

Anglicans and Sexuality: A Way Forward?

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Anglicans and Sexuality: A Way Forward?

Report on the Role of an Independent Commission in Understanding the Relationship between the Anglican Communion and Laws Criminalising Consensual Same-Sex Intimacy between Adults

‘I remember a lesson of the rabbinical scholars which was always repeated to us by my teacher of jurisprudence, and it was to this effect: “In this life it is not given to us to right all the wrongs of humanity, but neither are we released from the obligation to try.”’

The Hon. Michael Kirby

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I. INTRODUCTION

In the end you will come to the stage where you understand that criminalisation causes more and more damage. It doesn't stop homosexuals from being born, from existing, it just makes their existence hell.¹

I.1. The purpose of this Study

This Study was carried out by the authors in conjunction with the Institute of Public Affairs based at the London School of Economics and Political Science in London between January and May 2016. It stemmed from conversations over several months in 2015.

The purpose of the research was to consider the role, both historic and current, of the Anglican Communion, and individual provinces and churches that make up the Communion, in efforts to bring about the decriminalisation of same-sex sexual conduct between consenting adults. It asked a simple question: should an independent commission be set up to look at all aspects of criminalisation and seek ways in which Anglicans can come to a better understanding of these issues and how they can engage with governments, legislatures and the public in countries which criminalise?

The preliminary research it contains and the conclusions we have come to should be viewed as an opportunity to forge better understanding of the nature of criminalisation of same-sex sexual conduct between consenting adults. Faith groups, and the Anglican Communion in particular, can utilise that understanding to bring about positive change. As Esther Mombo of the St Paul's United Theological College of Kenya sees it: 'The Communion should be known for offering a place where different people find space to meet God, rather than a space where people feel judged and condemned.'²

Our research has concentrated on the Anglican Communion rather than any other denomination or faith group for the simple reason that the Anglican Church is seen to have significant influence in over the half the countries that still criminalise same-sex intimacy between consenting adults. That does not mean that other faith groups have no role in efforts to repeal these laws; it is simply a matter of the scheme and scope of this research and the nature of the commission it proposes.

¹ Davis Mac-Iyalla: interview with the authors, 28/01/2016.

² Dr Esther Mombo: email to the authors, 23/04/2016.

The scope of this report

This introduction will consider the current state of laws criminalising same-sex sexual conduct, particularly in those regions where the Anglican Communion represents a significant faith group. The report will then examine the narrative arc of Christianity and Anglicanism's troubled history around human sexuality and how that history has influenced the passing of laws, from the earliest period of the Christian era, via the Buggery laws in England and their expansion during the 19th and 20th centuries.

It will then consider the role of Anglican Churches in the repeal of these laws in certain jurisdictions during the late 20th century and the ways in which contemporary Anglican churches have reacted differently to recent calls for repeal in Africa, the Caribbean and Asia. It will explore some of the most recent statements by Anglican leaders regarding the role of the Church in the persecution of Lesbian, Gay, Bisexual and Trans (LGBT) people, and finally, it will consider in detail the potential of a commission to investigate all aspects of criminalisation and how the Anglican Communion might find a way forward. Included in that discussion is an appraisal of why a commission would be in a position to take this work further than is possible in this report.

An Appendix considers various models we consider suitable for this projected commission. A further Appendix lists the respondents who agreed to take part in this study.

Methodology

This study was carried out over four months in early 2016. The first couple of these months involved an extensive literature review so as to highlight areas of research and to consider what had already been written on the subject of criminal sanctions against consensual same-sex sexual conduct and the differing views held by Anglicans and Anglican bodies. It also considered legal and political developments in this area.

From this survey a detailed topic guide was drawn up as a basis for carrying out a number of interviews with key figures in the Anglican Communion, LGBT community, human rights activism, the law, global funding and health care.

With the help of advisers from within the Anglican Church and relevant human rights organisations, a list of suitable candidates for interview was drawn up. From these initial interviews, further subjects were identified. We were keen to seek the opinions of men and women from the Global North and South equally, and it is one of the pleasures of this research that we have been successful in achieving this aim.

We have also attempted to canvas the views of as broad a range of people as possible. Unfortunately, we were unable to obtain responses from everyone we contacted, but we have at least offered the opportunity for people on all sides of the theological and cultural debates within the Anglican Communion to express their views. Many of those views have been published, and are, therefore, in the public sphere. Where appropriate, we have included these too.

In total, 46 interviews were carried out, either in person, over the telephone or via Skype or email. The detailed responses elicited from these conversations form the basis of this report.

The report was compiled between March and May 2016. It was published in June 2016.

I.2. Executive summary

- 1. There have been a number of statements made by senior figures in the Anglican Communion, including the current Archbishop of Canterbury, Justin Welby, condemning the persecution of LGBT people around the globe.**

Until 2016 these statements tended to be general in nature, but recently they have called for the repeal of laws criminalising same-sex sexual conduct between consenting adults. Combined with historical support by senior Anglican Church figures for decriminalisation in countries such as the UK, Australia and Canada, this suggests a growing movement within the Communion against penal sanctions.

- 2. Conversely, there have been moves in several countries, predominantly in Africa, not only to retain these laws, but to augment them.**

These efforts are often supported by churches, including Anglican Churches within these provinces.

Moves among more liberal churches to be inclusive of LGBT people are cited by those promoting criminalisation as reasons for retaining and augmenting these laws.

GAFCON (Global Anglican Conference) bishops and primates have driven an agenda within the Anglican Communion to reject LGBT inclusion, at the expense of consideration of discriminatory and persecutory criminal sanctions.

- 3. Ways of shifting this impasse are considered by this report, principal amongst them being the setting up of an independent commission to consider the full picture of criminalisation and how the Anglican Communion can and should respond.**
- 4. There is overwhelming support amongst the research respondents for such a commission.**

Born out of a sense that the Anglican Communion can and should do more to promote repeal of criminal sanctions, a commission would help identify relevant issues, educate and make recommendations for moving forward.

It would provide an invaluable source of information on all aspects of criminalisation which could be used to shift the debate within the Communion towards a better understanding of the nature and impracticality of criminal sanctions.

Its focus on criminalisation, for most respondents, was positive in that this is an aspect of the debates concerning homosexuality on which the Anglican Communion ought to find consensus.

Consequently, for civil society activists, it would encourage the Anglican Communion to consider its own responses to date and why so little has been said and done at a Communion level to end the persecution of LGBT people (recent statements notwithstanding).

Whilst it would be a positive move to have the engagement of Lambeth Palace and the Communion, this is not necessary (to some undesirable) for an independent commission to carry out its work; obviously, co-operation between commissioners and churches within the Communion would also be highly advantageous.

5. The commission should be constituted to examine the role of the Anglican Communion and Churches in the decriminalisation of same-sex intimacy between consenting adults wherever laws governing this exist.

Its remit should be to investigate all aspects of criminalisation from theological, legal, medical, historical, psychological and sociological perspectives.

Commissioners should travel to the various regions to gather evidence and testimonies; witnesses should not be expected to travel to a fixed location outside their region. This is for both financial and practical considerations, as well as 'optics'.

Its report should make clear and concise recommendations on how the Anglican Communion can influence the repeal of laws that are intended to discriminate against or persecute LGBT people. Strong, practical, achievable solutions are necessary.

6. Ideally, the geographical location of the commission should be split between a centre in the Global North and one in the Global South.

For people in the Global South to feel they own the commission, including those Anglican Churches that choose to engage, it is important that it has a physical presence there.

Africa is the most likely location, with South Africa a favoured centre given that it repealed its anti-LGBT laws twenty years ago and so can provide a safe space for evidence gathering.

London would make a suitable home too: it is a major global hub; it is the home of the Anglican Communion and the office of the Archbishop of Canterbury.

To retain the independence of the commission, it should be hosted by an academic or similar institution: the LSE in London and the Universities of Cape Town or Kwa-Zulu Natal have been suggested.

If it is not practicable to split the base of the commission, then the most sensible solution would be to base it in London, but ensure the prominence of Global South commissioners.

7. Commissioners should be drawn from the Global North and the Global South.

There should be ideally 11, but no more than 15, commissioners.

There should be equal representation of men and women. Ideally, the chair should come from the Global South.

As far as is possible, all the regions covered by the Anglican Communion should be represented on the commission.

There should be a good mix of expertise including, as far as is possible, law (particularly human rights law), medicine, theology, sociology, gender issues and those engaged in LGBT rights.

Commissioners should be respected in their field and, crucially, respected by a broad section of Anglicans.

Again as far as is possible, a broad range of views should be included.

8. No commission will be possible without proper funding.

This is a major undertaking, so funding must be in place to cover the work of the commission over its life time (probably 3-4 years).

Funding should come from respected funders who are already working in the area of faith and LGBT rights without any particular agendas or expected outcomes.

Church funding, where forthcoming, would be welcome, but not to the extent that it might be seen to dominate the commission's work and therefore jeopardise its independence.

9. The Commission should aim to report within four years.

The Lambeth Conference in 2020 would be an ideal opportunity for the commission's findings to be discussed.

This provides a tight schedule: hosting, funding, a secretariat and commissioners would need to be in place within a year – summer 2017.

I.3. Laws criminalising same-sex intimacy between consenting adults: a Global perspective

The extent of criminalisation

As of 2016, 77 countries criminalise same-sex intimacy between consenting adults. The laws invoked may differ in language and, occasionally, intent; they may capture only intimacy between men or both men and women; they may cover virtually all aspects of LGBT identity;

they may be to varying degrees 'dormant'; but they are all on the statute books. Furthermore, they all derive principally from two sources: Islamic Sharia law and laws promulgated throughout the British Empire in the 19th and 20th centuries.³

According to research undertaken by the Human Dignity Trust, an NGO that provides legal advice and other practical help to those seeking to challenge criminalising laws, in those jurisdictions somewhere between 94 to 145 million men and 13 to 40 million women 'are or will be "un-apprehended felons"' as a result of engaging in consensual sexual intimacy.⁴ The realities of this can be manifold, extensive and tragic. In its series of Briefing Notes published in 2016, the Human Dignity Trust has collated evidence to show how criminalisation impacts on areas as diverse as democracy, the rule of law, business and health care – this latter being particularly relevant in the context of the HIV/AIDS pandemic, data on which shows that rates of infection among men who have sex with men are significantly higher in jurisdictions which criminalise than in those which don't.⁵ Studies show that consequences for mental health, family breakdown and poverty are also significant factors which result directly from criminalisation.⁶

More than half the countries which criminalise same-sex intimacy are in the Commonwealth, testament to the role of the British in promoting such laws. As Leslie Green, Professor of the Philosophy of Law at Oxford University, explains:

The Indian Penal Code was our colonial export, and these people never thought for five minutes that they had to criminalise any of this stuff until we took the Indian Penal Code, generalised it for the rest of the Empire and exported it. Then the cutting grew

³ Since the end of the Soviet Union, whose block, including Eastern European countries and countries in Central Asia provided another source for criminalisation, penal sanctions against same-sex intimacy have been to a degree repealed. Recent anti-homosexual 'propaganda' laws in the Russian Federation and elsewhere do effectively criminalise certain aspects of sexual identity, but do not affect sexual acts in private between consenting adults. See 'Kirgizstan moves towards adoption of Russia's anti-gay law', *The Guardian*, 16/10/2014. Available at: <http://www.theguardian.com/world/2014/oct/16/kyrgyzstan-moves-towards-adoption-russia-anti-gay-law>.

⁴ See the Human Dignity Trust Briefing Note, *Criminalising Homosexuality: Irreconcilable with Good Governance – Synopsis and Our Recommendations*, London, 2016, p. 7. Available at: http://www.humandignitytrust.org/uploaded/Library/Other_Material/Criminalising_Homosexuality_-_Synopsis_and_Recommendations.pdf. The statistics will vary depending on current research into the percentage of any given population who are or present as LGBT.

⁵ See <http://www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=476>. For the HIV infection statistics, see Fenton, K.A., Flores, S.A., Heilig, C.M., Jeffries, W.L., Lane, T., Malebranche, D.J., Millett, G.A., Peterson, J.L., Steiner, R., Wilson, P.A., 'Common roots: a contextual review of HIV epidemics in black men who have sex with men across the African diaspora', *The Lancet*, 28 July 2012, Vol. 380, Issue 9839, pp. 411-423.

⁶ See, for example, King, M., Semlyen, J., See Tai, S., Killaspy, H., Osborn, D., Popelyuk, D., and Nazareth, I, 'A systemic review of mental disorder, suicide, and deliberate self-harm in lesbian, gay and bisexual people', *BMC Psychiatry*, 18 August 2008. Available at: <http://bmcp psychiatry.biomedcentral.com/articles/10.1186/1471-244X-8-70>.

roots. And now the attachments to these criminal offences, symbolic and quasi-national attachments, are quite astonishing.⁷

In reality, nearly three quarters of the people who live in criminalising countries, live in the Commonwealth, or to put it another way, 90% of the people who live in the Commonwealth do so in countries with laws aimed at persecuting and discriminating against LGBT people.⁸ Given the statistics, it is quite clear that the imposition of penal sanctions on people for consensual sexual expression, expression that, as will be shown, is protected under international human rights law, is as much a problem for a supra-national organisation like the Anglican Communion as it is for the UN, say, or for the Commonwealth itself. We are told that the growth areas for Anglicanism are in East and West Africa, as well as other parts of the Global South.⁹ These are often the areas most determined to maintain their criminal laws, even in the face of severe international criticism.¹⁰

The right to manifest religion

The UN Universal Periodic Review procedure (UPR), whereby individual countries must justify their human rights records on a rolling basis under the auspices of the Human Rights Council, has often highlighted issues of criminalisation and persecution of LGBT people, accompanied by calls for the country in question to repeal criminal sanctions.¹¹

In response, governments deploy the religious (whether Christian or Muslim) nature of their societies and the need to protect minors as justifications for not doing so. Setting aside the issue of child abuse, which cannot be used to defend the criminalisation of sexual conduct between consenting adults in the first place, human rights norms and national and international courts and tribunals have consistently found that religious beliefs and customs, no matter how profoundly held, cannot be cited to justify human rights abuses. A report by the UN Special

⁷ Professor Leslie Green: interview with the authors, 18/02/2016.

⁸ Human Dignity Trust Briefing Note, *Criminalising Homosexuality: Irreconcilable with Good Governance – Synopsis and Our Recommendations*, p. 7.

⁹ *From Anecdote to Evidence: Findings from the Church Growth Research Programme 2011-2013*, Church Growth Research Programme, 2014. Available at:

<http://www.churchgrowthresearch.org.uk/UserFiles/File/Reports/FromAnecdoteToEvidence1.0.pdf>.

¹⁰ See various statements from UN bodies on the subject, both in general and country-specific:

<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx>.

¹¹ For example, during the most recent UPR of Nigeria many in the working group tasked with examining that country's human rights record called for the repeal of all discriminatory laws affecting LGBT people and for the then Same-Sex Marriage (Prohibition) Bill to be scrapped. See Media Briefing at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights22October2013pm.aspx> and the *Report of the Working Group on the Universal Period Review Nigeria*, United Nations/HRC/25/6, 16 December 2013, p. 26. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/10/PDF/G1319010.pdf?OpenElement>.

Rapporteur on Freedom of Religion and Belief in 2014 observed, on the basis of the evidence it had collected, that:

[H]omophobic and transphobic violence against lesbian, gay, bisexual and transgender (LGBT) persons may also be perpetrated in the name of religion... Violence against women and against LGBT persons is often justified and given legitimacy by discriminatory laws based on religious laws or supported by religious authorities, such as laws criminalizing adultery, homosexuality or cross-dressing.¹²

Freedom of religion is based on a concept of personal autonomy, but so are the rights of LGBT people not to have their private life, for example, interfered with. Therefore, the limits imposed on the right to manifest religion from an international human rights law perspective are fairly straightforward, as the Human Dignity Trust's Briefing Note *Criminalising Homosexuality and the Right to Manifest Religion* shows: an individual's right to believe whatever he or she wishes is absolute, i.e. it cannot be interfered with; but the right to manifest that belief is not absolute. Any interference with the rights of others promoted by that manifestation must be proportionate to any aim sought, in this case the protection of public morals.¹³ According to the International Covenant on Civil and Political Rights (ICCPR), to which a majority of countries which criminalise are signatories and on whom, therefore, its provisions are binding, the right to manifest religion or belief may not amount to 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.¹⁴ Furthermore, from the case of *Dudgeon v. the United Kingdom* in 1981 onwards,¹⁵ international, regional and national courts and tribunals have consistently found that religious and other beliefs cannot be used for the 'destruction of any of the rights and freedoms recognized' in the relevant human rights treaty.¹⁶ The issue was put most succinctly, perhaps, by the South African Constitutional Court in 1998:

¹² UN General Assembly, Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, 29 December 2014, UN Doc A/HRC/28/66.

¹³ The Human Dignity Trust, *Criminalising Homosexuality and the Right to Manifest Religion*, London 2016. Available at:

http://www.humandignitytrust.org/uploaded/Library/Other_Material/Criminalising_Homosexuality_and_Religion.pdf.

¹⁴ UN Human Rights Committee, General Comment No. 22, UN Doc CCPR/C/21/Rev.1/.

¹⁵ For a thorough and succinct overview of cases relating to the criminalisation of same-sex intimacy between consenting adults, see the Human Dignity Trust's Briefing Note *Criminalising Homosexuality and International Human Rights Law*, London 2016. Available at:

http://www.humandignitytrust.org/uploaded/Library/Other_Material/Criminalising_Homosexuality_and_International_Human_Rights_Law.pdf.

¹⁶ The full text of the judgement in *Dudgeon* can be found at:

[http://hudoc.echr.coe.int/eng#{"fulltext":\["Dudgeon"\],"display":\[0\],"itemid":\["001-57473"\]}](http://hudoc.echr.coe.int/eng#{). See also Article 5, ICCPR. All human rights treaties have similar wording.

Such [religious] views, however honestly and sincerely held, cannot influence what the Constitution dictates in regard to discrimination on the grounds of sexual orientation.... Yet, while the Constitution protects the right of people to continue with such beliefs, it does not allow the state to turn these beliefs – even in moderate or gentle versions – into dogma imposed on the whole of society.¹⁷

This last statement is of particular significance in that it relates to a case concerning the criminalisation of LGBT people in an African context. The judgment was cited in a more recent case before the Kenyan High Court in 2015 concerning the registration of an LGBT rights NGO. In that case the Court made reference to the religious beliefs of the NGO Board and Attorney General of Kenya in denying registration, citing passages in the Bible, the Quran and various religious studies, but came to the conclusion:

We must emphasize, however, that no matter how strongly held moral and religious beliefs may be, they cannot be a basis for limiting rights: they are not laws as contemplated by the Constitution. Thus, neither the Penal Code, whose provisions we have set out above, which is the only legislation that the respondents rely on, nor the religious tenets that the Board cites, meet the constitutional test for limitation of rights.¹⁸

Human rights in a Global South context

The Commission of the African Union, a Pan-African organisation governed by various treaties, including the African Charter on Human and People's rights, has also condemned violence against LGBT people perpetrated by both state and non-state actors, and has urged governments to enact 'appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities'. Significantly, this resolution, published in May 2014, which does not go so far as to call for repeal of penal sanctions against LGBT people, has not yet been agreed by the states that make up the Union. The Inter American Commission on Human Rights (IACHR), an emanation of the Organization of American States, of which a number of criminalising Caribbean countries are members, has also condemned violence and discrimination, including discriminatory laws, against LGBT people.

What is clear is that there is a tidal movement towards greater recognition of the egregious nature of laws criminalising same-sex intimacy between consenting adults amongst national

¹⁷ *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* [1998] ZACC 15 (Constitutional Court), para. 137.

¹⁸ *Eric Gitari v. NGO Board & 4 others*, [2015], Petition 440 of 2013, The High Court of Kenya at Nairobi, para. 121. Cited in Human Dignity Trust Briefing Note, *Criminalising Homosexuality and Understanding the Right to Manifest Religion*, London 2016, p. 19. See note 10 above.

and international bodies across the world. What is also palpable is the rear-guard action being taken by some governments and legislatures in Africa, Asia and the Caribbean, not only to retain those laws, but to augment them. In recent years, new provisions have been introduced in Nigeria, Uganda, the Gambia and elsewhere further criminalising aspects of LGBT expression and increasing sentences on conviction.^{19,20}

Attempts to repeal laws via the courts have either stalled or failed.²¹ This has coincided with a rise in prosecutions in countries like Nigeria, Senegal and Cameroon, and an alarming increase in homophobic violence across Africa and the Caribbean.²² Mark Hill, a British lawyer and expert in ecclesiastical law and religious liberty, saw this situation as symptomatic of a rejection of 'Western' values by Global South countries:

There is an argument from sub-Saharan Africa that they perceive foreign liberal values as neo-colonial. They are God-fearing Africans living in accordance with their values and Scripture. For example, a discussion about gender equality is rights based, but in Africa it is seen as causing social disorder. They regard human rights culture as a Western thing. Many Western lawyers don't understand that.²³

Jason Jones, an activist and lawyer from Trinidad and Tobago pointed out that Churches in the Global South often push an anti-human rights agenda:

The message of human rights being espoused by the Global North and 'white' leaders is completely overshadowed and disavowed by the dogma being propagated by

¹⁹ See the report published by the IACHR, *Violence Against Lesbian, Gay, Trans and Intersex People in the Americas*, 12 November 2015. Available in Spanish only at:

<http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf>.

²⁰ Nigeria's Same-Sex Marriage (Prohibition) Act was signed into law in 2013. The Anti-Homosexuality Act in Uganda was signed into Law by President Yoweri Museveni in early 2014, only to be struck down on a technicality by the Constitutional Court later that year. See 'Uganda anti-gay law challenged in court', *The Guardian*, 31/07/2014, available at

<http://www.theguardian.com/world/2014/jul/31/uganda-anti-gay-law-constitutional-court>. See also,

'Gambian leader approves anti-gay law', *The Guardian*, 21 November 2014. Available at

<http://www.theguardian.com/world/2014/nov/21/gambian-leader-approves-anti-gay-law>.

²¹ A challenge in the Belize courts in May 2013 has, as of writing in April 2016, still not been decided.

See 'Two year wait for justice in case challenging Belize's law banning LGBT relationships', *glaad*, 02/11/2015. Available at: <http://www.glaad.org/blog/two-year-wait-justice-case-challenging-belizes-law-banning-lgbt-relationships>; a case in 2014 in Singapore failed to overturn the relevant section of the Penal Code governing same-sex intimacy. See 'Singapore: court ruling a major setback for gay rights', Human Rights Watch, 29/10/2014, available at:

<https://www.hrw.org/news/2014/10/29/singapore-court-ruling-major-setback-gay-rights>.

²² See, for example, *'And That's How I Survived Being Killed': Testimonies of human rights abuses from Uganda's sexual and gender minorities*, Sexual Minorities Uganda, Kampala, 2016. Press release, 'SMUG Report finds 264 cases of human rights abuses', available at:

<https://sexualminoritiesuganda.com/blog/>.

²³ Mark Hill QC: interview with the authors, 03/02/16.

Christianity! Human rights are now viewed by the general public as a 'white people ting'.²⁴

This anti-human rights culture was also cited by sources within the Anglican Communion itself to explain resistance to decriminalisation, but it is by no means a universal attitude in the Global South.²⁵ Not all the stories emerging over the last few years have involved an entrenchment of positions or a rejection of human rights values. A few countries have decriminalised, including Mozambique in 2015, and the Seychelles and Nauru in 2016.²⁶ But it is generally felt by human rights defenders and faith community commentators alike that we have reached something of an impasse, with little or no movement discernible. 'We seem to have reached a point where nothing is happening, virtually nothing,' former Justice of the High Court of Australia, Michael Kirby said in a recent interview for this Report. 'There is now a large body of people who are urging change in Christian churches around the world... because there is so much in Scripture that is extremely uncomfortable if you start to urge it as an unerring word of God applicable at all times.' He went on, '[w]hether people want to hear these things, and whether they've got their hearts and minds open to messages of this kind, is uncertain.'²⁷

Persecution, violence and the law

Ultimately, these laws are the product of a particular, and reactionary, religious mind set, whether Islamic fundamentalist or evangelical literalist Christian. There is no other possible explanation for the retention of laws governing sexual behaviour between consenting adults in the 21st century. To borrow the language of human rights, they are not necessary in the democratic nation – for that matter, the majority of countries which criminalise have weak democratic track records;²⁸ they do not serve the public good and they are not proportionate to any arguments about public morality. They are, in so many senses, theocratic in nature,

²⁴ Jason Jones: email to the authors, 12/05/2016.

²⁵ See, for example, *Human Rights and the Third World: Issues and Discourses*, Bagchi, S. S. and Das, A. eds., Lanham MD and Plymouth, 2013, in particular Part IV, chapter 12, Das, A. and Dhall, P., 'Culture and Issues of Rights to the Eyes of the Indians with "Other" Self-Identities of Sexuality and Gender', pp. 235-264.

²⁶ 'Mozambique scraps anti-gay law', *The Guardian*, 30/06/2015. Available at: <http://www.theguardian.com/world/2015/jun/30/mozambique-scraps-anti-gay-law>. 'A Victory for LGBT Rights in Seychelles', *The Atlantic*, 19/05/2016. Available at: <http://www.theatlantic.com/international/archive/2016/05/lgbt-rights-seychelles/483503/>. 'Marital rape no longer allowed and suicide, homosexuality decriminalised at Nauru', *Sydney Morning Herald*, 27/05/2016. Available at: <http://www.smh.com.au/federal-politics/political-news/marital-rape-no-longer-allowed-and-suicide-homosexuality-decriminalised-at-nauru-20160527-gp586w.html>.

²⁷ The Hon. Michael Kirby: interview with the authors, 08/03/2016.

²⁸ See the Human Dignity Trust's Briefing Note, *Criminalising Homosexuality and Democratic Values*, London 2016. Available at: http://www.humandignitytrust.org/uploaded/Library/Other_Material/Criminalising_Homosexuality_and_Democratic_Values.pdf.

urged by churches, devised and maintained by religiosity (real or feigned) amongst legislators and governors and supported by an ill-educated public. This, as has been shown, is contrary to the qualified right to manifest religion contained in human rights instruments and national constitutions.

Many of those we interviewed for this report had harrowing tales to tell of violent persecution that correlate directly to the sort of poisonous atmosphere of hate promoted by these laws and the often bizarre manifestations of religious belief that maintain them. For Prossy Kakooza, who was forced to flee Uganda after being arrested and brutally abused, the answer is clear: 'The Church holds the key to changing people's views, but they're not particularly vocal in preaching a message of love, because they are very reluctant to put themselves in that sort of position.'²⁹

As this Report shows, there have been moves on the part of senior members of the Anglican Communion to challenge the sort of views that lead to violence and discrimination against LGBT people and to criticise the retention of laws criminalising same-sex intimacy between consenting adults. These are very recent and suggest a slow evolution in the thinking of leading Anglicans. They should be encouraged. But the sort of treatment meted out to people like Prossy, or described in numerous reports on LGBT violence and discrimination, demands immediate action.

