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# Post-Legislative Scrutiny: From a Model for Parliamentarians to a CSO Strategic and Operational Tool

Grazia Careccia  
Alicia Wallace

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## Table of Contents

1. Executive Summary .....	4
2. Glossary .....	5
3. Methodology.....	6
4. Introduction .....	7
5. Part I: PLS and CSOs: The Research Findings.....	8
6. Part II - PLS: Preliminary Questions .....	10
7. Implementing Post-Legislative Scrutiny.....	11
8. PLS Planning Phase: Identification of laws.....	12
9. Checklist: Key Strategic Allies.....	14
10. State-led PLS.....	14
11. Checklist: CSO input on State-led Post-Legislative Scrutiny.....	20
12. Toolkit: CSO-led PLS: Monitoring and Reporting on the Impact of the Law .....	21
13. Part III: Case Studies: Belize, Mauritius, Pakistan .....	26
13.1 Belize: from sexual offences laws reform to the Equal Opportunities Bill .....	26
13.2 Mauritius: the elusive decriminalisation & sexual offences laws reform .....	32
13.3 Pakistan: A success story of traditional values and strategic allies .....	35
14. Resources.....	38

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# 1. Executive Summary

The methodology presented in *Post-Legislative Scrutiny: guide for parliaments* (2018) has been used by State actors, in particular Parliaments, in evaluating the impact of legislation and whether the implementation of legislation met its intended objectives. Westminster Foundation for Democracy and Kaleidoscope Trust recognises the importance of civil society organisations and their participation in democratic political processes, particularly the role they play in advocating for communities. Civil society organisations can engage in post-legislative scrutiny, whether by monitoring the process initiated by State actors or undertaking the process on their own, including informing the process with their own perspective on the impact of legislation. For this reason, a guide to post-legislative scrutiny for civil society organisations has been developed.

This report is comprised of: the methodology employed for the development of the guide, main findings from the research process which prioritised the experiences of civil society organisations, and two step-by-step guides for civil society organisations to engage in post-legislative scrutiny.

Civil society organisations are working on the ground and directly connected to community members. They are aware of changes in the law and the real impact laws have on the people they are meant to serve. In order to use their knowledge and experience to improve laws for the betterment of people's lives, they need sustainable funding, technical support, human resources, and research and analytical tools to assist their work. The research undertaken to produce the guide shows that the environment for civil society needs to be more enabling. While some of the needs are outside the scope of this project, this document highlights these needs and responds to the clear request from civil society organisations for simple tools to engage with post-legislative scrutiny that are easy to operationalise.

The tools produced are adaptable for civil society organisations working in different contexts, on different issues, and with different capacities. The first is an 18-step guide to a process that runs parallel to a State-led post-legislative scrutiny and the second is a 10-step guide to a process led by civil society organisations. These steps can easily be collapsed or combined, and they can be shared by multiple organisations. In addition to the tools, key questions for internal assessment and identification of external factors such as opposition and allies are included. At the end of this report, three detailed case studies serve as examples of the legislative reform process and can help civil society organisations in planning their work on post-legislative scrutiny. This report focuses on LGBTIQ+ organisations and their priorities as reported in interviews. The tools, however, can be used on a wide range of issues.

This report was funded through the Westminster Foundation for Democracy (WFD) and Kaleidoscope Trust (KT)'s Commonwealth Equality Programme (CEP) which ran from October 2020 to March 2021. CEP focused on fighting discrimination against women and girls, LGBTIQ+ people and other intersectionally disadvantaged groups in 16 Commonwealth countries in Africa, the Eastern Caribbean, Asia and the Pacific. The programme was funded by the UK Foreign, Commonwealth and Development Office (FCDO) through the Conflict, Security and Stability Fund (CSSF) as part of its Commonwealth Equality Project.

## 2. Glossary

ACHPR - African Charter on Human and People's Rights

ACHR - American Convention on Human Rights

CAT - Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW - Convention on the Elimination of all Forms of Discrimination against Women

CEDAW - UN Committee on the Elimination of Discrimination Against Women

CERD - Committee on the Elimination of Racial Discrimination

CRC - Convention on the Rights of the Child

CRPD - Convention on the Rights of Persons with Disabilities

CSO - Civil society organisation

ECHR - European Convention on Human Rights

ICCPR - International Covenant on Civil and Political Rights

ICESR - International Covenant on Economic, Social and Cultural Rights

ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association

LGBTIQ+ - Lesbian, Gay, Bisexual, Trans, Intersex and Queer people/communities (+ is an inclusive reference to other identities not specifically spelled out here)

MHDSTPA - Ministry for Human Development, Social Transformation and Poverty Alleviation

OSEWC - Office of the Special Envoy for Women and Children

PLS - Post-Legislative Scrutiny

SOGI - Sexual Orientation and Gender Identity

UDHR - Universal Declaration of Human Rights

UN - United Nations

WFD - Westminster Foundation for Democracy

## 3. Methodology

This report is based on a review of Post-Legislative Scrutiny: guide for parliaments by Westminster Foundation for Democracy (WFD) alongside a desk review, key informant interviews, a survey and three case studies. The desk review material included academic papers, legal reports and policy documents. These formed the foundation of this work, and the material was used to formulate the interviews and survey.

Forty-five-minute interviews were conducted with nine LGBTIQ+ organisations covering all Commonwealth regions. They were focused on four key areas—national and regional context and experience with post-legislative scrutiny, legislative assessment, the activities undertaken to engage in the process, the effects of the COVID-19 pandemic on their operations, and utility and expectations of a tool for the legislative scrutiny process. The findings on the impact of COVID-19 on the work of civil society organisations (CSOs) have been integrated in the report using text boxes on relevant aspects of post-legislative scrutiny and related CSOs activities.

There were constraints on the project that were compounded by the holiday period and COVID-19. It emerged that CSOs had delayed their own projects and shifted their work priorities to respond to the immediate needs of their communities resulting from the pandemic. This meant the return from the holiday period was busy as CSOs tried to regain footing and make up for time lost to lockdowns. This resulted in fewer interviews than planned and low survey response. It was, however, possible to validate the data collected by cross-referencing with available interviewees, survey responses, case studies and four piloting sessions with CSOs.

Throughout this report, "LGBTIQ+" is used to mean lesbian, gay, bisexual, trans, intersex and queer people. It is used instead of "LGBT+" to be more inclusive and to intentionally name gender and sexual minorities that are often overlooked and, as a result, made more vulnerable.

## 4. Introduction

Post-legislative scrutiny (PLS) is a methodology that allows Parliaments to effectively exercise their oversight role with regard to the impact and effectiveness of legislation. It is also relevant for CSOs that are active in the areas of legislative assessment, reform and legal advocacy.

This report unpacks the PLS methodology developed by the Westminster Foundation for Democracy (WFD), *A Guide to Post-Legislative Scrutiny*, to strengthen the ability of CSOs in documentation, campaigning, empowerment, public education and legal advocacy and effectively engage in the PLS process. The scope of this analysis is limited to the aspects and activities relevant for CSOs working to promote and protect the rights of LGBTIQ+ people.

This report is structured in three main parts. The first, primarily narrative, details the findings of the research and engagement with CSOs for the production of useful tools to assist organisations in participating in PLS and more broadly in legislative assessment and reform, legal advocacy, and strategic litigation to promote a more inclusive, equalitarian and fair legal environment and society at large.

The second part of the report includes toolkits, charts, checklists and case studies in order to assist CSOs in assessing their current work, capacity, and how they can effectively engage in PLS, whether it is implemented by state-agencies or undertaken by CSOs. This part of the report privileges ready-to-use tools as CSOs often have limited resources, competing deadlines and, in some cases, unfortunately can only rely on the work of volunteers.

The toolkits are structured using colour coding that reflect the four phases of the PLS methodology as developed by WFD—pre-planning, planning, implementation and follow-up.

The third part of the report contains three case studies that illustrate the legislative assessment and reform processes in Belize, Mauritius and Pakistan. The case studies highlight the processes, key actors and role of CSOs in assessing and reforming laws with a view to showcasing how the PLS methodology could be a good fit in their legal advocacy activities.

CSOs that participated in this process quickly noted that the term “post legislative scrutiny” is both unfamiliar and daunting to them. They said that they did not participate in PLS, but it then emerged that they have been engaging in PLS-like activities, at least in part, for years in different ways.

Due to competing priorities, time constraints, varying lev-

els of technical expertise, and lack of staff and volunteer retention, it is critical that a tool designed for CSOs be as simple, short, and operational as possible.

This report includes toolkits for CSOs to:

1. Engage with PLS led by state institutions, primarily Parliaments, and
2. Undertake PLS directly as a way of structuring their advocacy and campaigns on the PLS methodology.

The first toolkit breaks down the 18 steps of the PLS implemented by state institutions to identify areas of influence and activities that CSOs can undertake to pursue their objectives. The second one describes a 10-step process for CSOs to conduct PLS. It is supported by a Step 0 which is an acknowledgement that many CSOs are operating in countries that have not had a change in law for many years, and are steadily working toward amendments to primary and secondary legislation. In these cases, CSOs are recommending changes and articulating the projected outcomes. Where less than ideal amendments are proposed by States, CSOs are able to identify the issues and offer alternatives.

