fear, stigma, discrimination and violence.

The Trust provides technical legal assistance upon request to local human rights defenders, lawyers and governments seeking to eradicate these discriminatory laws.

With generous funding from Global Affairs Canada, the Human Dignity Trust has developed a series of case studies on the ways in which Commonwealth governments around the world have achieved reform of these laws and other sexual offences laws that discriminate against women, children, LGBT people and other groups, and initiated the establishment of a Commonwealth Group of Experts on legislative reform comprised of legal, political, academic and other experts with experience in reform of discriminatory sexual offences laws.

The research for this series of case studies has been possible thanks to the insight and assistance of members of the Commonwealth Group of Experts and many others in the relevant countries who helped initiate, steer, inform and implement sexual offences law reform to bring sexual offences laws into compliance with international and domestic human rights standards.

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INTRODUCTION


INTRODUCTION

Discriminatory sexual offences laws continue to impact the lives of many Commonwealth citizens, particularly affecting women, children, and LGBT people. These laws are at odds with international and regional human rights norms and domestic constitutional law. They undermine human rights and perpetuate violence, hate crimes and discrimination, and threaten the health and prosperity of entire societies.

Discriminatory laws are apparent in the sexual offences provisions of many Commonwealth criminal codes as well as in the absence of protective legislation. For example, many Commonwealth countries have different ages of consent for sexual relations and marriage for males and females. Rape provisions are often gender-specific, and do not cover all forms of rape including rape with objects. Marital rape remains lawful in half of all Commonwealth countries. Laws protecting against sexual harassment and child sexual grooming are uneven across the Commonwealth. In two thirds of Commonwealth member states, consensual same-sex sexual intimacy in private between adults is criminalised. Many countries have laws that are used to discriminate against transgender people including cross-dressing, impersonation and vagrancy laws. Very few Commonwealth countries have legislation to recognise, prevent and punish hate crimes, including those committed on the basis of sexual orientation or gender identity.

Several countries have, however, made real progress in reforming their laws through either the wholesale updating of criminal codes, allowing multiple issues to be tackled together, or through targeted reforms. Some of the most recent examples are as follows:

- **Seychelles** in 2016 repealed a law criminalising consensual same-sex sexual intimacy between adults;
- **Belize** in 2014 enacted major reforms to its colonial-era sexual offences laws, including making rape laws gender neutral, and it achieved decriminalisation of consensual same-sex sexual acts in 2016 through the courts;

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- **Northern Cyprus** in 2014 repealed a law that criminalised consensual same-sex sexual conduct, prompted by litigation before the European Court of Human Rights, as part of a package of reforms to the sexual offences chapter of its colonial-era criminal code;
 - **Nauru** in 2016, with international assistance, completed the wholesale updating of its criminal code, including the modernisation of its sexual offences laws;
 - **Palau** in 2012 and 2014, with the assistance of model laws, respectively modernised its sexual offences laws and completed the wholesale updating of its penal code; and
 - **Mozambique** in 2015 completed the wholesale updating of its penal code, including the modernisation of its sexual offences laws, using the Portuguese penal code as the basis for reform.

Law reform can play a key role in advancing human rights in relation to sexual and physical integrity and health, and is an important part of a comprehensive strategy to reduce crimes, particularly sexual crimes, as well as address the persecutory and discriminatory dimensions of laws that exist on many statute books, ensuring a criminal justice regime that meets international human rights obligations and is fit for the 21st century.

The above examples demonstrate that different countries have taken diverse approaches to reforming sexual offences laws. The Human Dignity Trust has compiled a series of case studies to document the ways and means that each of these countries has achieved reform.

By showcasing these examples, it is hoped that other countries can be inspired and assisted to undertake similar reforms.



EXECUTIVE SUMMARY

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Seychelles is one of the few African countries that has recently taken a very positive step to repeal its law criminalising private consensual same-sex sexual intimacy between adults. This report documents how the reform was successfully achieved in a contemporary, deeply religious African society.

History of the Offence

A British colonial law reflecting Victorian attitudes of the time, section 151(a) and (c)¹ of the Penal Code 1952, criminalised a person who had “carnal knowledge” of any person “against the order of nature”, or a person who permitted any male person to engage in such conduct with them. This was generally understood to capture anal intercourse. It was first introduced by the British in the 1924 version of the Penal Code while Seychelles was a British colony. When Seychelles became independent in 1976, section 151 was inherited with the rest of the Penal Code of 1952. The provision was discussed during the drafting of the new Constitution ahead of the return to democracy in 1992-93 and there was, in effect, a conscious choice by the then leadership of the country to retain section 151.

Impact of the Law

Section 151 was mainly unenforced. The only documented prosecutions were for non-consensual acts and those committed in public. However, the existence of the offence reportedly reinforced pervasive stigmatisation and discrimination against LGBT people that, among other negative consequences, discouraged LGBT people from seeking testing and treatment for HIV.

The international community voiced concerns, collectively through the United Nations Human Rights Council’s Universal Periodic Review (‘UPR’) process, with recommendations in 2011 for the repeal of section 151 in order to allow LGBT people to “participate more equally in society without fear of discrimination or stigma”.² In 2016, a further UPR report noted that the continued discrimination against LGBT people limited their access to health and social services. In a significant step, the Seychelles government accepted the UPR recommendations in 2011.³ But thereafter, progress towards repeal was slow.

¹ For simplicity, throughout this report these sub-sections are referred to simply as ‘section 151’, although subsection (b) of section 151, which criminalises bestiality, was not part of the reform and remains in force. A copy can be found at section 1.a of the Annex.

² United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Seychelles*, July 2011 (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/144/43/PDF/G1114443.pdf?OpenElement>). A copy can be found at section 5.a of the Annex; Arc International, *Seychelles* (available at <http://arc-international.net/global-advocacy/universal-periodic-review/s/seychelles/>).

³ Seychelles, *Responses to Recommendations*, 21 September 2011 (available at https://www.upr-info.org/sites/default/files/document/seychelles/session_11_-_may_2011/recommendationstoseychelles2011.pdf).

Reform Context

There is no evidence to suggest that any single factor led to the reform of section 151. The political will and climate of the time were likely very influential factors, in combination with Seychelles seeking to fulfil its international and constitutional commitments (as highlighted by the UPR) and muted opposition from the mainstream churches. Other significant factors were engagement by the legal profession, civil society groups and the diplomatic community, while generally balanced coverage in the media helped to raise awareness and to create a political environment more open to change.

A previous reform attempt had been made in 1990 but was not pursued, reportedly due to strong opposition from faith groups, which have an important place in Seychellois life.

However, in the years preceding 2016, the public profile of the issue of decriminalisation was raised significantly, particularly through the following:

- a well-informed and attended public debate in the Judicial College in 2014;
- campaigning by the then-unregistered LGBT civil society group ‘LGBTI Sey’;
- mainstream and social media articles and broadcasts; and
- a same-sex marriage at the British High Commissioner’s residence in 2015.

These factors were reinforced by evidence from the National AIDS Council that identified section 151 as a barrier to effective HIV testing and by arguments from the business community that tourism, Seychelles’ leading business sector, would benefit from the country being seen as open, tolerant and welcoming to all visitors.

Reform Announcement

In February 2016, shortly after his re-election, President Michel announced during the course of his annual State of the Nation Address that section 151 would be repealed. His announcement took most people by surprise and has been seen as a remarkable act of political will since the issue had not featured significantly in the main parties’ election campaigns and – despite its raised public profile noted above – there could not be said to be substantial domestic political pressure to repeal the offence.

While President Michel has not set out more fully the rationale that lay behind his decision, he made clear in his Address that Seychelles’ international and national human rights commitments, the country’s constitutional provisions on equality, and its character as a tolerant society all required that the offence be repealed. In addition, a key contributory factor is likely to have been clear indications that, despite vocal opposition from the smaller evangelical churches, neither the Anglican nor the Catholic Church would oppose the repeal of section 151. There was also a favourable

EXECUTIVE SUMMARY

political climate, with the government having an overwhelming majority in the National Assembly and reform being publicly supported by key political figures.

The Reform Process

Following the president's announcement, the process of reform was swift, aided by the fact that it was narrowly focused on only the repeal of those parts of section 151 that related to private, consensual same-sex sexual acts between adults. The National Assembly held three public consultation meetings in early 2016. These provided important opportunities for ministers and officials to set out the reasons for and the nature of the repeal, and for civil society groups and members of the public to express their views. The meetings attracted a good turnout and enabled a wide range of opinions, mostly supportive, to be aired.

There were calls for a referendum, mainly from opposition politicians. These were resisted by the government on the grounds that referendums were reserved for constitutional matters only.⁴ In May 2016, a very short amendment bill, deleting two sub-paragraphs of section 151, was adopted by the National Assembly in a free vote, with 14 in favour, 14 abstentions and four absences.

Aftermath and Lessons Learned

Following the reform, a number of positive developments emerged, not least the absence of the negative effects that had been feared by opponents of the reform such as a descent into a 'moral quagmire', or the corruption of children. Some of the former stigma eased, with more LGBT people feeling able to 'come out'. Seychelles became further established as a 'LGBT friendly' tourism destination, and the civil society group, LGBTI Sey, was officially registered. Since then, LGBTI Sey has been included in government consultations on policy issues, including work on the national HIV/AIDS strategy and on a schools anti-bullying policy.

Nevertheless, progress in other respects remains limited. Social attitudes are reported not to have moved on significantly. This may be a result of the lack of post-reform training, education and sensitisation programmes. Some discrimination and harassment reportedly continues, particularly on social media, and there appears to be little political appetite to take forward related measures or wider reforms of the Constitution or the Civil Status Act, especially on the issue of equal marriage and wider LGBT equality.

Some stakeholders considered that more progress could and should have been made from the opportunity that was opened up by the reform of section 151. Others, however, were of the view that the repeal of section 151 was in reality the most that could have been achieved at that particular time, and that attempting to press for wider reforms risked jeopardising the progress that was achieved. Either way, the law reform is seen as a major success in itself.



What does decriminalisation mean for you on a personal level?

"For me, it's very emotional because I've lived as an LGBT person since I was born – when I discovered myself, I was a very young age. I have never let that law affect me but it was there and it did affect me in certain ways. Now I feel I can be more open, more free."

Ronny Arnephy
in an interview with
Irant-Org, May 2016

⁴ R.J. Govinden, *Decriminalisation of Homosexual Practices in the Republic of Seychelles*, 1 June 2018: Article 91 of the Constitution provides that alteration of certain Chapters, including the Charter of Fundamental Human Rights, requires a referendum. A copy can be found at section 2.c of the Annex.

COUNTRY OVERVIEW

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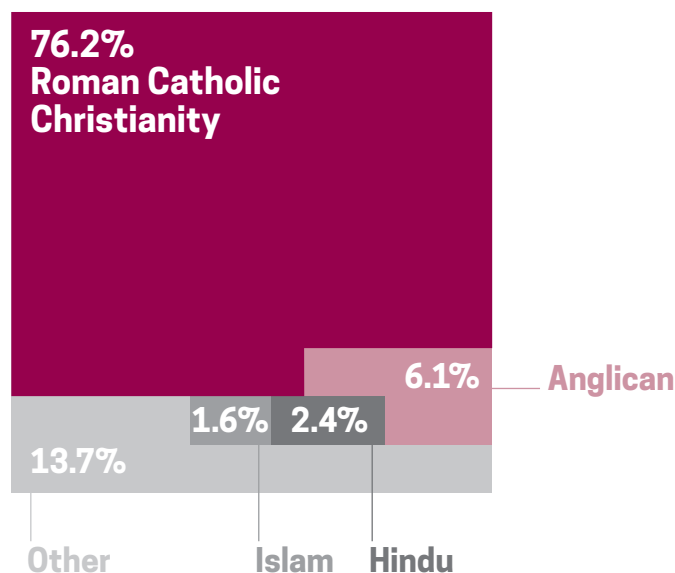
Location and Population

Seychelles is the smallest state in Africa by population and one of the smallest in the world. Located in the Indian Ocean, Seychelles is made up of 115 islands over an Exclusive Economic Zone of 1.3 million km². It has a population of 96,762 and a land mass area of 455.3 km². A large majority of 86.4 per cent of the population inhabits the main island Mahé, with 9.5 per cent in Praslin and 2.9 per cent in La Digue.⁵

Seychelles is a culturally diverse country. The first settlers were French colonists with African slaves and Indian labourers. Subsequent Asian, Chinese, British, and other immigrants were absorbed into the wider population. It has three official languages: Creole, English and French. Creole has been integrated into primary education since 1982.⁶

The faith community of Seychelles is made up of a wide variety of religious identities that are actively practised and deeply held. These are dominated by Roman Catholicism. On a smaller scale, Anglican and Protestant churches are also established in the country, as are Orthodox, Baha'i, Muslim, Buddhist, Hindu and Zoroastrian communities. The main breakdown, according to the most recent government census in 2010, is as follows:⁷

Faith Groups in Seychelles



⁵ Seychelles National Bureau of Statistics, *Statistical Bulletin*, 31 August 2018 (available at <https://www.nbs.gov.sc/downloads?task=document.viewdoc&id=449>).

⁶ United Nations General Assembly, *National Report*, dated 2 March 2001, (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/115/02/PDF/G1111502.pdf?OpenElement>).

⁷ Seychelles National Bureau of Statistics, *Population and Housing Census 2010 Report*, 2012 (available at https://web.archive.org/web/20140514112130/http://www.nsb.gov.sc/wp-content/uploads/2012/12/Population_and_Housing_Census_2010_Report.pdf).

All the faith groups above form the Seychelles Interfaith Council ('SIFCO'), which was launched in February 2012 during the global United Nations ('UN') interfaith harmony week.⁸ SIFCO aims to encourage communication, learning and respect among the different faiths.