In discussing an important US case concerning criminalisation, Leslie Green made the observation:

In *Bowers v Hardwick*, wrestling with the question of overt discrimination – firing teachers because they're gay or alleged to be gay – the Supreme Court said 'how could it possibly be wrong to discriminate against gay people if it's permissible to criminalise?'³⁰

As long as laws remain on statute books there will be discrimination and people will feel entitled, obliged even, to bully, beat, rape and murder men and women on the basis of their real or perceived sexuality because they are, to all intents and purposes, 'un-apprehended felons', and because the perpetrators of such actions claim to be 'upholding the law', preserving cultural (and national) identities, and carrying out the wishes of their political and religious leaders.³¹

²⁹ Prossy Kakooza: interview with the authors, 10/03/2016.

³⁰ Professor Leslie Green: interview with the authors, 18/02/2016.

³¹ See, for example, 'Anti-gay violence hits Nigerian capital', Aljazeera America, 15/02/2014. Available at <http://america.aljazeera.com/articles/2014/2/15/mob-attacks-allegedgaysinnigeriancapital.html>.

II. HISTORICAL PERSPECTIVE

Some of the battles that have not been won in the West are going straight to the Global South and they're finding a kind of fertile and ripe ground there.¹

II.1. The Anglican Communion and human sexuality: a historical perspective

Unlike the Church of England, which grew out of the theological and political upheavals in sixteenth and seventeenth century England, the Anglican Communion had a relatively straightforward, if not altogether peaceful birth. As a necessary response to the expansion of Anglicanism throughout the British Empire, the first Lambeth Conference of 1867 could be seen as the initial step in the creation of a loose federation of churches, dioceses and provinces, in full communion with the English Church, Episcopalian in terms of structure, broad in terms of doctrine, but nevertheless based on the fundamental principles of the Book of Common Prayer, its various rubrics and the Thirty-Nine Articles of Religion. This is the Anglican Communion of today.²

Yet even from its inception, the Communion has been forced to deal with complex issues of sexuality. At that first conference, the bishops attending listened to arguments for and against the writings and teachings of John Colenso, the Bishop of Natal. Amongst his progressive (and controversial) views on the treatment of Africans in his province and the impact of colonial expansion, Colenso had published commentaries challenging the literal interpretation of certain passages in Scripture and a tract entitled *Remarks on the Proper Treatment of Cases of Polygamy Converts from Heathenism*, which argued for tolerance of polygamous marriages among African converts who would otherwise have to cast off into a state of poverty and social limbo dependent wives.³

An attempt to condemn the Bishop of Natal by the presiding Bishop of the American Church was vetoed by Archbishop Longley of Canterbury.⁴ At the very beginning of what could be identified as the Anglican Community, bishops were embroiled in a controversy involving sex (polygamy) where one province (America) wanted to condemn officially another (Natal) and

¹ The Reverend Macdonald Sembereka: interview with the authors, 12/02/2016.

² <http://www.anglicancommunion.org/identity/about.aspx>

³ John Colenso, *Remarks on the Proper Treatment of Cases of Polygamy Converts from Heathenism*, May and Davis 1855.

⁴ Davidson, R. T. (ed.), *The Lambeth Conferences of 1867, 1878 and 1888, with the Official Reports and Resolutions, together with the Sermons Preached at the Conferences*, London, Brighton and New York SPCK, 1889. Full text available at http://www.archive.org/stream/a589564000lambuoft/a589564000lambuoft_djvu.txt

the Archbishop of Canterbury found himself fighting a rear-guard action to keep the Communion together.

Fast-forward to the early 21st century and the Anglican Communion is again struggling with a sexual controversy (homosexuality) wherein a number of African provinces (Nigeria and Uganda principally) are seeking to censure the liberal views and practices of another (the Episcopal Church of the United States), and the Archbishop of Canterbury finds himself once more in the middle of a row which threatens to pull the Communion apart. Prior to the Lambeth Conference in 2008, during which issues of sexuality were to be discussed, a group of disgruntled conservative and literalist primates and bishops, led by then-Archbishop of Sydney and the Primate of Jerusalem and the Middle East, and supported by a number of African primates, inaugurated the Global Anglican Futures Conference or GAFCON, a coalition which has promoted socially conservative theological doctrines and statements based on restrictive Biblical readings and which many more Anglicans consider to pose a threat to Anglican unity.⁵

In between 1867 and now there have been plenty of controversies – the 1878 Lambeth Conference grappled with polygamy again and divorce – more recent meetings have considered the role of women in the priesthood; and always sides have been drawn between conservative traditionalists invoking the literal nature of Scripture as the ‘Word of God’ and liberal reformers who see Scripture and doctrine as living instruments which should be interpreted in terms of our understanding of the nature of the universe we inhabit. The premise of the Communion has always been that no one opinion should be imposed on others. Trevor Mwamba, former Bishop of Botswana, cited the 3rd-century bishop, St Cyprian as the source of this idea of unity:

St Cyprian advocated that each bishop should bring forward his opinion, judge no one, nor deprive anyone of the right of communion if they thought differently. He was of the opinion that a person does not set himself up as a bishop, nor by tyranny and terror can anyone compel his colleagues to the necessity of obedience.⁶

On one level the current controversy over homosexuality is no different from previous arguments: the heat created by opposing sides, the resort to Scripture, the reliance on rational arguments. Discussions about what is generally considered a fundamental aspect of human sexuality are also something the battle over homosexuality holds in common with the debates

⁵ See, for example, ‘“No Unity at the Expense of Truth”: a Response to Justin Welby’s Presidential Address’, *Christian Concern*, 17/02/2016. Available at: <http://gafcon.org/2016/02/17/no-unity-at-the-expense-of-truth-a-response-to-justin-welbys-presidential-address/>.

⁶ The Right Reverend Dr Musonda Trevor Mwamba: email to the authors, 04/05/2016.

about the role of women in the Church of twenty years ago. Indeed, the current controversy has been characterised as something of a continuation of those debates by other means:

It's been suggested to me that you couldn't win the women debate because women are 50% of the population, with gay or lesbian people it's much more like 10%, if that. So there are some people who will say that there was, behind closed doors somewhere, a decision that it was going to be an easier battle or a more likely successful battle.⁷

What is different is that the way homosexuality manifests itself is subject to criminal sanctions in a great number of jurisdiction around the world. While there exist many laws curtailing the activities of women, their fundamental nature is not criminalised. Yet, this is the case with same-sex relationships, and it is this which has given the debates in the Anglican Communion a particular urgency.

In October 2009, Ugandan MP Steven Bahati introduced the Anti-Homosexuality Bill to the Ugandan legislature... Right from the start, this bill was as much about globalization as it was about homosexuality. The language of the bill focuses on the fear that both homosexuality and accepting attitudes towards homosexuality will be spread in Uganda by Northern homosexual activists. One article discussing the bill summed up this view by describing 'promoters of homosexuality' who have 'vast resources at their disposal and a global reach'.⁸

Criminalising Same-Sex Sexual Conduct and the Christian Perspective

As most historians and theologians on whatever side of the academic or religious divide they find themselves have noted, the justification for the criminalisation of homosexuality within the Judeo-Christian tradition derives initially from a few verses in the Old Testament Book of Leviticus.⁹ John Boswell, who's ground-breaking book, *Christianity, Social Tolerance and Homosexuality*, has been referenced ever since its first publication in 1980, argued that the strictures in Leviticus were intended to relate to ritual only for the Levite or priestly class in ancient Judaea, and were not binding on gentiles.¹⁰ Boswell's study has proven remarkably popular for an academic publication: its thesis that the early Christian church was not as anti-homosexual as had been previously believed and that it was only with a shift in secular

⁷ Dr Meg Warner: interview with the authors, 24/02/2016.

⁸ The Reverend Miranda Hassett: email to the authors, 16/02/2016.

⁹ Leviticus 20:13. The traditional translation is summed up in the King James version: 'If a man also lie with mankind, as he lieth with a woman, both of them shall have committed an abomination: they shall surely be put to death; their blood shall be upon them.'

¹⁰ Boswell, J., *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*, University of Chicago Press 2005 (1980), p. 100.

attitudes in the thirteenth century that persecution became the norm, challenged both traditional conservative Christian opinion and secular LGBT academics. Louis Crompton, one of Boswell's first critics, has sought to counter much of what Boswell had to say in his book *Homosexuality and Civilization*. His interpretation of Leviticus 20, for example, extends the various prohibitions to strangers living in Judaea. Furthermore, he argues, the laws set out in Leviticus were intended to be binding on all the descendants of Noah, that is the whole human race.¹¹

Early Christian Justifications?

Without going into the various interpretations of these Scriptural passages that have emerged over the decades, it is worth considering how the very notion of Biblical exegesis, a concept strict Scriptural literalists would oppose in any case, has been used to inform debates about decriminalisation. Derrick Sherwin Bailey, published an influential treatise on homosexuality and the Christian tradition for the Church of England's Moral Welfare committee in 1955 which led to support on the part of consecutive Archbishops of Canterbury for decriminalisation of consensual same-sex sexual acts between adult males. He considered the few biblical references to what could be construed as same-sex sexual acts, and quite a few passages which have come to be interpreted as referring to homosexuality, and sought to explain them in the context of early Judaism and the misinterpretations of early Christian writers. For example, he takes to task a recent American translation of St Paul's first letter to the Corinthians for using the word 'homosexuals' to translate two Greek words which, in his estimation, clearly do not mean this in its modern context (1950s terminology notwithstanding):

Use of the word 'homosexuals' inevitably suggests that the genuine invert, even though he be a man of irreproachable morals, is automatically branded as unrighteous and excluded from the kingdom of God, just as if he were the most depraved of sexual pervers.¹²

Interpretations of St Paul¹³ from Boswell to Crompton¹⁴ have, as William Petersen pointed out, tended to be more reflective of their authors' contemporary concerns than what a 1st-century reader would have understood.¹⁵

¹¹ Crompton, L., *Homosexuality and Civilization*, Harvard University Press, 2003, p. 33.

¹² Bailey (1955), p. 39.

¹³ In particular Romans 1:26.

¹⁴ Crompton (2003), p. 115. In recognising the crucial significance Paul's letter to the Romans has had for Christians of all denominations, from its exposition of the new law of Christ as replacing the old Mosaic law to its apparent affirmation of the doctrine of justification by faith, '[f]or homosexuals,' Crompton writes, 'this pre-eminence has been tragic, for it has enshrined an intemperate diatribe at the very heart, if not of Christianity, then at least of Christian theology.'

¹⁵ Petersen, W.L., 'On the Study of "Homosexuality" in Patristic Sources', *Patristic and Text Critical Studies: The Collected Essays of William L. Petersen*, Leiden, Koninklijke Brill NV, 2012, pp. 110-116.

Early Patristic Interpretations of Scripture and the first laws criminalising same-sex intimacy

The writings of early church fathers were without exception stern in their condemnation of homosexuality. Writers like Clement of Alexandria¹⁶ and John Chrysostom had the entire pagan mind set around sexuality in their sights, particularly its idealisation and idolisation of the human body.¹⁷ As pagan religions formed a significant threat to Christianity, patristic writers wanted to warn their flocks against them and all idol worship. Even John Chrysostom, who rather hysterically described homosexual acts as worse than murder because he chose to see them as the ultimate rebellion against God,¹⁸ suggested that Paul in his writings wasn't speaking of men who were 'enamoured of, or lusted after one another' but those who made a 'business of it', that is to say male prostitutes.

Augustine, whose *Confessions* contain a frank acknowledgement of his own varied sexual past, nevertheless as a mature theologian condemned outright same-sex sexual desire and acts: '[T]hose shameful acts against nature, such as were committed in Sodom, ought everywhere and always to be detested and punished. If all nations were to do such things, they would be held guilty of the same crime by the law of God, which has not made men so that they should use one another in this way.' As Crompton has pointed out, Augustine's crucial role in the development of Western Christianity in the late 4th and early 5th centuries has meant that his influence on Church beliefs about sex and sexuality has been pervasive.

The passage quoted above leads to another issue of biblical exegesis, contemporary with the considerations of the writings of Saint Paul; this is a reinterpretation of the story of Sodom and Gomorrah found in Genesis 19. As has been pointed out from Bailey onwards, the account in Genesis makes no clear mention of same-sex sexual conduct as the 'sin' for which Sodom and Gomorrah were destroyed. Later Old Testament references to Genesis 19 and one in Matthew's gospel are clear that the sins of Sodom were a mixture of pride, luxury, carelessness of the poor and a (potentially murderous) lack of hospitality.¹⁹ As Bailey points out, it is only because of a determination to understand, in the context of the attitude of the people of Sodom towards their angelic visitants, the phrase 'that we may know them' in the sense of carnal knowledge rather than the far more likely 'know who they are' that later commentators decided that the sin of Sodom had to be homosexuality, so much so that by the late Middle Ages the word sodomite became synonymous with it.²⁰ Modern 'sodomy' laws

¹⁶ Clement of Alexandria, *Exhortation to the Greeks* 2, c. 190 CE

¹⁷ See, for example, John Chrysostom's *Homilies on Titus* 5, c. 390 CE.

¹⁸ John Chrysostom, *Homilies IV, Romans* 1, 26.27, c. 386-397 CE

¹⁹ See principally [Isaiah 1:9-10](#), [Isaiah 3:9](#) and [Isaiah 13:19-22](#); [Jeremiah 23:14](#), [Jeremiah 49:17-18](#), [Jeremiah 50:39-40](#); [Ezekiel 16:48-50](#); Matthew 10:1-15.

²⁰ Bailey (1955), pp. 3-4.

perpetuate the fallacy, and modern critics of LGBT rights still espouse this version of the story in their attacks on what they see as degenerate Western liberal values.²¹

Perhaps of even greater pertinence to this report, most writers have seen a direct parallel between the comments in patristic texts and the creation of laws specifically targeting same-sex sexual conduct towards the end of the 4th century.²² Crompton believed the law promulgated by Theodosius I in 390 CE was a watershed in that it prescribed death by burning for anyone who ‘condemned the male body to the submissiveness appropriate to the opposite sex’. He recognises that it is difficult to know to what extent the letter of the law was carried out, and Timothy Barnes has put forward the intriguing idea that what was originally an immoderate instruction to the governor of Rome to clean up the city of male prostitutes later became encoded as Roman law in the so-called Theodosian Code of 438 CE.²³

As Crompton points out, it was during the reign of the 6th-century Emperor Justinian, however, that these legal provisions were extended to cover active as well as passive partners in same-sex sexual intimacy.²⁴ According to the contemporary historian Procopius, Justinian used accusations of intimacy between males to settle political scores with a number of high-profile victims amongst the aristocracy and clergy, irrespective of the evidence against them.²⁵ These executions represent the first time law was used to prosecute same-sex intimacy on any scale.

Bailey shows how Justinian’s edicts (or *Novellae*) cited the example of Sodom and stated the Empire’s need for the laws to avoid a similar fate. He writes that the laws implied a belief that homosexual acts endangered the state as they provoked divine vengeance in the form of what we would now call natural disasters.²⁶ A special magistrate was appointed to investigate ‘unnatural sexual practices’ and deviations from orthodox religion, a twinning of heretical beliefs and public morality that would come to define approaches to same-sex intimacy for over a thousand years.

²¹ Conservative Anglican literature is peppered with the liberal use of the word ‘sodomy’ to define ‘homosexuality’ or same-sex intimacy (both terms appear to be interchangeable, although they are in fact, quite distinct. See, for example, ‘12 Historical Quotes against Sodomy that every Christian should know’, Virtue Online, 14/12/2013. Available at: <http://www.virtueonline.org/12-historical-quotes-against-sodomy-every-christian-should-know>.

²² *Ibid.*, pp. 134-135.

²³ Barnes, T. D., ‘Leviticus, the Emperor Theodosius and the Law of God: Three Prohibitions of Male Homosexuality’, *Roman Legal Tradition* 8 (2012), pp. 43-62

²⁴ Crompton (2003), p. 143.

²⁵ Procopius, *Secret History in Procopius*, Dewing, H. B. tr., Cambridge, Harvard University Press, 1914-1940, 11:34-36.

²⁶ Bailey (1955), pp. 74-75.

With the adoption of Roman law by many jurisdictions during the medieval period, 'Justinian's treatment of homosexual practices became the *locus classicus* for civil legislation concerning this matter'.²⁷

English Law and the Church of England

It has been frequently noted that the common law in England, prior to the 16th century, did not criminalise same-sex sexual conduct. Regulation of such matters was left to the church, although both Bailey and Crompton identify a 13th-century source which implied that 'sodomy' was a mixed 'crime', that is one which could be tried by either state or church.²⁸

But all agree that the first appearance of an actual statute in English law against what could be construed as same-sex sexual conduct was the so-called Buggery Act of 1533. As Jonathan Goldberg has indicated, however, the language of this Act is not at all clear: 'there is not yet sufficient and condign punishment appointed and limited by the due course of the Laws of the Realm for the detestable and abominable Vice of Buggery committed with mankind or beast'.²⁹ What actually is the vice? Who could be guilty of it? What acts are involved? This lack of specificity may derive from the word's original relationship to heretical beliefs rather than sexual depravity, but by the 1500s it was also due no doubt to moral niceties. In 1628, for example, John Harris referred to the '*peccatum nefandum*, that sin not fit to be named' in preaching before the House of Commons on the destruction of Sodom.³⁰

Crompton states that the text suggests a lacuna in English law at the time. It was a crime that could be committed by lay people and clergy alike, and the latter could not claim 'benefit of clergy' in this instance and avoid prosecution, unlike murder charges. The punishment for this hard-to-define offence was death by hanging, but for some time, there were few, if any prosecutions. The reason for this, Crompton and others suggest, is that the sponsor of the Act, Thomas Cromwell, intended it as a weapon in his armoury against the monasteries. Bruce Smith, followed by Crompton, quotes a letter from Henry VIII to the Regent of Scotland advising him to investigate Scottish monasteries to 'get knowledge of all their abominations' so as to confiscate monastic property 'to their great profit and honour'.³¹

That the Buggery Act coincided with Henry's marriage to Anne Boleyn and preceded by only a year the Act of Supremacy which officially split the English Church from Rome is not lost on

²⁷ McNeill, J. J., *The Church and the Homosexual*, Kansas City, 1976, p. 104.

²⁸ Bailey (1955), p. 147; Greenberg (1988), at n. 24, p. 303; Crompton (2003), at n. 3, pp. 362-363; Smith, B., *Homosexual Desire in Shakespeare's England: A Cultural Poetics*, Chicago, 1991, p. 43

²⁹ Goldberg, J., *Sodometries: Renaissance Texts, Modern Sexualities*, New York, Fordham University Press, 2010, p. 3; the text of the Act is taken from Bailey (1955), at n. 4, p. 147.

³⁰ Harris, J., *The Destruction of Sodom*, London, 1628, p. 34.

³¹ Smith (1991), p. 44.

commentators. Alan Bray, whose 1982 book *Homosexuality in Renaissance England* was the first serious academic text on the origins of English attitudes towards homosexuality, explored in detail the way the language of the 1533 Act and subsequent statements in support of the Reformation in England consciously echoed medieval writings equating sodomy with heresy.³² In the context of 16th-century England the new heresy was the Old Church and its adherents. It is hardly surprising to read, therefore, that the entire hierarchy of the Catholic Church, and monks in particular, is accused of 'sodomitical vice' and the monasteries' downfall in the 1530s credited to the 'vengeance of God... so manifestly declared for their beastly buggery'.³³ The fact that the Catholic Mary I repealed the Buggery Act in order to effect a return to a pre-Reformation status quo in 1553, can only have fed this sort of propaganda.

Prior to this the law had been overhauled during the reign of Edward VI, stripping it of some of its more draconian aspects such as total confiscation of the malefactor's property, and preserving the rights of widows and children to property and freedom from 'taint of blood'. No one could be charged if the offence had taken place more than six months earlier, and the evidence of anyone who might gain from the defendant's death was also to be ignored. Interestingly this reappraisal of the law was undertaken by Lord Protector Somerset under the influence of radical protestant divines and laymen such as Hugh Latimer and John Hale.³⁴ Smith sees in this a personalising of the law in a way that meant it could no longer be a mask for treason or heresy. Furthermore, the concern for a convicted man's descendants rather implies that felons of this type might not just be foreign priests.³⁵

Yet the idea that same-sex sexual desire was Catholic and, therefore, foreign tied in with a determination to see the Roman church not only as heretical, but also as treasonable. Edward Coke, one of the great jurists of his time and explicator of the laws of England, wrote:

...crimen laesae majestatis, a sin horrible, committed against the King; and this is either against the King Celestial or Terrestrial in three manners: by heresy, by buggery, by sodomy.³⁶

In his 1628 address to Parliament, for example, John Harris could declare that England was free of sodomy, what Crompton calls a national myth, and one all the more curious given the

³² Bailey (1955), p. 148; Crompton (2003), p. 362; Bray, A., *Homosexuality in Renaissance England*, Columbia University Press, 1995, pp. 19-20.

³³ See, for example, Bale, J., *The Actes of the Englysh Votaryes*, London, 1546. See also Bray (1982), p. 19.

³⁴ See, for example, Weil Baker, D., *Divulging Utopia: Radical Humanism in Sixteenth-Century England*, Amherst, University of Massachusetts Press, 1999, in particular Chapter 4 'Topical Utopias', pp. 106 ff.

³⁵ Smith (1991), p. 46.

³⁶ Coke, E., *The Third Part of the Institutes of the Laws of England*, London, 1644, p. 58.

fact that the previous king himself, James I, who had died only three years earlier, was well-known for his passionate predilection for handsome young male favourites.³⁷

In fact, outside of the odd recalcitrant monk, the statute was used on only a handful occasions. The first being Nicholas Udall, the Headmaster of Eton College, who was convicted of a violation of the Act alone (i.e., not coupled with heresy or treason) in 1541 and imprisoned for less than a year. The prosecution was in no way political and Havelock Ellis noted that his reputation 'was not permanently injured'.³⁸ And given the paucity of prosecutions, it is odd that when the law was reinstated in full, blood-thirsty Henrician mode by Elizabeth I's second Parliament in 1563, it was alleged that its repeal under Mary had led to 'divers evil disposed persons... to commit the said most horrible and detestable Vice of Buggery'.³⁹ Once again the language of religion was invoked on the part of the reinstated Bill's sponsors with intimations of divine wrath at a time when Elizabeth's reign and the new Protestant Settlement were being challenged by Europe's Catholic powers.⁴⁰

The Elizabethan law was to 'stand, remaine and be in full force, strength and effecte for ever'. Yet, for the next hundred years or so it was rarely used other than as an adjunct to a charge of witchcraft, and often under fairly dubious circumstances.⁴¹ The difficulty encountered in quantifying such cases and teasing out the stories behind them from court records is well presented by Bray.⁴² As he shows in the last chapter of *Homosexuality in Renaissance England*, the fact that the Buggery Law remained in force allowed for brutal responses when the first true persecutions of homosexual men in Britain began in the early 18th century.

The world of 16th and early 17th-century England may seem a long way from contemporary concerns. But parallels are remarkable. In contemporary Africa commentators will not mention what they dub merely 'unnatural'.⁴³ In Uganda, arguments over the recent Anti-Homosexuality Act, referenced above, hung on the sorts of punishments appropriate: the death penalty was, in the end, considered too draconian and was substituted with life imprisonment for an offence

³⁷ Crompton (2003), p. 362.

³⁸ Havelock Ellis (1897), p. 23.

³⁹ Crompton (2003), p. 366.

⁴⁰ Bray (1995), p. 20, on the new threat posed by Jesuits, who were themselves routinely accused of sodomy during the reign of Elizabeth.

⁴¹ Bullough, V. L., 'Heresy, Witchcraft, and Sexuality', *Journal of Homosexuality*, 1, 2 (1974), 183-201; Norton, R., '4 Gay Heretics and Witches', *A History of Homophobia*, 15 April 2002, updated 18 February 2011 <http://rictornorton.co.uk/homopho4.htm>

⁴² Bray (1982), pp. 38-42.

⁴³ See, for example, Brown, A., 'The latest hate speech from the Church of Nigeria', *The Guardian*, 19/03/2009. Available at:

<http://www.theguardian.com/commentisfree/andrewbrown/2009/mar/13/religion-anglicanism-akinola-nigeria>.

named 'aggravated homosexuality'.⁴⁴ The debates about whether homosexuality is 'un-African' mirror the notion in the early 17th century that buggery was a foreign vice which had no place on English soil.⁴⁵

Buggery and the Church of England

Attitudes have changed in England and the West generally since the 17th century. The emergence of something that could be called a gay or 'queer' subculture with the Molly Houses of 18th-century London pushed the boundaries of what was socially acceptable, if not morally.⁴⁶ Responses to this assertion of the individual were, not surprisingly, brutal. To counter this subculture, the 1690s saw the emergence of Societies for the Reformation of Manners, loose associations of lawyers, justices, clergymen, and a range of 'constables' and informers whose intention was to rid England (and north of the border) of vice, be it prostitution, coining or 'sodomy'. As Bray, Rictor Norton and Crompton have shown, successes against homosexual men, or mollies, led to literally hundreds of prosecutions in the first forty years of the 18th century, paid for by the Societies.⁴⁷ Crompton quotes one Anglican priest in 1698 approving of the wholesale hanging of 'sodomites': 'Such monsters ought to be the Detestation of Mankind, pursued by Justice and exterminated from the Earth.'⁴⁸

The 19th century saw a shift in attitudes towards homosexuality – including the invention of the word and the increasing medicalisation of gay men and women. Attitudes, though, remained rooted in the same interpretation of apparent biblical strictures and the law stood implacably against any liberalisation. With the single exception of the commuting of the death sentence in the 1861 Offences Against the Person Act – there had been no hangings for sodomy offences since 1835 – the law actually expanded in the 19th century to encompass activities that had not previously been criminalised and to make it easier to secure convictions. The infamous Labouchère Amendment to the 1885 Criminal Law Amendment Act introduced a catch-all offence of 'gross indecency'. While he sees Labouchère as motivated by a desire to reinvigorate morality, Harry Cocks points out that the sorts of 'offences' which the amendment

⁴⁴ See, for example, 'Uganda debates "Kill the Gays" Bill, expresses unhappiness at Christian leaders speaking out against it', *Towleroad*, 18/12/2009. Available at: <http://www.towleroad.com/2009/12/uganda-debates-kill-the-gays-bill-expresses-unhappiness-at-christian-leaders-speaking-out-against-it/>.

⁴⁵ 'Is Homosexuality Un-African', BBC World Debates, 17/03/2011. Available at: <http://www.bbc.co.uk/programmes/p00fjqg2>.

⁴⁶ Bray (1995), pp. 112-113.

⁴⁷ Bray (1995), pp. 100-102; Norton, R., 'Mother Clap's Molly House', *The Gay Subculture in Georgian England*, 5 February 2005 <http://rictornorton.co.uk/eighteen/mother.htm>; Crompton (2003), at n. 3, p. 455-456.