CSOs shared that their experiences in legislative assessment have shown that there is a need for more sustainable funding and that there is insufficient focus and resources going into implementation of new amendments and laws. They are concerned that the legal changes do not translate to an improvement in the lived experiences of LGBTIQ+ people. This is also due to the lack of sustained and long-term availability of funding to support the retention of technical knowledge, data collection and the establishment and maintenance of coalitions, in particular intersectional ones.

There is a clear need for CSOs to engage in legislative assessment, prioritising monitoring and evaluation of the use of and access to the law and the justice system. Legislative monitoring, assessment and reform require long-term engagement. The legislative process is a cycle; it does not end with changing the laws, and more attention needs to be on implementation and access, which can only be assessed through data collection and sharing.

## 5. Part I: PLS and CSOs: The Research Findings

LGBTIQ+ CSOs in the Commonwealth are engaged in advocacy to monitor, assess and reform discriminatory laws, from their constitutions to penal codes, and to support drafting more inclusive, non-discriminatory and egalitarian laws. With limited resources—including funding, technical expertise and human resources—they are largely focused on the repeal of archaic laws such as the criminalisation of same-sex sexual activity where it still exists. While other laws adversely impact the LGBTIQ+ community, criminalisation represents a significant challenge in ensuring equality and non-discrimination as it also prevents LGBTIQ+ people from exercising other rights. These include access to legal remedies and reporting cases of violence and discrimination to the authorities for fear of prosecution. Criminalisation of same-sex sexual activity crystallises stigma, marginalisation and legitimises broader discrimination of LGBTIQ+ people. However, a wider range of laws negatively impacts the right of LGBTIQ+, such as those on social benefits, inheritance, child custody, registration of associations, access to health (see Chart: Mapping Domestic Laws and International Mechanisms, page 11).

In order to participate in PLS, CSOs need to have reasonable capacity. The four main needs highlighted by CSOs are:

1. Funding
2. Technical assistance
3. Human resources
4. Good practices

CSOs are generally underfunded and struggle to sustain their work due to the nature of funding and development frameworks. Most of them are operating on project-based funding, which forces them to work within short cycles with insufficient human resources because salaries are typically only partially covered. In many cases, living spaces double as office space, most of the labour is done on a voluntary basis, and the staff and/or volunteer turnover is high, which hinders institutional long-term development and engagement.

One of the most challenging issues arising from the COVID-19 pandemic has been the change in funding priorities. This has led to LGBTIQ+ organisations having to delay projects and find other means to support their work. They have also had to shift to re-prioritise resources and activities into basic support of community members who lost income or are generally struggling as a result of lockdown and curfews.

### Using international spaces

CSOs make use of international and regional human rights mechanisms to draw attention to issues of inequality in the law and hold their governments accountable. Participating in these mechanisms and other opportunities to convene in international space enables them to engage with lawmakers who would not otherwise acknowledge or speak with them. Some CSOs report that governments often do not want to engage LGBTIQ+ organisations, yet say they do not want to do any harm. In practice, however, they do not support or protect LGBTIQ+ people, nor do they remove discriminatory law. CSOs need people within governments to be allies and serve as champions, introducing bills that serve LGBTIQ+ people and garnering support for them. While governments are obligated to uphold human rights, it is helpful to build relationships with actors who are concerned about issues impacting vulnerable communities.

Due to the COVID-19 pandemic, international spaces and opportunities for direct engagement between CSOs and policy/law makers shrank considerably to come to a total halt due to travel and movement restrictions. Online sessions do not offer the same opportunity for confidential and frank discussions. The creation of alternative safe spaces for CSOs to access policy/law makers in the long term should the continuation of the pandemic further prevent holding international events is a matter that also requires donor attention.

### From enactment to implementation

In countries where legal reform has taken place, implementation has been a primary challenge. CSOs are concerned about public understanding of the law, accessibility of policy development, funding, resourcing and capacity development of implementing agencies, and harmonisation of all laws. This requires monitoring, data collection and analysis at the national level.

It is important for CSOs to monitor key developments in other countries. This helps to inform strategy, set precedent and boost morale. CSOs want to learn from other countries and they greatly benefit from opportunities to engage with other CSOs and review case studies.

### **Inclusive language**

When assessing laws and recommended amendments, CSOs pay particular attention to the language used. They want to ensure that it is inclusive, gender neutral, and void of discriminatory references. They seek to highlight inequalities and to ensure that the language is inclusive, trauma- and victim-centred. In some cases, CSOs have been able to participate in the drafting of legislation to more directly contribute to the language used. CSOs consider the communities they serve, especially the most vulnerable people within them, and ensure that they are not left out or set further back.

### **Access to justice**

CSOs stress that, while it is important to amend the law, it is also critical to attend to parts of the legal system that determine whether or not changes can be implemented and have real impact on the lives of vulnerable people. Court systems remain archaic and slow, discouraging people from attempting to use them. Litigation is also very lengthy, expensive, resource-consuming and potentially harmful to the safety and mental well-being of claimants, their families and community. These are the major considerations when assessing access to justice; therefore, the primary focus is making rights a lived reality.

### **Data is key**

CSOs recognise that their power to influence policy makers depends on their access to them, adept use of international mechanisms and negotiation spaces, and ability to produce relevant and comprehensive data and compelling stories. It is, however, challenging for CSOs with limited resources to produce their own data, and they have noted difficulty in obtaining existing data from, for example, police departments, courts, and national statistics institutes. They find it burdensome and, at times, virtually impossible to gather the necessary evidence to show the impact of harmful practices and law on LGBTIQ+ people. This is especially challenging when cases are unreported, often due to the hostile environment created by provisions criminalising consensual same-sex adult sexual activity.

In some countries, due to the movement restrictions imposed as a result of the COVID-19 pandemic, CSOs have found it more difficult to access their community members for data collection as the focus has been on service provision and emergency needs. However, in countries with reliable internet infrastructures, some CSOs reported an increase in attendance to their online sessions and expansion in the number of community members who approached the organisation, feeling more encouraged by the distance engagement that did not expose them to the risk of being

CSOs are conducting their own research to fill the knowledge gap, and they are making considerable effort to reach people in rural areas, particularly in large Commonwealth countries. CSOs need to be able to assess and influence change, and they depend heavily on the stories people are willing to share. Some have suggested that it is necessary to have CSOs specifically focused on data collection in order to support the work of others.



## 6. Part II - PLS: Preliminary Questions

<p><b>What is Post-Legislative Scrutiny?</b></p>	<p>Post-Legislative Scrutiny (PLS) is a methodology used to monitor and evaluate the enactment or the impact of legislation in order to ensure that laws benefit constituents in the way originally intended by lawmakers.</p> <p>During the 2017-2018 period, WFD explored how parliaments monitor the enactment and implementation of existing legislation through a series of programme activities around the world.</p> <p>WFD also developed a <a href="#">PLS guide for Parliaments</a>.</p>
<p><b>What are the objectives of PLS</b></p>	<p><b>PLS on the enactment of the law:</b> assessing the adoption of required secondary legislation and the establishment, resourcing and capacity of relevant implementing agencies.</p> <p><b>PLS on the impact of the law:</b> assessing the achievement of the objectives set at the time of the enactment of the law and identifying the adverse effects, impact on different social groups, and efficiency of resources use in the implementation of the law.</p>
<p><b>Who can undertake PLS?</b></p>	<ul style="list-style-type: none"> <li>· The Government</li> <li>· The Parliament - appointed/existing Parliamentary Committees</li> <li>· Independent Technical Institutions (Human Rights Commission, Law Reform Commission, National Human Rights Institutions)</li> <li>· Civil Society Organisations</li> </ul>
<p><b>How can PLS be used by CSOs?</b></p>	<p>The methodology can be added to their toolbox for framing advocacy and campaigning on the impact of laws on their communities.</p>

## 7. Implementing Post-Legislative Scrutiny

PLS is a fairly new methodology that has been used by several Parliaments. In particular, the UK Parliament has been leading on using this tool to assess the enactment and impact of laws. While PLS was initially developed for Parliaments and other State agencies, CSOs can use this methodology in their work to frame their advocacy and campaigning activities.

Structuring activities along the lines of the PLS could strengthen the ability of CSOs to shape public narrative around LGBTIQ+ matters in a broader and more inclusive manner, in particular, through the development of intersectional coalitions\* and alliances with key players, such as MPs, experts, social influencers, faith and thoughts leaders.