Legal System

Seychelles has a mixed legal system with English criminal law and French civil law. The civil law is governed by a Civil Code derived from the French Napoleonic Code, while the criminal law is substantially based on British colonial criminal law. The Judiciary consists of the Court of Appeal, the Supreme Court, the Magistrates' Court and subordinate courts or tribunals. The Judiciary is independent and subject only to the Constitution and other laws of Seychelles.⁹

Political System

Seychelles became a British colony in 1811. It gained its independence from the United Kingdom ('UK') in 1976. A coup d'état in 1977 established a one-party state under President France-Albert René, leader of the Seychelles People's Progressive Front. A pluralist political system was introduced in 1991 and Seychelles became a multi-party democracy under the 1993 Constitution.¹⁰

The system of governance comprises the President, who appoints a Council of Ministers, and a separately-elected National Assembly with 33 seats. The President is the Head of State, Head of Government and Commander-in-Chief of the Defence Forces of Seychelles. Presidential and parliamentary elections are held every five years.¹¹

President René held office until 2004 when he was succeeded by his former vice president, President Michel. President Michel retired in 2016 and was succeeded by his vice president, President Faure.

⁸ World Faith International Harmony Week, *Seychelles' interfaith council launched*, 2012 (available at <http://worldinterfaithharmonyweek.com/newspost/seychelles-interfaith-council-launched-11-02-2012/>).

⁹ Constitution of the Republic of Seychelles, 21 June 1993 (available at: <https://greybook.seylii.org/w/se/CAP42>). A copy of relevant articles can be found at section 1.b of the Annex.

¹⁰ *Ibid.*, (n 6).

¹¹ *Ibid.*, (n 6).

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Human Development in Seychelles

Seychelles ranks 62nd on the United Nations Development Programme's ('UNDP') Human Development Index. It cites social cohesion and religious and racial harmony as the foundations of a diverse, peaceful and stable society, together with the principles of equal opportunity and social justice.¹²

To institute this, a people-focused approach to development is maintained. For example, the Constitution enshrines free compulsory education for a minimum of ten years, and it is legally compulsory up to the age of 16 and free through secondary school until age 18. Free primary health care in state institutions is provided for all citizens. According to the UNDP's Human Development Report 2018,¹³ the adult literacy rate is 94 per cent, the enrolment ratio for secondary school children is 93 per cent and the infant immunisation rate is close to 100 per cent. However, the government has expressed concerns that in the light of external forces, including globalisation, climate change and piracy, sustaining these achievements is challenging.¹⁴

Economy

With a gross domestic product ('GDP') per capita of U.S. dollars 15,502 in 2017 and having reported a per capita GDP above USD 15,000 for the required number of years, Seychelles has now graduated to 'High Income Country' status by World Bank standards. The economy consists primarily of the tourism and fisheries sectors, which combined account for 40 per cent of the workforce and 90 per cent of foreign exchange earnings. Other significant industries include international (offshore) banking and small-scale manufacturing.¹⁵

Media

The Seychelles Broadcasting Corporation ('SBC') provides radio and television services. The print media is made up of a government daily newspaper, an independent daily newspaper (*Today in Seychelles*) and three weekly publications of political parties. *Today in Seychelles* was the first and largest daily independent newspaper and uses social media (Facebook) as a platform to make its publications freely accessible.¹⁶ It is widely referenced in this study.

The Legal Framework for Human Rights

The Constitution

The Constitution is the supreme law of Seychelles. To the extent that any other law is inconsistent with it, that law becomes void. The Constitution describes Seychelles as

¹² United Nations Development Programme, *Human Development Reports*, 2018 (available at <http://hdr.undp.org/en/countries/profiles/SYC>).

¹³ *Ibid.*

¹⁴ *Ibid.*, (n 12).

¹⁵ *Ibid.*, (n 6).

¹⁶ *Today in Seychelles, Our Story*, undated (available at https://www.facebook.com/pg/todayinsey/posts/?ref=page_internal).

a “pluralistic society in which there is tolerance, proper regard for the fundamental human rights and freedoms and the rule of law and where there is a balance of power among the executive, legislature and judiciary.”¹⁷ It enshrines rights and freedoms under the Seychellois Charter of Fundamental Human Rights and Freedoms, largely inspired by the Universal Declaration of Human Rights.

Chapter III of the Constitution sets forth the protection of fundamental human rights and freedoms including the right to life (Article 15), right to dignity (Article 16), right to liberty (Article 18), right to a fair and public hearing (Article 19), right to privacy (Article 20), freedom of expression (Article 22), right of assembly and association (Article 23), rights of minors (Article 31), protection of families (Article 32), and rights to cultural life and values (Article 39).

A key provision is contained in Article 27 under the Right to Equal Protection of the Law:

(1) Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.

Although specific protected categories are not listed and the exception is not further defined, it is notable that the Seychelles government’s response to questions during its 2011 UPR stated that: “Article 27 prohibited discrimination on any grounds whatsoever, including sexual orientation.”¹⁸

Article 32 on the Protection of Families explicitly permits the introduction of legal restrictions to same-sex marriage:

(1) The State recognises that the family is the natural and fundamental element of society and the right of everyone to form a family and undertakes to promote the legal, economic and social protection of the family.

(2) The right contained in clause (1) may be subject to such restrictions as may be prescribed by law and necessary in a democratic society including the prevention of marriage between persons of the same-sex or persons within certain family degrees. Same-sex marriage is not in fact expressly prohibited, notably in the law that sets out the main legal provisions on marriage, the Civil Status Act.

Ombudsman

Article 143(1) and Schedule 5 of the Constitution create an Ombudsman and establish its powers and responsibilities, including the ability to investigate any public authority for abuse of power. Reportedly some have found it challenging to engage with the

¹⁷ *Ibid.*, (n 9).

¹⁸ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Seychelles*, 11 July 2011, A/HRC/18/7, para. 63

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Office of the Ombudsman, even to schedule appointments, and it appears not to have played a significant role in the protection of LGBT people or related legal reforms.¹⁹

Human Rights Commission

A National Human Rights Commission ('Commission') was established in 2009. The core mission of the Commission is to secure better protection and promotion of human rights in Seychelles. However, until 2016, the Commission had only three part-time members and its chairperson noted its "limited resources and lack of support from partners."²⁰ The US State Department's 2017 Country Report on Human Rights for the Seychelles commented that the Commission generally operated without government or party interference, but it lacked adequate resources and was rarely sought out due to a public perception that it was inefficient and aligned with the government.²¹

Seychelles adopted the Human Rights Commission Act 2018 with the aim of strengthening the Commission.²² The Act provides for the Commission to have greater powers, including making recommendations to government ministries, initiating educational programmes and investigating human rights abuses. However, at the time of writing, its Commissioners have yet to be appointed.

Ethics Code

The Public Service Code of Ethics and Conduct, enacted in 2003, requires public servants covered by the Code to act with high standards of professionalism.²³ Article 9(b)(iv) states that a public servant is expected (underlining added):

not to discriminate against any person because of their gender, marital status, colour, race, ethnic or national origins, age, political opinion, employment status, family status, sexual orientation, ethnicity, disability or religious or ethical beliefs.

Employment Act

The Employment (Amendment) Act 2006,²⁴ which modified the Employment Act 1995, introduced new provisions in Article 46A to prevent discrimination (underlining added):

(1) Where an employer makes an employment decision against a worker on the grounds of the worker's age, gender, race, colour, nationality, language, religion,

¹⁹ AIDS Rights Alliance for Southern Africa, *Seychelles Political Scan*, accessed in 2018 (available at http://www.arasa.info/files/3914/8585/6127/Seychelles_Political_scans.pdf).

²⁰ Seychelles Nation, *New Human Rights Commission Sworn In*, (available at <http://www.nation.sc/article.html?id=241157>).

²¹ US State Department, *Country Report on Human Rights for the Seychelles, 2017* (available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277041#wrapper>). A copy can be found at section 5.d of the Annex.

²² Seychelles Human Rights Commission Act, 2018 (available at <https://seyl.ii.org/sc/legislation/act/2018/7>).

²³ Government of Seychelles, *Public Service Code of Ethics and Conduct, 2003* (available at <http://workspace.unpan.org/sites/internet/Documents/UNPAN038478.pdf>).

²⁴ Seychelles Employment Act, 1995 (as amended in 2016) – Chapter 69. A copy of relevant articles can be found at section 1.c of the Annex.

disability, HIV status, sexual orientation or political, trade union or other association, the worker may make a complaint to the Chief Executive stating all the relevant particulars.

The definition in Article 2 of “harassment”, which is prohibited under Article 46B, uses similar language (underlining added):

“harassment” means any such unfriendly act, speech or gesture of one person towards another person that is based on the other person’s age, gender, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, or otherwise, as would adversely affect the other person’s dignity or make that person feel threatened, humiliated or embarrassed;...

The impetus behind these amendments at that time is not clear but may have been related to the adoption in the same year of the Yogyakarta Principles – a set of international principles relating to sexual orientation and gender identity drafted by a distinguished group of international human rights experts.²⁵

International Commitments

Seychelles has ratified or acceded to all of the main international human rights treaties. Of particular significance, in 1992 it acceded to the International Covenant on Civil and Political Rights (‘ICCPR’), under which criminalisation of consensual same-sex intimacy between adults is prohibited.²⁶

Relevant International Human Rights Commitments of Seychelles

<ul style="list-style-type: none">▪ African Charter on Human and Peoples’ Rights <p>1981</p>	<ul style="list-style-type: none">▪ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment▪ Convention on the Elimination of all forms of Discrimination Against Women▪ International Covenant on Civil and Political Rights▪ International Covenant on Economic, Social and Cultural Rights
<ul style="list-style-type: none">▪ African Charter on the Rights and Welfare of the Child▪ Convention on the Rights of the Child <p>1990</p>	<p>1992</p>

²⁵ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, (available at <https://yogyakartaprinciples.org/>).

²⁶ *Toonen v Australia*, 1994: the Human Rights Committee: Communication No. 488/1992.



THE OFFENCES UNDER REFORM

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Colonial History

As a result of its colonial history, the judicial system of Seychelles is a mixture of French and British influences. Seychelles became a French colony in 1756, after which the first French Penal Code was extended to Seychelles.²⁷ This Code was based on the equality of citizens before the law; there were no provisions criminalising consensual same-sex sexual conduct. Although France ceded control of Seychelles to Britain in 1810 and a new Penal Code was enacted in 1838, this was based on the French Penal Code of 1810 as amended in 1832 and, again, contained no offences of same-sex intimacy.²⁸

However, in 1860, the introduction of the Indian Penal Code in India, which reflected Victorian attitudes of the time and contained the offence of “carnal intercourse against the order of nature with any man, woman or animal”,²⁹ interpreted as criminalising consensual same-sex sexual activity,³⁰ was set to impact the legal systems of British colonies the world over. In 1924, a new edition of the Penal Code in Seychelles saw the criminalisation of same-sex sexual acts for the first time through the (undefined) term “carnal knowledge against the order of nature”. The offence carried a prison term of ten years. There are two known convictions for this offence but one was non-consensual and the other was in public.³¹

Section 151 of the Penal Code was enacted by the British authorities in 1952 and came into effect in 1955 as part of a new Penal Code.³² The offence mirrored the 1924 construction but raised the penalty for same-sex sexual conduct from ten to 14 years. Although the UK itself partially decriminalised same-sex sexual relations in July 1967, this change was not automatically transferred to the colonies. When Seychelles became independent in 1976, section 151 was inherited unchanged with the rest of the Penal Code.

²⁷ France Penal Code, 1789

²⁸ Seychelles Penal Code, 1838 based on France Penal Code, 1810 (as amended in 1832).

²⁹ India Penal Code, 1860 – s.377.

³⁰ Human Rights Watch, *This Alien Legacy*, 2 September 2015, (available at <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>).

³¹ M. Twomey, *Brief History of section 151 Penal Code*, undated. A copy can be found at section 2.a. of the Annex.

³² *Ibid.*

Section 151 of the Penal Code 1952

151. Any person who-

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years.

The provision in section 151(b) relating to bestiality was not the subject of reform and properly remains in place.

Interpretation

Since section 151 did not define “carnal knowledge against the order of nature,” it was open to differing interpretations and could be interpreted to mean that any form of non-penile/vaginal sex between two people of the same or opposite sex was illegal. This ambiguity permeated and confused the debate on the provision’s reform. In particular, an argument deployed against its reform was that the offence applied only to non-consensual same-sex intercourse. This was the official interpretation given by the Seychelles delegation to the UPR in 2011.³³ However, in the 2016 National Assembly debate on the reform of section 151, the Leader of Government Business stated that the law criminalised any form of anal sex, even if in private and consensual.³⁴

Early Attempts at Reform

Seychelles did not attempt a wholesale law reform programme in relation to its colonial-era Penal Code, and considerations of setting up a law reform unit did not gain traction. An attempt by the government to repeal section 151 in 1990 was withdrawn due to strong opposition, reportedly from faith groups.

Enforcement and Effect

According to available information, the only prosecutions on record under section 151 were in 1970 (Larsen, *unreported*) and 1980 (Bradburn, *unreported*), although the first was non-consensual and the second was committed in public. Neither prompted significant public reaction.

³³ *Ibid.*, (n 18).

³⁴ Hansard verbatim of National Assembly sitting, *National Assembly of Seychelles*, 17 May 2016 (in Creole) (available at <http://nationalassembly.sc/index.php/2016/06/03/sitting-of-tuesday-17th-may-2016/>). A translation of relevant extracts can be found at section 6.c of the Annex.

THE OFFENCES UNDER REFORM

Despite the fact that section 151 was not actively enforced, its existence, as in other countries where similar laws remain on the statute books, reportedly contributed to a climate of stigmatisation and discrimination towards the LGBT community.³⁵ This has manifested itself in various forms, ranging from homophobic violence³⁶ to lack of access to housing and health care, particularly for those with HIV/AIDS.³⁷ Documented evidence of this is rare as, according to LGBT activists, social stigma typically prevents incidents from being reported or pursued.³⁸ However, *Today in Seychelles* reported, for example, on the barriers to social services that LGBT people continued to face at the time of the reform in 2016. These issues are explored further in the following section on the drivers behind the reform of section 151.