⁴⁸ Crompton (2003), p. 451.

was intended to cover were already being prosecuted under such niceties as ‘attempted sodomy’, ‘conspiracy to commit sodomy’ etc.⁴⁹

Charles Upchurch sees this as partly a result of the influence of the Evangelical movement in the Anglican Church in the first half of the 19th century, and its emphasis on personal morality.⁵⁰ Sean Brady’s view is more secularist. He considers the trenchant attitudes toward homosexuality in the 19th century as a symptom of a renewed masculine identity which would not tolerate the sort of debate – medical, psychological, social – around sexual ‘inversion’ prevalent elsewhere in Europe.⁵¹

Ironically, as David Hilliard has shown, the Anglican Church itself became concerned with conflicts around doctrine and ritual which could take on a sexualised tone. The Oxford or Anglo-Catholic Movement of the 1840s became characterised as ‘feminine’ and lacking in virility by its early historians. Hilliard suggests, while attacks on Anglo-Catholicism attempted to paint the movement as foreign, and sexually suspect, with its emphasis on celibacy and aesthetics, there was certainly a kernel of truth in the idea of the sensitive, secretive curate sublimating his homosexuality in ecclesiastical ritual and male friendships.⁵²

Writings by John Addington Symonds, Havelock Ellis and Edward Carpenter attempted to redress the relative silence on homosexuality, although they were often subject to the censor’s control – Havelock Ellis’ *Sexual Inversion* was banned by the censor in 1897, as he says in the preface to the American edition a few years later.⁵³ Carpenter, who had taken holy orders after graduating from Cambridge, rejected the Church in order to explore his own nature, the nature of homosexuality in general and socialist politics in his writings more freely.

Gradually, the stage was being set for a challenge to the previous 400 years of oppression in the United Kingdom. Perhaps the most surprising element of that challenge was the role that the Church of England would play.

⁴⁹ Cocks, H. G., *Nameless Offences: Homosexual Desire in the Nineteenth Century*, London and New York, IB Tauris, 2003, p. 17.

⁵⁰ Upchurch, C., *Before Wilde: Sex Between Men in Britain’s Age of Reform*, University of California Press, 2009, pp. 10, 25, 54.

⁵¹ Brady, S., *Masculinity and Male Homosexuality in Britain, 1861-1913*, London, Palgrave Macmillan, 2009.

⁵² Hilliard, D., ‘UnEnglish and Unmanly: Anglo-Catholicism and Homosexuality’, *Victorian Studies*, Winter 1982, pp. 181-210.

⁵³ Havelock Ellis (1901), p. iii.

II.2. The role of the Church of England in the decriminalisation of same-sex intimacy between consenting adult males in England and Wales

Most of the literature relating to homosexuality and the Anglican Communion has its origin in the early 1950s. There have been several phases in the development of this body of research and changes in attitude largely seem to move with social attitudes toward homosexuality.

There are several streams of research into why the Anglican Communion has held the attitude which it currently does:

- a) the first is simply a collection of work on the development of the scriptural understanding of homosexuality;
- b) the second is a look into how Anglican Communion attitudes towards homosexuality have affected individuals; and
- c) the third considers the perceived political reasons for Anglican Communion attitudes.

The Development of Scriptural Understanding

As has been shown, the approach taken by most researchers in evaluating the Anglican Communion's attitude towards homosexuality generally begins with Biblical evidence. Bailey⁵⁴ and after him Pittenger⁵⁵, for example, sought to contextualise Church attitudes by way of an empirical look at what scripture says.

Although much of this body of work is generally regarded as having contributed to the drafting of the Wolfenden Report in 1957, which led to the decriminalisation of homosexual conduct in private between consenting adult males above 21 in England and Wales via the Sexual Offences Act 1967, it does not move beyond stating the inaccuracy and inherent injustice behind some of the Anglican Communion's interpretations of scripture. That said, individual churchmen were prepared to go further; the then-Archbishop of Canterbury, Geoffrey Fisher, in an apparent reversal of much of the attitudes towards homosexuality and the law since Justinian's time, made clear his position vis-à-vis criminalisation:

There is a sacred realm of privacy... into which the law, generally speaking, must not intrude. This is a principle of the utmost importance for the preservation of human freedom, self-respect, and responsibility.⁵⁶

⁵⁴ Bailey (1955)

⁵⁵ Pittenger, N., *Time for Consent: A Christian Approach to Homosexuality*, London 1967

⁵⁶ *Report of the Committee of Homosexual Offences and Prostitution*, September 1957, p. 38.

During the passage of the 1967 Act through Parliament, Fisher's successor, Michael Ramsey, was vocal in his support for decriminalisation, drawing a distinction between the 'sin' of homosexuality and the proper use of the criminal law:

The proposed reforms would, I believe, help greatly by enabling a greater balance between the forces of law, morality, remedial science and the cure of souls, by promoting what is good and right.⁵⁷

His view of homosexuality, and that of the Church of England more widely, remained unmoved, however:

There will be no question of... declaring homosexual practices to be a right use of sex. Rather will there be a greater possibility for some to find their way from wrong uses of sex and to be helped towards better uses of their energies. In the moral state of our country we need all the forces available to combat evils, of which homosexual practices are one.⁵⁸

It's not surprising, given this reiteration of the conservative view of homosexuality as a mutable characteristic that, twenty years later, the debate had not moved on much. Writers in the 1970s and '80s sought to discuss the morality of homosexuality so that the Church's position could be better understood, rather than considering the continued criminalising of sexual conduct and other aspects of sexual identity.⁵⁹ When it came to the debates around the repeal of the now-infamous Section 28 of the Local Government Act 1988, which outlawed the discussion of sexual diversity in schools, the Church of England was split. While three of the four bishops sitting in the Lords voted against its repeal, others came under fire from synod members for appearing to accept the change in the law.⁶⁰

After 1967, there was a definite hardening of attitudes towards what we would now call LGBT rights more broadly. The gay rights movement in Britain and North America, for example, emboldened to demand greater rights, particularly through the terrible prism of HIV/AIDS, stood in contrast to much of the Anglican Communion's teaching on human sexuality, and therefore studies about the relationship between homosexuality and the Church were naturally

⁵⁷ Johnson, P. and Vanderbeck, R., *Law, Religion and Homosexuality*, London, Routledge, 2014, pp. 47-48.

⁵⁸ *Ibid.*

⁵⁹ See variously, Scroggs, R., *The New Testament and Homosexuality: Contextual Background for Contemporary Debate*, Philadelphia: Fortress Press, 1983; Wright, D. F., 'Homosexuals or Prostitutes? The Meaning of [Arsenokoitai] (1 Corinthians 6.9, 1 17 Timothy 1.10)', *Vigiliae Christianae* 38, 1984; Borg, M. J., 'Homosexuality and the New Testament', *Bible Review*, Dec 1994, 20, 54.

⁶⁰ 'Church split over Section 28 repeal', *The Guardian*, 29/02/2000.
<http://www.theguardian.com/world/2000/feb/29/religion.uk>.

drawn into a discussion about the morality of homosexuality. This is because similar discussions taking place in the media and popular culture at the time were wrong footing, and continue to, the Church, which increasingly seems out of step with society. As Martyn Percy, currently Dean of Christ Church Oxford, has put it:

Why is this an issue? Social media and the relatively rapid and wide-spread acceptance of same-sex relationships has forced the agenda on the Church, and the churches are not ready for the agenda. It's a comprehensive swing from the early eighties and an awkward small group of people in the shadows to now where we're pretty much flying the flag. And the church is just marooned in this.⁶¹

On a practical level, it is not surprising, given the prevailing attitude towards homosexuality in the Church of England that various attempts to continue with reform of sexual offences from the perspective of consensual same-sex intimacy, including legislative reform of the age of consent in the late 1990s, were opposed by a majority of bishops sitting in the House of Lords and argued against on the grounds that Britain was a 'Christian' society.⁶²

Conservative attitudes towards homosexuality are pervasive, not only among certain groups of heterosexual men and women; they permeate to a degree religious LGBT people too. Charles Silverstein, in the early 1980s, noticed a preference for monogamy, reflecting heterosexual ideals, among Christians who identified as LGBT: 'gay Christians make sex wholesome by integrating intimacy and permanence in a gay couple relationship. They dwell on the love of Jesus rather than on the anger of Paul, and their moral standard is based on the extent to which they are capable of love, both in a personal and religious sense, rather than on conformity to the historical interpretations of the church.'⁶³

This shift in attitude towards relationships on the part of many religious gay men and lesbians is not without its casualties. As Nigerian LGBT activist Bisi Alimi has pointed out:

When you talk about same-sex relationships the image that comes to people's minds is sex: LGBT people are having too much sex and they see everything through the binoculars of sex. So we have to find a way whereby we present ourselves beyond just sex... How do we have that conversation on the one hand without shaming people, and on the other promote the fact that we're not just about sex, we're about love, emotions, we're just human beings like you.⁶⁴

⁶¹ The Very Revd Martyn Percy, Dean of Christ Church: interview with the authors, 18/02/2016.

⁶² See Thorp, A., *The Sexual Offences (Amendment Bill): 'Age of Consent' and Abuse of Position of Trust*, House of Commons Research Paper, 2000, pp. 25-27.

⁶³ Silverstein, C., *Man to man: Gay couples in America*, New York, William Morrow & Co, 1981.

⁶⁴ Bisi Alimi: interview with the authors, 02/03/2016.

What is sacrificed in the LGBT identity in attempts to normalise that identity for the sake of religious sensibilities? This may no longer be a serious issue in much of the Global North, but in the South, where the very nature of criminalisation reduces people to sexual acts, sex as a celebration of diversity is still in danger of being 'shamed'.

II.3. Anglican Churches and decriminalisation in other jurisdictions

It might seem expedient to look for a mirror prospect in moves to decriminalise same-sex sexual conduct between consenting adults in other jurisdictions where the Anglican Church has influence. The same dynamic, to a greater or lesser degree, can be seen between the liberal end of the Anglican Communion and its more conservative evangelical end, represented by GAFCON. By and large, however, in those jurisdictions that have decriminalised since 1967 the provincial Anglican churches have broadly supported removing criminal sanctions, with the usual caveats and with some significant exceptions.

The Anglican Church of Australia

In Australia, for example, liberalising attitudes in the 1970s clashed with a more conservative view over legislative moves to follow England and Wales in partial decriminalisation. At a seminar in Adelaide in 1970 works by Bailey and Pittinger were cited by the Rev. W. R. Bennetts as a strong indication that theological thinking on this issue had shifted towards a more liberal position, albeit one that we might not entirely recognise today:

We now find that the Church is seeking to re-examine its teaching in the light of new information. In particular, it has come to be recognised that a distinction must be drawn between the condition of homosexuality and homosexual behaviour. We are coming to recognise that the homosexual is a person who is sexually handicapped. He is the way he is, not by choice, but because of circumstances largely beyond his control.⁶⁵

During the debates around decriminalisation in the 1970s, both at state and federal level, the Anglican Church remained split between a majority who supported law reform while maintaining the innate 'sinfulness' of homosexuality, and a smaller group led by the diocese of Sydney which campaigned strongly for criminal sanctions to remain on the basis that '[w]e must see what God's Word says about both the disease and its treatment. All other authorities

⁶⁵ Bennetts, W. R., *A Theological View of Homosexuality*, cited in Willett, G., *Anglicanism and Homosexuality in the 1970s*; available at <http://web.stpeters.org.au/ausanglican/sexuality.shtml>

are patent frauds'.⁶⁶ Other dioceses such as Melbourne and Brisbane called for decriminalisation ten or twenty years before the state legislatures enacted laws.

That dichotomy remains in Australia. Successive Archbishops of Sydney have maintained a strict literal Scriptural and conservative evangelical approach to all issues the church considers coming under the rubric of morality. For example, in 1985, the Sydney Diocesan Synod resolved to deny all offices in the church and deny access to the sacraments to both LGBT people and 'any person who advocates or promotes homosexual practices or a homosexual lifestyle, even if there is no evidence that he or she personally engages in homosexual acts'.⁶⁷ The previous Archbishop, Peter Jensen, a leading member of GAFCON, has equated homosexuality to alcoholism and smoking-induced cancer.⁶⁸ Through its wealth and influence as a non-UK and non-American diocese, Sydney maintains a significant amount of influence over Global South churches in Africa and Asia. According to Dr Meg Warner, a Hebrew Testament Theologian at King's College London and originally from Australia, Sydney is unlikely even to support efforts to decriminalise globally:

Because Sydney is so invested in its relationship with the African churches, I don't know if you could find the will in Australia. I don't think that the diocese of Sydney could allow itself to be seen by its partners to be trying to persuade them out of any part of this issue, even criminalisation. It would be a betrayal of their relationship.⁶⁹

The Episcopal Church in the United States

Since the mid-1970s, Acts of Convention of the House of Bishops of the Episcopal Church of America have consistently supported moves to acknowledge the legal and moral equal status of LGBT people. In 1976 one such resolution stated 'this General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and calls upon our society to see that such protection is provided in actuality'.⁷⁰ These resolutions were repeated in subsequent years, culminating in a firm statement against criminalisation in 2006, stating that 'efforts to criminalize homosexual behavior are incompatible with the Gospel of Jesus Christ' and affirming its 'opposition to the imposition of civil or criminal penalties, especially imprisonment and execution, upon gay and lesbian

⁶⁶ Stott, J. R. W., 'Salvation Yesterday and Today', Baker Memorial Lecture, *Church Scene*, 18 July 1974, pp. 10-11. Quoted in Willett, n. 65 above.

⁶⁷ http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=1988-D171

⁶⁸ See news reports: <http://www.smh.com.au/national/anglican-archbishop-backs-christian-lobbys-gay-views-20120910-25ogi.html>; <https://www.themonthly.com.au/monthly-essays-andrew-west-enough-already-archbishop-peter-jensen-surprise-scouge-john-howard-and-ma>

⁶⁹ Dr Meg Warner: interview with the authors, 24/02/2016.

⁷⁰ http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1976-A071

people and our opposition to laws anywhere in the world that specifically target and impose imprisonment for homosexual behavior, speech, or assembly of gay and lesbian people and their supporters'.⁷¹

In response to the case brought by John Lawrence and others against the State of Texas, challenging the sodomy laws there, on which the US Supreme Court ruled in 2003, the Presiding Bishop of the Episcopal Church joined fifty other religious leaders in signing briefs on behalf of the plaintiffs.⁷² As a spokesperson for Concerned Women of America, an organisation supporting criminal sanctions, pointed out, the Episcopal Church's was the only amici brief filed on behalf of an entire congregation.⁷³

Canon Charles Robertson, Canon to the Presiding Bishop of the Episcopal Church, has said that, while there have been those in his church who have opposed this progressive stance, the approach of the House of Bishops is the result of a willingness to engage in dialogue:

In our part of the Anglican Communion we have already taken seriously in the past thirty years the call from the Communion to talk about these things, and while we have not done it perfectly, the conversations go forward. We do have persons who are of widely divergent positions from our own, but I think the conversations go on.⁷⁴

As will be shown, the willingness of the Episcopal Church to be inclusive of LGBT people, including ordaining an openly practising gay bishop as well as altering its canons to include same-sex marriage, is often cited as the principal cause of disunity amongst the churches that make up the Anglican Communion.

The Anglican Church of Canada

Like the Episcopal Church in the US the Anglican Church of Canada has a lengthy history of support for LGBT people. In 1978 the House of Bishops released a statement aimed at reassuring gay and lesbian Christians:

We believe as Christians that homosexual persons as children of God, have a full and equal claim, with all other persons, upon the love, acceptance, concern and pastoral care of the Church. The gospel of Jesus Christ compels Christians to guard against all

⁷¹ http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=2006-D005

⁷² Northrup, L. A., 'Homosexuality in the Evolution of American Christianity' in *Religion and Sexuality: Passionate Debates*, Robertson, C. K. ed., Peter Lang, New York, Bern, Berlin, Brussels, Frankfurt-am-Main, Oxford and Vienna, 2005, p. 184.

⁷³ http://www.religioustolerance.org/hom_laws4.htm

⁷⁴ Canon Charles Robertson: interview with the authors, 22/02/2016.

forms of human injustice and to affirm that all persons are brothers and sisters for whom Christ died. We affirm that homosexual persons are entitled to equal protection under the law with all other Canadian citizens.⁷⁵

Nine years earlier the Canadian Parliament had effectively decriminalised same-sex intimacy for consenting adult men in private, very much following the lead and letter of the Sexual Offences Act 1967 in England and Wales. Major opposition to this overhaul of the Criminal Code by the Government of Pierre Trudeau came principally from the Catholic Church and Catholic Members of Parliament. Unlike its counterpart in England, the Anglican Church at that time played little role in the debates.⁷⁶

Since then, however, Canadian Anglican Bishops and synods have moved much further towards a liberal view than any other province with the exception of TEC. Consistent statements of support for LGBT rights have emerged from successive synods, with the Church even contemplating same-sex unions in 2016. For example, in 1996, the House of Bishops published its support for the Canadian Human Rights Act, specifically its provisions concerning the prohibition of discrimination based on sexual orientation.⁷⁷

The progress towards liberalisation in Canada has not been without its critics. Individuals, including prominent evangelical theologians, and entire congregations have left the Anglican Church of Canada for other denominations or for more conservative provinces such as the Southern Cone of South America in protest against moves towards a greater accommodation of LGBT people, including blessing same-sex unions.⁷⁸ As will be shown, these alliances have fuelled debates and rumoured schism in the Anglican Communion world-wide. Miranda Hassett, whose written work has examined the alliances between conservative Global North Anglicans and their Global South counterparts sees this as a form of 'globalisation' of Anglicanism where the impetus from north to south or south to north is not at all clear. What is clear, as she indicates, is the conservative consensus on homosexuality:

This global Anglican movement's fixed conservative content consists in its strong opposition to the acceptance of homosexuality... opposing the acceptance of

⁷⁵ ASSIST News Service / 1978 February 3 / Press Release. Available at: <http://www.anglican.ca/wp-content/uploads/2010/10/hsrh.pdf>

⁷⁶ See House of Commons Debates, 28th Parliament, 1st Session, Volume 8 available at: http://parl.canadiana.ca/view/oop.debates_HOC2801_08/598?r=0&s=1

⁷⁷ Resolution of the House of Bishops / 1996 April 26 – May 3. Available at <http://www.anglican.ca/wp-content/uploads/2010/10/hsrh.pdf>

⁷⁸ See, for example, <http://www.identitynetwork.net/apps/articles/default.asp?blogid=0&view=post&articleid=45644&fldKey words=&fldAuthor=&fldTopic=0>

homosexuality is associated with the conservative side both in American public debate and, increasingly, in many Southern societies.⁷⁹

II.4. The 1998 Lambeth Conference: Resolution 1:10

Tensions between conservative evangelicals in all parts of the Communion and liberals principally in the Global North, with exceptions in Southern Africa and South America, came to the surface in 1998 at the decennial Lambeth Conference of bishops. Several bones of contention were on the agenda, but chief amongst them was individual provinces' and churches' attitudes towards human sexuality, or more specifically the acceptance of homosexuality. Those advocating for a literal interpretation of Scripture were determined to use the occasion to express their views and push for a clear statement of condemnation. They did not quite get that, but what emerged from the conference, Resolution 1:10, was enough to cause disquiet among more liberal members of the Communion.

At Lambeth 1998 the power of the links between global North traditionalists and some global South leaders became apparent. This alliance augured for a re-defined Anglicanism and for the fractured relations that were incidental to producing it. By the end of the Lambeth Conference, it was clear that a contest to define Anglicanism had emerged out of controversy over homosexuality, and that voices from the global South figured prominently in this contest. Re-definition was driven by a global phalanx of traditionalists that persuaded Lambeth 1998 to endorse their position.⁸⁰

What that resolution says is worth quoting, as much for what it does not say. The relevant passages are:

This Conference:

- b. in view of the teaching of Scripture, upholds faithfulness in marriage between a man and a woman in lifelong union, and believes that abstinence is right for those who are not called to marriage;
- c. recognises that there are among us persons who experience themselves as having a homosexual orientation. Many of these are members of the Church and are seeking the pastoral care, moral direction of the Church, and God's transforming power for the living of their lives and the ordering of relationships. We commit ourselves to listen to

⁷⁹ Hassett, M. K., *Anglican Communion in Crisis: How Episcopal Dissidents and their African Allies are Reshaping Anglicanism*, Princeton University Press, Princeton and Oxford, p. 24.

⁸⁰ Sachs, W. L., *Homosexuality and the Crisis of Anglicanism*, Cambridge University Press, Cambridge and New York, 2009, p. 240.

the experience of homosexual persons and we wish to assure them that they are loved by God and that all baptised, believing and faithful persons, regardless of sexual orientation, are full members of the Body of Christ;

- d. while rejecting homosexual practice as incompatible with Scripture, calls on all our people to minister pastorally and sensitively to all irrespective of sexual orientation and to condemn irrational fear of homosexuals, violence within marriage and any trivialisation and commercialisation of sex;
- e. cannot advise the legitimising or blessing of same sex unions nor ordaining those involved in same gender unions⁸¹

The unequivocal rejection of same sex 'practice' and unions may have caused consternation among liberals, but the condemnation of 'irrational fear of homosexuals' might have given some comfort, except that it was coupled bizarrely with 'violence within marriage and any trivialisation and commercialisation of sex', clearly other unrelated evangelical bugbears. Churchmen and women will often point to this Lambeth resolution as a clear statement of opposition to criminalisation. It is nothing of the sort. It makes no mention of criminalisation. Had it done so, would it have received the overwhelming support of bishops from countries which then still criminalised (with the exception of the United States)?

Critics of Lambeth 1998 point to this confusion as the source of so much argument today. Barney Pityana, a South African human rights lawyer and theologian, has said:

The official position must surely be the one articulated at Lambeth 1998, to the extent that one understands it anymore, because so much is changing again and again. That means that the Anglican Communion shares a common understanding about marriage and human sexuality, and that the matter of same-sex relations remains a pastoral matter. In other words, there is recognition that by God's will men and women are created with a variety of sexual orientations, even though the Church falls short of acknowledging homosexual practices.⁸²

This very indefiniteness, however, is seen by some as positive, a sign that the Communion can and is evolving. As one commentator has put it, 'in spite of some who have portrayed Lambeth 1.10 as a line in the sand, a fuller reading reveals it to be more akin to a milestone

⁸¹ Available at <http://www.anglicancommunion.org/resources/document-library/lambeth-conference/1998/section-i-called-to-full-humanity/section-i10-human-sexuality?author=Lambeth+Conference&year=1998>

⁸² Barney Pityana: comments by email to the authors, 14/02/2016.

along the way'.⁸³ A similar positive spin was placed on the 1998 Lambeth Conference's statement by Archbishop Sentamu of York in a letter written in February 2016.⁸⁴ But this interpretation notwithstanding, conservative commentators can still point to Lambeth 1998 as a restatement of 'the church's formal view that homosexual activity was immoral'.⁸⁵

II.5. The Windsor Report, 2004, the Dromantine Communiqué 2005: dialogue and listening

The statements on homosexuality that emerged from the 1998 Lambeth Conference did not deter both the Anglican Church of Canada and the US Episcopal Church from pursuing a more liberal approach to sexuality. Gene Robinson's appointment as Bishop of New Hampshire in 2003 resulted in a deluge of criticism from conservative evangelicals, infuriated that the Episcopal Church should 'flout' the consensus of the Communion and appoint a practising gay man to the office of bishop. Peter Jensen, who was then Archbishop of Sydney, penned a lecture attacking the Episcopal Church's decision in which he managed to conflate scriptural hot-headedness with the very real conflicts between Christians and Muslims in West Africa:

... my problem is nothing compared to the problem, say, of the Africans, who are face-to-face with Muslims. And the Muslims in the world are saying, 'There you are, you Christians are immoral and Christianity is immoral.' And this is being used [against the witness of the Church]. The actions of the American Church – absolutely repudiated by the African Church – are going to be used against the African Church, with evangelistic and other consequences.⁸⁶

If anything, the years following Lambeth 1998 showed that there was no consensus. But what did occur was a renewed call for a 'listening process' and 'good disagreement'. In 2004 the Lambeth Commission on Communion published a study on the problems stemming from the appointment of Bishop Robinson, known as the Windsor Report. While it expressed no view on same-sex intimacy, the Windsor Report did urge a moratorium on further consecrations of actively gay or lesbian bishops and blessings of same-sex unions. Like previous studies and

⁸³ Hazlehurst, B., 10/08/2011, available at <http://www.acceptingevangelicals.org/2011/08/lambeth-1-10-line-in-the-sand-or-milestone-on-the-way/>⁸³

⁸⁴ The letter was in reply to one from Jayne Ozanne and others urging the Archbishops to take an unequivocal message to a 2016 Primates meeting at Canterbury concerning the failure of the Church in its 'duty of care' towards LGBT people. Available at http://www.archbishopofyork.org/york/data/files/media/12_02_16_Jayne_Ozanne_Final.pdf

⁸⁵ <http://www.anglican.ink/article/lambeth-conference-cancelled>

⁸⁶ The Right Reverend Peter Jensen, Archbishop of Sydney, in a lecture delivered 23/07/2003, reprinted in Heinbach, D. R., *True Sexual Morality: Recovering Biblical Standards for a Culture in Crisis*, Crossway Books, Wheaton, Illinois, 2004, pp. 464-465.

statements, it said nothing about criminal sanctions. Heavily criticised by liberals, the report called on both sides of the debate to apologise for disunity, but acknowledged that conservative evangelicals had acted out of a sense of duty, offering no such concession to the members of the Episcopal Church and Anglican Church of Canada who had conducted the consecrations and blessings. 'By defining the Communion as a "bulwark against cultural change"', one critic wrote, and placing the 'demands of institutional functioning and survival before human well being and justice', the Windsor Report was indicative of the 'sickness unto death of contemporary Anglicanism'.⁸⁷

The report was discussed at a meeting of Primates in Dromantine, Northern Ireland in February 2005. Their communiqué reiterated the report with an additional call for the Episcopal Church and Anglican Church of Canada to withdraw voluntarily from the Anglican Consultative Council until the next Lambeth Conference in 2008. The communiqué did deal with the victimisation of LGBT people:

We also wish to make it quite clear that in our discussion and assessment of the moral appropriateness of specific human behaviours, we continue unreservedly to be committed to the pastoral support and care of homosexual people. The victimisation or diminishment of human beings whose affections happen to be ordered towards people of the same sex is anathema to us. We assure homosexual people that they are children of God, loved and valued by him, and deserving of the best we can give of pastoral care and friendship.⁸⁸

Until 2016, this was the closest any official statement from one of the Anglican Communion's governing bodies came to condemning the criminalisation of same-sex sexual conduct.

What has followed is an on-going process of listening to the experiences of 'homosexual persons', the Continuing Indaba Project, characterised by the editors of a major publication on the listening process as an aid to making decisions regarding homosexuality and to 'seek together the mind of Christ'. That publication quotes the then Archbishop of Canterbury, Rowan Williams:

This is not and should never be a question about the contribution of gay and lesbian people as such to the Church of God and its ministry, about the dignity and value of

⁸⁷ Linzey, A. and Kirkler, R. (eds.), *Gays and the Future of Anglicanism: Responses to the Windsor Report*, John Hunt, Hampshire 2005, pp. 71 and 295 respectively.