### **Key questions for CSOs to consider before beginning the PLS process include:**

1. What are your objectives?
2. What laws should be scrutinised on the basis of their adverse effects on LGBTIQ+ people?
3. What activities do you need to undertake to achieve the objectives?
4. What are the resources that would make the activities possible?
  - a. Which resources do you already have?
  - b. How can you acquire the resources you do not have?
5. Where should your CSO position itself in this process?
6. What is your CSO's assessment of its organisational capacity?
7. What are your strengths?
8. Who can support in areas of identified weakness?
9. Who is the opposition?
  - a. Where is its power?
  - b. What are its tactics?
  - c. How will it be engaged?
10. Who are your allies?
  - a. Where is their power? How can it be leveraged?
  - b. How will they be engaged?
  - c. What will they be asked to do?
11. What is the language that can win the hearts and minds of people?
12. What are the relevant intersectional issues and actors?

\* Intersectional coalitions refers to the convening of a diverse range of persons who work collectively for inclusive public policy change, with an overt understanding and integration of intersectional analysis into their advocacy so that hierarchical exclusions are not reinforced. Despite being a collective working for the marginalised communities and marginalised issues, that these coalitions do not themselves only promote the goals that are prioritised by the most privileged within these marginalised communities.

## 8. PLS Planning Phase: Identification of laws

The objective of PLS is to assess whether the enactment or implementation of a law or provision(s) have achieved the objectives that led to their adoption. It is worth noting that the lawmakers' objectives might not coincide with the objectives that CSOs would expect, so CSOs need to be vocal with regard to the needs of the LGBTIQ+ community and how those needs should be addressed by the legislator.

The identification of the law/provisions that need to be scrutinised is a crucial step in the planning phase of the PLS. CSOs in their ordinary work of collecting stories and data on the denial of rights of the members of their community, their research, and analysis identify the laws that negatively impact LGBTIQ+ people.

The optimal time to initiate a PLS is after a minimum of three years following the enactment of the law as this would be a sufficient time for the law/provisions to have generated visible and sufficient effects<sup>1</sup>.

The PLS methodology also provides guidance on technical aspects of legislation such as the inclusion of review or sunset clauses<sup>2</sup>. These are a trigger of the planning phase of PLS. CSOs can recommend their inclusion as part of the implementation and follow-up phases of the PLS.

International mechanisms such as UN treaty body reviews and submissions to special procedures can be an opportunity to highlight the adverse impact of universal and specific legislation on the LGBTIQ+ community. Special Procedures, beyond the Special Rapporteur on SOGI, have increasingly integrated LGBTIQ+ issues into their work and they are monitored by international LGBTIQ+ organisations<sup>3</sup>. It can be useful to explore opportunities for intersectional work as it would be of use in the planning, implementation and follow-up phases of the PLS.

An intersectional approach would allow for LGBTIQ+ issues to be integrated more organically in the general quest for inclusion and fairness undertaken as part of a wider set of laws, some of which are detailed in the chart below.

### Chart: Mapping Domestic Laws and International Mechanisms

<p><b>Areas of Domestic Law</b></p> <p>Criminal provisions (including torture &amp; inhumane treatment)</p> <ul style="list-style-type: none"><li>- Buggery laws</li><li>- Vagrancy laws</li><li>- Public order laws</li><li>- Criminalisation of same sex sexual activities</li><li>- Intersex Genital Mutilation</li><li>- Hate crimes (inclusion of SOGI as a protected characteristic)</li></ul> <p><b>Sexual Offences Laws</b></p> <ul style="list-style-type: none"><li>- Definition of rape</li><li>- Age of consent</li><li>- Gender Based Violence</li><li>- Domestic Violence</li></ul>	<p><b><u>International Legal Instruments</u></b></p> <p>ICCPR - ICESCR CEDAW - CRC - CERD - CAT - CRPD</p> <p><b>Regional Mechanisms:</b></p> <p>European Convention on Human Rights The American Convention on Human Rights African Charter on Human and Peoples' Rights</p> <p><b><u>International Bodies &amp; Mechanisms</u></b></p> <p><b>Charter Bodies:</b></p> <p>Human Rights Council (Universal Periodic Review) Human Rights Committee</p> <p><b>Treaty Bodies:</b></p> <p>CEDAW, CRC, CAT, CERD, CRPD</p>
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01 F. De Vrieze, A Guide to Post-Legislative Scrutiny - Guide for Parliaments, WFD, 2017, p. 21 (hereinafter, WFD Guide).

02 These clauses provide for a time-frame after which a law has to be reviewed or would cease to be in force unless reviewed.

03 UN Special Procedures and LGBTI Issues, ILGA & ISHR, <https://ilga.org/special-procedures-factsheets>

### **Health - AIDS/HIV**

- Non-discrimination
- Access to services/privacy

### **Anti-Discrimination and equality**

- Right to privacy
  - Right to freedom of expression and association, including registration of organisation/associations)
  - Access to legal remedies
  - Gender self-identification
- Education

### **Education**

- Enrolment in education institutions
- Participation in activities

### **Elder & Healthcare Law**

- Carer support
- Pension entitlement

### **Employment**

- Social Security
- Labour rights/ leave permits

### **Family Rights, Relationship Recognition**

- Same sex marriage
- Same sex civil partnership
- Inheritance Laws
- Divorce/Separation
- Child Custody

### **Housing**

- Social Housing/Benefits

### **Immigration & Political Asylum**

- Criminalisation of same-sex activities as default ground for asylum
- Acceptance of selfidentification

### **Military**

- Inclusion of LGBTIQ+

### **Transgender Issues**

- Gender election/recognition
- Birth registration

### **Key UN Special Procedures:**

- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity
- Special Rapporteur on the situation of human rights defenders
- Special Rapporteur on freedom of opinion and expression
- Special Rapporteur on freedom of peaceful assembly and of association
- Special Rapporteur on violence against women
- Working Group on discrimination against women in law and practice
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Working Group on arbitrary detention
- Working Group on enforced, involuntary disappearances
- Special Rapporteur on freedom of religion or belief
- Special Rapporteur in the field of cultural rights
- Special Rapporteur on the right to the highest attainable standard of physical and mental health
- Special Rapporteur on extreme poverty and human rights
- Special Rapporteur on adequate housing
- Special Rapporteur on the right to education
- Working Group on people of African descent
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on the rights of persons with disabilities
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on minority issues
- Special Rapporteur on the rights of indigenous peoples
- Independent Expert on the enjoyment of all human rights by older persons
- Special Rapporteur on the independence of judges and lawyers
- Special Rapporteur on the right to privacy
- Special Rapporteur on the sale and sexual exploitation of children
- Special Rapporteur on contemporary forms of slavery
- Special Rapporteur on trafficking in persons, especially women and children

### **Regional Bodies:**

- European Court of Human Rights
- Inter-American Commission on Human Rights
- Inter-American Court of Human Rights
- African Commission on Human and Peoples' Rights
- African Court on Human and Peoples' Rights.

## 9. Checklist: Key Strategic Allies

In engaging with PLS, CSOs can rely on the same strategy they already adopt for ordinary advocacy activities, engaging with key actors as listed in the chart below. Strategizing, developing and sustaining these relations is key for the successful outcome of PLS. These synergies are relevant in identifying the laws for scrutiny in the planning phase to ensure that these actors have a say in the process of data collection, consultations and the follow-up phase to ensure that pressure is exercised by a variety of actors to monitor the implementation of recommendations and policy changes identified through PLS.

It is understood that the establishment of coalitions and engaging with key actors can be a demanding endeavour for CSOs in terms of funding and the creation of safe spaces to meet and engage with champions, allies, partner organisations locally and internationally. This is a matter that needs to be prioritised and supported by donors so that they can sustain CSOs in undertaking network and coalition-building activities.



## 10. State-led PLS

When PLS is led by state agencies, CSOs can roll out parallel processes to engage and monitor the operationalisation of the PLS activities.

Not all of the 18 steps of state-led PLS detailed in the PLS Guide for Parliaments are relevant for CSOs. In some steps, CSOs have a wider space for influencing the process while other steps are more internal and administrative. They can monitor the rolling out of PLS through the media and internal contacts to learn more about the process including time frame, resourcing, implementing agencies, expected outcomes, and activities such as consultations, public and private hearings, and data/evidence collection.

Due to COVID-19 causing parliamentary sessions to shift to the online space, it has become more difficult for CSOs to engage legislators. They can no longer intercept them on their way into Parliament or reach them by phone in their offices.

The toolkit below shows, step-by-step, what state institutions do when undertaking PLS. Every step has been analysed through the prism of CSOs to identify which role they can play and what activities they can implement to ensure that the PLS integrates their objectives.