“It is particularly difficult to discuss reproductive and sexual health in respect of being LGB or T in Seychelles. First of all this can be accorded to negative perceptions of being LGBT. Hence for instance people from this group might be very reluctant to seek medical assistance even if they know something is wrong.”

“When it comes to social housing, LGBT persons are not seen as a priority group since the current system favours people with children, however we are a group where a significant proportion of us have had to leave the homes of our parents because they did not want us to be there because of our sexuality or we are just tolerated where we live and the need to have our own space was dire.”

Fabianna Bonne,
Chairperson of LGBTI
Sey, 2016

³⁵ Quote: “LGBT activists reported they faced social stigma and discrimination”. US Government, *Seychelles Human Rights Report, 2017* (available at <https://www.state.gov/documents/organization/277285.pdf>). A copy can be found at section 5.e of the Annex.

³⁶ Quote: “I know young men who have been slapped by their parents for watching what is considered as shows for women and some are ridiculed for being cross-dressers.” Seychelles News Agency, *LGBT group in Seychelles seeks acceptance by Society*, 12 September 2017 (available at <http://www.seychellesnewsagency.com/articles/7889/LGBT+group+in+Seychelles+seeks+acceptance+by+society>); *Today in Seychelles, Social Affairs: LGBTI Sey chairperson comments on continued barrier*, 18 July 2016, (available at https://en-gb.facebook.com/todayinsey/posts/1035311226506687?..xts_%5B0%5D=68.ARB.YerB3KrWMm01J_u5fvfHc3bS2QuG4ivjHf_X_45gcWfRAtJhno4PZgF580MT3m6kBkMa_Galz6Drc6UcKA57a9v3R38BxDxcGG1TxoYzP04eVyTZlwTNjDp8AH7-wl5XnmSm9AgjERgfDRLvFvxplS1_kYWnHz0y4tQIMI9jP-Kdsz2nhpA8ya57Nqo63bTiXQGRf_bGzzQZrUHB_ODNtWm1bCNHdWU0skw_4mQCHfe96uUQJkMmKzgpJ6VrqlUJRv0UCbl4xoEVVWV_UI2_JIK9vIVk8v9NwJKsvxRdBhqjSzCYaf2qGoduc2Rou&..tn_=K-R).

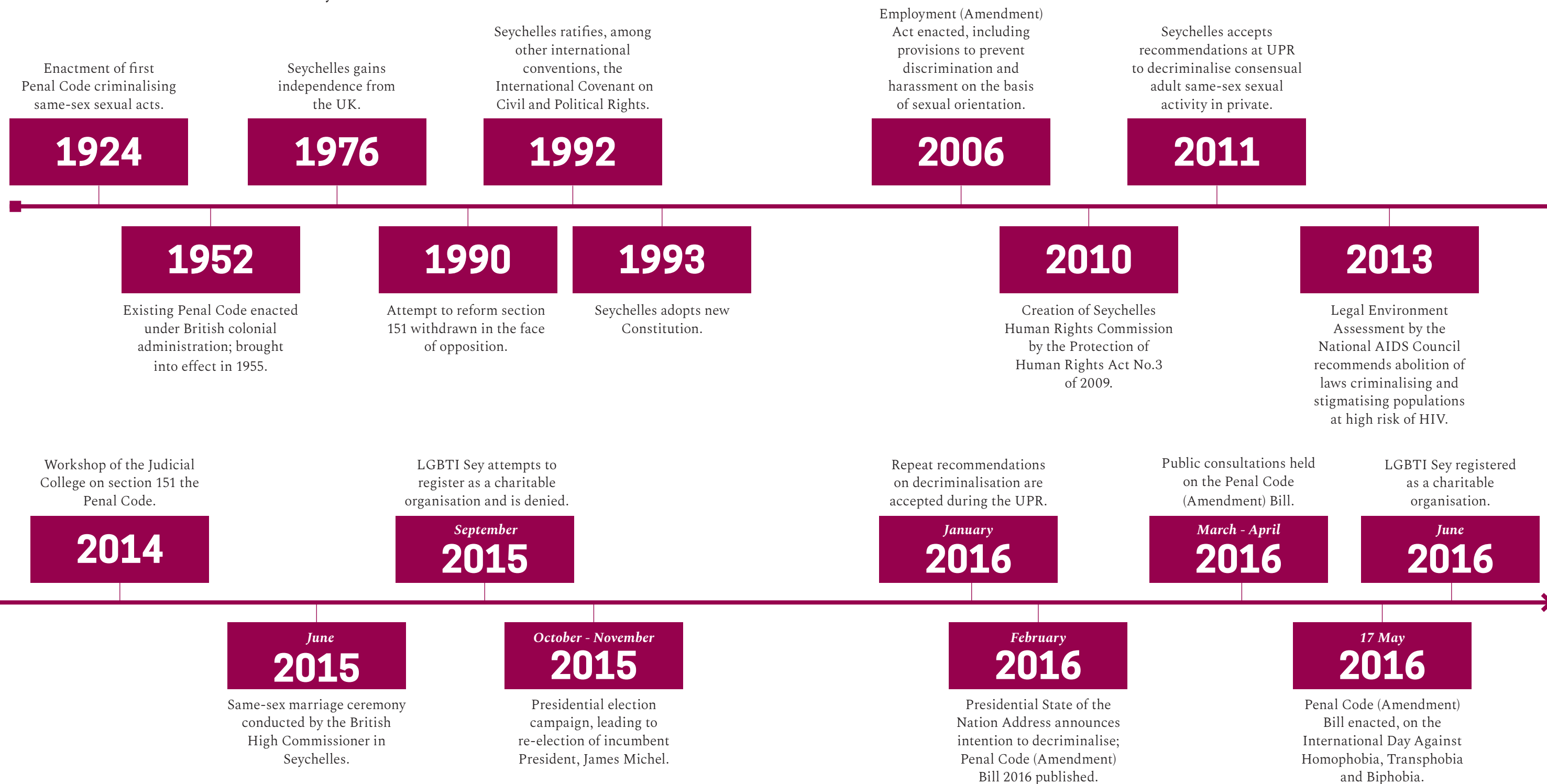
³⁷ Quote: “Stigma, discrimination and a range of rights abuses faced by people living with HIV and AIDS...compromise their ability to access health care services.” HIV Law Commission, *Seychelles Legal Environment Assessment of HIV and AIDS*, April 2013 (available at <https://hivlawcommission.org/wp-content/uploads/2017/06/Seychelles-Legal-Environment-Assessment-of-HIV-and-AIDS.pdf>).

³⁸ Quote: “LGBT activists reported social stigma prevented incidents from being pursued”. US Government, *Seychelles Human Rights Report, 2016* (available at <https://photos.state.gov/libraries/mauritius/882940/hrr-2016/seychelles-2016-country-report-on-human-rights-practices.pdf>).

CHRONOLOGY OF LEGISLATIVE REFORM

CHRONOLOGY OF LEGISLATIVE REFORM

The following provides a timeline of key events and activities relating to the enactment and eventual reform of section 151 of the Penal Code, which criminalised consensual same-sex intimacy between adults.





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In February 2016, President Michel announced that section 151 would be repealed. Within four months, the National Assembly had adopted the Penal Code (Amendment) Bill, 2016 ('Amendment Bill') with no negative votes, and same-sex sexual activity in Seychelles became legal in July 2016.

The path to this significant reform appears to have been characterised not by a single overriding factor but, rather, by a virtuous confluence of circumstances and influences. The historical context described in the previous section - earlier reform attempts, the adoption of fundamental human rights protections in the 1993 Constitution, inclusive employment legislation in 2006 - suggests that there was a positive trajectory that came to a head in 2016.

The political will and climate of the time were likely very influential factors, in combination with Seychelles seeking to fulfil its international and constitutional commitments and muted opposition from the mainstream churches. Other significant factors included engagement by the legal profession, civil society groups and the diplomatic community, while generally balanced coverage in the media helped to raise awareness and to create a political environment more open to change. This section considers each of these factors in turn.

The Seychelles President James Michel. (Office of the President)



Political Will and Climate

It came as a surprise to many when, in his annual State of the Nation Address on 16 February 2016, President Michel unambiguously and unequivocally announced his decision that section 151 would be repealed.

This initiative was a calculated political risk. On the one hand, the President does not appear to have been under significant domestic political pressure to make this announcement and nor was it clear that he or his party would gain substantial political credit for such an action. In the Presidential election campaign in late 2015, some smaller parties had used their support for the decriminalisation of private consensual same-sex intimacy to gain followers. Yet, there appears to have been no official debate on, or engagement with, the issue by the two main parties, despite being confronted by the civil society group, LGBTI Sey.

In the light of the announcement, the Opposition took advantage of the opportunity to criticise the government for the delay in carrying out the reform following the government's commitment to do so in its official response to the 2011 UPR. However, the Opposition appears to have been largely silent on the issue before the announcement was made.



"...There are many other laws which the National Assembly has to consider, including certain regulations in our criminal code which are of no relevance today.

One of them is the law introduced by the British in 1955 to criminalise homosexuality. Although this law is not enforced these days, it remains part of our legal system. This is an aberration.

Seychelles is a society that has always been tolerant, where we respect divergent views and where we live in peace with everyone. We are not a homophobic society.

Moreover, the Constitution of the Republic of Seychelles guarantees the protection of all citizens, without discrimination.

We also have a United Nations human rights obligation, since 2011, to abolish all provisions in our laws that criminalise homosexuality between consenting adults.

As a secular and democratic nation, Seychelles has to fulfil its national, international and constitutional obligations. I have listened and I have consulted. My government has decided to repeal the law."

President Michel,
State of the Nation Address, February 2016

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On the other hand, the initiative could have posed a significant political risk, potentially provoking a backlash against the president from the opponents of reform. Some therefore saw the president's move as a demonstration of considerable courage. The backlash did not materialise; as the president said in his statement, he had "consulted" and evidently concluded that the political climate and timing was right for such a step. The president was in his final term of office and, arguably, could afford to take some political risk.

The political circumstances were also favourable: the government had an overwhelming majority in the National Assembly. There was only one opposition politician in the National Assembly, since their party had boycotted the previous elections. The repeal could therefore be readily passed by the large government majority. The reform was also publicly supported by key political figures, such as the Speaker of the National Assembly and the Leader of Government Business.

An additional perspective put forward is that the president, having won the election by a very narrow margin and facing parliamentary elections in nine months, was anxious to build support for his party in all sections of the population. Virulent allegations had been made during the presidential campaign against one of the opposition candidates in relation to his sexuality and morality, yet this individual went on to secure a significant proportion of the vote. This, it was suggested by an interviewee, further demonstrated that resistance among the general public to people of different sexual orientations was not as strong as had been supposed.

It is also notable that, among the arguments deployed by President Michel in favour of reform, he included the colonial heritage of the law as a key justification.³⁹

Fulfilling International Commitments

As set out in the 'Country Overview' section previously, Seychelles has ratified or acceded to most relevant international and regional human rights treaties and, despite challenges, has maintained its commitment to abiding by its international human rights obligations.

Seychelles had also claimed for many years that it recognised the importance of protecting LGBT groups from discrimination and that it was committed to furthering equality for LGBT people in Seychellois society. Notably, in March 2011, Seychelles was a signatory to the Joint Statement by the United Nations Human Rights Council entitled "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity". This statement introduced a higher level of UN support for the rights of LGBT people than previously seen, explicitly drawing



"Your government had an obligation since 2011 to decriminalise homosexuality, but you chose not to do so... Once again it shows the complacency in your government and your refusal to conform to the norms of the world, let alone our obligations as a country."

Wavel Ramkalawan,
Leader of the
Opposition, 2016

"As the United Kingdom's prime minister, I deeply regret both the fact that such laws were introduced and the legacy of discrimination, violence and death that persists today."

Rt. Hon. Theresa May,
British Prime Minister,
April 2018

³⁹ For an analysis of the British colonial origins of laws such as s. 151, see: Human Dignity Trust, *Tackling LGBT persecution must be a priority for Commonwealth leaders*, 2015 (available at <https://www.humandignitytrust.org/news/tackling-lgbt-persecution-must-be-a-priority-for-commonwealth-leaders/>) and Hon Justice Michael Kirby, *The Sodomy Offence: England's Least lovely criminal law export?*, 2013 (available at <https://sas-space.sas.ac.uk/4801/>).



UN Human Rights Council in Geneva. Xinhua / Alamy Stock Photo.

attention to LGBT issues as part of the UPR process and encouraging signatories to remove legal sanctions based on sexual orientation and gender identity.⁴⁰



“We call on States to take steps to end acts of violence, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity”.

The UN Human Rights Council,
March, 2011

Seychelles has actively participated in the UPR process. This is a state-driven peer-review process, under the auspices of the UN Human Rights Council, under which the human rights situation of all UN member states is reviewed every five years. The result of each review is reflected in the Final Report of the Working Group, which lists the recommendations the state under review is called upon to implement before the next review cycle.⁴¹

The Seychelles government has publicly stated that it views the UPR process “as a unique and vital mechanism in ensuring the promotion and protection of human rights”⁴² and that the country “remains fully committed to the UPR process and is cognizant of the importance of the process in promoting and protecting human rights within its own borders and across the world.”⁴³

In light of Seychelles’ commitment to the UPR and its international obligations, it is unsurprising that the recommendations flowing from its 2011 and 2016 reviews with respect to the decriminalisation of private consensual same-sex sexual conduct were influential in the government’s decision ultimately to repeal the law. They were explicitly referenced by the president in his State of the Nation Address in February

⁴⁰ US Department of State, *Joint Statement on the Rights of LGBT Persons at the Human Rights Council*, 22 March 2011 (available at <https://2009-2017.state.gov/r/pa/prs/ps/2011/03/158847.htm>).