⁸⁸ The Anglican Communion Primates' Meeting communiqué, February 2005. Available at <http://www.anglicannews.org/news/2005/02/the-anglican-communion-primates-meeting-communiqué,-february-2005.aspx>

gay and lesbian people. Instead it is a question, agonizingly difficult for many, as to what kinds of behaviour a Church that seeks to be loyal to the Bible can bless, and what kinds of behaviour it must warn against - and so it is a question about how we make decisions corporately with other Christians, looking together for the mind of Christ as we share the study of the Scriptures.⁸⁹

What the report and the process to date has not considered is the effects of criminalisation and the increasing consensus amongst the international community and major church leaders that criminal sanctions should be repealed. There was and still is a certain reticence to speak about this issue, as Giles Goddard, former chair of Inclusive Church, explained:

I spoke to Rowan [Williams] about this issue and he said, 'If I say more about sexuality it will be reported in Nigeria and there would be riots'. And I said the same thing to Justin [Welby], and he said more or less the same and that, actually, it's not helpful if he speaks. It's such a destructive thing. Justin says it's extremely unhelpful if we talk about Uganda, that just puts the Ugandan Church's back up because they say, 'you have no right to speak to us. You're just being colonial.' And so he says 'I have to work behind the scenes, that's all I can do'.⁹⁰

The accusation of 'cultural imperialism' which seems to haunt the debate about the continuing criminalisation of homosexuality is an important part of the story as it relates to the Global South. It is often a defining characteristic in what seems like an ongoing battle between conservatives and liberals, literalists and historical critics, exclusive evangelicals and broad church inclusivists for the soul of the Anglican Communion.

It would be entirely wrong to characterise this as a battle between North and South. There are liberal-minded Anglicans in Africa and the Caribbean, just as much as there are conservative literalists in the US and the UK. Esther Mombo worries about the power and influence of individuals to control debate within Churches across the Communion:

Some primates have been lone voices, but give the impression that they are speaking the voice of the province... It has made me question the way the structures of the Communion appear not to have ways of effecting change. It has made me note the power games on the part of the leadership, and especially the notion of the tyranny of

⁸⁹ Groves, P. (ed.), *The Anglican Communion and Homosexuality: A Report to Enable Listening and Dialogue*, SPCK, London, 2008, p.

⁹⁰ The Reverend Giles Goddard: interview with the authors, 11/02/2016.

numbers. Anglican membership appears to be strong in the South and this has been used to embarrass the North.⁹¹

II.6. Criminalisation and the Anglican Communion in Africa

Thirty-one countries in Africa currently criminalise same-sex intimacy between consenting adults either for men who have sex with men alone or with the addition of laws affecting women who have sex with women. In sub-Saharan Africa the root of these laws are various penal codes introduced by the British in the late 19th or early 20th centuries to govern what appears to have been an indigenous tradition of tolerance.⁹²

Concerns over masculinity in the Victorian period spilled over into the expanse of Empire and fears about how contact with indigenous people in Africa and Asia might 'infect' Britain itself. Robert Aldrich shows how the opposite was often true, with colonial administrators making use of local male brothels, a scenario implied in a report on such facilities in Northern India by a young Sir Richard Burton.⁹³ Burton, inveterate explorer and writer on Empire, described what he called a 'Sotadic Zone' straddling the world where homosexuality was endemic, a fact he put down to climatic conditions rather than racial considerations.⁹⁴ Ironic or not, Burton's description played to the prejudices of colonisers. Across the British Empire in the wake of the Anglican Christian Mission Society, came British laws criminalising same-sex sexual conduct, beginning in India in 1860, with other Asian colonies and British territories in East and West Africa following.⁹⁵

The example of Uganda shows the pattern. Originally a series of independent kingdoms, the largest being Buganda, Anglican and later Catholic missionaries had been active in the region from the 1870s. In 1885 the new King of Buganda, Mwanga II saw the activities of missionaries as a sort of fifth column after Christian converts began to treat his authority with contempt. Executions followed, including the assassination of James Hannington, the Bishop of East Africa. After Mwanga's defeat by a British invasion force, British colonialists attacked him for his homosexuality, which became the pretext for his killing Christian pages who, it is said,

⁹¹ Dr Esther Mombo: email to the authors, 23/04/2016.

⁹² For an extensive overview of the countries that criminalise, see the work of the Human Dignity Trust at <http://www.humandignitytrust.org/pages/COUNTRY%20INFO><http://www.humandignitytrust.org/pages/COUNTRY%20INFO>

⁹³ Aldrich, R., *Colonialism and Homosexuality*, London and New York, Routledge, 2008, p. 31.

⁹⁴ Burton, F. R., 'Terminal Essay', *One Thousand Nights and One*, vol 10, London, 1886.

⁹⁵ Gupta, A., *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*, Human Rights Watch, 2008, p. 11.

refused his sexual advances.⁹⁶ A recent scholarly re-appraisal has cast doubt on this narrative.⁹⁷

A report published by Sexual Minorities Uganda in 2014 charts a rich history of same-sex desire in African culture before the arrival of European colonisers. It shows how the condemnation of such traditions by missionaries and colonial administrators often implies racial prejudice and justifies the colonisation in the first place.⁹⁸ Conversely, the virulent anti-gay stance of much of the Anglican Communion in Africa today is, according to William Sachs, the result of the encouragement of independent indigenous churches by a number of British missionaries during the colonial period, entrenching a form of biblical supremacy as the basis of all order that does not allow for debate or variation.⁹⁹ As Diarmaid MacCulloch, Professor of Church History at the University of Oxford, suggested in a recent interview, '[t]here are plenty of examples of what we might recognise as homosexual behaviour in pre-colonial Africa. Current attitudes are shaped by a missionary tradition which shaped Christianity there, naïvely Biblicist, cultic'.¹⁰⁰

Laws which lay dormant for years after independence have been revived with spates of active prosecutions and new, more draconian legislation. Kevin Ward, who spent two decades as a missionary in East Africa, paints the picture:

The whole thing has been skewed by a sense that gay people are an aggressive and destabilising force in society generally and that particularly they are an evil force among young people. Certainly in Uganda the Anti-Homosexuality Bill was very much framed in a language of protecting our children.¹⁰¹

Not surprisingly, given the colonial past of these countries, various Anglican churches, all making up a number of provinces of the Anglican Communion, have significant influence, often beyond their actual size and congregations, on elites in government and the judiciary. Frank Mugisha, an LGBT activist living in Uganda, sees this as problematic for his country: 'The

⁹⁶ Hoad, N. W., *African Intimacies: Race, Homosexuality and Globalization*, University of Minnesota Press, 2007, pp. 4-5.

⁹⁷ Lwanga-Lunyiigo, S., *Mwanga II: Resistance to Imposition of British Colonial Rule in Buganda, 1884-1889*, Kampala, Wavah Books, 2011. Bisi Alimi has made extensive researches on the existence of homosexuality in pre-colonial Africa for the course he teaches at the Humboldt University, Berlin. See also 'If you say being gay is not African, you don't know your history', *The Guardian*, 09/09/2015. Available at: <http://www.theguardian.com/commentisfree/2015/sep/09/being-gay-african-history-homosexuality-christianity>.

⁹⁸ Sexual Minorities Uganda (SMUG), *Expanded Criminalisation of Homosexuality in Uganda: A Flawed Narrative*, Kampala, 2014, pp. 7-9.

⁹⁹ Sachs (2009), pp. 149-158.

¹⁰⁰ Professor Diarmaid MacCulloch: interview with the authors, 01/02/2016.

¹⁰¹ Kevin Ward: interview with the authors, 16/02/2016.

Anglican Church is at the very centre of politics in Uganda,' he wrote recently. 'This is seen when every bishop who's appointed receives a 4x4 car from the government. Many bishops sit on government bodies where policies are made.'¹⁰²

That influence is not always benign from the perspective of LGBT people. In Uganda, for example, senior figures in the Anglican Church were openly supportive of the Anti-Homosexuality Bill, which was signed into law in 2014 but declared invalid later that year.¹⁰³ Prossy Kakooza, founder of Lesbian Immigration Support Group in the UK and a refugee from Uganda, believes the Anglican Church there is culpable:

I know that the Anglican Church in Uganda is still resistant. I know that when the Homosexuality Bill was raised many of them were vocal in their support of criminalisation. And I know that some of them were not as vocal as others, but they were silent. The Archbishop of the time, Archbishop Orombi, said nothing. In my opinion, if you say nothing you are as well as supporting.¹⁰⁴

In an article 'The Lies We Have Been Told', Thabo Msibi explores how some member churches in the Anglican Communion have used anti-homosexual stances as a way of shoring up their influence.¹⁰⁵ By appearing to offer moral guidance, Msibi argues that these religious groups justify their existence. The 2013 film *God Loves Uganda*, produced by Roger Ross Williams and Julie Goldman, highlighted the impact of US and African evangelical preachers in Uganda and showed the power (and wealth) that can be gained by denigrating homosexuality. This is a phenomenon discussed in detail by Kapya Kaoma, an Anglican priest from Zambia.¹⁰⁶

Clearly, Anglican voices both within and without Uganda were raised against the Act. Canon Gideon Byamugisha, a priest and HIV activist from Uganda, called the then Bill 'state-legislated genocide'.¹⁰⁷ Christopher Senyonjo, the retired Bishop of West Buganda and a rare advocate for LGBT rights in the Ugandan Church, gave evidence to parliament condemning the Bill as a means to a police state and warning that it would only lead to further spreading of HIV/AIDS.¹⁰⁸ Rowan Williams declared 'Overall, the proposed legislation is of shocking

¹⁰² Frank Mugisha: email exchange with the authors, 23/03/2016.

¹⁰³ Notably Joseph Abura, Bishop of Karamoja, <http://www.speroforum.com/a/23193/For-some-Anglicans-Vices-are-now-Virtues#.Vw-BoDArJdg>

¹⁰⁴ Prossy Kakooza: interview with the authors, 10/03/2016.

¹⁰⁵ Msibi, T., 'The Lies We Have Been Told: On (Homo) Sexuality in Africa', *Africa Today*, 58: 1 (2011), pp. 55-77.

¹⁰⁶ Kaoma, K. J., *Colonizing African Values: How the US Christian Right is Transforming Sexual Politics in Africa*, Somerville MA, Political Research Associates, 2012.

¹⁰⁷ <http://www.theguardian.com/katine/2009/dec/04/gideon-byamugisha-homosexuality-bill>

¹⁰⁸ <http://www.boxturtlebulletin.com/tag/christopher-senyonjo>

severity and I can't see how it could be supported by any Anglican who is committed to what the Communion has said in recent decades. Apart from invoking the death penalty, it makes pastoral care impossible – it seeks to turn pastors into informers.¹⁰⁹

Ijeoma Ajibade, who left Nigeria as a young adult and is now an Anglican priest in London, sees the promotion of the issue of sexuality by African Church leaders as another aspect of African politics:

What was covert has suddenly become a big issue and everyone is wading in. When I speak to African activists a lot of them feel their issues have been hijacked. The whole issue about gay marriage which the primates are responding to is not something that necessarily concerned African LGBT activists. What concerns them is criminalisation, arbitrary arrests, harassment, discrimination, lack of employment.¹¹⁰

Jenny Te Paa, a prominent Anglican educator from New Zealand, warns that much of this hostility is a sort of smoke screen thrown up by individuals with personal or ideological agendas:

At every turn there have been these distractions thrown up to try and deflect the focus of our teaching away from this fundamental issue of what we're doing to other human beings, which is either to criminalise them, to discriminate against them or to exclude them.¹¹¹

Godwyns Onwuchekwa, a Nigerian activist, agrees, but believes that arguments about decriminalisation offer a way forward:

With the most recent law in Nigeria [the Same-Sex Marriage (Prohibition) Act], everyone missed the issue that it was about criminalisation, because they thought it was about marriage... I've met with clergy from Nigeria: if the discussion focussed on criminalisation there would be a move, there would be a shift from where they stand and that would make things move in a positive way. If it stays on same-sex marriage, they are resisting that, and we forget that this confuses the actual issue.¹¹²

¹⁰⁹ <http://www.telegraph.co.uk/news/religion/6792671/Dr-Rowan-Williams-taking-a-break-from-Canterbury-travails.html>

¹¹⁰ Ijeoma Ajibade: interview with the authors, 03/02/2016.

¹¹¹ Dr Jenny Te Paa Daniel: interview with the authors, 24/05/2016.

¹¹² Godwyns Onwuchekwa: interview with the authors, 08/02/2016

The situation in East Africa is often characterised, with considerable evidence, as the result of interference from American right-wing evangelicals. The Anglican Church of Uganda, fearing loss of congregations to Pentecostal and other evangelical churches, has, in this scenario, jumped on the anti-LGBT bandwagon.¹¹³ In Nigeria and other parts of East Africa, the narratives are different. Davis Mac-Iyalla, who established a Nigerian branch of the Anglican LGBT community organisation Changing Attitudes before moving to the UK, was a prominent member of his Church until he voiced his opposition to anti-LGBT rhetoric. He sees Nigeria's Same-Sex Marriage (Prohibition) Act as an attempt to criminalise all aspects of LGBT identity. His view on Anglican bishops' support for this law is a critique of the whole GAFCON premise:

It's difficult to live in West Africa and do the work that we do because of the criminalising law, the Same-Sex Marriage law criminalises everyone. I believe that the bishops wanted a further law to prevent the listening process, which is the Communion's way forward on this issue.¹¹⁴

Other factors involved in West Africa and other provinces such as Sudan and South Sudan, are the interplay between Christianity and Islam where the stricter, less tolerant attitudes of local Islamic traditions have shifted the debate towards a hard-line position, and the growing influence of women's groups. In relation to the former, the Bishop of Woolwich, Michael Ipgrave, in an interview with the authors, cited the murder of Christians in Nigeria, widely reported to have been carried out because of perceived Christian tolerance of homosexuality, and Archbishop Welby's reported concerns about the Church of England's acceptance of equal marriage.¹¹⁵

The role of women in African Church life is also of significance. Martyn Percy highlighted the importance of women's groups around health and FGM and suggested that they might also be a voice of reason in this debate:

I think there are some very interesting alliances to be formed here. Female health and FGM are a big concern for Anglican women's groups and Mothers' Unions, and these

¹¹³ This is the premise of the film, *God Loves Uganda*, Robert Ross Williams, Dir. And Prod., Independent Filmmaker Project, 2013.

¹¹⁴ Davis Mac-Ilya: interview with the authors, 28/01/2016.

¹¹⁵ The Right Reverend Michael Ipgrave, Bishop of Woolwich: in an interview with the authors, 15/02/2016; for reports on the mass murders see <http://www.theguardian.com/uk-news/2014/apr/04/african-christians-church-of-england-gay-marriage-justin-welby>.

women's groups have no time for a tiny group of men trying to bang a drum for anti-gay stuff across the communion.¹¹⁶

This is a point reiterated by Frank Mugisha from Uganda in a recent statement.¹¹⁷ Esther Mombo also sees this as a manufactured problem 'discussed largely by straight men in high level places'.¹¹⁸

Several commentators have noted the presence of Western advisers, from North America, from the UK, from Australia, in the entourages, so to speak, of African primates. Macdonald Sembereka, an Anglican priest and human rights activist from Malawi who advised President Joyce Banda on NGOs, has observed this phenomenon in recent years:

Those primates coming from Africa and Asia are supported by some conservatives from both Europe and the United States, who are perpetuating the level of anathema that drives the whole debate. Some of the battles that have not been won in the West are going straight to the Global South and finding fertile and ripe ground through our own primates, who are frequently in the West as well; oftentimes, they're all over the place at the invitation of their hosts who have been supporting them in this debate.¹¹⁹

The Bishop of Salisbury, Nicholas Holtam, goes further in his criticisms of East and West African primates:

I've heard that there is a gap on the part of a number of primates between what is said in public and what is said in private. It might be a certain amount of fear, in terms of what leadership's around and how you carry a group of people with you. I've wondered whether it's to do with funding and whether there's conservative money that flows in behind, and I've got some evidence of that.

Money is often accompanied by boots on the ground, according to Bishop Holtam:

There are certainly people working in each of those provinces who are either English or North American, who are the thought police and controllers. I think there's been an extraordinary amount of interference in the fairly recent past.¹²⁰

¹¹⁶ The Very Reverend Professor Martyn Percy, Dean of Christ Church: interview with the authors, 18/02/2016.

¹¹⁷ Dr Frank Mugisha: email to the authors, 23/03/2016.

¹¹⁸ Professor Esther Mombo: email to the authors, 23/04/2016.

¹¹⁹ The Reverend Macdonald Sembereka: interview with the authors, 12/02/2016.

¹²⁰ The Right Reverend Nicholas Holtam, Bishop of Salisbury: interview with the authors, 08/02/2016.

It appears to be a common experience across Africa that, until the early years of the 21st century, homosexuality was not a subject of discussion either culturally or within churches. Godwyns Onwuchekwa explained this in the context of his home country:

Nobody was talking about it. There was an understanding that I shouldn't bring my sexuality out to you to talk about it. The anti-LGBT laws in place were rarely used. The fact that they exist is only acknowledged by those who were campaigning rather than the general public. The government wanted it to be that way because its becoming a measure of discussion would change things, and that is what is happening now. The whole fuss got kicked off at the 1998 Lambeth Conference.¹²¹

Frank Mugisha has echoed this sentiment in numerous interviews. Prossy Kakooza also experienced something similar, but was able to recall the change in attitude in her local Anglican church, 'it wasn't the most conducive or the best of churches to be in as a young lesbian impressionable person who listened to a lot of hate that was preached about LGBT people'. But she is adamant that churches can also be strong vehicles for change:

I grew up in a household where, when I was younger, you were told 'did you hear what the reverend said? If you do this, God will be mad at you. If you do this, you have to pray and repent.' And people listen, even when you're growing up as a child, people listen to the Church. If the Church takes the stance of starting to change people's minds, we can capitalise on that with the people who are already supporting LGBT people.¹²²

Such evidence suggests a certain level of toleration for LGBT people prior to the turn of the millennium, and clearly contradicts any narratives promulgating the supposed 'un-African' nature of homosexuality. For example, the Southern African Church, with its base in South Africa, a country which, since the mid-1990s, has not criminalised same-sex intimacy, has been fairly consistent in its positive messaging. Former Archbishop of Cape Town, Desmond Tutu's statements of support are well known, but other bishops have been vocal in their backing for decriminalisation. In 2010 the Anglican Bishops of Southern Africa issued a joint statement opposing the sentencing of two gay men in Malawi and the criminalisation of homosexuality generally.¹²³ More recently, in early 2016 in a letter from the current Archbishop of Cape Town, Thabo Makgoba, the bishops of the Southern African Church

¹²¹ Godwyns Onwuchekwa: interview with the authors, 08/02/2016.

¹²² Prossy Kakooza: interview with the authors, 10/03/2016.

¹²³ Statement by the Anglican Bishops in Southern Africa, 'The Imprisonment of Stephen Monjeza and Tiwonge Chimbalanga', 26 May 2010. Available at: <http://archbishop.anglicanchurchsa.org/2010/05/imprisonment-of-stephen-monjeza-and.html>

welcomed LGBT people in same-sex unions, permitted under South African law, as full parishioners in their churches, a significant step given the attitudes of Anglican leaders further north.¹²⁴

Diasporas can also play an important role in changing attitudes. Giles Goddard, who's parish includes a number of congregants from East and West Africa, is clear on this point:

It's important to remember that it's not monolithic. We have a big Ugandan congregation here; they have lots of connections with the church in Uganda, and they're deeply embarrassed by what's happening. The best way to chip away at it is to get people from that culture to challenge it.¹²⁵

Josiah Idowu-Fearon, a bishop from Nigeria and currently Secretary General of the Anglican Communion, has expressed his dismay at the continued criminalisation of LGBT people in a response to the January 2016 Primates' meeting:

Although this resolution was passed by the majority of the bishops in 1998, it has not been unanimously acted upon by the churches of our communion. As an African and Anglican, I am most challenged by the reality that in many of our countries, including my own, homosexuality is a criminal offence. I have made many people in my church and in the government of Nigeria very angry with me by my repeated objections to the criminalising of gay and lesbian brothers and sisters.¹²⁶

Such statements notwithstanding, narratives against homosexuality that have emerged from what is essentially religious debate in Africa, including the conservative-driven debate in the Anglican Communion, have set the agenda for much of African society. Bishop Idowu-Fearon's own experiences are testament to this. Bisi Alimi, an actor and Nigerian LGBT activist who was forced to flee his homeland after coming out on TV, believes that liberals in Africa and the West have been wrong footed:

Whoever drives the argument first gets to hold their place in it, and I think the Church was very smart to be the driver of the argument. It's very difficult for liberals or LGBT people to find a space because the moment the Church started a narrative, many of us who could have found a counter-narrative from the Bible were not old enough, educated enough around Biblical justification and were not certain enough. Many of us were young, naïve and didn't know how to articulate these things. What the Anglican Church in Nigeria has been able to do is build their homophobia around intellectuality.

¹²⁴ <https://www.enca.com/south-africa/anglican-church-says-yes-homosexuals>

¹²⁵ Reverend Giles Goddard: interview with the authors, 11/02/2016.

¹²⁶ Available at <http://livingchurch.org/covenant/2016/01/30/perspectives-on-the-primates-meeting/>

They have ‘scientific’ explanations for why people aren’t born gay. The way they come across, you can’t just disregard them.

He goes on, however, to pinpoint the root of the Church’s arguments:

I don’t think the Anglican Church in Nigeria would have been that skilled to add to the intellectual discourse around it without the support from the right-wing traditional values movement from the West.¹²⁷

Interestingly, a point echoed by Bishop Holtam:

You’re dealing with a clergy who are ill-trained. One of my friends who was a primate – I met him after a primates’ meeting and he needed picking up because, he said, ‘of the people at the table about half of them weren’t able to deal with the business as it was being presented to them; they hadn’t been able to read everything; they certainly hadn’t been able to get inside it and think it.’¹²⁸

That education is key to ending discrimination was pointed out by Dr Nontando Hadebe, a Catholic theologian and chair of the Southern African region of the Circle of Concerned African Women Theologians:

We can start in our local churches and educate congregations on the dignity of the human person, based on being created in the image of God without exception, and allow the realisation and implications to emerge from people. This process of conscience raising through a deeper appreciation of dignity, equality, the value of each person, starts with less threatening groups and gradually allows them to see the connection between criminalisation and the violation of rights as opposing the dignity of all persons.¹²⁹

Esther Mombo believes it is incumbent on educators to be at the forefront of this process:

My role as a theological educator has been to discuss the issues with my students at all levels and empowering them with information This is with the view that when the matters are brought for discussion they will be able to share from a position of knowledge.¹³⁰

¹²⁷ Bisi Alimi: interview with the authors, 02/03/2016.

¹²⁸ The Right Reverend Nicholas Holtam, Bishop of Salisbury: interview with the authors, 08/02/2016.

¹²⁹ Dr Nontando Hadebe: email exchange with the authors, 29/02/2016.

¹³⁰ Dr Esther Mombo: email to the authors, 23/04/2016.

II.7. Criminalisation and the Anglican Communion in the Caribbean

The story of criminalisation in the Caribbean region has very similar antecedents to the story in Africa. Islands and mainland countries which were once British colonies tend to criminalise, those which were not do not. Criminal codes in Jamaica, Trinidad and Tobago and Belize, for example, are derived from old colonial penal codes, even if the actual provisions have been updated by successive legislation.¹³¹ Jason Jones, a lawyer from Trinidad and Tobago, considered the history of his country as one of reaction against colonialism and slavery:

Slavery and colonisation have left a very bitter aftertaste for our young democracy, but what we have seen happen is that former slaves (and Christian indentured labourers from India) have separated their belief in God and Jesus Christ from the ills of their former masters. In many ways the Church is seen as the salvation of the people: ‘God set us free! Not the white man!’¹³²

While prosecutions might be relatively rare, violence and discrimination are not. Gareth Henry, an LGBT activist who was forced to flee Jamaica after death threats, has spoken of the sort of treatment, including murder and mob violence, that LGBT Jamaicans can expect.¹³³ Maurice Tomlinson, a lawyer and LGBT activist also from Jamaica, expressed this level of homophobia succinctly: ‘The reality is that if you want to whip up a crowd in Jamaica or a congregation, just mention homosexuality.’

Not only is the legal story in the Caribbean region similar to that of Africa, the narrative around rising anti-LGBT attitudes looks remarkably similar. Maurice Tomlinson describes his upbringing:

My mother said that when she grew up everyone knew somebody who was gay and no one cared in her village, but during the ‘80s and the ‘90s, as my mother describes, there was a coarsening of Jamaican society because the churches started to ramp up the anti-gay rhetoric. And we also have most of our musicians listening to this kind of rhetoric, because everybody had to go to church; so they listened to it and they imbibed it and then they performed it.¹³⁴

Tomlinson believes that much of this agitation came from US evangelical churches who were losing the culture wars in the North and so turned their attention to the South, ‘and they came

¹³¹ Again, for a helpful analysis of the region, see the work on individual countries of the Human Dignity Trust, at n. 96 above.

¹³² Jason Jones: email to the authors, 12/05/2016.

¹³³ See, for example, <https://www.youtube.com/watch?v=fHnS7v3jbt0>; <http://www.theguardian.com/world/2012/oct/26/jamaican-gay-petitioner-gareth-henry>

¹³⁴ Maurice Tomlinson: interview with the authors, 09/02/2016.

south just about the time the AIDS epidemic was beginning to hit. So they twinned the issue of homosexuality with AIDS, and it was a potent message and it was a very popular message.'

By contrast, another Jamaican activist with a background in theology, Ian McKnight, sees the Anglican Church in Jamaica, or at least individuals within it, as a positive force:

The Anglican Church has been outstanding in its response. I'm embarrassed by the response from many of the other churches, particularly in comparison with what the Anglican community has done. In Jamaica it is the Anglican community that has led the response to HIV; it is the Anglican community, members of which who have buried people living with HIV and buried people who have been killed as a result of their being homosexual.¹³⁵

McKnight relates how when fellow activist, Steve Harvey, was murdered his own Baptist Church refused to carry out his funeral service, while Anglican priest, Father Patrick Cunningham, got permission from the Bishop to hold the service for him, 'and most touchingly, the bishop wrote a letter which was read at the funeral and which said exclusively the Church is going to stand by and be supportive of this'.

Other figures within the Anglican Church in Jamaica have expressed their support for LGBT people. Garth Minott, the Vice President of the United Theological College, has spoken of Jamaican society's level of toleration leaving 'much to be desired when it comes to treating people who are different generally, and treating people who are a different sexual orientation in particular'.¹³⁶ Father Sean Major Campbell was heavily criticised by other faith groups when he washed the feet of two lesbians in a ceremony at his Kingston church in December 2014. His response was '[i]t is quite understandable that some persons will have some difficulty because human sexuality is a difficult subject and, generally speaking, in our country and culture, we really do not have enough safe spaces for people to explore the subject, without feeling unsafe or judged, and that is true even of the Church itself.'¹³⁷

Elsewhere the Church's response has been quite different. In 2011 the Anglican Bishop of Belize, Philip Wright, joined a coalition, along with the local Catholic bishop, opposing a legal challenge to his country's criminal sanctions against same-sex intimacy, signing up to a statement that '[t]his homosexual agenda insists upon the promotion of homosexual acts in the schools and society, undermining the rights of parents as primary educators of their children and targeting even grammar school children under the guise of 'comprehensive'

¹³⁵ Ian McKnight: interview with the authors, 04/03/2016.