What state-agencies do	What CSOs can do
<b>Pre-planning phase</b>	
<p><b>STEP 1</b></p> <p><b>Decide to establish binding requirements for Post-Legislative Scrutiny prior to adoption of legislation</b></p>	<p>Prior to the approval of a relevant laws, CSOs can <b>build intersectional coalitions*</b> to influence:</p> <ol style="list-style-type: none"> <li>1. The language of the law building on existing recommendations from international and regional bodies</li> <li>2. The inclusion of review and sunset clauses</li> <li>3. The inclusion of enforcement and oversight mechanisms and make recommendations on their mandate.</li> <li>4. The staffing of implementing mechanisms suggesting criteria for their selection based on technical expertise</li> <li>5. The adequate budget allocation necessary for law enforcement</li> <li>6. Public opinion and awareness raising through education campaign</li> </ol> <p>CSOs should identify their internal needs in terms of technical capacity (including legal expertise and communications) and tap into support available locally and/or internationally.</p> <p>CSOs should identify laws that affect their community, set their priorities and adopt the necessary monitoring and documentation systems to collect data in order to assess the impact of legislation against its stated objective.</p> <p>CSO data collection and documentation need to be disaggregated and devised with a strong victim- and trauma-centred approach and with the necessary safeguards to prevent harm or risks for survivors and witnesses.</p> <p>Documentation and data need to be safely stored.</p> <p>CSO can make recommendations for state institutions to adopt inclusive data collection with a view to ensuring that gender and diverse ability disaggregated data is available.</p>
<p><b>STEP 2</b></p> <p><b>Identify the triggers for Post-Legislative Scrutiny</b></p>	<p><b>CSOs play a vital role in triggering PLS by:</b></p> <ol style="list-style-type: none"> <li>1. Monitoring the timing of sunset and review clauses of relevant legislation for entry point advocacy</li> <li>2. Executing campaigns and evidence-based advocacy</li> <li>3. Initiating strategic litigation</li> <li>4. Submitting petitions</li> <li>5. Publishing op-eds and articles</li> </ol>

\* Intersectional coalitions refers to the convening of a diverse range of persons who work collectively for inclusive public policy change, with an overt understanding and integration of intersectional analysis into their advocacy so that hierarchical exclusions are not reinforced. Despite being a collective working for the marginalised communities and marginalised issues, that these coalitions do not themselves only promote the goals that are prioritised by the most privileged within these marginalised communities.

What state-agencies do	What CSOs can do
<p><b>STEP 3</b></p> <p><b>Engage human resources for Post-Legislative Scrutiny</b></p>	<p>CSOs might not have direct influence on composition of PLS bodies, but they can:</p> <ol style="list-style-type: none"> <li>1. Exercise oversight of appointments</li> <li>2. Enquire about the competence of appointed staff</li> <li>3. Seek direct engagement with the appointed body</li> <li>4. Comment on eventual conflict of interest/inadequacies</li> </ol>
<p><b>STEP 4</b></p> <p><b>Engage financial resources for Post-Legislative Scrutiny</b></p>	<p>CSOs might not have direct influence on composition of PLS bodies, but they can:</p> <ol style="list-style-type: none"> <li>1. Exercise oversight of budget allocation</li> <li>2. Indicate priorities to ensure that expected outcomes are taken into account</li> <li>3. Create coalitions and work intersectionally with other CSOs and experts to create a critical mass to recommend adequate resourcing of the PLS</li> <li>4. Publicly state disengagement with the PLS if there is a lack of transparency and accountability. (This can be a powerful advocacy opportunity also to highlight the demands, objectives and expectations of CSOs.</li> </ol>
<p><b>Planning phase</b></p>	
<p><b>STEP 5</b></p> <p><b>Select the laws and legal documents for Post-Legislative Scrutiny review</b></p>	<p>As a result of their expertise, case work and advocacy, CSOs should have a mapping of the laws that affect their community and they can:</p> <ol style="list-style-type: none"> <li>1. Influence the selection of laws by putting forward their priorities through evidence-based advocacy, reports and media pressure</li> <li>2. Engage with champions and experts who would validate the prioritisation of laws for review</li> <li>3. Create coalitions and work intersectionally with other CSOs and experts to create a critical mass to influence the selection of laws to be reviewed</li> </ol>
<p><b>STEP 6</b></p> <p><b>Define objectives for conducting Post-Legislative Scrutiny and public hearings</b></p>	<p>CSOs' objectives might differ from those stated by the Parliament upon adoption of the legislation.</p> <p>CSOs can:</p> <ol style="list-style-type: none"> <li>1. Highlight the gaps between their expectations and the objectives of the law set upon its adoption</li> <li>2. Influence the objectives of the scrutiny by proposing benchmarks and indicators</li> <li>3. Indicate their priorities and expectations</li> </ol>

What state-agencies do	What CSOs can do
<p><b>STEP 7</b></p> <p>Identify and review the role of implementing agencies</p>	<p>CSOs might not have direct input on the selection of PLS agencies, but they can:</p> <ol style="list-style-type: none"> <li>1. Monitor their selection and their mandate</li> <li>2. Comment on the expertise and capacity of the selected agencies</li> <li>3. Ask to review and comment on the terms of reference of the selected agencies</li> <li>4. Monitor progress of work of the implementing agencies</li> </ol>
<p><b>STEP 8</b></p> <p>Identify relevant stakeholders</p>	<p>CSOs play a vital role in the following:</p> <ol style="list-style-type: none"> <li>1. Recommending that implementing agencies adhere to a victim- and trauma-centred approach</li> <li>2. Indicating affected communities and their representatives (if their consent is secured)</li> <li>3. Listing clients and individuals (with their approval, provided there is no harm or risk)</li> <li>4. Indicating relevant experts on the law under scrutiny, both locally and internationally</li> <li>5. Monitoring the list of stakeholders identified by implementing agencies</li> </ol>
<p><b>STEP 9</b></p> <p>Collect background information and relevant data</p>	<p>CSOs have a vital role in ensuring that key data and evidence are included in the scrutiny by:</p> <ol style="list-style-type: none"> <li>1. Drafting and submitting evidence-based material such as reports, briefings, visual materials, analysis, statements and testimonies</li> <li>2. Selecting and submitting official documentation</li> <li>3. Submitting relevant media material</li> <li>4. Listing relevant data produced by national institutions, such as reports of board of statistics, socio-economic bodies and other public offices</li> <li>5. Listing and submitting reports of international and regional bodies, such as UN treaty-based bodies, Human Rights Council's Concluding Observations of Universal Periodic Review</li> <li>6. Submitting reports of independent experts</li> <li>7. Engaging with other CSOs to submit materials proving impact of the law on a wide range of stakeholders/interest groups</li> </ol>



What state-agencies do	What CSOs can do
<p><b>STEP 10</b></p> <p>Determine timeframe of the Post-Legislative Scrutiny process</p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>1. Recommend that the timeframe is sufficient and compatible with the accurate review of received evidence and documentation and allows for the engagement of key experts, witnesses, survivors and their representatives</li> <li>2. Recommend that the timeframe takes into account relevant political developments and institutional deadlines such as elections, changes in political leadership, and upcoming international or regional review mechanisms or events</li> <li>3. Monitoring the adequacy of the timeframe for the scrutiny and commenting on unsuitable deadlines</li> </ol>
<p><b>Implementation phase</b></p>	
<p><b>STEP 11</b></p> <p><b>Conduct the Post-Legislative Scrutiny stakeholder consultation</b></p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>1. Highlight deficiencies in State-led data collection</li> <li>2. Plan strategically for engagement with the PLS process by ensuring participation of key players and CSOs and identifying priorities and expected outcomes</li> <li>3. Communicate on positioning and expected outcomes, including establishment of implementing and oversight mechanisms</li> <li>4. Develop and disseminate communication materials on the consultation</li> <li>5. Engage directly in consultations by attending events and public hearings</li> <li>6. Encourage participation of individuals, experts and representatives of interest groups</li> <li>7. Give visibility to their participation in consultations, criticising shortcomings and praising good practice and positive steps</li> </ol>
<p><b>STEP 12</b></p> <p>Review the effects of delegated legislation</p>	<p>CSOs should rely on technical expertise (internal or outsourced locally or internationally) to assess:</p> <ol style="list-style-type: none"> <li>A. the impact of parent legislation</li> <li>B. the identify implementing bodies and enforcement agencies</li> </ol> <p>This information should be integrated in reports and communications materials to be strategically disseminated</p>
<p><b>STEP 13</b></p> <p><b>Making the consultation public</b></p>	<p>CSOs can:</p> <ul style="list-style-type: none"> <li>- Raise awareness through media about consultations</li> <li>- Roll out public communications on media and social media on the PLS to encourage large social engagement and monitoring</li> <li>- Encourage partner organisations, influencers, champions and allies to engage with consultations</li> <li>- Encourage intersectional groups to engage with consultations</li> </ul>