⁴¹ United Nations Human Rights Council, *Universal Periodic Review*, information available at <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

⁴² United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Seychelles, Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, June 2016, para. 1 (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/69/PDF/G1607269.pdf?OpenElement>.) A copy can be found at section 5.f of the Annex

⁴³ United Nations Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Seychelles, by the Human Rights Council Working Group on the Universal Periodic Review Twenty-fourth session on behalf of the United Nations General Assembly*, January 2016. A copy can be found at section 5.e of the Annex.

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Influence of International Commitments

"We have a United Nations Human Rights obligation, since 2011, to abolish all provisions in laws that criminalise homosexuality between consenting adults. As a secular and democratic nation, Seychelles has to fulfil its national and international Constitutional obligations."

Mr James Michel, The President of the Republic, 2016

"...it is a priority for the country because whenever Seychelles is participating in an international convention... we face pressures

from other countries who are asking us to remove this law."

Rony Govinden, Attorney General, 2016

"The President has in his State of the Nation Address highlighted the need to abolish the provisions in our laws that criminalise homosexuality between consenting adults in view of the United Nations Human Rights obligation of Seychelles."

Penal Code (Amendment) Bill, Objects and Reasons, 2016

2016 and subsequently by a number of senior government ministers, and were reflected in the preamble to the Amendment Bill that effected the repeal.

During Seychelles' first cycle review in 2011, a number of states including Australia, Canada, France, Spain and Norway called for the decriminalisation of private, consensual same-sex sexual activity and the combating of discrimination against LGBT people.⁴⁴



Recommendations during Seychelles' 2011 UPR

"Repeal all provisions in its domestic law criminalising consensual sexual activity between adults of the same-sex."

Spain, UPR 2011

"Confirm its commitments to equality and non-discrimination by decriminalising consensual sexual relations between adults of the same-sex as well as any discriminatory provisions with respect to lesbian, gay, bisexual and transgender persons."

France, UPR 2011

"Bring its criminal code into conformity with its international commitments by taking appropriate steps to ensure that

same-sex activity between consenting adults is not subject to criminal sanctions."

Norway, UPR 2011

"Bring its legislation into conformity with its commitment to equality and non-discrimination, by prohibiting discrimination based on sexual orientation or gender identity."

Canada, UPR 2011

"Enact legislation that expressly prohibits discrimination against a person on the basis of sexual orientation or identity."

Australia, UPR 2011

These recommendations were all accepted by the Seychelles government in its official response, albeit with some qualifications.

⁴⁴ *Ibid.*, (n 2).



“The one provision in the Penal Code for ‘sodomy’ does not directly discriminate homosexuals as it is intended for penalising the offence of sodomy as such. In any case this provision has never been applied against anyone. The government will decide as to when and to what extent the legislation could be amended to better guarantee the Constitutional precept that lesbian, gay, bisexual and transsexual persons are not to be discriminated in Seychelles.”

Response of Seychelles Government to UPR 2011

“Following a proposal made by the government, in May 2016 the National Assembly approved the repeal of paragraphs (a) and (c) of Section 151 of the Penal Code, 1955 which can criminalise acts of a homosexual nature, as well as potentially give rise to discrimination and homophobic sentiments.”

Seychelles Government, January and June 2016

Following the government’s acceptance of these recommendations, an internal governmental consultation was reportedly conducted but no details on the findings of that consultation are publicly available. Following the consultation, no further action was taken.

As a result, despite the commitment made in 2011, no action to repeal the law had been taken by the time of Seychelles’ 2nd cycle UPR in January 2016. On that occasion, similar recommendations were made and a similar undertaking by the Seychelles delegation was repeated.⁴⁵

Seychelles also accepted related but distinct recommendations to “adopt comprehensive anti-discrimination legislation, including on the basis of sexual orientation and gender identity” and to “reinforce the relevant legal framework in order to contrast [sic] discrimination on the basis of sexual orientation”.⁴⁶

By June 2016, following the amendment to section 151 in May that year, the government was able to report positively to the UN Human Rights Council that it had fulfilled its commitments with respect to decriminalisation.⁴⁷

Diplomatic Pressure

In addition to the recommendations for change from the UPR process, Seychelles was also reportedly subject to diplomatic pressure, notably from France and the UK. Since this was exerted mainly behind the scenes, it is unclear how often or in what terms the issue was raised but its influence cannot be discounted.

An instance of the role of diplomatic missions was the holding of a same-sex marriage of two men, a British national and a Seychellois national (who was also a British passport holder), by the British High Commissioner at her official residence in Seychelles on 13 June 2015.

A spokesperson for the British High Commission reportedly said that under British law, the British High Commission was obliged to offer the service of same-sex marriage to British nationals and that the High Commission had sought and been granted permission to conduct the marriage by the Ministry of Foreign Affairs.

But the Seychelles Principal Secretary for Foreign Affairs reportedly clarified that the Ministry had not given approval for the marriage and described the holding of the ceremony as “lacking in sensitivity”. He said that Seychelles was bound to recognise the territorial sovereignty of each country with a diplomatic mission in Seychelles and

⁴⁵ *Ibid.*, (n 42); United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Seychelles*, April 2016 (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/69/PDF/G1607269.pdf?OpenElement>.) Section 5.c of the Annex.

⁴⁶ *Ibid.*, (n 50) - Recommendations 120.45 - 120.53.

⁴⁷ *Ibid.*, (n 42).

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thus the British High Commission was entitled to execute the provisions of the UK's Marriage (Same-Sex Couples) Act, but the marriage was illegal under Seychelles' law.

The event sparked considerable public comment, both positive and negative. Some reportedly welcomed it but others perceived it as disrespectful of Seychelles' law, an imposition of foreign cultural values and a publicity stunt by the British High Commissioner. Members of SIFCO said that they were 'saddened' by the British Government's decision to hold the event.

The marriage was widely covered in the Seychelles media, including the *Seychelles News Agency*,⁴⁸ *Today in Seychelles*⁴⁹ and *Seychelles Nation*.⁵⁰

Influence of the Legal Profession

The legal profession in Seychelles, made up of lawyers and judges, among others, appears to have been a key driver in the reform effort both by helping to bring the issue of the criminalisation of consensual same-sex sexual intimacy into the public domain – by providing an insight into public sentiment – and by stimulating debate at an influential judicial and political level.

Public Debate

A public debate held in 2014, organised and hosted by the Judicial College (a body of the Supreme Court, for the professional development of the Judiciary) at the Palais de Justice, gave society an important opportunity to air different views on the topic of criminalisation of consensual same-sex sexual intimacy. The debate was reportedly energetic and constructive.

The panel and the attendees

The panel comprised lawyers, academics and judges and included: Justice Robinson, Justice Fernando, Appeal Judge (now Chief Justice) Mathilda Twomey, and Dr. Charles O'Mahony (a public law lecturer from the National University of Ireland, Galway, who gave a presentation titled "From Discrimination to marriage equality: A comparative perspective for the Seychelles").⁵¹ The chair was Bernard Georges, a respected lawyer and Member of the National Assembly.⁵²



"Britain questions us, saying that we have not made progress on this issue."

Barry Faure,
Secretary of State in
the Seychelles Ministry
of Foreign Affairs, 2016

"What we do is keep up gentle but firm pressure. We don't just suddenly start trying to get people to change the law because that doesn't work. You have to be patient and utterly determined."

Baroness Anelay,
Minister of State in
the UK Foreign and
Commonwealth Office
2016

"My main fear is the effect this will have on our children, adoption will certainly be considered once same-sex marriage is legalised and this will bring all sorts of problems."

**Audience Member at
the Palais de Justice
debate, 2014**

⁴⁸ Seychelles News Agency, *First Same-Sex Union in Seychelles takes place at British High Commissioner's residence*, 13 June 2015 (available at <http://www.seychellesnewsagency.com/articles/3128/First+same-sex+union+in+Seychelles+takes+place+at+British+high+commissioners+residence>). A copy can be found at section 4.b of the Annex.

⁴⁹ Today in Seychelles, *Seychelles' First Gay Wedding*, 14 June 2015 (available at <https://www.facebook.com/todayinsey/posts/seychelles-first-gay-wedding-government-gave-its-approvalthe-british-high-commis/838572392847239/>).

⁵⁰ Seychelles Nation, *Interfaith body reacts to same sex marriage in Seychelles*, 12 June 2015 (available at <http://www.nation.sc/article.html?id=245698>).

⁵¹ Dr. Charles O'Mahony, *The Decriminalisation of Same-Sex Sexual Activity in the Seychelles: A Comparative Approach*, 2014. A copy can be found at section 2.b. of the Annex.

⁵² Today in Seychelles, *Homosexuality*, 14 August 2014, (available at https://www.facebook.com/todayinsey/posts/702980213073125?_tn_=K-R).



“The law in the Seychelles needs to be reformed. This reform is necessary in light of the Seychellois obligations under international human rights law and its commitment to decriminalise during the UPR process... The commitment of the Seychellois Government to decriminalisation is to be welcomed.”

Dr. O’Mahony, 2016

“The law is harmful in stigmatising LGBT persons and opening them up to discrimination...Some of the most powerful arguments for the decriminalisation of homosexual acts include discouraging violence against the LGBT community as criminalisation can be used to as a justification for violence.”

Dr. O’Mahony, 2016

“The law should clearly provide for some sort of protection for the LGBT community if decriminalisation is achieved because violence persists in many countries.”

Audience Member at the Palais de Justice debate, 2014

The event was open to members of the public and was reportedly attended by over 100 people. It is believed to have been the first occasion in Seychelles at which the issue was discussed publicly. The event attracted Church representatives, the LGBT community, journalists, law students, the British High Commissioner and legal practitioners. The debate was followed by a phone-in programme on the radio. There were strong views expressed on both sides of the debate.

Viewpoints against reform

Some Church representatives are reported as expressing the view that amending the penal code would be “bringing the country closer to the fate of Sodom”, and that “decriminalisation would lead to other offences such as incest”.⁵³

One pastor, who had been campaigning outside the debate venue with anti-reform leaflets, stated that “we are an archipelago and cannot be compared to great states represented at the United Nations...Seychelles must not adhere to this.”⁵⁴

A concern was expressed that reform would lead to same-sex marriage being legalised and that this would negatively affect families in Seychelles.

Some attendees questioned the practical utility of amendment, believing that it alone would not reduce the levels of discrimination felt by members of the LGBT community in Seychelles.

Viewpoints in favour of reform

Dr. O’Mahony argued that the Penal Code stemmed from colonial, Victorian puritanical ideals and was out of line with the modern principles of equality to which Seychelles had voluntarily committed itself through international human rights laws.

Pat Matyot, a journalist with the Seychelles Broadcasting Corporation attending in a private capacity, declared that he was a “proud homosexual” and put forward his belief that the country had lost “many talented people and good professionals” due to the discrimination in the law.⁵⁵

Justice Twomey argued that legally and politically Seychelles was a secular state, neutral on points of religion, and so religious viewpoints should not influence the law. In addition, she agreed with Dr. O’Mahony that Seychelles had “already committed to the United Nations to repeal these laws in conformity with its international obligations”.⁵⁶

⁵³ *Ibid.*

⁵⁴ *Ibid.*, (n 52).

⁵⁵ *Ibid.*, (n 52).

⁵⁶ *Ibid.*, (n 52).

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LGBT representatives argued that discriminatory laws unjustly added to the stigma faced by the LGBT individuals in Seychellois society by normalising and legitimising discrimination. They made it clear that, despite the absence of prosecutions, they nonetheless felt oppressed and judged by the law.

Impact

Despite strong opposition to reform by some of those who spoke out at the debate, in general the public response was muted and receptive to change. According to sources, this helped to give the government an early sense that reform could be achieved without substantial political repercussions. A widely-held view of those who recall the debate was that it was “a real kick starter ... a turning point.”

Risk of a legal challenge

The Judicial College event also discussed the fact that the constitutional and legal framework in Seychelles presented the possibility of a legal challenge to section 151.⁵⁷ Dr. O’Mahony’s presentation included examples of how the courts of other jurisdictions had treated and responded to the criminalisation of consensual same-sex sexual conduct.⁵⁸

While there is no evidence of any plans to mount a legal challenge in Seychelles before the 2016 reform, recognition that this was a clear possibility is likely to have increased the motivation for the reform in Seychelles, particularly since legal challenges to similar laws have been successful in a number of other jurisdictions.⁵⁹

Societal Attitude Shifts

Societal attitudes in Seychelles had reportedly begun to shift in the years preceding the 2016 reform, albeit slowly. There appears to have been some lessening of fervent opposition to decriminalisation and an opening up of civil society space for the LGBT community. For example, following on from the Judicial College’s event in 2014, the country’s first LGBT workshop took place in March 2016, three months before decriminalisation took place, hosted at the International Conference Centre Seychelles. This was a public workshop, designed to give a platform for members of Seychellois society who wished to advocate for the rights of LGBT people and to support the LGBT human rights movement generally.⁶⁰

Further insight into shifts in public attitudes can be found in the Media section.

⁵⁷ In 1993, Seychelles adopted a new Constitution establishing protections for basic human rights and freedoms including equal protection of the law (Article 27) and the protection of families (Article 32). Importantly, Article 27 states the right to equality positively, affirming that every person has the right to equal protection of the law, and requires that persons should be uniformly treated unless there is some valid reason for treating them differently. A copy of relevant articles can be found at section 1.b of the Annex.

⁵⁸ *Ibid.*, (n 51).

⁵⁹ *Caleb Orozco v. Attorney General of Belize* (2016) Supreme Court of Belize, Claim No. 668 of 2010; *Navtej Johar v Union of India* (2018) Supreme Court of India. The first decision in Africa on this issue was *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (1998) BCLR 726.

⁶⁰ Today in Seychelles, *Gay Rights*, 17 March 2016, (available at <https://www.facebook.com/todayinsey/posts/gay-rights-countrys-first-lgbt-workshop-takes-place-this-weekend-seychelles-very-/960961137275030/>). A copy can be found at section 4.i of the Annex.