¹³⁶ 'We are Jamaicans': <https://www.youtube.com/watch?v=g2dVV8E9pkA>

¹³⁷ *The Gleaner*, December 8 2014; available at <http://jamaica-gleaner.com/article/lead-stories/20141208/righteous-anger-church-members-upset-over-priests-embrace-gays-worship>

sexual education programmes that promote sodomy and immoral behaviour. It also demands that same-sex marriage must be recognised, and that no group may object to this agenda on religious or moral grounds.¹³⁸

Following a House of Bishops meeting in Barbados in 2013, the bishops of the Province of the West Indies issued a statement rebuking US President Barak Obama's vocal support for LGBT rights, conflating issues of LGBT discrimination (including criminalisation) with equal marriage.¹³⁹ As Ian McKnight explains:

This matter of marriage has been flung in our faces as the be all and end all of anything of causal human rights. The truth is many of us live in countries in which heterosexual marriage is rare and not something that is a major issue. Even though [equal marriage] has been a triumph in countries in which it has happened, it has not helped many countries that have not even moved to the position of saying these are persons who deserve to be treated with respect.¹⁴⁰

Or as Maurice Tomlinson put it:

In Jamaica you can't preach against adultery because we have a population of about 85% which is born out of wedlock. And you can't preach against alcoholism because usually there's a bar in front of every church. But you can preach against homosexuality because that's one thing nobody will acknowledge because of the stigma of being HIV positive.¹⁴¹

He noted that the Jamaican church had signed up to the House of Bishops' statement in 2013 condemning homosexuality, but adding that Jamaican citizens, including LGBT citizens, should have all the civil rights guaranteed by the Constitution. 'But of course the Constitution technically tries to ban same-sex relationships by trying to preserve the anti-sodomy law, and it also has a constitutional ban on same-sex relationships being recognised in law.'¹⁴²

What of the role of Churches in government and the drafting of laws? Richie Maitland, a lawyer from Grenada, has explored how Churches in the Caribbean region, including

¹³⁸ Conger, G., 'West Indian Church rejects call to decriminalize homosexuality', *Church of England Newspaper*, 5 August 2011, available at <https://geoconger.wordpress.com/2011/08/10/west-indian-church-rejects-call-to-decriminalize-homosexuality-the-church-of-england-newspaper-aug-5-2011-p-5/>

¹³⁹ Conger, G., 'Bishops denounce Obama blackmail over gay rights', *Anglican Ink*, 27 April 2013; available at <https://geoconger.wordpress.com/2013/04/27/bishops-denounce-obama-blackmail-over-gay-rights-anglican-ink-april-27-2013/>

¹⁴⁰ Ian McKnight: interview with the authors, 04/03/2016.

¹⁴¹ Maurice Tomlinson: interview with the authors, 09/02/2016.

¹⁴² *Ibid.*

Anglican churches, have interfered with legislation on a number of occasions.¹⁴³ He cites examples from Guyana and Trinidad and Tobago where liberal, reforming legislation has been buried or stalled because of pressure from churches. It is a view shared by Jason Jones of Trinidad and Tobago:

The relationship between Church and State in Trinidad and Tobago is a very close one and, in fact, it can be said that the influence religion has over matters of state legislature is at this time impossible to be separated. It is therefore an imperative that, in order for the human rights of LGBT people to be observed legislatively, the Church must constructively support the abolition of current legislation that denies those rights.¹⁴⁴

We have also seen the pressure brought to bear on the courts in Belize by church leaders. In the Bahamas, a country which decriminalised homosexual relations under certain prescribed circumstances in 1991, the influence of Churches on government decision making was revealed by Wikileaks cables suggesting the then Prime Minister, Perry Christie, 'owes his election to the active intervention of the conservative end of the Bahamian protestant religious spectrum'.¹⁴⁵ His successor, Hubert Ingraham, who has spoken out against discrimination, was led to rebuke the former Primate of the West Indies, Drexel Gomez, when he appeared at a rally supporting Christie's party in 2012. Gomez has been a virulently vocal critic of any attempt to liberalise attitudes towards LGBT people in the Anglican Communion.¹⁴⁶

In May 2016, further evidence of an attempt by a senior Christian minister to interfere in government emerged in Antigua and Barbuda. Following comments by the Minister for Social Transformation, Samantha Marshall, that the cabinet should repeal 'antiquated' laws criminalising same-sex intimacy between consenting adults, Bishop Charlesworth Browne of the Christian Ministry Center demanded the laws remain, citing the fate of Sodom and Gomorra and the recent Canadian wildfires in support of his position.¹⁴⁷

¹⁴³ Maitland, R., 'On Religion and Rights in the Caribbean', *Groundation Grenada*, 2013, <http://groundationgrenada.com/2013/10/07/on-religion-and-rights-in-the-caribbean/>

¹⁴⁴ Jason Jones: email to the authors, 12/05/2016.

¹⁴⁵ Gaskins, J. Jr, "Buggery" and the Commonwealth Caribbean: a Comparative Examination of the Bahamas, Jamaica and Trinidad and Tobago', in Lennox, C. and Waites, M. (eds.), *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*, School of Advanced Study, University of London, 2013, p.439

¹⁴⁶ Conger, G., "Stay out of politics" Bahamian PM tells Archbishop Gomez', *Anglican Ink*, 14 March 2012. Available at <http://www.anglican.ink/article/stay-out-politics-bahamian-pm-tells-archbishop-gomez>

¹⁴⁷ 'Bishop Browne: Buggery Law Must Stay', *The Daily Observer*, 19 May 2016. Available at: <http://antiguaobserver.com/bishop-browne-buggery-law-must-stay/>.

II.8. Criminalisation and the Anglican Communion in Asia

It is, perhaps, unfair to lump the Anglican provinces of Asia and the Pacific together; they are disparate and far flung, they do not necessarily share a common heritage as ex-British colonies – the Province of Japan is a case in point – nor do they all cover countries which criminalise same-sex intimacy between consenting adults. That said, several churches in Asia and the Pacific do share much in common with many other provinces in the Global South, not least of which is an adherence to conservative evangelicalism and a sort of sub-communion, the Global South Anglicans.

In Pakistan, in India, in Singapore and in Papua New Guinea laws exist, residual of colonial heritage, criminalising same-sex intimacy. The provisions in India's Penal Code are among the oldest and were rolled out across large areas of the British Empire. These are not insignificant provinces of the Anglican Communion and yet consistently, church leaders there have supported a conservative position regarding homosexuality. Martyn Percy recognises that across Asia, for example, conservative attitudes prevail, but even with this narrow paradigm, it would be wrong to assume universality:

It's not that they won't have a discussion, they're not ready for it. Discussions about human sexuality in Japan are awkward. Korea's more socially conservative, but I could go and preach in Hong Kong and state my views on homosexuality clearly and it would be fine.¹⁴⁸

Senior figures in Asia have made unequivocal statements against homosexuality in the past. Then-Bishop Alexander Malik of Lahore, during the 1998 Lambeth Conference attacked liberal notions of accepting homosexuality:

Scripture calls homosexuality a perversion, or abomination. It says homosexuals will not enter the kingdom of God... If we speak against homosexuality it is certainly not gay bashing, but a matter of conscience, faith and doctrine... What if they ask them [liberal bishops] to bless their pets, their cats and dogs?¹⁴⁹

In Singapore in 2009, the then Bishop John Chew warned against what he called 'alternative values', interpreted as homosexuality, while statements by Prime Minister Lee, urging tolerance were countered by leading conservative Anglican Christians who insisted on the

¹⁴⁸ The Very Reverend Martyn Percy, Dean of Christ Church: interview with the authors, 18/02/2016.

¹⁴⁹ Stammer, L. B., 'Anglicans Decry Homosexuality, Back Abstinence', *Los Angeles Times*, 06/08/1998. Available at: <http://articles.latimes.com/1998/aug/06/news/mn-10606>.

need for criminal sanctions to remain in place.¹⁵⁰ Phil Chan, commenting on the intervention of the National Council of Churches, which includes the Anglican Church, in a policy for employing gay men and lesbians in the civil service which led to the then Prime Minister reiterating a more conservative position about sexuality, wrote:

... one ought to ask, if Singapore is essentially a Confucian polity, why should the National Council of Churches of Singapore that represents Anglican, Methodist and Presbyterian churches, have such influence on governance in Singapore as was apparently reflected in Prime Minister Goh's speech?¹⁵¹

That said, a recent statement signed by a number of primates, including the Indian Ocean, South East Asia, Myanmar and John Chew, all leading members of the Global South Anglicans, while condemning the American Episcopal Church for its actions over equal marriage, rejected the idea of criminal sanctions:

The aim of pastoral care is to restore people to the bosom of God where they encounter His love and design to live a life according to His plan. We are against any criminalization of homosexuals, they are like all of us, need God's mercy, grace and salvation.¹⁵²

Churches based in overwhelmingly Muslim or Hindu countries may have their own particular concerns around this issue. Neither the Church of North India nor the Church of South India (both provinces of the Anglican Communion) supported the recent appeal by other faith groups of the High Court of Delhi's decision to strike down Section 377 of the Indian Penal Code, the law criminalising same-sex intimacy.¹⁵³ That said, neither church has made any statements concerning the Supreme Court's overturning of the Delhi Court's decision in favour of the faith group petitioners.

¹⁵⁰ 'Archbishop John Chew urges Singaporeans to unite against "alternative values"'. Available at <http://anglicanmainstream.org/archbishop-john-chew-urges-anglicans-to-unite-against-alternative-values/>

¹⁵¹ Chan, P. C. W., 'Shared values of Singapore: sexual minority rights as Singaporean value' in Chan, P. C. W. (ed.), *Protection of Sexual Minorities since Stonewall: Progress and Stalemate in Developed and Developing Countries*, Routledge, Abingdon and New York, 2010, p. 156; see also Obendorf, S., 'A few respectable steps behind the world? Gay and lesbian rights in contemporary Singapore' in the same publication, pp. 238-39.

¹⁵² 'Global South Primates respond to the House of Bishops of TEC's resolution on same-sex marriage' 04/07/2015. Available at http://www.anglican.org.sg/index.php/articles/item/global_south_primates_respond_to_the_house_of_bishops_of_tecs_resolution_on. Other Global South primates, such as Nigeria, Uganda and Kenya did not sign the statement.

¹⁵³ See, for example, 'Verdict reserved on appeal in gay sex case', *The Hindu*, 28/03/2012. Available at: <http://www.thehindu.com/news/national/article3250607.ece>.

There is a sense that Asia can provide a voice of moderation on the issue of homosexuality within the Anglican Communion which will, inevitably, lead to a greater understanding of criminalisation and its effects. Kevin She, a human rights researcher and HIV/AIDS activist from Hong Kong, sees the experience of his region as a positive message for other parts of Asia. Quoting Joseph Cho's work in this area, he wrote 'the decriminalization of homosexual acts between two consenting men in 1991... signified a shift in the social attitude towards homosexuality from grave hostility to tolerance and acceptance'.¹⁵⁴ The current Archbishop of Hong Kong, Paul Kwong, has noted that religious plurality in Asia has enabled the Anglican churches there to adopt more conciliatory approaches that are more inclusive and moderate.¹⁵⁵ His election as Chair of the Anglican Consultative Council in April 2016 has been widely seen as an attempt to bring some of that plurality into the working of the Communion as a whole.¹⁵⁶

II.9. History moving forward

Desmond Tutu, the former Archbishop of Cape Town, has made numerous remarks in print concerning homophobia and criminalising laws, often with other members of the Anglican Communion in his sights. In this he links the personal with the political and condemns Christians who deny their faith to others on the basis of sexuality:

All over the world, LGBT people are persecuted. They face violence, torture and criminal sanctions because of how they live and who they love. We make them doubt that they too are children of God – and this must be nearly the ultimate blasphemy.¹⁵⁷

Tutu's statements join those of senior figures in the United Nations, the Commonwealth Secretariat and governments in the US, UK and Europe condemning the use of penal sanctions against LGBT people, in whatever form. This shift on a global level, however, coincides with moves towards more draconian laws in Africa, Russia and parts of Central Asia: the culture wars of the Anglican Communion writ large, so to speak.

While the laws criminalising same-sex intimacy may appear to be a matter for countries in Africa, the Caribbean and parts of Asia, their existence has profound consequences not only for levels of discrimination in the Global North, but, more specifically, for Christian

¹⁵⁴ Kevin She: email to the authors, 30/04/2016. The quote is from Cho Man-kit, J. 'The Journey of Hong Kong's Tongzhi Movement', in *In God's Image*, vol. 29, no. 3, Sept. 2010, p. 4.

¹⁵⁵ 'Hong Kong: Archbishop advocates Asian approach to Anglican "power struggle"', *Episcopal News Service*, 19/03/2007.

¹⁵⁶ 'Primate of Hong Kong elected as new chair of Anglican Consultative Council', *Anglican Communion News Service*, 15/04/2016.

¹⁵⁷ Statement at UN High Level Panel on Ending Criminal Laws and Violence, September 2010, Available at: <http://geneva.usmission.gov/wp-content/uploads/2010/09/Tutu.pdf>

denominations and in particular the Anglican Communion as a whole. Meg Warner has made this clear:

[Criminalisation] may affect principally the Global South, but it affects the politics in the Church in this country [UK] and in others and their willingness to make the distinction which they've made before.

The broader context of human sexuality is something the Communion has been engaged with for several years, and this is an ongoing process. Criminalisation is a far more acute issue, given the levels of violence and grief it can propagate, including society and family exclusion, exile and, on too many occasions, death. Paula Nesbitt, a priest in the Episcopal Church who has written extensively on gender issues in the Anglican tradition, recognises that even this issue must take into account context:

From my experience in evaluating Continuing Indaba conversation, I became familiar with the criminalization issue... Participants from different dioceses across the Communion also began to see differing ways in which social justice is practiced in relation to both cultural and legal contexts. For instance, an effective strategy in one context could have an opposite effect in another. The challenge is to find those ways and places in each context where advocates can work best.¹⁵⁸

This challenge is echoed by Kevin Ward:

In Africa the present controversy has made it extremely difficult for anyone to get a hearing who wants to abolish the old penal codes... In places like Nigeria and Uganda, where the Anglican Church is such an important social force, it's extraordinarily difficult to see how decriminalisation can take off in society as a whole.¹⁵⁹

Clearly, there are individuals within the Churches of countries such as Uganda and Nigeria who are willing to take a stance on this issue. Mario Gerarda, a founder of Drachma LGBTI, an organisation which promotes dialogue between LGBT communities and religious institutions, has identified the potential of diversity within churches as a means forward:

Churches are usually not monolithic in their thinking and one can find church leaders (who also have influence), who can be supportive of change, who can offer critical perspective or an alternative theological interpretation or understanding. Those are key and it's important to collaborate with those voices. At times those same religious

¹⁵⁸ Reverend Dr Paula Nesbitt: email to the authors, 31/03/2016.

¹⁵⁹ Reverend Kevin Ward: interview with the authors, 16/02/2016.

leaders may be marginalised themselves because of their views which are not mainstream within the church.¹⁶⁰

The experiences of Bishop Josiah Idowu-Fearon and Bishop Christopher Senyonjo offer clear examples of how such voices can be marginalised. But then the relative calm of the Anglican Communion itself, distinct and a haven from national internal politics, ought to be able to provide a safe space for all voices in this debate, particularly those who might be otherwise silenced by a counter weight of opinion. And perhaps the last word should be given to someone who has himself direct experience of marginalisation within the church in his community, Nigerian LGBT and HIV activist, Godwyns Onwuchekwa:

[Church leaders] do say they don't agree with someone being violently abused. The current Catholic Archbishop of Nigeria has consistently come out against criminalisation, and I think if we engage on that issue, bishops and the Anglican Church in particular, have clout with politicians in these countries: politics walks alongside religion.¹⁶¹

¹⁶⁰ Mario Gerada: email to the authors, 24/02/2016.

¹⁶¹ Godwyns Onwuchekwa: interview with the authors, 08/02/2016. On the position of the Catholic bishops in Nigeria, see, for example, *Daily Post*, 20/09.2015. Available at: <http://dailypost.ng/2015/09/30/stop-condemning-homosexuals-they-dont-deserve-it-catholic-bishops/>

III. RECENT DEVELOPMENTS ON DECRIMINALISATION

III.1. The 2016 Primates Meeting

In January 2016, at a meeting of the Primates of the Provinces of the Anglican Communion in Canterbury, the first clear statement from any organ of the Communion regarding criminalisation emerged in the aftermath of what was otherwise an extremely controversial conference.

Over a period beginning with the consecration of Gene Robinson as bishop in 2003, the Episcopal Church in the US had gradually developed more liberal doctrines on LGBT issues. This culminated in a change to the Church's marriage canons in favour of same-sex marriage in 2015.¹ Disquiet amongst more conservative branches of the Communion, including some within the Episcopal Church itself, had led to various statements of condemnation, and the initiation of an alternative 'Anglican' Church, the Anglican Church of North America, a relatively broad congregation, although one whose adherence to literal interpretations of Scripture places them closer to GAFCON than the official provinces of North America. The fact that this church is in full communion with the provinces of Uganda, Nigeria and Sudan, South Sudan is itself controversial.

As a result of the decision of the Episcopal Church regarding marriage, Archbishop Welby called a meeting of all the primates in January 2016 to discuss ways forward. Liberals in the church saw this as a means of censuring their views and a route to potential schism. Martyn Percy wrote, rather hopefully, in the lead up to the meeting:

In 41 of the 53 countries within the British Commonwealth [sic], homosexual conduct is still regarded as a serious crime... The Archbishop of Canterbury could begin the Primates' meeting by accepting the responsibility for the part the Church of England has played in perpetuating this discrimination and the subsequent injustices – and publicly repenting them.²

What particularly disturbed Percy and others was the fact that Archbishop Welby had invited Archbishop Foley Beach of the Anglican Church of North America to the meeting, without canvassing the opinion of the official North American provinces in the US and Canada.

¹ <http://www.episcopalchurch.org/page/lgbt-church>.

² Percy, M., 'Sex, Sense and Non-Sense for Anglicans', *Modern Church*, December 2015. Available at: <http://modernchurch.org.uk/downloads/finish/818-articles/756-sex-sense-and-non-sense-for-anglicans>.

The result of the meeting was a predictable censuring of the Episcopal Church and a request that it exempt itself from taking part in the business of the Anglican Communion for a period of three years. GAFCON were not pleased. Peter Jensen, former Archbishop of Sydney and General Secretary of GAFCON said:

From a GAFCON point of view that communiqué that came out was inadequate, because what we're saying is that it's impossible to have fellowship with the Episcopal Church while they hold these views. And our view is that they ought to come back and put themselves under the Bible again, so taking communion with them is difficult or impossible. By the time the meeting finished something like 27 or 28 of the Primates present voted, not in that full scale way, but they did vote to censure. It was a relatively mild censure, but the fact that it was so wide spread is the key issue here.³

Charles Robertson of the Episcopal Church was keen to point out that not all African bishops are as set against his Church as GAFCON would like to imagine:

I was astounded this past year when five archbishops from the African provinces requested to come to New York and meet with our presiding bishop to talk about how to move forward in relationship, without getting into the differences they hold. They are not African provinces where there is criminalisation, nothing like the extent we see in certain places, where they are still, absolutely, not going to relate to us.⁴

Many, from Anglican politicians to senior clergy and lay people, expressed their dismay over the decision to sanction the Episcopal Church.⁵ But the 'consequences' relayed to the Episcopal Church notwithstanding, what happened at the end of the Canterbury meeting is of most significance for the global question of criminalisation. The Primate of Uganda had already left before any official communiqué was issued. Archbishop Welby then publically apologised on camera for the way the Anglican Church had historically treated LGBT people. This was followed by a communiqué which is worth quoting, as its language is of great significance. In addition to the full explanation of the actions of the primates with regard to the Episcopal Church, the Church's attitude towards discrimination and prejudice was elaborated:

The Primates condemned homophobic prejudice and violence and resolved to work together to offer pastoral care and loving service irrespective of sexual orientation. This

³ Peter Jensen in conversation with Dominic Steele, 27 January 2016. Available at <http://www.dominicsteele.com/blog/2016/1/17/pfj>.

⁴ Canon Charles Robertson: interview with the authors, 22/02/2016.

⁵ See, for example, 'Chris Bryant quits Church of England over its views on homosexuality', *The Guardian*, 15/01/2016. Available at: <http://www.theguardian.com/world/2016/jan/15/anglican-leaders-statement-on-marriage-disappoints-liberals>.

conviction arises out of our discipleship of Jesus Christ. The Primates reaffirmed their rejection of criminal sanctions against same-sex attracted people.

The Primates recognise that the Christian church and within it the Anglican Communion have often acted in a way towards people on the basis of their sexual orientation that has caused deep hurt. Where this has happened they express their profound sorrow and affirm again that God's love for every human being is the same, regardless of their sexuality, and that the church should never by its actions give any other impression.⁶

This is the first time any official statement from the Communion has mentioned criminal sanctions, irrespective of the suggestion that this is a 'reaffirmation', and is therefore a significant condemnation. Not surprisingly, Archbishop Ntigali of Uganda and Archbishop Okoh of Nigeria soon distanced themselves from the meeting and its communiqué, citing the unrepentant Episcopal Church as justification.⁷ In a pastoral letter following the meeting, Archbishop Wabukala of Kenya chose to ignore the condemnation of prejudice and criminal sanctions and concentrated instead on the 'punishment' of the Episcopalians:

TEC is not the only province to reject the bible's teaching and there is still much work to do to heal the wounds that compromise and false teaching have inflicted upon the Anglican Communion, but a start has been made. Flagrant violation of biblical teaching has been punished and this meeting has shown that the rebuilding of the Communion is not just a matter for the Archbishop of Canterbury, but a concern for every member Church.⁸

Esther Mombo, as a Kenyan theologian, believes these sorts of statements imply a hierarchy of opinion which is misleading: 'What is important is that Anglicans are allowed to talk, not just the primates.'⁹

III.2. General Synod of the Church of England

Perhaps an even more pertinent statement emerged from Archbishop Welby himself, during a meeting of the General Synod of the Church of England in February 2016. In response to a

⁶ The text of the communiqué is available at:

<http://www.primates2016.org/articles/2016/01/15/communique-primates/>.

⁷ See *Pink News*, 25/02/2016. Available at: <http://www.pinknews.co.uk/2016/02/25/archbishop-of-uganda-says-anglican-churches-have-betrayed-god-over-lgbt-rights/>; GAFCON, 18/01/2016.

Available at: <http://gafcon.org/2016/02/04/archbishop-nicholas-okoh-issues-a-statement-to-the-church-of-nigeria-on-the-outcomes-of-primates-2016/>.

⁸ *Anglican Ink*, 19/01/2016. Available at: <http://www.anglican.ink/article/pastoral-letter-church-kenya-archbishop-eliud-wabukala-canterbury-primates-communique>.

⁹ Dr Esther Mombo: email to the authors, 23/04/2016.

question posed by Dr Rachel Jepson as to whether there would be ‘relational consequences’ for provinces that support criminalisation, the Archbishop said:

if you look at the communiqué... you will find that there is a very, very clear statement of the longstanding opposition of the Anglican Communion to the criminalisation of LGBTI people. And given that that is a very important part of the thinking of the Anglican Communion in this area, one could anticipate that the primates when they meet, were someone to be advocating such, would need to consider that. If they were to continue to advocate it since the primates meeting we just had.¹⁰

While there may be something of King Lear’s ‘I will do such things / What they are yet I know not, but they shall be / The terrors of the earth’ about this talk of ‘consequences’, these are uncharted waters for the Communion. Graham James the Bishop of Norwich explains the difficulties with trying to ‘discipline’ any province for its actions:

Because of its episcopal and international structure, the Anglican Communion is sometimes regarded from outside as a hierarchical church (given the way in which Roman Catholic patterns of church life are so well known), and yet Anglicanism has no Magisterium, no centralised teaching authority. It prefers to recognise the authority of Scripture, tradition and reason, and each province is called to interpret them appropriately.¹¹

In other words, it is extremely difficult, if not legally impossible, for one part of the Communion to impose ‘consequences’ on another. The preferred route is to ‘walk together’, as the Primates reiterated in their January 2016 communiqué. This essential formlessness can have positive and negative aspects to it, as Michael Ipgrave, the Bishop of Woolwich pointed out:

The Communion is in a constant state of experiment. It won’t work with a Curia, it’s too familial in structure. But there has long been an assumption that larger provinces will dominate.¹²

Traditionally, it has been the provinces of the West, England, North America, that have dominated. In the last twenty years or so, however, it has been recognised that the mass of congregants is now in the Global South, in provinces like Nigeria, and so understandably those provinces are seeking to increase their influence. But at what cost? Commentators suggest that, if the Communion is to avoid schism, compromises will have to be made on all sides, yet it is the very nature of compromise that is anathema to conservative clergy and lay people

¹⁰ Interchange available at *Thinking Anglicans*, 19/02/2016:

http://www.thinkinganglicans.org.uk/archives/cat_general_synod.html.

¹¹ The Right Reverend Graham James, Bishop of Norwich: email to the authors, 23/02/2016.

¹² The Right Reverend Michael Ipgrave, Bishop of Woolwich: interview with the authors, 15/02/2016.

whose understanding of Anglicanism prioritises Scriptural literalism over tradition and reason. Bishop Trevor Mwamba believes that ‘the spirit of the via media inspires Anglicans to think multi-dimensionally. This means resisting the “know it all” mentality which takes a simplistic view of life by reducing it to a one dimensional level devoid of new frontiers.’¹³ What Esther Mombo calls ‘the tyranny of numbers’ should not be used to impose any position:

The North and South is important for the Communion and no part should be made to feel they do not belong, as is the case today. Some part of the North whose strongholds are in the South should engage the North and not use the South to fight the North.¹⁴

III.3. Possible future steps

Since the Primates’ meeting in January 2016, Archbishop Welby has repeated the rhetoric against criminalisation, including during a meeting with President Robert Mugabe of Zimbabwe in April 2016.¹⁵ The view of the Anglican Communion on how to advance this issue remains one of dialogue and listening, captured by the idea of ‘Indaba’, a Zulu term denoting meeting or gathering. The former Archbishop of Canterbury, Rowan Williams, characterised the process as: ‘people get together to sort out the problems that affect them all, where everyone has a voice and where there is an attempt to find a common mind or a common story that everyone is able to tell when they go away from it.’¹⁶

The goal is long-term, the process necessarily slow. Ongoing conversations are hugely important in bringing people to a greater understanding of each other. As one source close to the Anglican Communion explained, it is remarkable what can be achieved by putting one LGBT person in a room with others who have probably never consciously met someone of a different sexuality. Yet the fact that the Episcopal Church and Church of Canada have precipitated discussion around same-sex relationships, the priesthood and criminalisation may, in the end, also promote positive outcomes. Pyt Farrugia, an LGBT activist from Malta and a key player in faith-based solutions, has noted:

The fact that the Anglican Communion has been a motivating force in breaking open, however painfully, conversations on these issues in such a way as to involve

¹³ The Right Reverend Dr Musando Trevor Mwamba: email to the authors, 04/05/2016.

¹⁴ The Right Reverend Nicholas Holtam, Bishop of Salisbury: interview with the authors, 08/02/2016.

¹⁵ ‘ACC declines to go along with “consequences”’, *Anglican Journal*, 18/04/2016. Available at: <http://www.anglicanjournal.com/articles/acc-declines-to-go-along-with-consequences>. The article also reports on how the Anglican Consultative Council meeting in Lusaka in April 2016 had declined to support the Primates’ decision to impose ‘consequences’ on the Episcopal Church for its stance on same-sex marriage.