What state-agencies do	What CSOs can do
<p><b>STEP 14</b></p> <p>Analysis of Post-Legislative Scrutiny findings</p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>Propose analytical tools, benchmarks, and format to structure the analysis of the PLS findings</li> <li>Offer support in the analysis of the consultation findings and data collected through the scrutiny</li> <li>Ask to review the preliminary findings of the review before the report is drafted</li> </ol>
<p><b>STEP 15</b></p> <p><b>Drafting the report</b></p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>Ask to have access and comment on the draft report</li> <li>Produce and disseminate a parallel report on the scrutiny that details recommendations</li> <li>Target institutions such as international/regional human rights mechanisms, MPs, the Office of the Attorney General, champions, intersectional CSOs allies and the diplomatic community in dissemination</li> </ol>
<p><b>Follow-up phase</b></p>	
<p><b>STEP 16</b></p> <p>Distributing the report and making it publicly accessible</p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>Monitor the dissemination of the report produced by the PLS implementing agencies</li> <li>Make political statements with regard to the process of the PLS and its outcomes</li> <li>Make recommendations on modalities of dissemination including format and language</li> <li>Produce user-friendly documents to disseminate PLS findings and recommendations</li> </ol>
<p><b>STEP 17</b></p> <p><b>Policy follow-up to the Post-Legislative Scrutiny inquiry</b></p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>Create a critical mass with intersectional allies</li> <li>Indicate priorities and put forward recommendations for policy changes</li> <li>Encourage champions and experts to support their recommendations</li> <li>Trigger monitoring of international/regional institutions, human rights bodies and the diplomatic community</li> </ol>
<p><b>STEP 18</b></p> <p><b>Evaluate the Post-Legislative Scrutiny inquiry results and process</b></p>	<p>CSOs can:</p> <ol style="list-style-type: none"> <li>Run a parallel assessment of the scrutiny</li> <li>Identify weaknesses and strengths of the process</li> <li>Recommend amendments for future scrutiny</li> </ol>

# 11. Checklist: CSO input on State-led Post-Legislative Scrutiny

The chart below details the questions addressed in PLS<sup>4</sup>. While not all of them are relevant for CSOs, it is important for CSOs to have them in mind when planning data collection and reporting to maximise their influence on the PLS. In **bold** are the questions most relevant in relation to CSOs role and capacity.

PLS Questions for Parliaments	CSOs input
<p>Have the original objectives of the law been achieved in quality, quantity and time, when measured against the baseline of what would have happened without the intervention of this law?</p> <p>To what extent has the law brought about the achievement of the objectives or has it induced activity that would not otherwise have occurred?</p> <p><b>Has implementation been affected, adversely or advantageously, by external factors?</b></p> <p><b>Have any significant unexpected side effects resulted?</b></p> <p><b>Have all the inputs required from the Government and the private sector been made as planned?</b></p> <p>Have any of the allocated resources been wasted or misused?</p> <p><b>Has implementation led to any unfairness or disadvantage to any sector of the community?</b></p> <p>Could a more cost-effective approach have been used?</p> <p>What improvements could be made to the law and its implementation that might make it more effective or cost efficient?</p> <p>Overall is the law and how it has been applied well suited to meeting the desired objectives?</p> <p><b>Has the law affected different groups in different, or unintended ways?</b></p> <p><b>Have unforeseen disadvantages or burdens been created for women, young people, or other groups?</b></p> <p>Have assumptions made during the passage of legislation (on costs, or timings, or impact) held true and if not, why not?</p>	<ul style="list-style-type: none"> <li>• It is important to note that the original objectives of the law might differ from CSOs' expected objectives. CSOs have an opportunity to highlight how the initial assumptions and objective(s) of the law were not in line with ensuring inclusion, non-discrimination and the fulfilment of the rights of the LGBTIQ+ community.</li> <li>• CSOs can address the gaps between their expectations and the objectives of the laws.</li> <li>• Disaggregated data, evidence and analysis developed by CSOs can highlight:             <ul style="list-style-type: none"> <li>- the shortcomings in the implementation of the law</li> <li>- inadequate resourcing of implementing/ monitoring mechanisms</li> <li>- unintended effects of the law</li> <li>- adverse impact on the LGBTIQ+ community and other social groups</li> <li>- intersectional impact of the law</li> <li>- recommending legislative amendments, including regarding implementation mechanisms, oversight bodies, financial allocation and capacity development of enforcement mechanisms</li> </ul> </li> </ul>

O4 See WFD PLS Guide, p. 13.

## 12. Toolkit: CSO-led PLS: Monitoring and Reporting on the Impact of the Law

CSOs can add the PLS methodology to their toolbox in order to strategize, plan, and implement legal advocacy activities and campaigns. The PLS methodology offers the opportunity to structure some of the ordinary activities of CSOs in order to gain wider social engagement through consultations of larger sectors of the society with a stronger framing of their legal advocacy work. This methodology would also assist CSOs in shaping the public narrative around issues that impact the LGBTIQ+ community by presenting them in a more inclusive manner, highlighting also how laws that are adopted with public funding for the benefit of all citizens adversely affect one or more of its groups, including LGBTIQ+ persons.

CSO-led PLS is not intended to replace state-led PLS. The State is the duty-bearer with regard to the responsibility for monitoring the enactment and impact of laws. CSO-led PLS can incentivise the Parliament to meet its responsibility to monitor the activities of the executive and to ensure that laws achieve their objectives in a democratic, inclusive and non-discriminatory manner.

COVID-19 prompted a shift to virtual working environments due to lockdowns, curfews, and mandatory social distancing has, in some cases, increased participation in meetings. People who may have been unable to engage due to lack of transportation or time for the commute have been able to attend meetings and other events. Those without access to the internet, however, have been unable to participate and CSOs must now find ways to re-engage them.

The steps below are ordered to ensure adequate preparation for each step and a consistent flow from one activity to the next. For each step, there are tips to help CSOs, particularly those with lower capacity, to identify available resources and simplify the steps in line with their capabilities.

### PLS PRE-PLANNING PHASE

#### Stage 0 (Preliminary): Monitor key legislation and encourage review.

Lobby for inclusion of specific language, monitoring mechanisms and the inclusion of sunset or review clauses in key legislation.

**TIPS:**

- Take cues from recommendations provided to the State by international mechanisms and use them to support your positions
- Publicize recommendations you make to the government before the amendment or new legislation is finalized

#### Step 1: Design long-term strategic engagement.

Focus on evidence-based advocacy to strengthen the recommendations made in the parallel report that will be produced during this process. In order to engage at this level, it is necessary to:

- Identify available resources and capacity needs.
- Set objectives that are compatible with your available resources.
- Create a timeline of activities.
- Identify decision-makers who are or may become allies.
- Recruit influential individuals who can become champions.
- Collect evidence including publicly available data, stories from community members, and new data from surveys and interviews
- Fundraise for research to make data collection possible

*TIPS:*

- Identify areas of shared interest with other CSOs and opportunities to collaborate  
Coalition-building may allow for sharing of resources and increase opportunities to amass more resources and specific support for the post-legislative scrutiny process.
- Identify funders prioritizing similar issues, their grant cycles, and national or regional partners and offices.
- Identify regional and international organisations that offer technical and legal support.
- Collect relevant stories that appear in traditional and social media.
- Focus on the nine questions for strategic advocacy planning (developed by Jim Schultz, The Democracy Center).
- Consider your current capacity by identifying the implications of your registration status, funding available for this process, total number of human resource hours the organisation has in an average week, technical skills you do and do not have, and sources of external support.

### **Step 2: Develop resources for advocacy.**

Amass the necessary resources for the entire process. In the preparation phase:

- Assess and position your expertise in the public narrative.
- Recruit experts, gain technical expertise, or seek technical/legal support.
- Raise money for planned activities.
- Collect relevant data.

*TIPS:*

- Invite community members and supporters to make in-kind contributions such as graphic design, content creation, and event planning.
- Encourage various forms of fundraising including reaching out to community members, philanthropists, international programmes, and crowdfunding.
- Create a safe mechanism for community members to share their stories such as anonymous submissions on a website, drop boxes, or mail.
- Formally request technical and legal assistance from international organisations working on similar issues.
- Identify key words and phrases used in relevant new stories and set up Google Alerts.

## **PLS PLANNING PHASE**

### **Step 3: Assess impact.**

Use evidence—including stories and other relevant data along with the mapping of key entities and their experiences—to determine the difference the law under scrutiny has made. Consider:

- Who, in the community, has used this law?
- Who, outside of the community, has used this law (against the community)?
- How has this law affected community members' lives?
- How does this law fail to protect the community?
- What parts of this law cause harm to the community?
- Which international networks can provide technical support?

- Create opportunities for community members to share their experiences with the law in safe ways including anonymous drop boxes, online forms, and encrypted messaging services.

*TIPS:*

- Refer to your material from Stage 0 when you initially assessed the law as it was proposed and seek to validate your points with stories and data.
- Specifically request relevant stories (to the points identified earlier) from community members.

#### **Step 4: Develop and execute a campaign.**

Use available data and earlier assessment of the legislation under scrutiny to develop a campaign that engages community members, humanizes the highlighted issues for the general public, and calls decision-makers to action. The campaign may include:

- Stories from people affected by the law.
- Petitions calling for the desired action.
- Op-eds, television and radio talk shows, paid advertising, and other uses of traditional media.
- Production of content for social media.
- Presentation of relevant data to decision-makers and the general public.

*TIPS:*

- Focus on one or two social media platforms that are most used by your target audience.
- Prioritize activities that have proven to be successful in your country.
- Use free tools such as Canva to produce graphics for social media, newsletters, and other publications.
- Create a document with three key messages for the campaign, answer the who, what, when, where, and why about those messages, and use that document as the foundation of all communications.