“Where decriminalisation has occurred over the past number of decades the disastrous results warned of by campaigners opposing decriminalisation has not occurred. The notion that decriminalisation would lead to ‘moral instability and the downfall of society’ due to a lack of procreation now seems laughable.”

Dr. O’Mahony, 2016



“Having lived freely for three years [in South Africa], we didn’t want to go back and be in the closet, unable to be ourselves... So I thought, we have to do something to change that.”

Fabianna Bonne,
co-founder of LGBTI Sey, April 2018

“A portion of our population has had, down the ages, a sexual orientation different to the majority. We have to promote respect for and acceptance of these differences as they are an inescapable part of our reality. How individuals reconcile themselves with or cope with this condition in their daily lives depends on the strength of their belief, faith or set of values and priorities. It is not a matter of public scrutiny, condemnation or criminal intervention.”

CEPS 2016

Civil Society

The activities of civil society and its advocacy were also important factors. The leading sexual orientation and gender identity non-governmental organisation (‘NGO’), LGBTI Sey, and other activist groups were influential in raising the profile of the issue of criminalisation, generating debate and placing a degree of pressure on the government.

LGBTI Sey is an NGO that advocates for the rights of individuals of different sexual orientations and gender identities. Its mission is to provide an open, safe, inclusive space and community that is committed to challenging sexism, genderism, homophobia, biphobia, transphobia and heterosexism. The organisation recognises that this work requires a continued process of understanding and education, and the addressing of all forms of oppression.⁶¹ LGBTI Sey began life as a Facebook group in 2008, with community members meeting in informal settings to support one another and discuss issues impacting the LGBT community. In order to strengthen their collective voice, the founders of LGBTI Sey determined that they needed to form one formal group that was established and registered and that represented the various constituent members. The organisation was formally recognised and registered as a legal entity in June 2016.

The Citizens Engagement Platform Seychelles (‘CEPS’), a collaborative platform for civil society, also played - and continues to play - a significant role. The group acts as an interface between state and non-state actors to represent the interests of Seychelles’ civil society and NGO community; in their own words, they are “dedicated to enhancing the role and capacity of civil society to effectively contribute in policy processes and national development initiatives”.⁶² In 2016, CEPS published online an article stating their views on the proposed reform of section 151 and called for support from concerned partners and stakeholders to join them in educating the public on the law.⁶³

Jules Hoareau, the chairperson of CEPS, also called publicly for decriminalisation and included this call in a ‘Shadow Report’ as part of the 2016 UPR process.⁶⁴

LGBTI Sey began its campaign for decriminalisation in the summer of 2015. Through social media (primarily Facebook) the group was able to raise the issue of section 151, drawing it to the attention of the general public and placing pressure on political

⁶¹ LGBTI Sey (2008) (available at <https://en-gb.facebook.com/LGBTISey/>); The Commonwealth Equality Network, LGBTI Sey, 2019 (available at <https://www.commonwealthequality.org/members/41/>)

⁶² Citizens Engagement Platform Seychelles website (available at <http://www.civilsociety.sc/>).

⁶³ CEPS Seychelles, *CEPS view on the decriminalisation of penal code 151 (a) & (c)*, 2016 (available at <http://www.civilsociety.sc/2016/04/ceps-view-on-the-decriminalisation-of-penal-code-151-a-c/>). A copy can be found at section 7.c of the Annex.

⁶⁴ CEPS Seychelles, *Citizens Engagement Platform, Seychelles Submission to the United Nations Universal Periodic Review, 2016* (available at <https://www.google.com/url?sa=t&rt=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewjKhaj7wDgAhVEWq0KHQ1SDrgQFJAegQIABAC&url=https%3A%2F%2Fuprdoc.ohchr.org%2Fuprweb%2Fdownloadfile.aspx%3Ffilename%3D2446%26file%3DEnglishTranslation&usq=AOvVawOUQ9pJWctiAXLFRrR-xRYR>). A copy can be found at section 7.a of the Annex.

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leaders to have an opinion on the subject at a time of important political changes, notably the presidential elections in November 2015.

The organisation applied to register as a charitable organisation in August 2015 but received the official response that section 151 prevented that registration. This highlighted the fact that section 151 was not simply a dormant legislative clause but did actively affect the rights of LGBT people, specifically their right to freely associate. This created greater urgency and desire on the part of LGBTI Sey to campaign for the law to be repealed. LGBTI Sey was eventually able to register on 20 June 2016,⁶⁵ after the repeal of section 151.

The group also saw the 2015 presidential elections as an opportunity to press the case for decriminalisation and asked each of the six candidates, via Facebook, for their views on LGBT rights. Four of the candidates responded. In particular, the incumbent President, James Michel, blocked LGBTI Sey on Facebook, and the Opposition leader, Wavel Ramkalawan, held a meeting with the group.

As noted above, LGBTI Sey hosted a workshop on LGBT rights in March 2016, before they were legally registered, “with the purpose of educating and raising awareness on gay rights and how this correlates with the law and everyday life in Seychelles”.⁶⁶ This was reportedly significant, again, in raising awareness of LGBT issues in Seychellois society.

Lack of Active Opposition from Mainstream Faith Groups

A key factor in the president’s and government’s decision to announce the reform, given the historical context and earlier reform attempt, is likely to have been clear indications from the faith groups that, despite vocal opposition from the smaller evangelical churches, the majority Catholics and Anglicans would not actively oppose the repeal.

Given the considerable influence of faith groups in society as a whole, the inter-faith council SIFCO is regularly consulted by the government on matters of policy. According to sources, both the president and the vice-president reportedly sought SIFCO’s views on repealing section 151 shortly before the president’s announcement in February 2016.

Although there was reportedly significant resistance from the dominant religious groups to decriminalisation during the prior reform attempt in 1990, by 2016 both the Roman Catholic and Anglican leadership had softened their positions and took the view that same-sex intimacy between adults was a private matter for individuals.

⁶⁵ This information can be found on the archived posts of LGBTI Sey, for the month of June 2016 (available at https://www.facebook.com/pg/LGBTISeyposts/?ref=page_internal).

⁶⁶ Today in Seychelles, *Gay Rights*, March 2016 (available at <https://www.facebook.com/todayinseyposts/960961137275030>). A copy can be found at section 4.i of the Annex.

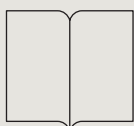


“Politics has divided our country. We, the faith groups, feel that we needed to show an example and to speak with one voice as far as possible. But the issue of homosexuality has divided the Church and on this issue [the repeal of section 151] we could not speak with one voice.”

Archbishop French Chang-Him, Anglican Archbishop Emeritus of the Indian Ocean and Chair of SIFCO

Given the importance of religion in Seychellois life and politics, this response on the part of the mainstream faiths was widely considered to be a key factor in creating an environment open to reform.

Following the president's announcement, the Chairperson and some of the office holders of SIFCO met the Minister of Foreign Affairs, at his request, to discuss the proposed repeal. The Minister had explained the implications of the proposed reform in a communiqué to SIFCO.



Implication of Repealing 151(A) and (C)

The repeal is a decriminalization (removal of criminalizing laws and penalties) rather than

legalization (formal recognition and possible provision of additional rights) of homosexuality.

The repeal does not support nor promulgate same-sex relationships, but rather removes this private and moral/religious issue from the scope of the law and the courts.

The repeal is in line with Seychelles' respect for equality

and human dignity, as well our stance on non-discrimination, and that all persons are equal before the law.

The repeal is also reflective of the overall review of archaic laws being conducted by the Government/Attorney General's Chambers.

Excerpt from a communiqué issued by the Ministry of Foreign Affairs to SIFCO

Two consultative meetings of the Managing Committee of SIFCO were then held on 25 February and 3 March 2016. It was agreed that SIFCO would leave each member church or faith to respond to the proposed repeal on the basis of its own sacred writings, current viewpoint and pastoral response to the issue.⁶⁷



SIFCO Recommendations, 2016

Each member church / faith of SIFCO would, whilst upholding the sacred writings, laws, provisions and teachings of one's religious persuasion, exercise compassion and sensitive pastoral care towards each of its adherents and all other citizens, irrespective of their origin and sexual persuasion, as

children of the same compassionate and loving Creator / God.

Emphasis on respect, healing and wholeness of the individual self would be at the heart of each pastoral encounter and / or response.

The main opposition to amending the law reportedly came from the leaders of some of the evangelical churches who argued that homosexuality was a sin, against the "natural order" and that decriminalisation would lead to the acceptance and proliferation of homosexuality across society, undermining marriage as a pillar of a stable, moral society.

⁶⁷ SIFCO Response to the Decriminalisation of Homosexuality 2016. A copy can be found at section 7.b of the Annex.

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The Roman Catholic Bishop addressed a letter to members of the National Assembly prior to the vote on the issue of criminalisation, in which he stated that traditionally the Roman Catholic Church does view homosexuality as “morally reprehensible.” However, he urged parliamentarians to “vote according to their informed conscience, free from all irrelevant external interference” and with reference to the “impact your vote will have on the future of our society.”⁶⁸

The Anglican Bishop also acknowledged the parliamentarians’ right to vote according to their conscience, and while expressing its own opposition to repeal recognised the need for the church and religious groups to be inclusive of LGBT people.

In line with the above, it was reported by Seychelles News Agency that the Anglican and Roman Catholic churches would not support, but would not actively oppose decriminalisation. This sentiment corresponds with the fact that half of the parliamentarians present for the section 151 vote abstained.⁶⁹

While presenting the issue of decriminalisation to the National Assembly for debate, the Foreign Affairs Minister, Joel Morgan, specifically addressed the concerns of those in the population who believed that a repeal of section 151 would legalise a sinful act. He argued that “a sin is not determined by the government but by religion. Each individual needs to follow his or her conscience on the issue.”⁷⁰ In so doing, he removed the policing of acts considered “sinful” by some religious institutions from the realm of the law and placed it back into the realm of individual choice, to be governed by conscience alone.

Media

The media in Seychelles comprises state-run TV and radio (SBC), a state-run newspaper (*The Nation*), an independent newspaper (*Today in Seychelles*), small independent radio stations and social media, primarily Facebook.

Given that discussion of LGBT issues was widely considered taboo in Seychelles’ conservative and predominantly Christian society, the media and social media played a significant role in stimulating debate, educating the public and helping to dispel misconceptions and prejudices. The coverage of the reform effort leading to decriminalisation was generally well-balanced, although the subject was often framed as a religious issue. While the media did not actively campaign for the repeal of section 151, it appears to have promoted a conducive environment in which reform could take place. By canvassing public opinion, the media acted as a barometer for societal attitudes, providing important insights into the political readiness of the



“The church is not pushing out those who are practicing sodomy or members of the LGBTI community but what I’m proposing is the need to establish a dialogue, where we say the doors of the church are opened and that God loves all people of earth. We have to establish a dialogue between both parties and at the end of the day, the love of God has to prevail... the church is against the repealing of the law but the church policy is that whether it has been repealed or not, life goes on. We should not discriminate against anyone.”

James Wong,
Seychelles Anglican
Bishop

“The loudest message that abstaining sent was that they were not going to stand in the way of this change of law happening and we at LGBTI Seychelles appreciate that”.

Fabianna Bonne,
founder of LGBTI Sey

⁶⁸ Seychelles News Agency, *Seychelles Parliament passes bill to decriminalise sodomy*, 18 May 2016 (available at <http://www.seychellesnewsagency.com/articles/5198/Seychelles+parliament+passes+bill+to+decriminalise+sodomy>). A copy can be found at section 4.1 of the Annex.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, (n 34).

country to accept reform. It also served as an information and communication channel between the National Assembly, politicians, pressure groups and the general public.

Examples of notable media interventions on the issue are provided below.

Today in Seychelles

From 2014, 'Today' provided extensive, factual and well-informed coverage of LGBT issues both domestically and globally. For example:

- On 15 November 2014, it published an article on calls at the UN to end so-called 'gay conversion' therapy;⁷¹
- On 23 June 2015, it published an interview with Fabianna Bonne, Executive Director of LGBTI Sey, on issues ranging from the public reaction to the same-sex marriage at the residence of the British High Commissioner to her personal experiences of stigmatisation in Seychelles, her thoughts on the fact that same-sex marriage is not yet legal under Seychellois law and the creation of the NGO, LGBTI Sey;⁷²
- On 19 February 2016, in extensive reporting on the President's State of the Nation Address, it carried an article on "Changing Laws versus people's mindset", including an interview with Fabianna Bonne, and reported the reluctance of others to speak on the issue:

"TODAY tried to contact a number of public figures and authorities, from the Anglican Church to the Seychelles National Youth Council, and even the Catholic Church to get their views on Mr. Michel's State of the Nation address. But many remained silent or felt that it was too soon to make any statements on the matter. This refusal to add a voice to the debate speaks volumes on the current state of acceptance of homosexuals in Seychelles."

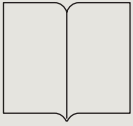
The same edition carried a report of interviews with members of the public, finding that at least 80 per cent of those who were approached supported the President's move to decriminalise.⁷³ Here are some examples of the responses.

⁷¹ *Ibid.*, (n 66).

⁷² Today in Seychelles, *The Big Interview with Fabianna Bonne*, 23 June 2015 (available at <https://www.facebook.com/todayinsey/posts/the-big-interview-with-fabianna-bonneit-all-boils-down-to-hypocrisyfabianna-bonn/842033089167836/>). Section 7.d. of the Annex.

⁷³ Today in Seychelles, *Changing Laws versus Changing People's Mind sets*, February 2016 (available at https://www.facebook.com/todayinsey/posts/947441435293667?_tn_=-R). A copy can be found at section 4.f of the Annex.

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Public comments to *Today in Seychelles*, 19 February 2016

"I believe that instead of the matter being left in the hands of lawmakers who, most of the time, only want to please people, it should be put before the Seychellois in a referendum. We have the right to decide whether we want it or not because homosexuality affects our lives and those of our children."