¹⁶ ‘Continuing Indaba – Anglicans becoming reconciling agents’. Available at: <http://www.anglicancommunion.org/mission/reconciliation.aspx>.

sacramental as well as social realities is huge. I think this is most interesting because of the way it could reflect and deepen discussion on these issues within other faith groups, such as the Roman Catholic Church. I think this is a source of great strength and relevance within the Anglican Communion.¹⁷

Others get impatient with what they see as a softly, softly approach to urgent human rights abuses. Davis Mac-Iyalla, from his own experience, urges stronger action by the Church:

The Anglican Communion needs to be made aware that criminalisation is a total abuse of human rights. Jesus would not support criminalisation. It is totally wrong to use the law against a group of people in this way.¹⁸

His views are echoed by Ijeoma Adibaje:

If your priority is to say anything that will keep the Communion together then you will say all those things. If your passion is ordinary people and their lives and human rights, then you'll say we might have a difference, but this is what we believe. It's why it's so important to have LGBT activists involved. It would be great to have more people who were clergy speaking up, but even straight people like me have our own part to play.¹⁹

Or as Professor Diarmaid MacCulloch put it, '[y]ou can't apologise without doing something'. Jason Jones of Trinidad and Tobago made his own impassioned plea:

The majority of LGBTIQ+ citizens of Trinidad and Tobago like myself are people of Faith and/or spirituality, so this is not an exercise in bashing the Church or Faith. What I and many are asking is that the language used be more inclusive of diversity, non-aggressive or condemning of homosexuality. That progressive steps are made to embrace all people of faith without any prejudice. That the Church condemns in the strongest terms any formal and active discrimination or prejudice by its members, affiliate organisations and governments that prevent all human beings access to their human rights and full equality.²⁰

The example of the Church of England itself, its historical recognition that using the criminal law to control sexuality is entirely wrong, irrespective of what Scripture says or people believe, should provide a useful template for arguments in other parts of the Communion. The theologian Meg Warner has drawn this distinction between the Church of England's past and the Anglican Communion's present attitudes:

¹⁷ Pyt Farrugia: email to authors, xxx.

¹⁸ Davis Mac-Iyalla: email to the authors, 28/01/2016.

¹⁹ The Reverend Ijeoma Ajibade: interview with the authors, 03/02/2016.

²⁰ Jason Jones: email to the authors, 12/05/2016.

The Church of England was able to make a distinction between its views about homosexuality as sinful on the one hand and the question of legality on the other. Whether the churches of the Anglican Communion will feel able to do that I don't know. Some of them will (and have).²¹

Biblical Exegesis

As Scripture is one of the pillars of the Anglican Communion, some would say the most important, then it is incumbent on Church leaders to be very careful about how this is used and promoted. Without going over the arguments over interpretation (or whether interpretation is even allowed, which seems a little specious given the fact that it is impossible to make use of a text thousands of years old without interpreting it somehow), it is clear that context is everything, and context needs to be emphasised in conversations about Biblical texts. For Derrick Sherwin Bailey, back in 1955, understanding this was crucial when it came to understanding the interplay between Scripture and homosexuality:

Here the Christian tradition affords us little guidance, for it knows only one kind of homosexual behaviour – that which would be termed perversion; this to one of the most perplexing ethical problems of our time, it has, at best, but an indirect and dubious relevance. Even the admirably temperate and thorough consideration of homosexual acts by Aquinas is governed by the assumptions typical of his age, and is consequently of limited value where true inversion is concerned.²²

The literal interpretation of text supposedly advocated by some conservative evangelicals today, is of very little help in understanding homosexuality and modern attitudes. Meg Warner again:

Much of Leviticus has to do with the sexual roles of men and anxieties about that being feminised. There's very little about this concern in the Hebrew Bible. There are other sexual issues which are of far greater concern – intermarriage and incest, for instance.²³

Martyn Percy shares this view about the 'fears' around sexuality, both in 6th-century BCE Israel and 21st-century sub-Saharan Africa:

If I was teaching about this area, I would talk about the anthropology of Mary Douglas and this incredibly visceral, irrational fear of penetration of orifices, tribal boundaries,

²¹ Dr Meg Warner: interview with the authors, 24/02/2016.

²² Bailey (1955), p. 169.

²³ Dr Meg Warner: interview with the authors,

the fear of the individual body being a representation of the body politic and therefore the necessity of things having to be contained.²⁴

British actor, politician and advocate for LGBT rights, Michael Cashman has a more forthright view of what he sees as the selective use of Scripture by some anti-LGBT faith groups: 'In order to respect religion, you need to respect it in its entirety, and its selective use needs to be exposed, because that's how we understand real motivations.'²⁵

Needless to say, not all Scriptural literalists take a holistic view of Scripture. Like William Blake's *Newton*, blind to anything but the circumscription of his compass, they focus on certain words, themselves often translations of translations, without contemplating the greatness of the work as a whole.

Understanding and Education

Ultimately, the way forward is education: better educated clergy and better educated lay people. As Davis Mac-Iyalla has pointed out, '[i]n Africa most seminaries are educating people using Victorian theology. What type of training are they getting in these institutions?'²⁶ That said, this is not a matter of the Global North patronising the Global South over its ignorance, or the West the East; education is a two-way process, and any suggestion of a neo-colonial agenda will stall initiatives from the start. As Prossy Kakooza has noted:

It's about finding the balance. I think historically the issue, especially in the South, has been people refusing to take criticism, or to put it another way, if someone in the West is telling them what to do, they don't react well to that.²⁷

Existing modes of education and means of communication should become part of the armoury of educators, according to Esther Mombo:

Can we produce something like the Anglican cycle of prayer on issues of justice and particularly criminalization. The medium of communication can include mail, websites, blogs, tweets and what's up. This can be read widely because the different church and dioceses are at different stages of communication. These discussions can be collated at Communion level and disseminated as well.²⁸

There is no doubt that initiatives like the Indaba listening project help in this process, they are intended to create spaces for discussion where there is no judgement, but the Indaba project

²⁴ The Very Reverend Martyn Percy, Dean of Christ Church: interview with the authors, 18/02/2016.

²⁵ Michael Cashman: interview with the authors, 23/02/2016.

²⁶ Davis Mac-Iyalla: email to the authors, 28/01/2016.

²⁷ Prossy Kakooza: interview with the authors, 10/02/2016.

²⁸ Dr Esther Mombo: email to the authors, 23/04/2016.

is essentially an internal matter for the Anglican Communion, whereas the criminalisation of same-sex intimacy is a global phenomenon about which all faith groups ought to be informed.²⁹ And perhaps there is a need for a more concentrated effort to understand criminalisation and all the problems, sufferings and evils that flow from it. This was the question posed to all the participants in this scoping study. Their answers are contained in the following section of this report. What is clear from all the respondents is that listening means listening to all voices, but particularly to those voices most affected by criminal sanctions. Macdonald Sembereka is clear on this:

People need to understand what kind of church we are, that we have no binding covenant in the first place. Secondly, we have to do a lot of listening, because this is not just about the leadership, it's about the members of the Anglican Communion, the very people we are so proud to declare we have so many millions of professing Anglicanism globally. Also those who are opposed to the issue do not take time to listen to the small voices in their pews and in their churches that are crying out for inclusion. They've just declared war and anathema, and yet the Church needs to take its time and reflect over these issues. But of utmost importance is to allow the people affected to be heard. Then we make our informed decision based on what is said and we need to discern what Christ would do in the circumstances.³⁰

Bishop Trevor Mwamba believes that time is in a sense of the essence. He recognises a shift in attitudes among a number of governments and church people in countries which criminalise same-sex intimacy:

The 'winds of change' are blowing. We should note that numerous governments across the Commonwealth are already developing political policies to advance equality. For example, recently Mozambique reformed its penal code by removing the Portuguese colonial era provision used to criminalise homosexuality. Botswana, Mauritius and the Seychelles have passed laws protecting people in the workplace, regardless of their sexual orientation. In India and Pakistan, the courts have upheld the constitutional rights of 'Third Gender' or Hijra citizens on the basis of traditional and cultural understandings of these groups.³¹

It's a movement that should be harnessed by the Anglican Communion itself.

²⁹ See, for example, Richard Hasbany's Preface to *Homosexuality and Religion*, Hasbany, R. (ed.), Routledge, New York and Abingdon, 1989, pp. 1-6.

³⁰ Macdonald Sembereka: interview with the authors, 12/02/2016.

³¹ The Right Reverend Dr Musando Trevor Mwamba: email to the authors, 04/05/2016.

IV. THE ROLE OF AN INDEPENDENT COMMISSION

IV.1. Why a Commission?

We began this Study with no pre-conceived ideas concerning any role a commission might have in helping the Anglican Communion in its understanding of the issues that arise from the criminalisation of same-sex intimacy between consenting adults, or whether even such a commission should or could be contemplated. In the process of interviewing it became clear that a majority, in fact something like 95% of those who took part in the study agreed that a commission was, in principle, a good idea.

Extensive data collection and analysis

We have examined various research projects that have already identified problems associated with criminalisation and we have brought in voices from across the globe and the Communion to comment on this, but what we cannot do is engage in the sort of in-depth analysis, combined with a wide ranging remit for gathering information and data that a commission could offer. Most respondents agreed that a commission would provide opportunities to investigate all aspects of the issue of criminalisation, including its impact on healthcare – the HIV/AIDS pandemic being an important case in point – societal and familial consequences, impunity in the context of violence and sexual violence against LGBT people; how criminalisation impacts on faith groups and faith-based organisations, considering theological arguments and gathering information, including statistics. On this last point, data is often scarce on this subject, as Paula Nesbitt has suggested:

Another area of need is to have access to good, reliable data on cultural attitudes in particular locations and the rate at which these have shifted or not over time, as well as a good handle on intervening factors such as political unrest, economic instability, and others, which can become manifest attitudes towards vulnerable groups... Since religious organizations and groups typically don't have the resources to research and analyse them, this is where an independent commission could be a helpful resource to those working for social justice advocacy.¹

A commission could take evidence from as wide a group as possible, much wider than we were able to, but in particular those most affected by criminalisation. Carolyn Tan, of the Diocese of Perth, Australia, considers this a crucial aspect of any potential commission's work:

¹ The Reverend Canon Paula Nesbitt: email to the authors 31/03/2016.

I think it would be set up to collect stories and provide a safe place for people in fear of or who have suffered from criminalisation to give evidence, perhaps on the basis that their identities are suppressed. It should be empowered to make recommendations to the Anglican Communion.²

Based as we are in London, this sort of in-country analysis has been difficult to execute on any scale but would not be beyond the capacity of a commission.

Impact assessment

Activists tended to want the commission to act as a sort of mirror for the Anglican Communion. For example, Maurice Tomlinson of Jamaica had in view the next Lambeth Conference in 2020:

I would show the delegates at the next Lambeth Conference the impact of these horrible laws on the lives of individuals. And I would show them how the law has devastated whole communities because of the impact on support for HIV. And then I would call on them to remember their function to care for human beings, human souls. This can't be a manifestation of their care.³

He went on:

The role of the commission should be to remind the bishops what harm these laws have caused, give them practical examples of the sort of harm I'm speaking about. And how repealing laws has helped certain societies to reach, to evangelise, to assist, to better the lives of human beings.

That mirror role should also extend to reflecting historical actions by the Anglican Communion and Anglican churches in supporting or opposing criminalisation. Pyt Farrugia, LGBT activist from Malta, saw this as a responsibility of churches with their roots deep in Britain's colonial past:

It would be an opportunity for the Anglican Communion to reflect on its complicity in maintaining oppressive structures (including colonial impositions intimately connected to these issues); its responsibility to see them dismantled; its potential as a source of healing and societal transformation.⁴

² Dr Carolyn Tan: email to the authors, 08/03/2016.

³ Maurice Tomlinson: interview with the authors, 09/02/2016.

⁴ Pyt Farrugia: email to the authors, 16/03/2016.

Nigerian activist Davis Mac-Iyalla's view was that '[c]hurches never move without a challenge. People outside the Church make progress. They need to be pushed.'⁵ Or as Giles Goddard, one-time Chair of Inclusive Church, rather more diplomatically put it, '[i]t would be good to shine a forensic light on this issue'.⁶

Education

Education, therefore, has been highlighted as a key area of a commission's work: bringing not just raw data but analysis and recommendations for future steps to the collective consciousness of the Anglican Communion. The educative aspect of a commission's work would not only benefit those in the Anglican Communion with the ability to influence policy. Kevin She, a human rights researcher and Board Member of the Hong Kong HIV/AIDS Centre, saw that role as broader still:

Perhaps, after the publication of its report, a gay Anglican in Africa will feel that his experience is not alone, and there are numerous other Anglicans who will stand with him. Perhaps another gay Anglican in another Asian country which still criminalises homosexuality will understand what other countries which have decriminalised have gone through, and will commit himself to helping the LGBTI community in his own country.⁷

This broadly educative function will also determine the sort of people who should be on the commission, as Jenny Te Paa Daniel suggested in a recent interview:

A commission ought to comprise those who see this as a pastorally educational justice issue, and who are capable of delivering that kind of message so that it becomes one that ordinary Anglicans can grasp. One that appeals to a sense of rightness and justice and Gospel truth.⁸

Cultural change

It would be wrong, however, to suggest that anyone was advocating an aggressive or confrontational approach. That, after all, would be very un-Anglican. As far as is possible, a broad range of voices in the Communion, or at least those willing enough to listen, should be brought on board, even amongst the commissioners. Miranda Hassett of the Episcopal Church voiced the concern of others who wanted the commission to have a 'listening' character:

⁵ Davis Mac-Iyalla: interview with the authors, 28/01/2016.

⁶ The Reverend Giles Goddard: interview with the authors, 11/02/2016.

⁷ Kevin She: email to the authors, 03/05/2016.

⁸ Dr Jenny Te Paa Daniel: interview with the authors, 24/05/2016.

It is unquestionably true that both Scripture and our Anglican tradition have important things to say on this subject – and if the thing could be handled with enough grace, enough prayer, enough conversation, enough wisdom to actually get some key Global South Anglican leaders to speak against criminalisation, then that would be a result worth the hard work.⁹

There were other notes of warning from some of those who took part in this study. Kevin Ward believed that, however a commission was constituted and whatever its remit, ‘I think you’re going to find that there’s a lot of opposition from vocal conservative groups within the Anglican Communion who would just see this as yet another liberal form of subverting moral integrity’. But he added, ‘[i]t might be interesting to have at least one member of the commission who did have that view’.¹⁰ Barney Pityana, South African lawyer and theologian, was also sceptical about the possibility of bringing people of differing views together, but still saw the value of seeking ‘to inform the church of its own theology, doctrine and ethics in the light of developments and new knowledge’.¹¹ Others, such as Robin Griffith-Jones and Mark Hatcher, both of the Temple in London, tended to agree that an information sharing commission might have a role.¹² This is an important thought in the context of a Church that is still developing doctrine and still attempting to understand what it thinks. It is also another good reason why a commission, which would inevitably include respected theologians amongst its commissioners and witnesses, would be able to go beyond the scope of this current research report.

Given the silence from the more conservative end of the Anglican Communion, and in particular GAFCON, to our requests that they take part in this project, both Kevin Ward and Barney Pityana may have a point. Andrew Linzey of the University of Oxford’s Faculty of Theology was dismissive of the idea of a commission which had the ‘blessing’ of Lambeth Palace, for example:

The English archbishops are maintaining wholly untenable positions of opposing same-sex sexuality, yet tolerating it in practice, while also saying human rights abuses against gays are wrong, but in reality exerting no pressure to end those abuses. Any ‘independent’ commission approved by the archbishops would be archiepiscopal whitewash.¹³

⁹ The Reverend Miranda Hassett: email to the authors, 16/02/2016.

¹⁰ The Reverend Dr Kevin Ward: interview with the authors, 16/02/2016.

¹¹ Professor Barney Pityana: comments via email to the authors, 14/02/2016.

¹² The Reverend Robin Griffiths-Jones and the Reverend Mark Hatcher: interview with the authors, 19/02/2016.

¹³ The Reverend Professor Andrew Linzey: email to the authors, 14/02/2016.

It was clear from our research that both Lambeth Palace and the secretariat of the Anglican Communion itself were nervous about the idea of such a commission. Its potential for pointing the finger of blame, concerns about ‘stirring things up’ and upsetting the Communion’s own process of Indaba offered troubling scenarios for some. Franklin Lee, School Chaplain and Succentor of St George’s Chapel, Windsor Castle, has been involved in the Indaba project for some time and could see little benefit in a commission:

The discussion has been there for many years and I think people understand the issues. It is the gift of God to the Communion that we are formed by people of different races, cultures and languages. I don’t think this is an impediment, but this diversity certainly gives us much challenge.¹⁴

Kevin She was less concerned that the setting up of a commission would further ‘divide’ the Communion:

I would argue that the church is already divided and will remain divided. There is nothing intrinsically wrong about a church which is divided... But it would be naïve to suggest that just because we don’t mention these things, the divisions are not there or will gradually disappear.¹⁵

The very notion that a commission could be ‘independent’ in the sense of ‘neutral’ on this subject was questioned. Bisi Alimi voiced this point as possible explanation for the Communion’s reticence:

Wouldn’t a commission be an indirect endorsement, and could it be the reason why the Church is scared? That might be one of the reasons why the Church is finding it difficult because they don’t have a counter argument on why it is important for us to have a commission, not to decriminalise, but to understand what the challenges are.¹⁶

The idea of a fact-gathering operation, in some sense divorced from any agenda, neutral in its approach and opinions is tempting, but, as Bisi Alimi suggests here, the issue is one of moral imperative and few would deny that. ‘I think decriminalisation is a very focussed thing to go for’, Martyn Percy told us, ‘because it’s extremely difficult for the dwindling number of hard men to argue against.’ He was also hopeful that senior figures within the Communion might still embrace such a commission: ‘If push comes to shove, bar the Archbishop of Canterbury, it could be owned by the Anglican Communion Office, it could be owned by a small group of progressive primates, Wales, Scotland, America, Canada.’¹⁷ It’s also something that ordinary

¹⁴ The Reverend Canon Franklin Lee: email to the authors, 01/05/2016.

¹⁵ Kevin She: email to the authors, 30/04/2016.

¹⁶ Bisi Alimi: interview with the authors, 02/03/2016.

¹⁷ The Very Reverend Martyn Percy, Dean of Christ Church: interview with the authors, 18/02/2016.

Anglicans across the world, who may not understand the history of this issue, ought to be given the opportunity to understand, as Jenny Te Paa Daniel suggested:

Handled with real care and with loving reason, I could see the arguments around criminalisation having great appeal to ordinary Anglicans, because they are not conscious of their history. There's real potential for having very careful, very pastorally textured factual arguments laid out. That history needs to be part of the educational gift that this project could offer to various parts of the Communion.¹⁸

If there is a danger with any 'official', semi or otherwise, owning of a commission, this lies as much in perception as in substance. The Anglican Communion prefers a slow moving approach. Walking together can take a very long time. Dialogue can seem frustrating on occasion. This may be what Meg Warner of King's College London was implying with her remarks,

Generally, commissions are a good thing, but there's also the danger of them being used to frustrate and make nothing happen. There is a huge commission going on in Australia about sexual abuse going on in churches. But it's become so much the issue of the moment it's got completely out of hand and people aren't able to see clearly.¹⁹

No one would doubt that the Communion and senior figures in it are not people of integrity as far as issues like criminalisation are concerned, that they mean what they say about the wrongs of criminalisation, but the reputation of the Anglican Church as a slow moving tanker, difficult to steer and hard to turn, might give the impression that nothing is happening, and, as so many of those who took part in this scoping study have said, criminalisation is a live issue and an urgent one:

For many people in many countries, finding a same-sex partner is itself a luxury. In countries where LGBTI people may face criminalization, survival is a more important issue than same-sex marriage. People's survival is at stake, so it is easier to lobby for support.²⁰

There are in a sense two models of a commission proposed here. One is a 'listening' entity, perhaps not unlike the Indaba project already under way, but with a narrower emphasis on criminalisation. It is an approach advocated by many who had experience of the Indaba project, such as Paula Nesbitt:

¹⁸ Dr Jenny Te Paa Daniel: interview with the authors, 24/05/2016.

¹⁹ Dr Meg Warner: interview with the authors, 24/02/2016.

²⁰ Kevin She: email to the authors, 30/04/2016.

Participants from different dioceses across the Communion also began to see differing ways in which social justice is practised in relation to both cultural and legal contexts. For instance, an effective strategy in one context could have an opposite effect in another. The challenge is to find those ways and places in each context where advocates can work best.²¹

The problem with this approach is that it assumes a sort of cultural relativism which does not and cannot exist in the context of criminalisation and the persecution which accompanies it. As Bisi Alimi alluded to above, there is a sort of moral determination of cultural change inherent in the notion of a commission, which shouldn't be obfuscated. So another model would be one that comes to strong and definite conclusions based on the evidence gathered, that ultimately cultural attitudes which promote fear and prejudice against LGBT people, and help popularise the use of the criminal law to control them, need to change. The Anglican Communion could and should be a conduit for change and, without wishing to second guess the findings of any commission, that would be a clear statement of intent. What is at stake is described by many of our respondents in this study:

Whether you're talking about gender roles or culture, in the end you will come to the stage where you understand that criminalisation causes more damage - its impact on HIV is an important example. It doesn't stop homosexuals from being born or existing.²²

Statements of intent are crucial in that they will determine the commission's terms of reference: should it be a commission that listens and presents its findings without any commentary, leaving the readers of its report to come to their own conclusions; or should it be a commission with definite views and able to make recommendations, ideally based on a consensus? Ultimately, the evidence gathered is likely to speak for itself rendering the idea of a neutrally 'listening' commission redundant.

IV.2. What should a Commission do?

The role of a Commission and how it goes about its work

There is clearly a broad need identified from our research for a commission to examine the roles, real and potential, of the Anglican Communion and its constituent churches in the decriminalisation of same-sex intimacy. But what exactly should it do? This question is linked to why a commission is necessary. As has been said, the information gathering activities required are beyond the scope of this report or any like it, and yet gathering the testimony of

²¹ The Reverend Canon Paula Nesbitt: email to the authors, 31/03/2016.

²² Davis Mac-Iyalla: interview with the authors, 28/01/2016.

witnesses and bringing the most up-to-date research data to the table are certainly aspects of what the commission must do as a very basic part of its remit.

It should bring to bear Scriptural exegesis and scientific evidence, legal and historical analysis in support of its conclusions. It would have to consider complex, often harrowing testimony from witnesses. Much of this work and the conversations necessary to drive it might, according to Charles Robertson, occur under the radar:

My background is conflict resolution. At lower stages we can have a different conversation than at higher stages. At higher stages we must have ground rules that allow for the emotion and the conviction and the feeling, but still allow the possibility for conversation to move forward.²³

Preparing the ground by identifying witnesses and considering all the issues involved in criminalising same-sex intimacy are all aspects of a commission's work that would need to be taken into consideration. Jonathan Cooper, of the Human Dignity Trust, suggested developing strong relationships with in-country activists and NGOs, as well as friendly churches, in order to gain a greater understanding of specific issues and identifying key individuals who could give evidence.²⁴ This is also likely to impact on the make-up of the commission's secretariat, as well as funding.

Kevin She saw the current Indaba listening project as a partial model for how the commission might go about its work as it is designed to enable discussion without conflict: 'the Indaba arrangement allows people to form relationships when discussing controversial issues. These relationships allow people to discuss these issues in a relaxed manner.'²⁵ Others saw commissioners more in an inquisitorial role, listening to testimony, probing witnesses and coming to a point of view. As we have said earlier, it will be hard not to come to a view in the light of the sort of evidence that will be available, so this second role is the more likely to achieve success.

Criminalisation of same-sex intimacy between consenting adults

Most agreed that there was great merit in concentrating on the criminalisation of same-sex intimacy, divorced from other issues concerning marriage and the priesthood, issues which are still too divisive and 'hot' to bring any kind of consensual attitudes to the table. 'This could be the genius of this sort of commission', Nicholas Holtam, Bishop of Salisbury told us: 'if this is about collecting hard evidence and providing an argument.'²⁶ Others, such as Gideon

²³ The Reverend Canon Charles Robertson: interview with the authors, 22/02/2016.

²⁴ Jonathan Cooper: interview with the authors, 14/04/2016.

²⁵ Kevin She: email to the authors, 30/04/2016.

²⁶ The Right Reverend Nicholas Holtam, Bishop of Salisbury: interview with the authors, 08/02/2016.

Byamugisha, were broader in how they envisaged such a commission working and exactly what its remit should be.

Given the history and current reality of global and local Anglicanism as one of the important sex-culture shapers, sex-culture gatekeepers and sex-culture influencers through its own forms and types of leadership in REPEALS [Religion, Education, Politics, Economics, Art, Legislation, Science], I support the idea of setting up an independent commission tasked with examining the role of the worldwide Anglican Communion.²⁷

He went on to explain,

Its role in not just the decriminalization of same-sex sexual conduct between consenting adults but also its role in (a) decriminalizing sexual conduct between consenting, thoughtful and considerate adults of whatever sexual orientation; and (b) criminalizing sexual manipulation, exploitation, coercion, discrimination, exclusion, abuse, harassment, humiliation and violence – irrespective of the gender, sexual orientation or societal status of both the offending individuals and the offending institutions at family, local community, state, national, regional and / or global level.

Bishop Trevor Mwamba was of a similar mind in that he believed the commission should not restrict itself to criminalisation alone, but should ‘address all issues that dehumanise and discriminate against people’, adding that ‘[c]onservative cultures will not respond positively if decriminalising homosexuality is the only issue on the agenda’.²⁸ Esther Mombo tended to agree with the idea of broadening the remit.²⁹

Such a commission would be a formidable thing indeed! But it is beyond the scope of this report to consider the range of criminal activity it proposes. That said, the most effective way of decriminalising consensual behaviour is via an overhaul of penal codes to ensure that true criminal behaviour is captured, while innocent consensual sex is not.³⁰

Why the Anglican Communion?

The narrow focus of the Anglican Communion was questioned by some of those we spoke to. Why restrict the commission’s activities to the role of the Communion? Why not include other

²⁷ The Reverend Canon Gideon Byamugisha: email to the authors, 28/01/2016.

²⁸ The Right Reverend Dr Musando Trevor Mwamba: email to the authors, 04/05/2016.

²⁹ Professor Esther Mombo: email to the authors, 23/04/2016.

³⁰ See the most recent example of Mozambique: ‘Mozambique: New Penal Code Removes Colonial Era Dispositions Against Homosexuality’, *Global Legal Monitor*, 06/07/2015. Available at: <http://www.loc.gov/law/foreign-news/article/mozambique-new-penal-code-removes-colonial-era-dispositions-against-homosexuality/>.