#### **Step 5: Build the case.**

Submit evidence-based materials to demonstrate inadequacy and/or negative impact of the laws that are being scrutinised. In this submission, it is important to:

- Be specific about the harm caused.
- Present clear examples with supporting evidence.
- Recommend the changes that would reverse and/or prevent the identified harm.
- Build relationships with other civil society organisations, nationally and internationally.
- Share good practices from other countries in the region or in the Commonwealth.

*TIPS:*

- In addition to the formal submission, consider sharing anonymized data and stories publicly using social media to increase reach and pressure on the government to take action.

*TIPS:*

- Connect with Commonwealth and international organisations supporting LGBTIQ+
- CSOs and legislative reform efforts and request reports, funding, and other forms of support.

## PLS IMPLEMENTATION PHASE

### Step 6: Present the case.

Use well-organised, strong evidence-based materials and concerted arguments to prove the case for review of the laws and of their impact on their community. To ensure that the case is accessible to different audiences: Limit the use of technical jargon in public-facing versions.

- Create graphics to depict the issues and recommendations.
- Support the full report with briefs, press releases, and other short written publications.
- Hold closed sessions to explain the case to community members and collect their feedback.
- Use live features on social media to speak directly to the public about the case.
- Ensure material meets accessibility requirements for people with disabilities.

*TIPS:*

- Share the material with community members and get feedback from them to ensure it is easily understood.
- Where full reports are not possible, use shorter forms of publication and communication and disseminate with the support of partner CSOs and your regional and international contacts.
- Seek support from allies locally and internationally to develop and disseminate your messaging.

### Step 7: Publicise the consultation process.

- Make the community aware of the consultation and facilitate their participation.
- If it is safe and they are comfortable, advise community members of ways to attend meetings, make comments, and call for specific action.
- Create a toolkit for community members that highlights talking points, makes the calls to action clear, and provides key data.
- If it is not safe or community members are not comfortable with direct engagement, design alternatives such as form letters or anonymous story-sharing platforms.
- Remain engaged with the government during the consultation process, encourage full disclosure of findings, and recommend thorough dissemination.
- Ensure material meets accessibility requirements for people with disabilities.

*TIPS:*

- Make every effort to have a team member participate in every consultation activity.
- Identify media personnel who will receive and print your press releases and other communications.
- Create your own communication channels and leverage social media platforms to reach government actors and community members.

### Step 8: Engage decision-makers, analysts, and champions

Focus advocacy on engaging with legislators.

*TIPS:*

- Build a relationship with the analysis team early in the process.
- Communicate anticipated issues with implementation so they can, if not immediately address, be included in the areas to be monitored.

## PLS FOLLOW-UP PHASE

### Step 9: Publish a review.

In addition to producing a review:

- Ensure the report is accessible.
- Distribute the report to the government, consultants and experts, community members, and the media.
- Present recommendations for policy changes to improve protection and promotion of the rights of the community.

*TIPS:*

- Create a document with the key points from the report.
- Create a chart with the key points from the report alongside the legislation under review.

### Step 10: Monitor implementation.

Develop a tool and process for monitoring and measuring the implementation of recommendations in the post legislative scrutiny report.

*TIPS:*

- This tool can be a four-column chart with the recommendations, activities that would lead to their implementation, the status of implementation, and comments.
- Identify team members to focus on monitoring and measuring implementation. These team members should work closely with those responsible for community engagement and collecting data and stories.



## 13. Part III: Case Studies: Belize, Mauritius, Pakistan

The PLS is still a fairly new tool. It has not been used in any of the focus countries of this study and across the Commonwealth this methodology has not been applied to LGBTIQ+ relevant legislation. Therefore, the case studies focussed on legislative reform, which has been analysed through the PLS methodology to show the complementarity of PLS with activities and experiences that LGBTIQ+ CSOs can relate to.

The three cases in this section intend to describe the processes, obstacles and strategies adopted in different Commonwealth countries in order to assess and reform laws that adversely impact LGBTIQ+ rights. Despite the differences in socio-cultural background, social composition and size, some common trends have emerged, such as the key role played by champions, the importance of producing and disseminating data and evidence on the impact of the laws, the strength of intersectional initiatives, the influence of international observers and mechanisms and the complementary role of CSOs legislative assessment with the one conducted by the Parliament.

Belize and Mauritius were selected for the case studies as these are the countries selected for the pilot phase of the programme on post-legislative scrutiny and LGBTIQ+ rights.

### 13.1 Belize: from sexual offences laws reform to the Equal Opportunities Bill

The development of the Equal Opportunities Bill in Belize largely built upon the lessons learned through the five-year-long process to reform sexual offences laws that culminated with the adoption of the Sexual Offences Law Bill in 2014.

#### Sexual Offences Laws Reform at a Glance

Since 1990, Belize embarked on a progressive long-term process to eliminate discrimination and strengthen equality across society, to tackle the legal provisions in the Penal Code 1888—a legacy of the British colonial regime—that were outdated and discriminatory. International legal standards deriving from the international human rights treaty that Belize acceded to also incentivized legislative review and reforms.

The Penal Code was outdated and provided no protection against rape to married women (unless separated); similarly, the gender specific definition of rape did not recognise males, adult and children alike, as potential victims. The archaic provision on sodomy was not only criminalizing the act, but also equating it to bestiality. The language of the Penal Code was derogatory and discriminatory, with words like “idiot” and “imbecile” used to refer to individuals with mental disabilities.

The Office of the Special Envoy for Women and Children (OSEWC) and the Ministry for Human Development, Social Transformation and Poverty Alleviation (MHDSTPA) were the driving forces for the review and reform of sexual offences laws. Other key institutional players were the National Women’s Commission and the National Committee for Women and Children. At that time, civil society organisations working on LGBTIQ+ and women’s rights—while active on issues related to discrimination and violence against their community—were still not as developed as today, yet they played an important role in advancing the quest for review and reform of inadequate and discriminatory provisions of the Penal Code. The strongest opposition to legislative reform came from religious groups and leadership, in particular from the Christian Evangelical church.

The urgency of the reform became more and more apparent as a result of a string of judicial decisions on criminal cases in which children were victims of sexual violence and with the perpetrators failing to be held accountable. A case that sparked strong outrage at the inadequacy of existing legislation was the one of a 14-year-old girl who was sexually abused and the perpetrator was offered bail on the condition to marry the victim.

The OSEWC and the MHDSTPA embarked on an increasingly pressing process of lobbying the judiciary as the shortcomings of jurisprudence were leaving victims without justice and failing to respond to the requirement of deterrence that penal provisions should have fulfilled. These decisions, their impact on victims and the social and economic system, along with the failure of the laws to uphold legal principles established in the Belizean Constitution and international human rights instruments, were brought to the attention of senior judges and officials, including the Attorney General. It emerged that the judiciary had its hands tied as it admitted that due to the existing provisions in the Penal Code, it was unable to adequately do justice to victims. Of particular importance was a workshop held with the Chief Justice and senior judges who later contributed to early drafts of the Amendment Bill before it was submitted to the Attorney General’s department. The initial drafting of the revised bill was completed by Belizean lawyers on a pro-bono basis. The advice

from the national legal community, such as the judiciary, the Bar Association and other national legal experts ensured that the draft legislation aligned with the national legal framework. A petition was submitted to the Cabinet for the amendments to the law to be considered. The request was accepted and the draft amendments submitted to the Cabinet. In parallel, the National Assembly started a consultation supported by a Cabinet-established cross-party Committee who held public hearings.

The institutions that spearheaded the reform of sexual offences laws widely engaged, including through consultation meetings with civil society, faith groups, political leaders, lawyers, activists and the media. In order to defuse the strong opposition of religious groups, those advocating for legal review strategically focused on the negative impact of existing criminal provisions on child protection. This made it more difficult for opponents to make a case against the review of the law and its reform.

## **“Did you know that our Criminal Code still uses the word 'idiot' to denote a person with a learning disability?”**

The constant reference to well-documented and compelling cases was also key in winning the hearts and minds of Belizean across the board.

The OSEWC and the MHDSTPA commissioned a series of studies to review the compliance of Belizean law with international obligations. In parallel, pressure was created through media reports and the work of CSOs that stepped up their campaigning and public education efforts, also encouraged by the increased public debate on violence and discrimination against vulnerable sections of the society such as LGBTIQ+ persons, women and girls.

Champions, such as the Special Envoy for Women and Children who was also the spouse of the then Prime Minister, health experts and politicians helped generate social and political receptiveness towards the inadequacy of existing laws and the need for reform that built on the process of modernisation of the legislation. The concerted efforts of these actors were successful as they put the victims at the heart of their campaign to promote revision of the law and reform.

### **Key Ministries and Agencies Driving the Reform in Belize**

OSEWC  
MHDSTPA  
National Committee for Families & Children  
National Women's Commission  
National AIDS Commission (NAC)

International agencies and human rights organisations offered support and resources in support of the activities undertaken by Belizean organisations and institutions in promoting legislative review and reform.