"Homosexuality is not a crime. We are all Seychellois and deserve the right to be able to love anyone we want to love. A person's love life should not be defined as either legal or illegal. So, I think it is about time that Seychelles joins the rest of the developed world by putting such a law in place that fights for every Seychellois citizen."

"Someone's sexuality should not define them. I have friends who are gay and lesbians and on their behalf I am happy that the government is thinking of decriminalising homosexuality. Everyone should be given the freedom to live and love the way they want."

"When I think of the possibility of such acts becoming part of our everyday lives, I think we are losing our values. This law will be ushering in a new foreign culture that is scary."

"I am Catholic and being one, the Bible has since time immemorial taught against homosexuality. All Christians know this, so I think it is not right for a country to come up with a law that legalises homosexuality."

"Low income countries in Africa have refused to legalise homosexuality despite being threatened by western super powers, and yet they still stand by their values. What does Seychelles have to lose by saying no to international pressure and standing by its morals?"

"Homosexuality should not be an issue in this day and age."

"I do not think legalising homosexuality is such a good idea. Homosexuals already exist in Seychelles and they do their stuff in private, and I have no problem with that. Decriminalising it and giving them the chance to flaunt it in public is not a good idea. What kind of examples will our children be getting by seeing two adult men make out?"



SBC TV and Radio

Seychelles Broadcasting Corporation hosted a number of talk shows and phone-ins on LGBT issues, with reportedly well-balanced participation from the different sides of the debate. These were generally considered helpful in educating the public about the issues. Following the announcement of the Amendment Bill, SBC hosted a public debate with the participation of different organisations including churches, politicians, journalists and civil society.

As noted above, a well-respected presenter on SBC, Pat Matyot, attended the Palais de Justice debate in August 2014 and declared that he was “a proud homosexual,” and that he believed the country had lost “many talented people and professionals” due to discrimination.⁷⁴

Some other notable examples of coverage of LGBT issues in early 2016 include a discussion on LGBT rights on the regular programme ‘Live Dialogue’, and an interview with Rieul Gendron, an airline pilot, on the programme ‘Zoom’ hosted by Marceline Evenor. The Zoom programme comprised a panel made up of a cross-section of the public responding with their thoughts and comments. This was reportedly the first time someone had publicly spoken on SBC about their experience of growing up as a gay person in Seychelles.

Bernard Georges, a prominent and well-respected local lawyer, hosted a regular programme on legal issues (‘Legal Corner’), which also debated LGBT issues on a number of occasions.



⁷⁴ Today in Seychelles, *Seychelles must legalise*, 13 August 2014 (available at <https://www.facebook.com/todayinsey/posts/homosexuality-13-08-2014seychelles-must-legalise-advocates-saya-debate-on-the-le/702980213073125/>).

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'Potpourri'

The independent monthly lifestyle magazine *Potpourri* featured a substantial article in July 2015, titled “Someone in Your Family is Gay” by Sandra Hanks, including interviews with a range of LGBT people.⁷⁵

Social Media/Facebook

Facebook is widely used in Seychelles and reportedly played an important role in the debate. It was used strategically by LGBTI Sey to promote its views and as a means of convening a community of supporters. Equally, it has been and continues to be a platform for opposition voices, including those who opposed the reform of the law and in some cases in strong and personalised terms.

For example, the ‘Free Seychelles Now!’ Blog,⁷⁶ which describes itself as “a community of decent freedom loving Seychellois, determined to see Seychelles FREE from the clutches of failure, corruption, and lack of respect of democracy and fundamental human rights” criticised SBC and President Michel for their apparently pro-homosexual stance.

Other Factors

Health

The criminalisation of private consensual same-sex sexual conduct between adults has been demonstrated to have adverse effects on public health,⁷⁷ particularly through exacerbating HIV/AIDS epidemics. Experts have repeatedly concluded that, rather than slowing the spread of HIV, criminalisation fosters and enables its spread and seriously impedes the effectiveness of measures designed to reverse the HIV pandemic. Further, on an individual level, criminalisation leads to increased morbidity and risk of death in those infected with HIV due to the barriers it creates in accessing testing and treatment.⁷⁸

In the light of this adverse impact, health arguments, particularly the need to reduce the prevalence of HIV, are often influential in advocating for decriminalisation. These arguments appear to have been a contributing factor in the debate over the reform of section 151 in Seychelles, albeit not in themselves a decisive driver.



“The paradox of the laws that criminalise same-sex sexual conduct is while they are in part justified by their proponents as measures to improve public health, such laws have an immediate and destructive impact on health. Not only do criminalising laws and the climate they create worsen the health of LGBT populations, their impact carries through to the general population’s health as well”.

Academy of Science,
South Africa

“Laws that criminalise HIV transmission, exposure or non-disclosure of HIV status discourage people from getting tested and treated. Similarly, laws that criminalise and dehumanise members of key populations drive them away from essential health services and heighten their HIV risk.”

UNDP,
January 2014

⁷⁵ S. Hanks, *Someone in your Family is Gay*, *The Independent*, July 2015.

⁷⁶ Free Seychelles Now, *More SBC Pilon Journalism*, April 2016 (available at <http://freeseychellesnow.blogspot.com/2015/04/more-sbc-pilon-journalism.html>); Free Seychelles Now, *SNP Complains About Lack of Access to SBC*, April 2017 (available at <http://freeseychellesnow.blogspot.com/2015/04/snp-complains-about-lack-of-access-to.html>).

⁷⁷ Academy of Science South Africa, *Diversity in Human Sexuality: Implications for Policy in Africa*, as referenced in Human Dignity Trust, *The Criminalisation of Consensual Same-Sexual Relations across the Commonwealth*, 2016 (available at <https://www.humandignitytrust.org/wp-content/uploads/resources/HDT.Commonwealth.Criminalisation.Report.2015.pdf>).

⁷⁸ The Human Dignity Trust, *Criminalising Homosexuality and Public Health*, (available at http://www.humandignitytrust.org/uploaded/Library/Other_Material/Criminalising_Homosexuality_and_Public_Health.pdf). A copy can be found at section 8.a of the Annex.



“Our key populations remain hard to reach, marginalised and even criminalised. Reaching them will require an even greater commitment to human rights and inclusion of all members of society in fighting stigma and discrimination. We must address these equity gaps with unprecedented urgency.”⁸⁵

Hon. Minister Mitcy Larue, Minister of Health

“Every day, stigma and discrimination in all their forms bear down on women and men living with HIV, including sex workers, people who use drugs, men who have sex with men, and transgender people. Many individuals most at risk of HIV infection have been left in the shadows and marginalized, rather than being openly and usefully engaged... To halt and reverse the spread [of HIV], we need rational responses which shrug off the yoke of prejudice and stigma. We need responses which are built on the solid foundations of equality and dignity for all, and which protect and promote the rights of those who are living with HIV and those who are typically marginalized.”

Helen Clark, Administrator, UNDP

The National Aids Council,⁷⁹ United Nations Development Programme (‘UNDP’),⁸⁰ the Ministry of Health⁸¹ and senior doctors all raised concerns about the access of LGBT people in Seychelles to HIV testing and care.

A Legal Environment Assessment (‘LEA’) conducted in 2013 by the National Aids Council identified the laws criminalising and stigmatising populations at high risk of HIV as a partial cause of LGBT people not accessing HIV prevention, treatment, care and support. The LEA also expressed concern over the negative impact that such laws may have on the availability of non-discriminatory access to education, healthcare, employment and social services.⁸² The abolition of the laws affecting certain groups, including the decriminalisation of consensual same-sex intimacy, was cited as a high priority.⁸³

The National AIDS Council was reportedly also in attendance at the public consultations on the Amendment Bill in 2016, although public health concerns were not a focus of those meetings. Nevertheless, decriminalisation was acknowledged as a positive step in addressing public health concerns around HIV and AIDS.

“The Ministry of Health has introduced a variety of prevention and intervention programmes, such as condom distribution, prevention of mother-to-child transmission and blood safety. ...The Test and Treat Campaign was underway and other positive results include the development of the National Policy on HIV and STIs, the creation of key population organisations such as LGBT-Sey and DURNS, as well as the decriminalization of sex between men.”⁸⁴

⁷⁹ The National AIDS Council, ‘Seychelles HIV & AIDS National Action Plan to remove legal barriers’, undated, (available at https://hivlawcommission.org/wp-content/uploads/2017/07/Seychelles_National_Action_Plan_to_Remove_Legal_Barriers_.pdf August 2016).

⁸⁰ United Nations Development Programme, ‘Legal Environment Assessment for HIV’, Jan 2014 (available at <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/UNDP%20Practical%20Manual%20LEA%20FINAL%20web.pdf>).

⁸¹ Ministry of Health of the Republic of Seychelles, *National Action Planning Workshop on Removing Legal Barriers for HIV and AIDS*, 3 August 2016, (available at <http://www.health.gov.sc/index.php/news-posts/national-action-planning-workshop-on-removing-legal-barriers-for-hiv-and-aids/>). Consultants’ Final Report, *Seychelles Legal Environment Assessment of HIV and AIDS*, April 2013 (available at <http://www.health.gov.sc/wp-content/uploads/Seychelles-HIV-AIDS-Legal-Environment-Assessment-Final-Report-15th-April-2013-3-copy.pdf>). A copy can be found at section 5.b of the Annex.

⁸² *Ibid.*

⁸³ *Ibid.*, (n 81).

⁸⁴ The Seychelles National Advocacy Convening on Reducing Violence and Discrimination against Key Populations, *Transforming Laws*, 2017 (available at http://www.arasa.info/files/7015/1844/3275/SEYCHELLES_REPORT_1v2.pdf).

⁸⁵ *Ibid.*, (n 80) - Seychelles Keynote address at the opening of the National AIDS Council meeting where LEA recommendations were adopted, page 37.

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Tourism/Business

It is widely recognised that the tourism sector benefits where a destination is regarded as being open, tolerant and welcoming to all visitors. There is a clear link between progressive policies towards LGBT communities and the economic benefits for business.⁸⁶

Tourism is a key driver of socio-economic progress through the creation of jobs and enterprises, infrastructure development and export revenues.⁸⁷ In Seychelles, tourism is one of the main sources of foreign exchange income and the primary export category, creating employment and opportunities for development. In 2016, the total contribution of the tourism sector to employment was 63.6 per cent of total employment, which included 29,000 jobs. The same year, tourism contributed 58.1 per cent of GDP.⁸⁸

Yet, despite the importance of tourism to the Seychellois economy, there is only limited evidence of the business case being raised from within the sector or by the government as a justification for law reform.

Although there appears to have been support for decriminalisation within the Ministry of Tourism, businesses did not play an active role or publicly advocate for change. This low profile may have been due, at least in part, to the fact that many of the hotels are owned by foreign investors, who may have been cautious about engaging in a sensitive political issue. However, local tourism operators and hotel owners on the island of Praslin reportedly made some limited interventions, arguing the benefits for business arising from being seen as an open, tolerant and inclusive destination.

⁸⁶ World Tourism Organisation (UNWTO), *Global Report on LGBT Tourism*, 2012, (available at <https://www.e-unwto.org/doi/pdf/10.18111/9789284414581>).

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, (n 85).

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

Given the government’s decision to pursue a tightly focused amendment limited to section 151 and its overwhelming majority in the National Assembly, the passage of the reform was a relatively simple and swift process. The process necessitated neither extensive legislative drafting nor consultation, and the reform was completed within four months.

Public Consultation

Although there was no legal requirement or precedent to hold public consultations for the type of legislative reform under consideration and previous consultations had concerned only infrastructure projects, the president is said to have wanted to enable the public to have their voices heard before proceeding, particularly given that the issue was generally poorly understood and there were widespread misconceptions that, for example, if consensual same-sex sexual conduct was decriminalised, “everyone would be doing it, and in public”. Moreover, there was pressure from the National Assembly for the government to consult on the reform before the Amendment Bill could be considered.⁸⁹

As a result, three public meetings were held in early 2016, one on the main island of Mahe, the others on the islands of Praslin and La Digue, under the auspices of the National Assembly with the close support of the government. The meetings were open to all and attracted an audience of over 50 people in Mahe; this was considered to be a good turnout.

The meetings were opened by a panel of speakers, which included:

- the Minister of Foreign Affairs (Hon. Joel Morgan) who presented the government’s position, and argued that the law was never used and never would be;
- the former Speaker of the National Assembly (Hon. Herminie), who stressed the human rights arguments and contended that the issue was one of privacy and making public health services more accessible to the LGBT community;
- the former Attorney General (Mr. Rony Govinden), who presented the legal aspects of the amendment and repeal process; and
- an experienced official from the Ministry of Foreign Affairs, Ms. Pillay, who set out Seychelles’ international human rights obligations and emphasised the distinction that the proposed reform was “decriminalisation” rather than “legalisation”.⁹⁰



“In February of this year the President of the Republic announced that the Government would propose the amendment to the Parliament to decriminalise the provision in our Penal Code. Following this announcement, we received positive and negative reactions from different groups including religious groups. The National Television held a public debate with participation of different organisations such as churches, politicians, journalists, civil society and gays. On the part of Parliament we drew the attention of the Government for consultation before the bill could be considered...”

Hon. Wilby Lucas

⁸⁹ Parliamentarians for Global Action, *PGA Member, Wilby Lucas, MP, comments on the decriminalization of homosexuality in the Republic of Seychelles*, 2016 (available at Comments by Hon. Lucas (available at <https://www.pgaction.org/news/hon-wilby-lucas-comments-decriminalization-homosexuality.html>).

⁹⁰ Ms. Gayethri M Pillay, *Repealing 151 (a) and (c) of the Penal Code*, 2014. A copy can be found at section 3.a of the Annex.

The presentations and arguments put forward by the senior political figures and officials reportedly made a powerful case for change, supported by respected and influential participants (including the Leader of Government Business (Hon. Rose) and an LGBT representative (Mr. Pat Matyot of SBC TV)).

The only significant opposition to reform came from the evangelical churches who focused on biblical arguments and the promotion of conversion therapies.