Christian denominations or faiths such as Islam? Prossy Kakooza from Uganda was clear that too fine a lens might reduce the commission's impact:

I disagree with concentrating on just the one denomination. What is the percentage of Anglicans? You go to a place like Nigeria and the people with the worst attitude towards LGBT people are going to be in the Muslim community. In Uganda the evangelicals are worse than the Anglicans. They have more fanatical believers.³¹

Mario Gerada of Drachma LGBTI believes it could be an 'ecumenical initiative': 'I don't think that the difficulties that the Anglican Communion has over this issue are different from those the Roman Catholic Church has.'³² This should extend to the range of commissioners, including, according to Catholic theologian James Alison, people of different faiths or no faith:

I think that those of you who have expertise in civil or criminal law, and other non-directly ecclesial fields, are in quite a different place where in all probability your own ecclesial belonging, or lack thereof, matters not at all to the proposals and advice you will be able to put on the table – and I would love to think that something similar might be done with and by my own Church... for indeed the simple aim of worldwide decriminalisation is a wonderful and necessary one!³³

Kevin Ward, an Anglican who has spent nearly twenty years in East Africa, tended to agree with this view:

To engage with other religious perspectives would be very useful to do. After all, it's not an Anglican issue, it's a human issue, and therefore is of relevance to all faith communities. Both Islam and Christianity have developed hard-line youth movements, Salafi and Pentecostal, which have united in being critical of the older, more relaxed attitudes towards their faiths.³⁴

But Ian Southey-Swartz of the Open Society Foundations, who has initiated a number of projects in Southern Africa dealing with sexuality and faith, believed that what was more important was the sense of what he calls an 'Anglican conversation' about its activities:

[A]t this point I think it needs to feel like an Anglican conversation. One of the difficulties we found with the Anglicans and the Catholics is, when we had multiple churches around the table, that seemed to be a really uncomfortable space for the Anglicans,

³¹ Prossy Kakooza: interview with the authors, 10/03/2016.

³² Mario Gerada: interview with the authors, 24/02/16.

³³ Dr James Alison: email to the authors, 18/02/2016.

³⁴ The Reverend Dr Kevin Ward: interview with the authors, 16/02/2016.

while the Lutherans and everyone else seemed to prefer being in a wider conversation.³⁵

The argument for restricting the commission to the role of the Anglican Communion is in fact quite simple. Over half the countries which criminalise are in the Commonwealth, are ex-colonies of Great Britain. As such Anglican churches have a significant presence and, to varying degrees it is true, considerable influence on hearts and minds in the general population and among elites. Other Christian denominations may have growing influence, but, with the exception of the Roman Catholic Church (which has made its objections to criminal sanctions relatively clear in recent years),³⁶ they have no core or overarching structure, no global communion or mechanisms of fellowship. In a sense, because the Anglican Communion exists it should be the subject of the commission. Esther Mombo saw further advantage in the involvement of the Anglican Communion as a facilitator of the commission's work:

The Communion has the mechanism to reach out to all provinces through its regional structures. A selection of individual churches could be chosen to take part in the commission, e.g., the commission visits a church and discusses their views on justice and especially criminalisation of gay people.³⁷

Terminology

There were concerns expressed about terminology too. What is the right language in which to express any commission's remit and scope? Max Anmeghichean of the Open Society Foundations referred to polling work that had been carried out in parts of the Global South the findings of which showed that people react negatively to certain words:

Another element is how this work is communicated and the optics of it. I think, particularly, using the term like criminalisation or decriminalisation, I would advise trying to find a different word for it. In the polling that we've seen, even in places say in the Caribbean or in Africa, this is the word that gets most negative connotation from people, even from those who generally agree with the principles of decriminalisation. So long as you name it that way, they have a reaction to it.³⁸

³⁵ Ian Southey-Swartz: interview with the authors, 29/03/2016.

³⁶ 'Vatican reasserts support for decriminalising homosexuality', *Independent Catholic News*, 15/12/2008. Available at: <http://www.indcatholicnews.com/news.php?viewStory=719>. Although a move by the UN to publish a declaration against criminalisation in 2008 was opposed by the Vatican.

³⁷ Professor Esther Mombo: email to the authors, 23/04/2016.

³⁸ Max Anmeghichean: interview with the authors, 29/03/2016.

If this view is taken into account, it could influence not only the way that a commission works, but what it is called and how the media and other interested parties refer to it. Being sensitive to this kind of issue can be the difference between bringing people along with you or not.

Despite the reservations of some of the respondents who thought the remit of the commission should be broadened to include a greater range of social justice issues, it is the opinion of the authors that concentrating on the criminalisation of same-sex intimacy between consenting adults would provide focus and achievable goals in the short-to-mid-term. Such a commission might then act as a model for broader concerns which the Anglican Communion would have an interest in or, indeed, obligation to investigate.

A Fixed or Roving Commission

How the commission goes about its work will be an important factor in what is achievable. While there may be advantages to a fixed commission which, much like an international court, receives witnesses from around the world, both the 'optics' and the practicalities of such a scenario are flawed. As Carolyn Tan explained quite simply, '[i]t would need to be a roving commission because the people who have the most information are not likely to be able to travel.'³⁹ Godwyns Onwuchekwa elaborates on this point:

Most of these are poor countries, so travelling abroad is quite prestigious. One of the problems they have is when people travel, that is seen as a bribery system and influences what they say, what they do. Getting people to travel will look like trying to influence them. Travelling regionally might be all right. If people are travelling within the Caribbean area, for example, but if they're travelling to America or the UK, that would be a problem.⁴⁰

So from an optical point of view, and undoubtedly a financial perspective too, it would be preferable for commissioners to travel to the regions where their witnesses are likely to be. There are arguments for creating safe spaces in which to interview people who may be in very sensitive, if not downright dangerous situations, and these safe spaces might well have to be outside their countries of residence. Again this would suggest a centre in Southern Africa, for example (see below).

On a separate, but related point, Max Anmeghichean of Open Society Foundations wondered whether there might be some merit in piloting the commission in a single country:

³⁹ Dr Carolyn Chan: email to the authors, 08/03/2016.

⁴⁰ Godwyns Onwuchekwa: interview with the authors, 08/02/2016.

We have definitely seen a lot of traction with religious leaders in Kenya over the last five years, for example. I understand there is a hunger within the Kenyan Anglican church to have a structured dialogue about this and have a clearer way forward, because they're so directly affected in their constituencies.⁴¹

Time and money considerations notwithstanding, it is worth entertaining this suggestion, but in the opinion of the authors this should not interfere with the reporting of a global commission which, as will be discussed below, is time sensitive.

IV.3. Where should a Commission be?

There might have been near universal consensus on the fact of a commission, but, as has been shown, how it should go about its work gathering evidence and what its affiliations should be are also crucial questions that need to be decided, and not least of these questions is 'who owns the commission?' This is a question that goes to the heart of the commission's purpose and location.

Geographical Location

There are obvious good reasons why a commission should be located in a major global hub. Commissioners will come from all parts of the world and will need to travel to far flung places. London, New York, even San Francisco have been suggested by respondents for this reason. London also houses the physical centre of the Communion as well as the office of the Archbishop of Canterbury. It hosts the Lambeth Conference. It is close to the 'Mother Church' in Canterbury.

But London is also part of the liberal West, a Global North city which is a long way from the heartlands of criminalisation in Africa and the Caribbean. Godwyns Onwuchekwa from Nigeria sees this as problematic:

The Global South has a suspicion about something coming from the Global North, whether Britain or America. They use it to engineer hate amongst their constituent base... If the commission is headed by someone from the Global South, someone you can trust to be, if not progressive, at least fair, or with an ample number of commissioners who are from that area, so it would appear to have less of a hidden agenda. You will never be able to remove that, but you can make it have less of an

⁴¹ Max Anmeghichean: interview with the authors, 29/03/2016.

impact by how the commission is constituted, probably by where it's located and probably by whom it's led.⁴²

Bishop Holtam of Salisbury saw little difference between locating it in the North or the South:

You can see by the way the African Primates are working that they are supported, even in the writing of documents, by people from the West. So if you're worrying about a commission being primarily North and liberal and Western, I'm not sure that that's something to worry about. But I think it would be good practice to get it driven from the Global South.⁴³

How the commission is constituted, where it is located and by whom it is led will, in the end, mitigate any sense that this is the Global North once more telling the Global South what to do. The need to take evidence in countries which criminalise would suggest a base in the Global South, Africa, for example. Kevin Ward saw advantages in a commission based in South Africa with strong reasons for not considering other African cities:

The advantage of basing a commission in South Africa is that there is decriminalisation, so people are not going to get in trouble with the government for being seen to advocate for decriminalisation; whereas in Nairobi I can see there's always potential for this group coming up against government displeasure. Uganda is out the question really.⁴⁴

Others did suggest Makerere University in Kampala, but the passing of a recent law in Uganda restricting the operations of NGOs, widely viewed to be aimed at LGBT advocacy, might well militate against this.⁴⁵ There are strong arguments for a commission which has two foci: one in, say, London, the centre of the Anglican Communion, the other in, say, South Africa. Franklin Lee of St George's Chapel, Windsor, while not keen on the idea of a commission, suggested several bases, but considered England an important location:

If [a commission] is to be set up, several hubs ought to be established, and Hong Kong will be a nice choice. One has to be England. This is not because we have got to look to the Church of England for leadership, but simply because of the historic tie which connects all Anglicans to the See of Canterbury.⁴⁶

⁴² Godwyns Onwuchekwa: interview with the authors, 08/02/2016.

⁴³ The Right Reverend Nicholas Holtam, Bishop of Salisbury, interview with the authors, 08/02/2016.

⁴⁴ The Reverend Dr Kevin Ward: interview with the authors, 16/02/2016.

⁴⁵ 'Uganda NGO Bill aims to muzzle civil society, say activists', *The Guardian*, 24/06/2015. Available at: <http://www.theguardian.com/global-development/2015/jun/24/uganda-ngo-bill-aims-muzzle-civil-society-say-activists>.

⁴⁶ The Reverend Canon Franklin Lee: email to the authors, 01/05/2016.

Dividing the home of commission may, in fact, present problems of logistics and cost. If a single home in the option, the most sensible solution would be London, for the reasons illustrated above. Global outreach, particularly in the Global South, would be maintained, however, through choice of commissioners.

Of course, anyone can set up a commission, but there would be advantages in its being hosted by an academic institution such as the London School of Economics, with strong international credentials in both law and religion, in collaboration with the University of Cape Town or the University of Kwazulu Natal. These are just ideas, and other combinations could be entertained, equally valid and functional, but what is important is that this would offer a certain 'projection' from the view that this is an Anglican Communion commission, purely and simply. The independence, which most respondents valued, would be safeguarded by being hosted on an independent site, with no hint or suggestion of 'archiepiscopal whitewash'.

IV.4. Who should be on a Commission?

As a number of our respondents stated, the commission will stand or fall on the skills, expertise and reputations of its commissioners. A list of potential commissioners is included in this section. This is by no means exhaustive, but offers a good starting place for the sort of people who were thought appropriate.

Global South and Global North

All respondents who considered this issue thought it would be necessary to have a broad spectrum of commissioners, both male and female and with a good balance between the Global North and the Global South. Charles Robertson of the office of the Presiding Bishop of the Episcopal Church wanted as many views as possible to be represented, as long as those involved were willing to listen to others:

Conversations work when people come ready to listen and not simply to speak. So if the commission can be populated by persons who are ready to listen to one another, to the data, to research and then have some honest discussion with a view to some kind of reasonable action, then yes, I think it's well worth it. Conversation is always better than no conversation.⁴⁷

Malawian human rights activist Macdonald Sembereka agreed:

It must be an inclusive kind of commission, encompassing people from all sides of the divide, which would undertake a very comprehensive kind of hearing and submissions

⁴⁷ The Reverend Canon Charles Robertson: interview with the authors, 22/02/2016.

from a variety of actors, based on not just Scripture, but based on the four or five pillars of the Anglican Church, and then take a very informed position.⁴⁸

Ian McKnight, Jamaican HIV/AIDS activist, warned against too strong a bias towards those regions where criminalisation is a problem:

It should include people from the Global South, definitely, but it should not be exclusively so. It is a fact that obtains in other matters whereby a kind of local ownership brings up a lot of questions, and the kind of independent voice and independent position of members in this regard get questioned.⁴⁹

Fellow Jamaican, Maurice Tomlinson, understood the need for a balance, but made the further point that '[t]he "who" must offer a balance of gender, yes, but more importantly opinion, very conservative and very liberal and those in between'.⁵⁰ For Frank Mugisha of Sexual Minorities Uganda, it was important not to identify the commission exclusively with the South, but more importantly, '[c]ommissioners can be appointed according to their expertise and background with the Anglican Church'.⁵¹

Ijeoma Ajibade, a Nigerian-born cleric, wanted the commission to be championed, that is chaired, by someone from the Global South:

It would shift the power dynamics. It would mean it would not be outsiders looking in. It would be about what is good for us and what has worked for us and what kind of people do we want to be.⁵²

Expertise within and without the Anglican Church

This broad range of expertise would include ideally many different disciplines and walks of life. Nontando Hadebe, South African theologian, was also clear on this:

I think it needs to be a multidisciplinary commission, because of the multi-faceted nature of the issues – so medical scientists, theologians, anthropologists, historians, civil society, parents of LGBTQI, priests, bishops, laity – geographical, gender and age inclusive.⁵³

But it was also considered important for the link with the Anglican Church to be maintained, comprising respected figures from provinces around the world. Ian McKnight again,

⁴⁸ The Reverend Macdonald Sembereka: interview with the authors, 12/02/2016.

⁴⁹ Ian McKnight: interview with the authors, 04/03/2016.

⁵⁰ Maurice Tomlinson: interview with the authors, 09/02/2016.

⁵¹ Frank Mugisha: email to the authors, 23/03/2016.

⁵² The Reverend Ijeoma Ajibade, interview with the authors, 03/02/2016.

⁵³ Nontando Hadebe, email to the authors, 29/02/2016.

For an enquiry to come from another side, it's not the usual suspects, it's not the activists who are making noise, for it to come from the Church can only be a very good and positive thing.⁵⁴

Graham James, Bishop of Norwich, thought that something with at least an official stamp would have better chance of succeeding:

There may be more use in a commission which did receive support from the Archbishop of Canterbury, the Primates and the Anglican Communion Office and reported to them all, even if it utilised funding sources not solely from Anglican structures... [A]lthough there is no Magisterium or centralised management of the Anglican Communion, there are agencies which facilitate and shape its life. Any commission must be in contact with them and establish dialogue if any recommendations are to be of value.⁵⁵

Of course, this suggests something more akin to a Church commission, but few respondents agreed that it should be wholly made up of Anglican clerics (and nor does Bishop James) or an official Anglican Communion project – it is unlikely that the Anglican Communion would launch such an enterprise. The range of expertise necessary to cover the areas articulated by Nontando Hadebe would not be available without broadening the pool. Leslie Green, Professor of the Philosophy of Law at Oxford University, expressed the difficulties of finding the right people neatly:

In five minutes on the phone you could put together a list of heavy-weights in medicine etc., but some in the reception audience are going to say, 'Who the hell are these people?' But having people who are connected with the Church in some way would buy the Church some good will. That said, the kiss of the death would be something like an imprimatur. If it's clear that it's very, very close to Lambeth, then people will say, 'they're not going to be able to speak truth to power here'.⁵⁶

So the preferred model for commissioners looks like a mix of expertise covering theology, law, health, human rights, anthropology, history and gender issues, but with a strong Anglican flavour, if it is possible to have a strong Anglican flavour. Of course, it would also be necessary to take witness statements from leaders in these fields as well, so if the body of commissioners does not cover all these areas of expertise there would still be scope to include them.

⁵⁴ Ian McKnight, interview with the authors, 04/03/2016.

⁵⁵ The Right Reverend Graham James, Bishop of Norwich: email to the authors, 23/02/2016.

⁵⁶ Professor Leslie Green: interview with the authors, 18/02/2016.

One concern that will need to be addressed by the choice of commissioners is the presence of LGBT people. Jenny Te Paa Daniel was clear on this point:

There must be a fair representation of gay and lesbian people on this commission. We've never had them before and I think that's inexcusable. People for whom it matters that hearts are moved and intelligence is built as a result.

She went on, '[e]ven among the LGBT community, I don't want them to be defined by their identity, but by the additional skills and perspectives that they would bring to bear.'⁵⁷ It would not make sense to have no 'out' LGBT people on the Commission representing civil society in this sector. This must be borne in mind when reaching out to potential commissioners.

Potential Commissioners

Those we interviewed for this project were asked to name people they thought would be appropriate commissioners. The list we have compiled here does not necessarily cover all the expertise mentioned above. It does, however, cover a mix of genders, clerical/laity and satisfies the requirement of people from the Global South as well as the North.

All respondents agreed that a smaller group of commissioners – 11, say, no more than 15 – would work better together than a larger group. That said, there would have to be enough of them to cover the work of gathering evidence from virtually all areas of the Globe.

A number of the individuals below have been involved in this scoping study. All have been recommended by respondents.

The Right Reverend Andrew Chan Bishop of West Kowloon. He has considerable standing in his Province of Hong Kong since its inception, as well as strong connections with the global Anglican Communion.

Professor Musa Dube is Professor of New Testament studies at the University of Botswana. Her work encompasses Biblical interpretation and translation as well as gender and HIV/AIDS studies. She was a World Council of Churches consultant and is a member of the Circle of Concerned African Women Theologians

The Reverend Canon Grace Kaiso is the General Secretary of the Council of Anglican Provinces of Africa (CAPO). He has worked in Uganda promoting human rights and has a strong background among global networks of faith-based organisations promoting family health and wellbeing.

⁵⁷ Dr Jenny Te Paa Daniel: interview with the authors, 24/05/2016.

The Hon. Michael Kirby is one of the most eminent jurists of his generation. A former Justice of the High Court of Australia, he has been an advocate of human rights on international fora. In 2013 and 2014 he led an inquiry into human rights abuses in North Korea and was a member of the Commonwealth Eminent Persons Group advising on reform of the Commonwealth.

Professor Diarmaid MacCulloch is a historian at Oxford University specialising in Church history, in particular the Reformation. His work has encompassed the complex relationship between sexuality, Christianity and the Church.

Davis Mac-Iyalla is a Nigerian LGBT rights activist. A founder of the Nigerian wing of Changing Attitude, an organisation that campaigns to change the Anglican Church's understanding of sexuality and LGBT identity.

Professor Esther Mombo is the former Deputy Vice Chancellor (Academics) of St Paul's United Theological College in Limuru, Kenya, where she still teaches church history and theologies from women's perspectives and interfaith courses. She is also a member of the Circle of Concerned African Women Theologians and writes on women's issues, evangelism, HIV/AIDS, Christian-Muslim relations, and poverty in Africa.

The Right Reverend Musonda (Trevor) Mwamba was Bishop of Botswana until 2012. He has worked as mediator within the Anglican Province of Central Africa, focussing on conflict resolution. He has also been an advocate of LGBT inclusion in the Church, social justice and the elimination of poverty.

The Right Reverend David Zac Niringye is the former Assistant Bishop of the Diocese of Kampala, Uganda. Since retiring he has worked on a number of initiatives to promote social justice and bring an end to the humanitarian crisis in the wake of the activities of the Lord's Resistance Army.

The Reverend Canon Mark Oakley is Chancellor of St Paul's Cathedral in London. An advocate of human rights, he is a trustee of the Civil Liberties Trust (Liberty). As well as lecturing in theology, he is an ambassador for the charity Stop Hate UK.

The Very Reverend Martyn Percy is Dean of Christ Church, Oxford and a very well-respected theologian and educator. He incorporates elements of sociology and anthropology into his work. He is a great advocate for diversity in the Anglican Communion and is Vice President of Modern Church.

Barney Pityana is a South African lawyer and Anglican theologian. A founding member of the South African Students' Organisation with Steve Biko, he has worked tirelessly against racism

and for human rights, having chaired the South African Human Rights Commission from 1995 to 2001.

Christina Rees is a well-known writer, broadcaster and speaker, and a member of the General Synod of the Church of England where she campaigned for the ordination of women. She is the Chair of Women and the Church and has represented the Church at the UN Commission on the Status of Women.

The Reverend Canon Charles Robertson is Canon to the Presiding Bishop of the Episcopal Church. Theologian and member of the Council on Foreign Relations, he was worked extensively in conflict resolution. His background also encompasses the US Department of Education and the White House.

Tracy Robinson is an attorney and lecturer at the Faculty of Law in the University of the West Indies. She was chair of the Inter-American Commission on Human Rights between 2014 and 2015 and has served as Rapporteur on the Rights of Women for the Organization of American States since 2012.

The Reverend Macdonald Sembereka is a Malawian Anglican priest, civil and human rights activist. Adviser on NGOs to the government of Joyce Banda, he is the national coordinator of the Human Rights Consultative Committee. His is also a member of the Coalition on Minority Protection Against Sexual Stigma.

The Right Reverend Francisco de Assis da Silva is Primate of the Anglican Episcopal Church of Brazil. With a background in law and political science, Bishop da Silva has also advocated for LGBT rights and expressed support for the Episcopal Church's stance on marriage and the clergy.

Dr Silvia Tamale is a legal academic and was the first woman to be Dean of the law faculty of Makerere University in Uganda. Her work also encompasses sociology and feminist studies. She is an outspoken advocate for LGBT rights in East Africa.

Dr Jenny Te Paa Daniel is an internationally recognised lecturer in theology. She has worked on an international level advocating for women's leadership in the Church and in society. She was NGO representative to the UN Commission on the Status of Women.

IV.5 Where should a Commission's funding come from?

A commission to consider the role of the Anglican Communion in decriminalising same-sex intimacy would be a major undertaking of near global significance. It could not be done without funding, both core and project based. If the work were divided geographically, for example,

more targeted, indeed localised funding could be used to carry out investigations in, say, the Caribbean region, West and East Africa, and South Asia.

That aside, however, the source of funding presented areas of concern for our respondents. It is a generally accepted fact that the main sources of funding of this type of work are in the Global North, in North America and Europe. The optics of this are not good, as Bishop Holtam of Salisbury noted: 'If all the money's North American, people will question the independence, I think, wherever it's hosted.'⁵⁸ Others saw this as less of a problem. Prossy Kakooza, for example, recognised that genuine funders like OSF and Arcus are welcome in the Global South, whereas national governments' money is not:

As long as it is funded by authentic funders who are neutral, it shouldn't be a problem where the money actually comes from. If it were the UK government, for example, it would leave a bitter taste in people's mouths.⁵⁹

A number of respondents suggested funding from individual churches or provinces which were 'neutral', such as Hong Kong. Others saw no problem in funding coming from provinces such as Canada or even the Episcopal Church, although some were dubious about this, given those churches' much publicised attitudes towards same-sex inclusion.

In the end, the funding must come from where it is available. As long as there is no agenda attached to it, and the majority of funders who work in this area are cognisant of this, there is unlikely to be an issue.

IV.6. When should a Commission report?

Despite being told by some of those we have spoken to that this is not a good time for a commission to be looking at this issue, most respondents were of the opposite view, or as Bisi Alimi put it,

There's never going to be a right time. There's only the time that we have, because if this is lost, what will happen is attitudes are going to be reinforced, and not just in the Church, because when you come to regions where people are very religious, it goes into politics, it goes into justice as well.⁶⁰

Max Anmeghichean of Open Society Foundations went further, considering the time to be ripe for such an in-depth investigation:

⁵⁸ The Right Reverend Nicholas Holtam, Bishop of Salisbury: interview with the authors, 08/02/2016.

⁵⁹ Prossy Kakooza: interview with the authors, 10/03/2016.

⁶⁰ Bisi Alimi: interview with the authors, 02/03/2016.

Generally, the time is more right probably now than it was before because there has been quite a bit of traction and ground gained in some countries with the Anglican Church, and more and more Anglican priests, bishops and people from the top of the Anglican churches from places like Kenya and Malawi and South Africa and Namibia have gone through trainings with our LGBT groups and with religious groups on the ground and have become more friendly.⁶¹

Open Society have engaged in a number of initiatives in the regions he talks about, they have their ear to the ground, so to speak, and can recognise a shift in mood, a greater willingness towards open dialogue than may have been the case in the past.⁶² There may be greater traction for a commission now than there has been for some time. But we should also bear in mind Bisi Alimi's warning that the moment could be lost if nothing is done.

There is another time consideration to be born in mind. The next Lambeth Conference is scheduled for 2020. This is only four years away, but would offer a tremendous opportunity for the work of the commission to be discussed. Ideally, it will have reported by then in some capacity. This presents a tight schedule indeed, but some sort of substantive findings would need to be ready for the bishops at this conference to consider. These meetings are only decennial, and it would be a shame to miss this opportunity for another ten years. As Charles Robertson pointed out:

The beauty of Lambeth 2020 is that you also can have it be in the shadow of Lambeth 1920, which is one of the high points of the Anglican Communion's discussion about how to get along. It really helped give theoretical ground rules about how to wrestle with difficult things.⁶³

For this to be possible, a commission would need to be funded, constituted and up and running by the middle of 2017 at the latest to allow three years in which to gather evidence and produce findings. That process of setting up would need to begin within the next few months in order to make this possible. Acting now would also show that the Anglican Communion can offer leadership on the issue of criminalisation, as Nontando Hadebe, herself a Catholic, acknowledged:

We in the Catholic Church have not even begun this conversation, and I thank you for leading the global church to act as a matter of faith and justice.⁶⁴

⁶¹ Max Anmeghichean: interview with the authors, 29/03/2016.

⁶² For the range of projects funded and run by the Open Society Foundations concerning LGBT issues see <https://www.opensocietyfoundations.org/topics/lgbt>.

⁶³ The Reverend Canon Charles Robertson: interview with the authors, 22/02/2016.

⁶⁴ Nontando Hadebe, email to the authors, 29/02/2016.

V. CONCLUSION

The change of a cultural mind-set is a complex process. For it entails the transformation of emotions, attitudes, and layers and layers of prejudices shaped over many generations. Accordingly, due understanding, respect, teaching and patience are essential ingredients in bringing about change rooted in culture. The legislative act which changes past discriminatory laws is the accumulative process of the inner change in the mind-set.¹

V.1. The problem

In 2010 the bishops of the Anglican Church of Southern Africa issued a statement condemning the imprisonment of a man and a trans woman in Malawi under the ‘unnatural offences’ provisions of the country’s Penal Code:

As we have previously stated, though there is a breadth of theological views among us on matters of human sexuality, we are united in opposing the criminalisation of homosexual people.

The bishops went on to elaborate their position, very much with the clergy and primates of provinces further north in Africa in mind:

As Bishops we believe that it is immoral to permit or support oppression of, or discrimination against, people on the grounds of their sexual orientation, and contrary to the teaching of the gospel; particularly Jesus’ command that we should love one another as he has loved us, without distinction... We commit ourselves to teach, preach and act against any laws that undermine human dignity and oppress any and all minorities, even as we call for Christians and all people to uphold the standards of holiness of life.²

Further arrests and prosecutions in Malawi have come as a result of pressure from churches and faith leaders urging the government, media and judiciary to enforce laws that had only rarely been used in the past. A moratorium on prosecutions put in place in 2015 was overturned in a court case brought by Christian leaders in February 2016.³ The moratorium

¹ The Right Reverend Dr Musando Trevor Mwamba: email to the authors, 04/05/2016.

² ‘Statement from the Anglican Bishops in Southern African on the Imprisonment of Stephen Monjeza and Tiwonge Chimbalanga’, 26/05/2010. Available at: <http://archbishop.anglicanchurchsa.org/2010/05/imprisonment-of-stephen-monjeza-and.html>.