A crucial contribution to the review and reform of the Penal Code was the constitutional claim brought by Caleb Orozco and UNIBAM against Section 53<sup>5</sup>. The case, filed in 2010, addressed discrimination, violence, stigma and marginalization of the LGBTIQ+ community and brought them to the attention of the public eye. The case sparked wider social debates and hostile reactions against Mr. Orozco, who received death threats, and the LGBTIQ+ community in general. A number of “interested parties,” including the Catholic Church of Belize and international human rights organisations such as the International Commission of Jurists and the Human Dignity Trust, joined the case respectively against and in support of the claim. The Supreme Court ruled in favour of the claimant and the decision was later upheld by the Court of Appeal<sup>6</sup>. This is a precedent-setting case of global relevance in the protection of the rights of LGBTIQ+ individuals<sup>7</sup>. In Belize, the case has played a significant role in encouraging legal, political and social change. It contributed to the strengthening of Belizean CSOs in terms of knowledge and strategic engagement with legal assessment and review.

While the Orozco case was being heard, the National Gender Policy 2013 was published. The document, amongst other principles, was recognising the right of individuals to be free from discrimination on the basis of their sexual orientation. As a result of all these concurrent events and initiatives undertaken in an intersectional and transversal manner, by the time the bill was introduced to Parliament there was sufficient cross-party consensus for the Amendment Bill to be smoothly approved by the National Assembly.

The process took five years, mainly due to the scarce resources available in state institutions and the existing backlog of legal offices. CSOs also had limited means and capacity, yet they played a vital role in giving voice to victims of discrimi-

nation and violence. These compelling stories were essential in pushing the process forward. All the above activities would have been relevant in the context of planning and, implementing a PLS and in its follow-up phase.

**A virtuous circle: key factors and players**

The process of assessing the protection gaps in the legal system and the subsequent legal review and reform that led to the adoption of the Amendment Bill 2014 is a complex one. Its success was determined by the concerted efforts of key players and interplay of factors, strategies and activities as detailed in the chart below. These factors and players are the same that would be of relevance in the planning, implementation and follow-up phases of a PLS, whether it is State or CSO-led.

<b>Amendment Bill 2014, Belize</b>	
<b>National Legal Community</b>	<b>Countrywide &amp; Transversal Engagement</b>
<b>Clear &amp; Simple Language</b>	<b>Public Education Campaigns &amp; Consultations</b>
<b>Strategic Entry Points</b>	<b>Victim-Centred Approach</b>
<b>Building On Existing Review &amp; Policy Documents</b>	<b>Complementarity Litigation &amp; Reform</b>
<b>Long Term Engagement</b>	<b>Intersectional Movement</b>
<b>Engaging The Media</b>	<b>Synergy Public Institutions &amp; Csos</b>
<b>International Observers &amp; Organisations</b>	<b>Evidence &amp; Stories Of Victims</b>
<b>Champions</b>	

**The obstacles in the way of legislative assessment and reform**

The legislative assessment and proposed reform of sexual offences laws that culminated in the adoption of the Amendment Bill 2014 represented an important learning experience for the public institutions and CSOs involved. The stakeholders evaluated their work, impact and the obstacles along the way. It emerged that the actors involved, while relying on stories, had only limited access to data which was often not sufficiently disaggregated and updated. Data collection is primarily the responsibility of state institutions; however, they are often deficient and CSOs, notwithstanding their limited capacity, end up taking responsibility for data collection. Technical knowledge, both legal and on strategic communications, needs to be very specialised for CSOs to be able to effectively engage in legislative assessment and review. These skills often are not part of the resources of CSOs which need to outsource them or rapidly acquire them with the support of international agencies.

The chart summarises some of the lessons learned and the identified mitigation strategies that were instrumental in developing the work on the Equal Opportunities Bill. These findings are also relevant for CSOs to plan their engagement or undertaking PLS.

Problem	Objective/s	Solution/s
Limited Resources	Accessing international funds to support the development of assessment of impact of legislation and engagement with key stakeholders would have facilitated and expedited the process	<ul style="list-style-type: none"> <li>• Assessing capacity needs (financial)</li> <li>• Tapping into international funds and programmes</li> </ul>
Limited Technical Capacity	Supplementing local legal/legislative and communications capacity with outsourcing legal drafting and development of strategic communications plans Ensure timely and accurate legislative drafting.	<ul style="list-style-type: none"> <li>• Assessing capacity needs</li> <li>• Planning capacity development activities</li> <li>• Seeking support from international organisations and academic institutions</li> <li>• Engaging with international networks and experts</li> </ul>
Preparedness for long term engagement	Understanding legislative and legal processes (i.e. elections, budget read, Parliamentary recess) in order to plan resources, activities and manage expectations	<ul style="list-style-type: none"> <li>• Defining final goal</li> <li>• Identifying benchmarks</li> <li>• Timeframe of activities</li> <li>• Managing resources</li> </ul>
Data collection & Evidence	Documenting cases and collecting, evidence and disaggregated data	<ul style="list-style-type: none"> <li>• Setting up monitoring and documentation programmes</li> <li>• Adopting systems for data collection and storage</li> <li>• Adopting safeguards for protection of data</li> <li>• Demonstrating socio-economic impact of discrimination and violence</li> <li>• Advocating for strengthening state data collection mechanisms</li> </ul>
Testing the Law	Ensuring that the new legislation is comprehensive, effective and minimising the risks of gaps	<ul style="list-style-type: none"> <li>• Mock trials</li> <li>• International review/advice</li> <li>• Referring to model laws</li> </ul>

## **The Equal Opportunities Bill 2019**

The lessons learned from the reform of sexual offences law facilitated the ensuing processes of legislative review and reform. In particular, CSOs were encouraged to strengthen their structures, organise better and work collaboratively in order to maximise resources, with small organisations learning from larger and better resourced ones. They also had a much stronger footing in engaging with lawmakers and clearer understanding of legislative and parliamentary processes.

The interaction between the initiators of the sexual offences law reform and CSOs continued and became stronger. From this dialogue, priorities for further legal assessment and reform emerged, including in relation to the adoption of legislation on equal opportunities and hate crimes. Reports and public criticisms of LGBTIQ+ organisations were showing that gaps in the legal protection of members of their community was affecting their socio-economic conditions and the social fabric. Members of the LGBTIQ+ community were vulnerable to violence and discrimination while having no access to legal recourse. Parallel reporting and advocacy of CSOs domestically and before international and regional mechanisms played an important role in creating the case for legislative amendments and reform.

Building on the experience of previous legislative assessment and reform, the OSEWC and the MHDSTPA, the National AIDS Commission (NAC) and CSOs joined forces to address the impact of deficient legislation on equal opportunities and hate crimes.

### **Nationally led and internationally resourced**

In developing the Equal Opportunities Bill<sup>4</sup>, the national agencies and CSOs promoting the new legislation adopted a strategy that capitalised on the evaluation of the previous legislative assessment and reform.

They tapped into existing international programmes, such as the Equality and Justice Alliance and, with the support of the Human Dignity Trust, they outsourced the legal team that included experts on hate crimes and experienced legislative drafters recruited regionally. The international team worked in close coordination with Belizean stakeholders and, on the basis of a CARICOM model law, drafted the Equal Opportunity Bill<sup>8</sup> in late 2019. The draft was reviewed by Belizean legal experts and the Office of the Attorney General to ensure its adherence to existing national legislation. The law is the first of its kind as it establishes criminal responsibility for hate crimes. It does not create new offences, but by way of analogy refers to existing provisions in the Belizean Penal Code.

The draft bill is strongly intersectional and includes 20 different protected characteristics, including age, disability, religion, sex, sexual orientation, intersex and HIV positive status, and victim of domestic violence. The proposed legislation explicitly excludes any modification of the Marriage Act (and any possibility for same-sex marriage) and recognises indigenous rights on communal land as protected in existing legislation.

The scope of the Bill is to give life to constitutional principles in order to eliminate discrimination, including in the workplace, and to create a better and fairer society for all Belizeans, equally protected under the law and able to thrive.

The Equal Opportunity Bill includes an implementing and investigative body, the Commission, which is in charge of receiving and investigating allegations prioritising conciliatory resolution of the dispute and developing strategies and guidelines to eliminate and prevent discrimination.

The legislative reform was publicised through a public sensitization campaign called "Live and Let Live" through radio and video contributions to familiarise the population with the draft law and its objectives.

Public consultations were held in January 2020 across the country with the national and international legal experts presenting the main features of the Bill to different social groups. Private meetings were held with political, religious and business representatives. The general public was also encouraged to share their views with the NAC by submitting enquiries or anonymous comments.

CSOs played a crucial role in reviewing the draft bill with a strong victim and trauma centred approach. They engaged their community and publicly campaigned in support of the new draft legislation. They attended strategically selected meetings along with others championing the law and held private meetings with faith leaders and politicians. In light of

the experience gained with the reform of the sexual offences laws, Belizean CSOs are better equipped to engage with law and policy makers and have easier access to them.

### **Stumbling blocks**

The draft bill was met with the fierce resistance of the Evangelical Church that mounted strong opposition on the argument that the new law was pursuing a “gay agenda” to incentivise homosexuality and corrupt the society. The hostility of religious leaders and groups towards this legislative initiative was particularly channelled via social media, now the primary outlet for political campaigning in Belize.