Members of the public appeared largely supportive of reform, some contributing family stories of the hurt caused by discrimination and stigmatisation, while others expressed surprise at the penalty of 14 years imprisonment, finding it absurd.

Following the consultations, the attorney general presented a report to the cabinet. This is not publicly available but we understand that it reported that the views were mixed: some considered that the law should be retained, principally on the grounds that “homosexuality is a sin”, but the majority considered it was anomalous to criminalise private consensual sex between adults.

Legal Drafting

Seychelles has no Law Reform Commission. New legislation and amendments to existing legislation are initiated within the relevant ministries and the Attorney general’s office and are then submitted to the National Assembly.

In the case of the revision of section 151, the president’s proposal was approved by the Cabinet of Ministers on 29 February 2016 and the attorney general was then instructed to draft an amendment bill.

On 4 March 2016, the attorney general submitted to the cabinet for review the very short Amendment Bill⁹¹ requesting the amendment of section 151.

⁹¹ Seychelles Penal Code (Amendment) Bill, 2016 - Objects and Reasons. A copy can be found at Section 1.d of the Annex.

CONSULTATION, DRAFTING AND PASSAGE OF REFORM



Penal Code (Amendment) Bill, 2016 (extract). Objects and reasons.

This Bill seeks to amend section 151 of the Penal Code in order to decriminalise unnatural offences specified in paragraph (a) and (c). The President has in his State of the Nation Address highlighted the need to abolish the provisions in our laws that criminalise homosexuality between consenting adults in view of the United Nations

Human Rights obligations of Seychelles. In 2011, Seychelles accepted to implement the recommendation of the Universal Periodic Review (UPR) towards the decriminalisation of same-sex relationships. To fulfil the said obligation, it is necessary to repeal the aforesaid provisions.



Penal Code (Amendment) Bill, 2016 (extract).

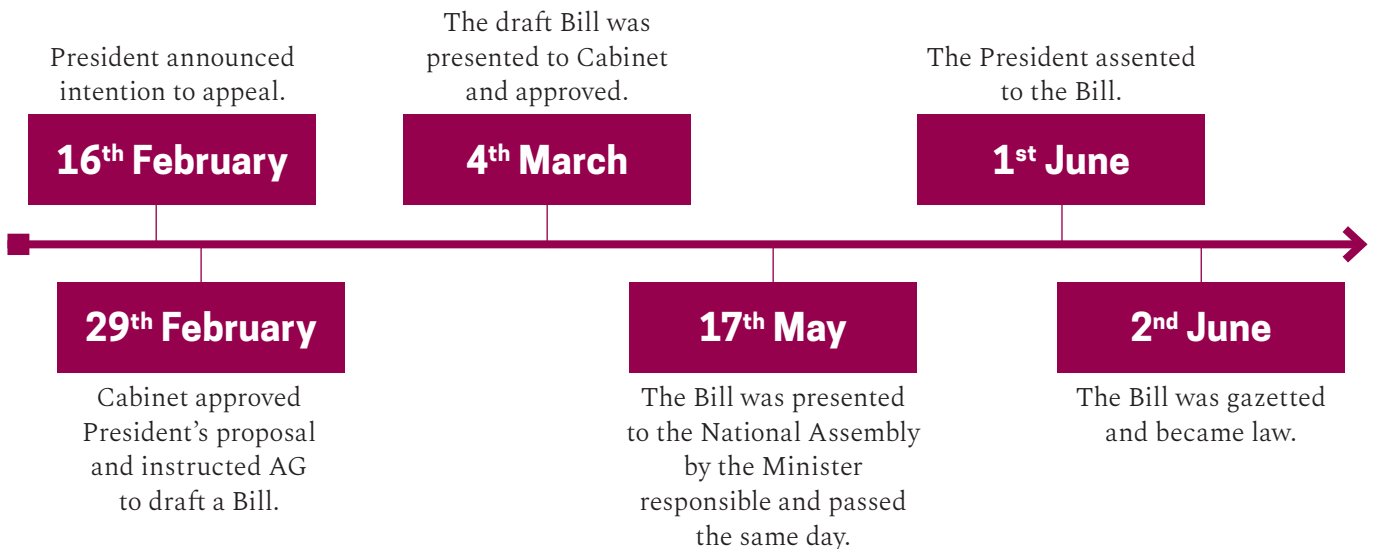
The Penal Code is hereby amended as follows –
 (a) in section 151 –
 (i) by repealing paragraph (a);
 (ii) by repealing paragraph (c).

The Amendment Bill was deliberately kept as simple as possible to minimise the scope for the debate being widened to other issues, although it also covered unrelated new offences for automated transaction machine fraud. The rationale for the reform referenced the President’s State of the Nation Address and was simply described as fulfilling the obligation to implement the recommendation of the 2011 UPR.

The draft Amendment Bill was brought before the cabinet for approval, then gazetted by the attorney general and listed for a first and second reading in front of the National Assembly. The National Assembly passed the Amendment Bill in one sitting and it received presidential approval on 1 June 2016, before becoming law upon publication in the Official Gazette on 2 June 2016.

Passage

Timeline from Proposal to Enactment (2016)





“This national debate has shown the democratic value of our society due to allowing several points of view with a spirit of tolerance.”

“We will honour our Constitution and fulfil our commitment to the international community through this proposition to amend...we are just giving the right which is guaranteed by our Constitution to certain citizens.”

“When a certain conduct has been discriminated against, it does not mean that that conduct is a sin...each individual should use their conscience regarding this matter.”

Joel Morgan,
Foreign Minister, 2016

“The government is doing its duty according to our Constitution [by] assuring that no individual is discriminated against due to his sexual preference.”

Hon. Marie Antoinette-Rose, 2016

The Amendment Bill was presented to the National Assembly by the minister responsible, Foreign Minister Hon. Joel Morgan, on 17 May 2016.⁹² It was debated, voted and adopted the same day.

There were calls, particularly from members of opposition political parties, that on a matter of such national importance there should be a referendum. The attorney general, however, advised that referendums were reserved for matters with constitutional implications.⁹³

The debate in the National Assembly was notable for addressing a wide range of the arguments. As Minister Joel Morgan pointed out in his opening statement.

Minister Morgan identified and outlined the main concerns that had been raised by the general public with respect to the reform, including that the amendment would bring moral upheaval and destroy families. He underlined the government’s position that the reform should be supported on human rights grounds.

Members of the National Assembly then gave their opinions on a range of issues, summarised as follows:⁹⁴

Health

Sultane Jacqueline: the idea that homosexuals have a mental problem has been found to be totally false.

Religion

Herbert Houareau: according to the Bible, John 15:12: “My command is this: Love each other as I have loved you.” Today’s church does not condemn homosexuality as immoral.

Marie-Antoinette Rose (Leader of Government Business): we do not have the right to impose religious practices on others nor to encourage discrimination against those with a different sexual orientation.

Bernard Arnephy: These people [whom the criminal provision discriminates against] contribute to the country, work hard and are very honest. The Pope does not condemn homosexuals.

⁹² *Ibid.*, (n 34).

⁹³ Seychelles News Agency, *Seychelles’ Parliament to consider decriminalising homosexuality in 2016*, 2016 (available at [http://www.seychellesnewsagency.com/articles/4702/Seychelles’+parliament+to+consider+decriminalising+homosexuality+in+](http://www.seychellesnewsagency.com/articles/4702/Seychelles'+parliament+to+consider+decriminalising+homosexuality+in+)). A copy can be found at section 4.g of the Annex.

⁹⁴ *Ibid.*, (n 34).

CONSULTATION, DRAFTING AND PASSAGE OF REFORM

Privacy

Chantal Ghislain: the government should not interfere in personal lives.

Bernard Arnephy: a consensual act in private should not be a concern of the law. We should defend the interests of the minority as well as the majority.

Culture

Sheryl Vanadasamy: her constituents were not fully aware of the law, the reform was progressing too fast and the international community failed to respect Seychellois culture.

Francesca Monnaie (Opposition member): the Constitution clearly states that all persons are equal ... so I do not see why we should discriminate against a specific group based on their sexual orientation... it has nothing to do with morality, religion or culture.

Human Rights

Nicole Barbe: the Universal Declaration of Human Rights applies to all human beings and not just to some. Section 151 is toxic for society, promoting a culture of discrimination and bullying.

Minister Jean-Paul Adam (during Right of Reply): revising section 151 recognises the inherent dignity and the equal rights of all, in accordance with Article 27 of the Constitution, with the Universal Declaration of Human Rights and Seychelles' international obligations. We live in a modern, democratic and free society where everyone has the right to respect.

Constitutional

Foreign Minister Joel Morgan: the law conflicts with the Constitution and with Seychelles' international obligations. For those concerned on moral grounds, Article 32 of the Constitution and the Civil Status Act protects the family, while s.137 of the Penal Code prohibits indecent acts in public.

The debate gave the country's elected representatives an important opportunity to express their views and to hear the full range of arguments. While some members reflected the conservatism of their constituents in voicing concerns that the reform was progressing too fast and did not respect Seychellois culture and religious beliefs, the majority believed that these concerns did not constitute legitimate justifications for maintaining a law that discriminated against a particular group of people and ultimately fostered stigma and homophobia.

The Amendment Bill was adopted on the same day, in a free vote in which the MPs were urged to vote according to their conscience. This was significant because the democratically elected parliament was seen to have decided on the issue not on the basis of party politics but rather on the basis of MPs', and their constituents', views. It demonstrated that the country as a whole had freely and consciously chosen to reform the law on a non-partisan basis.

The result of the vote was 14 in favour (including the sole opposition member), 14 abstentions and four absences. The 14 members who abstained were said to have been reflecting the conservatism in their constituencies. However, it was highly significant that no-one voted against and this was appreciated by members of the LGBT community.

THE POST-REFORM ENVIRONMENT

THE POST-REFORM ENVIRONMENT

Positive Outcomes: “Life Goes On”

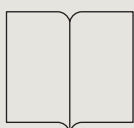
Following the reform of section 151, a range of positive developments reportedly emerged:

- Notably, there was an **absence of any backlash**. The negative effects that had been predicted by the minority of critics failed to materialise. There was no major pushback from faith groups or the public as a whole and, in effect confirming the president’s political judgement in initiating the reform, the subject was not an issue during the National Assembly election campaign a few months later in late 2016. In fact, the governing party had some inclusive language in its Creole campaign materials.⁹⁵
- Some of the **stigma eased**. More people ‘came out’ following the reform and the media found it easier to cover the subject, having previously exercised careful self-censorship. The LGBT community found new allies who were prepared to support them publicly and through social media.
- LGBTI Sey was **formally registered** and, as a result, became formally engaged in some government consultations. For example, LGBTI Sey was consulted on a new schools anti-bullying policy and in relation to the HIV Taskforce.⁹⁶ The reform put LGBTI Sey ‘on the map’ and they are now seen as a serious player by the government, although developing such involvement remains a work in progress.



“When I was struggling as a young person I had nowhere to turn to, but now people actually have somewhere to go...The real progress is having younger people coming forward, asking to be involved and, most of all, seeking information when they are in a difficult situation.”

Fabianna Bonne,
co-founder LGBTI Sey
(April 2018)



Review of the National Youth Policy, 2017

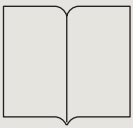
“The NYP [National Youth Policy] should include initiatives and programmes for other ‘fringe society’ youths including those who identify as LGBT, disabled etc. Again, for successful integration of young people within the LGBT community, education and awareness is integral to the process, and social media provides a scope for reaching a large majority of youth.”

“Appropriate healthcare should be made available to all youth including LGBT; healthcare that is respectful of their humanity and dignity as an individual.”

⁹⁵ Parti Lepep Azanda Lasanble Nasyonal – 2016 anmontan (Creole language document, available at www.partilepep.com/images/Azanda2016.pdf).

⁹⁶ LGBTI Sey was also engaged as a stakeholder for the revision of the national youth policy, under the purview of the Seychelles National Youth Council.

- During the **Gender Policy review** by the Ministry of the Family, a same-sex family was included in the consultations.



Anti-Bullying Policy and Strategy, February 2018

Homophobic and transphobic bullying (bullying targeted at those who are or who are perceived to be LGBT) has also been found to be prevalent with evidence that such learners

have particular difficulty in speaking up or reporting the bullying behaviour.

- The new **School Anti-Bullying Policy**, launched in February 2018, includes homophobic bullying.⁹⁷
- Seychelles had long been a popular destination for **LGBT tourists**, but it has become further established as an open and tolerant destination.
- The National AIDS Council's 'Strategic Framework 2018-2022' includes greater focus on and more targets relating to the LGBT community, with an entire section devoted to **raising awareness of health-related issues** related to men who have sex with men ('MSM'). Due to a lack of data, it is unclear whether more LGBT people are now coming forward for testing since the reform, but the National AIDS Council is now visibly engaging with the LGBT community in the form of providing funding to LGBTI Sey and including the organisation in its workshops. There has been collaboration between LGBTI Sey and the Ministry of Health to promote education

on sexual and reproductive health of LGBT people, and there is an intention to initiate sensitisation programmes, provided adequate funding can be secured.

- The consultations on and reform of section 151 set a **precedent for public consultations** on similar human rights issues and helped to prompt the introduction of a new White Paper process, which provides for the publication of proposals to be followed by public consultations, Cabinet decision and then submission to the National Assembly.

⁹⁷ Seychelles Ministry of Education and Human Resource Development, *Anti-Bullying Policy and Strategy for Primary and Secondary Schools and Professional Centres*, 2017 (available at <http://www.education.gov.sc/mediacenter/Documents/Address%20by%20the%20Minister%20for%20Education%20and%20Human%20Resource%20Development.pdf>).



AREAS FOR ONGOING WORK

AREAS FOR ONGOING WORK

After the adoption of the Amendment Bill, there appears to have been no specific implementation plans or programmes put in place to ensure effective implementation, for example; training of the judiciary, the police or government officials, or the rolling out of a public sensitisation programme.