³ ‘Malawi court rejects moratorium on gays: police can arrest homosexuals’, *Nyasa Times*, 10/02/2016. Available at: <http://www.nyasatimes.com/2016/02/10/malawi-court-rejects-moratorium-on-gays-police-can-arrest-homosexuals/>.

itself has been criticised by people from all quarters, not least because it was not the result of an 'accumulative process of the inner change in the mind-set', to quote Bishop Trevor Mwamba. As Macdonald Sembereka, who had advised the Malawian government on human rights and equality in the early 2010s, suggested:

If the government wanted a moratorium to encourage a dialogue without intimidation, it was incumbent on them to take some kind of view to Parliament... because what others have taken as a loophole in this case is that the Executive has usurped the powers of Parliament.⁴

It is a scenario that has played across countries for the last sixty years. In the 1960s in the UK criminal laws were only repealed when politicians and churchmen and civil society came together to speak as one against those laws, and when a critical mass in the country was willing to go along. Other jurisdictions followed. Liberation from the criminal law in the US took even longer, thanks mainly to the resistance of a conservative religious lobby in many states.

What the Malawian scenario shows is that cultural shifts are occurring at a far greater pace than was the case in the past and that those shifts demand a suitable response. The retention of penal sanctions against same-sex intimacy across the globe in the 21st century is the result of a toxic mix of political expediency, religious fervour and notions of nationalist purity masquerading as popular opinion. It is not a pretty picture, and it is hardly surprising that the bishops of the Southern Anglican Church chose to intervene in the way they did. To campaign for the imprisonment, often with hard labour, of people simply on the basis of a consensual sexual encounter (more often than not the mere suggestion of sex is enough), is on some fundamental level un-Anglican. To use the criminal law to oppress, intimidate and brutalise a section of society as a result of an inherent and inalienable trait, such as sexuality, is un-Christian. That is the message behind the bishops' statement. It is the message behind recent communiqués and speeches from Archbishop Welby and others.⁵ It is the message behind countless interpretations of Scripture by Anglican scholars over the last sixty years or so. And yet many Anglicans in many countries support such laws, often for very confused or prejudiced reasons; often out of a misplaced sense of religious, national or regional identity. Change in the cultural mind-set is still in a state of flux.

How the Anglican Communion squares this anomaly is, of course, a matter for the Anglican Communion. But it seems to the authors of this report that inherent in this anomaly is an

⁴ The Reverend Macdonald Sembereka: interview with the authors, 12/02/2016.

⁵ See Chapters II and III above, pp. xx, xx.

impasse in moral thinking which must be surmounted if Anglicanism is to survive in any meaningful sense in the 21st century.

We live in a world vastly different from even twenty years ago, let alone sixty, where actions and words can be relayed from one continent to another in the blink of an eye, where interdependence, cultural, economic, political and religious, between countries and peoples has become crucial for peace and prosperity. A thought can be shared with millions, and what has happened in recent times is that the thought of LGBT liberation from criminality has been, is being shared from Seattle to Singapore, from Norwich to Nairobi.⁶ To quote Professor Leslie Green of Oxford University: 'I hate to hear myself say Whiggish things like "it's just a matter of time", but it is just a matter of time in Jamaica, say.'⁷

Six years ago as 2010, Val Kalende of Freedom and Roam Uganda, which campaigns for the rights of LGBTI women and women who have sex with women, recognised the potential of this thought:

I believe that now is the season and time for lesbian, gay, bisexual and transgender rights in the continent. The LGBT rights movement has grown and it has come to a point where people can no longer be silent about injustices.

She went on to describe a backlash against LGBT people in the Global South: 'Long before we built a movement here, no one bothered about us. We got away with so many things. When we decided to come out and claim our space, society came harshly against us.'⁸

We said at the beginning of this report that the question of homosexuality for the Anglican Communion was not unrelated to that of the role of women. It is not inconceivable that lessons can be learnt from that struggle for recognition. Thirty years ago most Anglicans, including women, were very much against the ordination of women. Now only a few die-hard conservative traditionalists and literalists would countenance such a position. As Nigerian activist, Bisi Alimi said:

How did the Church get to the ordination of women? It took time, but what were the arguments that were being used for the Church to shift? So we don't have to reinvent

⁶ The Pew Research Center has undertaken studies on acceptance of homosexuality across the globe, highlighting a shift in attitude in certain areas between 2007 and 2013, particularly in the US, but also small, but significant shifts towards greater tolerance in Nigeria and Kenya. Available at: <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/> and <http://www.pewglobal.org/2014/04/15/global-morality/table/homosexuality/>.

⁷ Professor Leslie Green: interview with the authors, 18/02/2016.

⁸ 'Malawi gay couple who "married" face harsh prison sentences', *The Guardian*, 14/05/2010. Available at: <http://www.theguardian.com/world/2010/may/14/malawi-homosexual-couple-face-prison>.

the wheel, it's about saying what has worked in the Church before that the Church has resisted over time? How can we tap into those skills and expertise?⁹

Perhaps that is where a commission comes in.

V.2. The solution: a Commission

The research carried out for this report points to a number of recommendations regarding the setting up of a commission to examine the criminalisation of same-sex intimacy between consenting adults and its relationship with the Anglican Communion with a view towards helping to secure decriminalisation.

1. Firstly, there is overwhelming support amongst the research respondents for such a commission.

Born out of a sense that the Anglican Communion can and should do more to promote repeal of criminal sanctions, a commission would help identify relevant issues, educate and make recommendations for moving forward.

It would provide an invaluable source of information on all aspects of criminalisation which could be used to shift the debate within the Communion towards a better understanding of the nature and impracticality of criminal sanctions

Its focus on criminalisation, for most respondents, was positive in that this is an aspect of the debates concerning homosexuality on which the Anglican Communion ought to find consensus.

Failing that, it will force those of a differing view to 'explain why they're against the majority' view, as one of our respondents described it.¹⁰

Consequently, for civil society activists, it would encourage the Anglican Communion to consider its own responses to date and why so little has been said and done at a Communion level to end the persecution of LGBT people (recent statements notwithstanding).

Whilst it would be a positive move to have the engagement of Lambeth Palace and the Communion, this is not necessary (to some undesirable) for an independent commission to carry out its work; obviously, co-operation between commissioners and churches within the Communion would also be highly advantageous.

It is for this reasons that this report recommends the setting up of a Commission.

⁹ Bisi Alimi: interview with the authors, 02/03/2016.

¹⁰ Bisi Alimi: interview with the authors, 02/03/2016.

2. Second, the commission should be constituted to examine the role of the Anglican Communion and Churches in the decriminalisation of same-sex intimacy between consenting adults wherever laws governing this exist.

The commission should in the first instance only consider the existence and repeal of laws criminalising same-sex sexual conduct between consenting adults.

Again in the first instance, it should only consider the role, actual and potential of the Anglican Communion and not other churches and faith groups.

Its remit should be to investigate all aspects of criminalisation from theological, legal, medical, historical, psychological and sociological perspectives.

It should prepare the ground by identifying key stakeholders among local populations and diaspora in this process of decriminalisation by utilising the expertise of existing organisations working in the area of faith and LGBT rights; it might also use the structure of Anglican Churches to provide a 'neutral' space for witness statements to be taken and conversations to occur.

Commissioners should travel to the various regions to gather evidence and testimonies; witnesses should not be expected to travel to a fixed location outside their region. This is for both financial and practical considerations, as well as 'optics'.

Its report should make clear and concise recommendations on how the Anglican Communion can influence the repeal of laws that are intended to discriminate against or persecute LGBT people. Strong, practical, achievable solutions are necessary.

At the outset, commissioners should consider issues of terminology and how this will impact on their work, including finding expressions other than 'criminalisation' or 'decriminalisation'.

3. Third, ideally the geographical location of the commission should be split between a centre in the Global North and one in the Global South

For people in the Global South to feel they own the commission, including those Anglican Churches that choose to engage, it is important that it has a physical presence there.

Africa is the most likely location, with South Africa a favoured centre given that it repealed its anti-LGBT laws twenty years ago and so can provide a safe space for evidence gathering. It is also close to countries where 'enhanced criminalisation' is occurring. Africa also hosts the largest populations affected by criminal sanctions.

But it is equally important the Global North embraces the work of a commission too.

London would make a suitable second home: it is a major global hub; it is the home of the Anglican Communion and the office of the Archbishop of Canterbury.

To retain the independence of the commission, it should be hosted by an academic or similar institution: the LSE in London and the Universities of Cape Town or Kwa-Zulu Natal have been suggested.

Having two centres will, inevitably mean duplicating secretariats, but there may be advantages in this in that it will engage larger numbers of people in the project.

That said, if a joint venture is not practicable, the commission could be based in London, but with a strong representation of commissioners from the Global South.

4. Fourth, Commissioners should be drawn from the Global North and the Global South.

There should be ideally 11, but no more than 15, commissioners.

There should be equal representation of men and women, with the inclusion of people from LGBT communities.

As far as is possible, all the regions covered by the Anglican Communion should be represented on the commission: the UK, North and South America, the Caribbean, Africa and Asia.

There should be a good mix of expertise including, as far as is possible, law (particularly human rights law), medicine, theology, sociology, gender issues and those engaged in LGBT rights.

Commissioners should be respected in their field and, crucially, respected by a broad section of Anglicans. While it isn't necessary for all commissioners to be practising Anglicans, a majority should be.

Again as far as is possible, a broad range of views should be included.

5. Fifth, no commission will be possible without proper funding.

This is a major undertaking, so funding must be in place to cover the work of the commission over its life time (probably 3-4 years)

Funding should come from respected funders who are already working in the area of faith and LGBT rights without any particular agendas or expected outcomes.

Church funding, where forthcoming, would be welcome, but not to the extent that it might be seen to dominate the commission's work and therefore jeopardise its independence.

6. Sixth, the Commission should aim to report within four years.

The Lambeth Conference in 2020 would be an ideal opportunity for the commission's findings to be discussed.

This provides a tight schedule: hosting, funding, a secretariat and commissioners would need to be in place within a year – summer 2017.

V.3. Future considerations

Ultimately the purpose of this study has been to consider whether the Anglican Communion has a role in the decriminalisation of same-sex intimacy between consenting adults and to what extent a commission to investigate that role would help define and refine it. But there is a larger concern. LGBT people, wherever they are, should enjoy the same quality of life, the same opportunities as everyone else. As Professor Leslie Green pointed out to us, they cannot do this while discriminatory and persecutory laws keep them very much in the shadows.

It is equally clear that some of these wider rights issues – marriage, for example, and the acceptance of LGBT people as full members of the Church – have been used to cloud the question of criminalisation. Jenny Te Paa Daniel has considered this:

Personally, I find it unconscionable that churches throughout the Anglican Communion can remain so apparently unfazed by the pressing moral and thus theological dilemma of criminalisation. Sadly, the way in which the official narrative/disputes have been framed and ‘settled’ means that our official stance on same sex relationships has actually shielded the matter of criminalisation from proper scrutiny.¹¹

The task for a commission will not be an easy one. There are prejudices that need to be addressed on all sides of the Church’s debates around homosexuality. There are, inevitably, conversations to be had as well as the necessary process of collecting evidence, often under difficult circumstances. People will be reluctant to even consider these issues; others will turn their backs. But there cannot be any question that the victimisation of men and women on the basis of their sexuality, through the law, through the media, through the pulpit, is an acceptable or condonable reality for the Communion.

Perhaps the last word should be given to Michael Kirby on this subject, who reflected in his usual philosophical manner on the current situation vis-à-vis the status of laws criminalising same-sex intimacy between consenting adults:

The Eminent Persons Group [of the Commonwealth] recommended repeal. The United Nations in the UNDP Global Commission on HIV and the Law recommended repeal. Individual scholars have recommended repeal, now the Anglican bishops have recommended repeal, but nothing much gets to happen. So is it timely? Well, the oppression continues, therefore it is timely. Will it succeed? That’s not the question: the question is, are you released from the obligation to try?¹²

¹¹ Dr Jenny Te Paa Daniel: email to the authors, 13/04/2016.

¹² The Hon. Michael Kirby: interview with the authors, 08/03/2016.

APPENDIX I: Models for an Independent Commission

The table below sets out the key features of four commissions most often mentioned as examples for a possible future commission to follow. At this stage it is difficult to say how much a commission would cost to set up and run. If a decision is taken to proceed further with setting up a commission, one of the early priorities would be to approach the secretariats of the commissions which seem most appropriate as models to follow and ask if they would be able to share information on costs and funding.

Of the commissions respondents cited as good examples, the ones which seem to be most similar to the type of commission envisaged here are the International Commission Against the Death Penalty (ICDP) and the United Nations Development Programme (UNDP) Global Commission on HIV and the Law. These commissions are both concerned with gathering evidence with a view to changing laws in countries around the world. The Truth and Reconciliation Commission and the Northern Ireland Consultative Group on the Past did not set with an agenda for specific change, but to hear stories about and learn from events of the past before making recommendations for the future. In both cases enabling people to tell their stories was an important part of a healing process to which the commissions aimed to contribute.

The ICDP's mission is tightly focused and prescriptive – to promote the abolition of the death penalty. A future Anglican Communion commission would probably not be so focused from the outset on advocating for legal change; rather it would examine the impact of criminalisation on a range of issues and areas of people's lives. In this respect the UNDP Global Commission on HIV and the Law emerges as the most suitable model for a future Anglican commission.

Commission name	Dates of operation	Mission and objectives	Activities	Commissioners	Geographical scope and funding	Outputs and outcomes
International Commission Against the Death Penalty	October 2010 to date	Mission: To promote, complement or support any action which aims at obtaining the abolition of the death penalty in all regions of the world. Objectives: Promote the abolition of the death penalty and a moratorium on its use, and solicit the stop of executions in cases where international law restricts its application.	Intervene before representatives in specific countries Make appeals and statements concerning the death penalty Participate in campaigns to influence public opinion Disseminate information at international forums Promote intellectual and artistic works in favour of abolition	Eminent individuals from around the world, including former presidents, state governors and prime ministers, judges, academics and UN officials (17 commissioners).	Worldwide Funded and supported by 18 countries committed to abolishing the death penalty	A body of reports, factsheets and media statements Several conferences, actions and events The work of the commission is ongoing
UNDP Global Commission on HIV and the Law	2010 – 2012	Mission: To interrogate the relationship between legal responses, human rights and HIV. Objectives: <ul style="list-style-type: none"> Analyse existing evidence and generate new evidence on rights and law in the context of HIV and develop rights-based and evidence-informed recommendations. 	The Commission undertook extensive research, consultation, analysis and deliberation to examine links between legal environments and HIV responses. The Commission was supported by a Technical Advisory Group, which reviewed and	The Global Commission on HIV and the Law was based on three mutually reinforcing axes: <ol style="list-style-type: none"> A high level commission that added insight and weight to findings and recommendations A Technical Advisory Group 	Global reach Convened and funded by the Joint United Nations Programme on HIV/AIDS (UNAIDS) Supported by 3 core staff, management from within UNDP and	Final report 'HIV and the Law: Risks, Rights and Health' (July 2012). Consolidated, coherent and compelling evidence base on human rights and legal issues relating to HIV Greater awareness among key stakeholders and leadership of law- and policy-makers Public dialogue and civil society engagement on

Commission name	Dates of operation	Mission and objectives	Activities	Commissioners	Geographical scope and funding	Outputs and outcomes
		<ul style="list-style-type: none"> Increase awareness amongst key constituencies on issues of rights and law in the context of HIV and engage with civil society and strengthen their ability to campaign, advocate and lobby 	analysed existing public health and legal evidence and also commissioned original analysis. Seven regional dialogues were convened to share and deliberate on evidence and experience on the impact of law on HIV responses.	that helped generate and build consensus around the evidence base 3. Regional Dialogues that ensured participation and inclusion of affected communities and law- and policy-makers	consultants and interns	social attitudes, human rights and legal issues relating to HIV UNDP, working in partnership with the UNAIDS Secretariat, UN agencies, governments, civil society and donors, monitors and participants in activities to implement the findings and recommendations of the Report.
The South Africa Commission of Truth and Reconciliation	1995 - 2002	The commission was created to investigate gross human rights violations that were perpetrated during the period of the Apartheid regime from 1960 to 1994. Its mandate covered both violation by both the state and the liberation movements and allowed the commission to hold special hearings focused on specific sectors, institutions, and individuals. Controversially the TRC was empowered	The TRC took the testimony of approximately 21,000 victims; and 2,000 of them appeared at public hearings. The commission received 7,112 amnesty applications.	Seventeen commissioners: nine men and eight women. Anglican Archbishop Desmond Tutu chaired the commission. The commissioners were supported by approximately 300 staff members, divided into three committees (Human Rights Violations Committee, Amnesty Committee, and Reparations and	South Africa Funded by SA government	The commission's report was presented to President Mandela in October 1998. Recommendations for a reparations programme. Reforms to SA society and political system Prosecutions recommended A taskforce was set up in 2006 to monitor implementation of the recommendations

Commission name	Dates of operation	Mission and objectives	Activities	Commissioners	Geographical scope and funding	Outputs and outcomes
		to grant amnesty to perpetrators who confessed their crimes truthfully and completely to the commission.		Rehabilitation Committee).		
Northern Ireland Consultative Group of the Past	June 2007 - October 2009	Mission: to develop public strategies for confronting the most controversial actions of the Troubles.	Consultation across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years	Representatives from government, the non-profit sector, and the religious community; co-chairs were former Archbishop of Armagh Lord Robin Eames and columnist Denis Bradley	Set up by Secretary of State Rt Hon Peter Hain MP and funded by the British Government	June 2009 report <i>Dealing with the Past in Northern Ireland: The Recommendations of the Consultative Group on the Past</i> . Recommended establishing a Legacy Commission to integrate reconciliation, justice and information recovery processes, conducting public acts of remembrance, and, most controversially, £12,000 recognition payments to relatives of those killed during the conflict. After soliciting additional feedback and analysis, the government of Northern Ireland has not yet implemented the proposed recommendations.

APPENDIX II – List of respondents who contributed to this report

Bisi Alimi is an actor and LGBT/HIV rights activist from Nigeria. He lectures and publishes on human rights, LGBT rights and business, and the rights of people affected by HIV/AIDS.

The Reverend Dr James Alison is a theologian and Catholic priest. He is noted for his work on LGBT issues.

The Reverend Ijeoma Ajibade is an Anglican priest working in London. Originally from Nigeria, she worked in the public sector for 22 years before ordination to the priesthood. She has been an outspoken advocate for LGBT rights and the rights of people living with HIV/AIDS

Maxim Anmeghichean is programme officer for the Open Society Foundation where he manages grant making and advocacy programmes for LGBT groups in the developing world.

Andrew Brown is a journalist and religious affairs correspondent. A founding member of *The Independent* in the UK he is currently a leader writer for *The Guardian* as well as being on its editorial board.

The Reverend Gideon Byamugisha is an Anglican priest in Uganda. He became the first religious leader to be open about his HIV status and has subsequently campaigned for and written about the rights of people living with HIV/AIDS.

Michael Cashman is an actor, politician and British LGBT rights activist. One of the founders of the LGBT rights organisation, Stonewall, as MEP for West Midlands Constituency he campaigned for the rights of sexual minorities in Europe. A member of the UK House of Lords, he is the Labour Party's Special Envoy on LGBT issues worldwide.

Jonathan Cooper is one of the leading human rights barristers in the UK. Having been involved in some of the most important cases in Europe dealing with LGBT rights, in 2011 he helped set up and was the CEO of the Human Dignity Trust, which provides advice and support for people seeking to challenge laws which persecute LGBT people.

Professor Norman Doe - Director of the Centre for Law and Religion, which he set up at Cardiff Law School in 1998, and is also Director of Research at the Law School.

Professor Musa Dube is Professor of New Testament studies at the University of Botswana. Her work encompasses Biblical interpretation and translation as well as gender and HIV/AIDS studies. She was a World Council of Churches consultant and is a member of the Circle of Concerned African Women Theologians

Pyt Farrugia is a notable Maltese activist, particularly working on issues of gender equality and social justice, with a focus on the gender variant community in a religious context.

Mario Gerada is a founding member of the NGO Drachma LGBTI and Drachma Parents' group. He has worked as a researcher on projects concerning discrimination and violence on the grounds of sexual orientation and gender identity.

The Reverend Giles Goddard is a Church of England priest. He has written and broadcasted on issues to do with inclusiveness in the Church and is a board member of Inclusive Church and Operation Noah, an ecumenical enterprise considering the threats posed by climate change.

The Reverend Robin Griffith-Jones is Master of the Temple in London. Having lectured in theology and written on the New Testament, he has also worked extensively on law and religion. He is currently Visiting Professor of New Testament Theology and King's College London.

Professor Leslie Green is the Professor of the Philosophy of Law and Fellow of Balliol College. He also holds a part-time appointment as Professor of Law and Distinguished University Fellow at Queen's University in Canada.

The Reverend Dr Nontando Hadebe is a Senior Lecturer in Theology at St Augustine College, South Africa, specialising in African Theology, Pastoral & Contextual Theology, Feminist & Womanist Theology, Liberation Theology, Pastoral Psychology.

The Reverend Miranda K. Hassett is a priest in the Episcopal Church of America. She is the author of books such as *Anglican Communion In Crisis: How Episcopal Dissidents and Their African Allies Are Reshaping Anglicanism*.

The Reverend Mark Hatcher is both a lawyer and theologian, being a Bencher of the Middle Temple and Reader of the Temple in London.

Mark Hill QC is regarded to be the foremost authority on religious law. Mark is the author of Ecclesiastical Law.

The Right Reverend Nicholas Holtam, Bishop of Salisbury, in addition to this episcopal and pastoral duties, has been a regular broadcaster and writer on ethics and morality. In 2012 he was the first Church of England bishop to support same-sex marriage.

The Right Reverend Michael Ipgrave, Bishop of Woolwich, was formerly Inter-Faith Relations Adviser on the Archbishops' Council and Secretary of the Church's Commission on Inter-faith relations. In September 2016, he takes up the position of diocesan Bishop of Lichfield.

The Right Reverend Graham James, Bishop of Norwich, is sympathetic to the inclusion of LGBT people fully into society, although concerned about moves to 'redefine' marriage. As a Lord Spiritual with the right to sit in the UK House of Lords, he abstained on a move to 'wreck' the same-sex marriage bill in 2013

Jason Jones, a lawyer from Trinidad and Tobago, is Director of I Am One TnT, an NGO that promotes equality in Trinidad and Tobago and lobbies for the repeal of all legislation that discriminates against LGBT people.

Prossy Kakooza is co-founder of Lesbian Immigration Support Group. Originally from Uganda, she sought asylum in the UK in 2008. Since then she has campaigned for and written extensively on LGBT rights, particularly in the context of asylum.

The Hon. Michael Kirby is one of the most eminent jurists of his generation. A former Justice of the High Court of Australia, he has been an advocate of human rights on international fora. In 2013 and 2014 he led an inquiry into human rights abuses in North Korea and was a member of the Commonwealth Eminent Persons Group advising on reform of the Commonwealth.

The Reverend Canon Franklin Lee, originally from Hong Kong via Singapore, is Minor Canon of St George's Chapel, Windsor Castle, and Chaplain of St George's School, Windsor.

The Reverend Professor Andrew Linzey is a member of the Faculty of Theology at the University of Oxford, Director of the Oxford Centre for Animal Ethics and Visiting Professor at the University of Winchester.

Professor Diarmaid MacCulloch is Professor of the History of the Church at Oxford University and Fellow of St Cross College, specialising in the Reformation. His work has encompassed the complex relationship between sexuality, Christianity and the Church.

Davis Mac-Iyalla is a Nigerian LGBT rights activist. A founder of the Nigerian wing of Changing Attitude, an organisation that campaigns to change the Anglican Church's understanding of sexuality and LGBT identity.

Ian McKnight is co-founder of Jamaica AIDS Support for Life. A highly respected human rights defender, he has been involved in a great number of civil society organisations across the Caribbean.

Professor Esther Mombo is the former Deputy Vice Chancellor (Academics) of St Paul's United Theological College in Limuru, Kenya, where she still teaches church history and theologies from women's perspectives and interfaith courses. She is also a member of the

Circle of Concerned African Women Theologians and writes on women's issues, evangelism, HIV/AIDS, Christian-Muslim relations, and poverty in Africa.

The Right Reverend Musonda (Trevor) Mwamba was Bishop of Botswana until 2012. He has worked as mediator within the Anglican Province of Central Africa, focussing on conflict resolution. He has also been an advocate of LGBT inclusion in the Church, social justice and the elimination of poverty.

Dr Frank Mugisha is an LGBT activist and Executive Director of Sexual Minorities Uganda (SMUG). A winner of the Robert F. Kennedy Human Rights Award in 2011, he is one of the foremost human rights defenders in Uganda.

The Reverend Canon Paula Nesbitt is priest associate at All Souls, Berkeley, California. Her areas of interest include religion and society, ethics, spirituality, congregational studies, and social justice. She also teaches sociology at U.C. Berkeley.

Godwyns Onwuchekwa is founder of Justice for Gay Africans, an advocacy group for positive engagement on LGBT matters within Black communities. Originally from Nigeria, he advises on issues of health and advocacy for the most vulnerable people in society.

The Very Reverend Martyn Percy is Dean of Christ Church, Oxford and a very well-respected theologian and educator. He incorporates elements of sociology and anthropology into his work. He is a great advocate for diversity in the Anglican Communion and is Vice President of Modern Church.

Barney Pityana is a South African lawyer and Anglican theologian. A founding member of the South African Students' Organisation with Steve Biko, he has worked tirelessly against racism and for human rights, having chaired the South African Human Rights Commission from 1995 to 2001.

The Reverend Canon Charles Robertson is Canon to the Presiding Bishop of the Episcopal Church. Theologian and member of the Council on Foreign Relations, he was worked extensively in conflict resolution. His background also encompasses the US Department of Education and the White House.

Simon Sarmiento is founder of the Thinking Anglicans website and influential commentator on Anglican Communion issues in the media more generally.

The Reverend Macdonald Sembereka is a Malawian Anglican priest, civil and human rights activist. Adviser on NGOs to the government of Joyce Banda, he is the national coordinator of the Human Rights Consultative Committee. He is also a member of the Coalition on Minority Protection Against Sexual Stigma.

Kevin She is a lawyer and HIV/AIDS activist from Hong Kong. He is a Board Member of the HIV/AIDS Centre in Hong Kong and is involved in the Anglican Communion's Indaba Listening Project.

Ian Southey-Swartz is LGBTI Programme Co-Ordinator for the Open Society Initiative for Southern Africa. Originally from Namibia, he co-founded the Rainbow Project in 1997 to campaign for greater recognition of LGBT rights.

Dr Carolyn Tan is an Anglican lay woman, and a member of the General Synod Public Affairs Commission and the Perth Social Responsibilities Commission in Australia. She is a lawyer specializing in Native Title law.

Maurice Tomlinson, a lawyer and law lecturer, has been a leading LGBT rights activists in the Caribbean for 20 years. As a lawyer, he has been involved in a number of cases challenging laws criminalising and discriminating against LGBT people in Jamaica and elsewhere.

The Reverend Dr Kevin Ward is Lecturer in Theology at the University of Leeds. He spent 20 years in East Africa as a teacher and theological educator. He has written on sexuality in an African context in the light of the Anglican crisis over homosexuality.

Dr Meg Warner is Lecturer in Theology at King's College London. She is a specialist in the Old Testament and Hebrew Bible. She also has expertise in the area of Anglican Studies, having worked as Executive/Research Assistant to the Anglican Primate of Australia.

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