Some questioned whether the opportunity to capitalise on the momentum generated by the reform of section 151 to secure further progress on the rights of the LGBT community had been missed. Others pointed out that reform of section 151 was as much as was achievable at that time and that the reform had at least started a process of dialogue on other issues.

Social Attitudes

Movements in societal attitudes preceded the reform to some extent and continue today, but progress remains slow. While the reform of section 151 has gone some way to generate social change, the LGBT community in Seychelles still faces pockets of discrimination and stigmatisation, particularly from some service providers, law enforcement agencies and on social media. Some argue that it is still hard for LGBT people to access healthcare and that there is little education on sexual and reproductive health. Planned sensitisation programmes, which are being organised by LGBTI Sey, may go some way to address some of these issues.

The media, both the press and social websites such as Facebook, are said to have aided a shift in public attitudes by opening up a forum for the public to discuss their viewpoints on the issue, anonymously if preferred. Public discussion has, on balance, reportedly had a positive impact on lessening stigmatisation and discrimination. On social media, there are more positive messages about LGBT people and fluid sexuality in general, but some negative posts persist.

“There is some change in attitude with more people taking the stance ‘live and let live’. However, we note that on social media there is still homophobic and transphobic content in Seychelles related groups, but they are less frequent.”
(Fabianna Bonne, LGBTI Sey)

“There is no blatant discrimination in the workplace and there are some LGBT persons in senior positions. But they are not openly so. The general attitude towards LGBT persons in Seychelles is ‘keep it private and away from our sight, and things should be fine’.” (A journalist)

“I hear people saying sometimes (e.g. my co-workers): ‘It’s legal now, so it’s fine’; that sort of thing (but more in a joking way). But nothing documented. Nonetheless, it is still quite taboo. I know several young people personally who are terrified to be honest/open about their sexual orientation because of comments they hear from their parents



[If one of an LGBT couple has an accident] “Will the other spouse be recognised as having the authority to decide on what to do for the other’s wellbeing? Everyone should have the right to marry the person they love. Marriage is a rite of passage in any society...”

Mr Benoit,
(one of the couple married at the British High Commission in 2015)

and religion. So overall, yes there is an attitude shift but it is very slight. I would say the shift is less than I would have liked to see. This is due to lack of proper education and follow-up regarding the issue, in my opinion.” (Member of LGBTI Sey)

“Society seems to show more indifference towards the issue now.” (A senior official)

There is also continued apprehension over – and, in some quarters, strong opposition to – same-sex partnerships and marriage equality. The present legal developments in Seychelles around civil partnership, including equal property rights for co-habiting couples, which have formed part of the review to the Civil Code, appear unlikely to deal (at least explicitly) with same-sex relationships.

Hate Crimes and Hate Speech

Hate crimes remain a concern not only for the LGBT community but also in respect of people of different races and ethnicity. LGBTI Sey noted two cases of young gay men who were victims of homophobic violence and reported the attacks to the police, one in December 2016 and the other in September 2018. In both cases there was reportedly minimal engagement by the police and the cases were not pursued. In the 2016 case, the victim was reportedly told by the police that he could pursue a civil case as he knew his aggressor, but he chose not to take it further.

Other than Penal Code offences on, for example, wounding religious feelings, breach of the peace and seditious offences (which have been used in the past to address hate speech), there is no specific legislation on hate crimes and no apparent plans to introduce such legislation at this time. A ‘Speakers Corner’ Bill on free speech was tabled which would reportedly have included laws against making provocative statements. While this may go some way towards addressing hate speech concerns, it is unlikely to address the cyber sphere, including social media, despite the fact that Facebook, in particular, is reportedly used by some individuals to post highly offensive homophobic messages. The Leader of the Opposition has spoken of introducing legislation specifically targeting hate speech on social media, but to date no specific legislation has been proposed.

Recognition of the Transgender Community

The decriminalisation of consensual same-sex sexual conduct and the amendment of the Penal Code opened up to public debate issues surrounding the rights of all LGBT people in Seychelles. This included the question of recognition of the rights of transgender people, which was further prompted by the legal action taken by Mervin Jezabel Barbe in 2017.⁹⁸

⁹⁸ *Mervin Jezabel Barbe v Chief Officer of Civil Status* (2017) Civil Appeal SCA 08/2015. A copy can be found at section 1.e of the Annex.

AREAS FOR ONGOING WORK

Barbe was born and registered as a male and recorded as such on her birth certificate issued in Seychelles in 1972. Subsequently, in 2003, Barbe underwent gender reassignment surgery in Italy and later applied to the Seychelles' Civil Status Office in 2009 to change the gender record on her birth certificate, which was refused. As a result, Barbe sought the assistance of the courts but her case was rejected by the Seychelles Supreme Court and Court of Appeal on the basis that the present legal system did not permit such rectification of birth certificates. The Court of Appeal did however recognise that:

*“Despite this, we acknowledge the plea and plight of the Appellant to have [her] change of gender recognised. To that extent we recommend to the Legislature to consider whether in Seychelles of today there is a justification for the recognition of gender change, at least in conformity with the Charter of Human Rights in our Constitution”.*⁹⁹

The Court of Appeal further encouraged the Appellant to consider pursuing the matter in the Constitutional Court.

While the government has not yet taken up the gauntlet and undertaken to consider the rights of transgender people, the progressive pronouncements from the judiciary provide some indication of what the future may hold in this regard.

Anti-discrimination Law

The effects of stigmatisation and discrimination against the LGBT community are still being felt. As was noted in a report by the National AIDS Council, the HIV epidemic remains one of the major public health and development challenges in Seychelles. There is a concentrated HIV epidemic among key populations such as MSM (Men who have sex with men), estimated to account for 13.2 per cent of HIV transmissions. A significant obstacle in combating this epidemic is thought to be related to the stigma that LGBT people experience, which causes reluctance in coming forward for preventative advice and education, as well as treatment.¹⁰⁰

For this reason, among others, Seychelles could benefit from comprehensive equality legislation prohibiting discrimination on all grounds including sexual orientation, gender identity and expression, and HIV status. Although there is hope for greater legal protection for the LGBT community in the future, how soon this will become a reality remains unclear.

⁹⁹ *Ibid.*, para. 31.

¹⁰⁰ National Aids Council, *National Strategic Plan for HIV/AIDS, 2018 – 2022*, (available at a <http://www.health.gov.sc/wp-content/uploads/Seychelles-National-HIV-AIDS-STIs-Strategic-Framework-2012-2016.pdf>). A copy can be found at section 2.d. of the Annex.

LESSONS LEARNED

LESSONS LEARNED

Reform in Seychelles was the result of a **combination of factors**, coalescing at a politically opportune time. Moreover, there was clearly **genuine political will** to drive the reform forward, undoubtedly an essential element to achieving the change that followed. Many of the influencing factors, such as civil society advocacy, legal profession support, and favourable mainstream media, not only placed pressure on the political elite to take action but helped create a **social environment that was conducive to reform**.

The experience of Seychelles, a small, deeply-religious and conservative African society, clearly demonstrates that **reform can be achieved through constructive engagement with faith leaders and groups**. Their support, or at least acquiescence, was arguably a key factor in making the reform a political possibility.

Public consultations and awareness-raising programmes were an effective way to engage with the public, to educate them about the law and its impact and to enable the public to have their say. Personal stories by ordinary members of the public appear to have had a particular impact. The experience of Seychelles reveals that through engagement, particularly on highly emotive issues, governments pursuing reform can dramatically reduce the risk of alienating the public and missing a real opportunity to have them invested in the process.

Both positive and negative lessons can potentially be drawn from the swiftness of the reform in Seychelles. On the positive side, **the targeted and expeditious process avoided entangling the issue in lengthy deliberation**, which could have led to the reform being indefinitely delayed. Nevertheless, the speed at which the reform was achieved was perhaps also a missed opportunity to sensitise and educate the public on the rights and experiences of the LGBT community. This is especially so given there was no further implementation once the Amendment Bill was passed.

Finally, a valuable though less critical tool was **drawing in support** from a range of other constituencies, notably healthcare (access for those at risk of HIV) and business (the tourism industry).

Ultimately, the reform depended on the President and government being prepared to take the initiative. This, as some claimed, “took a lot of guts” given the deep-seated conservative social attitudes in Seychelles.



“Do not lose hope. We are a big African community. Of course our contexts are different and varies from countries to countries... My message is hold on in there. Do not lose hope.”

Ronny Arnephy,
Interview with Iranti-Org,
May 2016¹⁰¹

¹⁰¹ Ronny Arnephy, Interview with Iranti-Org, May 2016 (available at https://www.youtube.com/watch?v=AhqBW-_pEbs&feature=youtu.be)

ANNEX

ANNEX

1. Law and Legislation

- a. Section 151 of the Penal Code 1952.
- b. The 1993 Constitution of the Seychelles:
 - i. Articles 143 and 144: Creation of the Ombudsman;
 - ii. Schedule 5: Creation of the Ombudsman;
 - iii. Article 16: Right to Dignity;
 - iv. Article 20: Right to Privacy;
 - v. Article 27: Right to Equal Protection under the Law;
 - vi. Article 32: Protection of Families.
- c. The Employment (Amendment) Act 2006:
 - i. Article 46A;
 - ii. Article 2 definition of “harassment”.
- d. The Penal Code (Amendment) Bill, 2016, including the Objects and Reasons.
- e. Cases:
 - i. *Mervin Jezabel Barbe v Chief Officer of Civil Status*, Judgment of the Seychelles Court of Appeal, 11 August 2017.

2. Commentary

- a. *A Brief History of section 151 Penal Code*, The Chief Justice Twomey, 2014.
- b. *The Decriminalisation of Same-Sex Sexual Activity in the Seychelles: A Comparative Perspective*, Dr. O’Mahony paper, 2014.
- c. *Decriminalisation of Homosexual Practices in the Republic of Seychelles*, RJ Govinden, 2018.
- d. *The National Strategic Framework 2012 – 2016 for HIV and AIDS and STIs of the Republic of Seychelles*, The National AIDS Council, undated.
- e. *The Right in Article 27 to Equal Protection of the Law: Are our Courts Headed in the Right Direction?* Bernard Georges, undated.
- f. *Transforming Laws, Transforming HIV, Stop the Discrimination, End the Stigma, Human Rights for All, Stop the Violence, Remove Legal Barriers, Health for All, The Seychelles National Advocacy Convening on Reducing Violence and Discrimination Against Key Populations*, 20 October 2017.

3. Public Consultation Documents

- a. *Repealing 151 (a) and (c) of the Penal Code*, Ms Gayethri M Pillay, 2014.

4. Media Sources

- a. *An Innocent Misgiving*, Today in Seychelles, 10 September 2014.
- b. Seychelles News Agency, *First Same-Sex Union in Seychelles takes place at British High Commissioner’s residence*, 13 June 2015

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- c. *Perhaps we need to start loving people more instead of being self-righteous?* Today in Seychelles, 13 July 2015.
 - d. *Why is it taking so long?* Today in Seychelles, 15 October 2015.
 - e. *Editor questioned by police.* Seychelles Nation, 27 October 2015.
 - f. *Changing Laws versus People’s Mind Set,* Today in Seychelles, 19 February 2016.
 - g. *Seychelles’ Parliament to Consider Decriminalising Homosexuality in 2016,* Seychelles News Agency, 1 March 2016.
 - h. *The Seychelles will make Gay Sex Legal,* Gay Star, 2 March 2016.
 - i. *Gay Rights: Country’s first LGBT Workshop takes place this weekend,* Today in Seychelles, 17 March 2016.
 - j. *Population should have a say in move to Decriminalise Homosexuality,* Seychelles Nation, 30 March 2016.
 - k. *About Homosexually,* Today in Seychelles, 24 April 2016.
 - l. *Seychelles News Agency, Seychelles Parliament passes bill to decriminalise sodomy,* 18 May 2016
 - m. *Civil Rights,* Today in Seychelles, 15 June 2016.
 - n. *HIV/AIDS: The situation in Seychelles from the eyes of an active-activist.* Today in Seychelles, 22 January 2019.

5. International Assessments

- a. United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review* Seychelles,* July 2011
- b. Consultants’ Final Report, *Seychelles Legal Environment Assessment of HIV and AIDS,* April 2013
- c. United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Seychelles,* April 2016
- d. US State Department, *Country Report on Human Rights for the Seychelles,* 2017
- e. United Nations Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Seychelles, by the Human Rights Council Working Group on the Universal Periodic Review Twenty-fourth session on behalf of the United Nations General Assembly,* January 2016
- f. United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Seychelles, Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review,* June 2016

ANNEX

6. Parliamentary Debates

- a. Report of the Constitutional Review Committee, 12 December 2009.
- b. President Michel, *State of the Nation Address*, February 2016
- c. Hansard verbatim of National Assembly sitting, *National Assembly of Seychelles*, 17 May 2016 (unofficial English translation from the original Creole).
- d. White Paper (by the Ministry of Legal Affairs) Civil Code of Seychelles Bill, 2017.
- e. Parliamentarians for Global Action, *PGA Member, Wilby Lucas, MP, comments on the decriminalization of homosexuality in the Republic of Seychelles*, 2016

7. Civil Society Background/ Campaigns

- a. CEPS Seychelles, Seychelles Submission to the United Nations Universal Periodic Review, 2016.
- b. SIFCO'S *Response to the Decriminalization of Homosexuality*, 2016.
- c. CEPS Seychelles, *CEPS view on the decriminalisation of penal code 151 (a) & (c)*, 2016 22 April 2016.
- d. *The Big Interview with Fabianna Bonne: It all Boils down to Hypocrisy*, Today in Seychelles, Facebook, 23 June 2015.
- e. *The Registration of LGBTI Sey as a charitable organisation*, LGBTI Sey, Facebook 22 June 2016.

8. Human Dignity Trust Publications

- a. *Criminalising Homosexuality and Public Health: Adverse Impacts on the Prevention and Treatment of HIV and AIDS*, Human Dignity Trust, November 2015.