The establishment of the Commission has also been met with scepticism and criticism.

It is interesting to note the contrast between the position expressed by political and religious leaders, often wearing both hats, during public events and via social media and in private. Behind closed doors, in general, the bill was positively received and, in some cases, praised, while in group and public events, the predominant reaction was negative and of opposition with the peak in hostility being expressed on social media.

The public opposition to the draft bill escalated into what the former Belizean Prime Minister called “purposeful misinformation from some stakeholders”. On the basis of the need for further social consultations and debate, on 15 September 2020, the Cabinet decided to withdraw the bill while citizens can still present their concerns about the proposed law to the relevant Parliamentary Committees<sup>9</sup>.

Priorities have shifted due to the COVID-19 pandemic, which demanded significant public resources, slowed parliamentary activities and made it more difficult for CSOs to engage with lawmakers.

On 6 October 2020, the National Assembly was dissolved ahead of the general elections that were held on 11 November and resulted in the victory of the previous opposition party, the People’s United Party, and a change in administration. With the change in the administration, champions of legislative reforms such as the previous Special Envoy for Women and Children and the Speaker of the National Assembly no longer hold public functions.

CSOs had been advocating for political parties to support the Equal Opportunities Bill well ahead of the elections and, despite the challenges created by the COVID-19 pandemic, they continue to try to reach out to lawmakers with little success. The current Cabinet reportedly stated that there is support for further work on the draft bill; however, this is not a priority and might not be for at least for the first year to year and a half in office.

While not yet completed, the process of drafting and promoting the Equal Opportunities Bill has been faster and less bumpy than the one for the adoption of the sexual offences law. With the easing of the effects of the pandemic, CSOs will continue to work to support the draft Bill, including with public campaigns and private engagement with law and policy makers.

05 Caleb Orozco v. Attorney General of Belize, 668/2010. Available at: <http://www.u-rap.org/web2/images/Documents/Supreme-Court-Claim-No-668-of-2010-Caleb-Orozco-v-The-Attorney-General-of-Belize-et-al1.pdf>

06 Attorney General of Belize v. Caleb Orozco, 32/2016. Available at: [https://www.humandignitytrust.org/wp-content/uploads/resources/CIVIL-APPEAL-32-OF-2016-JUDGEMENT-30-Dec-19\\_compressed.pdf](https://www.humandignitytrust.org/wp-content/uploads/resources/CIVIL-APPEAL-32-OF-2016-JUDGEMENT-30-Dec-19_compressed.pdf)

07 Human Dignity Trust, “Belize: A constitutional challenge to the laws criminalising same-sex activity”. Available at: <https://www.humandignitytrust.org/what-we-do/cases/belize-a-constitutional-challenge-to-the-laws-criminalising-homosexuality/>

08 Equal Opportunities Draft Bill, January 2020. Available at: <https://www.policytracker.bz/wp-content/uploads/2020/01/Equal-Opportunities-Bill-Belize-Draft-dated-10.1.20-1-1.pdf>

09 Government of Belize Press Office, Statement, 16 September 2020, <https://www.facebook.com/GOBPressOffice/posts/3243984318970382>

## 13.2 Mauritius: the elusive decriminalisation & sexual offences laws reform

Mauritius is a small country with a diverse demographic composition, populated as a result of colonisation. Approximately two-thirds of the population are Indo-Mauritian while the remaining one-third is composed of Creole, Sino-Mauritian and French Mauritian. The religion composition of the country is also composite with a majority of Hindu (approximately 48.5%), followed by Roman Catholic (approximately 23%), and Muslim (approximately 17%)<sup>10</sup>.

Mauritius' society is fairly conservative with strong religious beliefs. This creates a hostile environment for LGBTIQ+ people who experience violence, stigmatization and marginalization, in particular within their families. In a homophobic society, LGBTIQ+ people are victims of physical and psychological violence and harassment, especially by members of their local community. Some LGBTIQ+ persons have been forced into marriages. As a result, LGBTIQ+ people in Mauritius tend to hide their sexuality or gender identity and when they do not, they live in difficult socio-economic conditions and virtually without legal protection.

The social homophobic attitude in which homosexuality is seen as a sin and unnatural is reinforced by archaic, discriminatory and derogatory laws inherited from the former colonial powers, France and the United Kingdom. While Mauritius adopted its Constitution in 1968 when it became an independent state, its legal system remains hybrid. In particular, the criminal law is based on the French Penal Code and British common law, especially on criminal procedure and evidence. The provisions on sexual offences in the Criminal Code, which dates back to 1838, are written in a moralistic, patriarchal, stigmatising and derogatory language. The provision on rape is vague and framed on the concepts of chastity and honour. Consensual same-sex sexual acts are criminalised and equated to bestiality.

The process of reforming sexual offences laws has been ongoing for over fifteen years. This is not unusual for Mauritius as it took over a decade for the drafting and adoption of the Children's Bill which was enacted in November 2020. Similarly, the adoption of the Gender Bill is still pending. The Government has repeatedly stated its commitment towards amending sexual offences laws before international human rights bodies such as the Human Rights Committee and the Human Rights Council.

In 2007, the government prepared a Sexual Offences Bill to update the criminal code's provisions on sexual offences, but it was subsequently shelved. The document, drafted by the Law Reform Commission, also clearly recommended the decriminalisation of sodomy in order to align the Mauritian legal system with international legal standards enshrined in ratified international human rights instruments.

In 2011, in response to a Private Notice Question made by the leader of the opposition in Parliament, the Government renewed its commitment towards reforming sexual offences law. It stated that it would await the findings of an international study commissioned by the UN High Commissioner for Human Rights and then set up a Select Committee to conduct a national study to identify the necessary amendments to the Criminal Code. This initiative bore no tangible outcomes.

### Key Public Institutions Engaged in the Reform in Mauritius

- The Office of the Attorney General
- Law Reform Commission
- National Human Rights Commission

Also due to the pressure from international human rights bodies, during the 5th Periodic Report to the Human Rights Council in 2017<sup>11</sup>, the Government of Mauritius stated its intentions to amend sexual offences laws; however, it clearly asserted that this would not have included any modification of the provision on sodomy and bestiality.

In late 2018, at the third Universal Periodic Review before the Human Rights Council, the then Minister of Human Rights and Institutional Reforms, and Attorney General, reiterated Mauritius' intention to move forward with the reform sexual offences law and declared that the Government was being supported by the Human Dignity Trust as part of the Equality and Justice Alliance programme.

The cooperation with the Equality and Justice Alliance gave new vigour to the efforts to reform sexual offences laws that were championed by the Attorney General. Key institutional players, including Parliamentarians, attended international convenings in which Commonwealth countries, represented by state officials and CSOs, exchanged lessons regarding the modernisation of legislation impacting women, girls and LGBTIQ+ rights. In April 2019, the Law Reform Commission published a discussion paper<sup>12</sup> recommending the redefinition of sexual offences laws, including an expanded definition of rape and the repealing of the provision criminalising sodomy.

In parallel, in late 2019, the Office of the Attorney General, with the assistance of the Human Dignity Trust, completed a comprehensive legal and human rights review of sexual offences laws and a new bill was drafted for presentation to the National Assembly in 2020. At the time of writing, the tabling of the Bill before remains unscheduled.

These international incentives towards reforming sexual offences law would have been equally relevant in the PLS phases of planning, implementation and follow-up.

### **The role of CSOs**

Mauritian LGBTIQ+ and women's rights CSOs actively engaged in the process of assessing, reviewing and reforming sexual offences laws, in particular on decriminalisation of consensual same-sex sexual acts.

LGBTIQ+ organisations have been receiving information and assisting survivors in dealing with public institutions including law enforcement offices and health services. Through these service provision activities, they were able to document cases and collect evidence to substantiate the failure of the legal system to abide by its constitutional principles and international legal standards. This documentation and analysis formed the backbone of their advocacy at the international level, and their parallel reporting put pressure on policy makers.

At the domestic level, CSOs empower the LGBTIQ+ community, conduct education and sensitisation activities, are active on social media and with traditional media which shows some resistance in featuring pieces on LGBTIQ+ rights. However, the coverage of and reactions to the incidents that occurred at the Pride March of June 2018 generated broader social debate on the rights of the LGBTIQ+ community.

In terms of assessment of the impact of legislation on the rights of LGBTIQ+ persons, in 2019, Mauritian CSOs joined forces and formed an intersectional group<sup>13</sup> that commissioned national experts to conduct research and produce a study on the legal environment in order to address violence against women, children and LGBTIQ+ people. The development of the report, which is still being finalized, created important opportunities for CSOs to engage with public institutions involved in scrutinising laws impacting LGBTIQ+ rights. In October 2019, the National Human Rights Commission attended a validation workshop for the report<sup>14</sup>.

In 2019, the Young Queer Alliance<sup>15</sup> and the Collective Arc-en-Ciel<sup>16</sup> filed two cases before the Supreme Court challenging the constitutionality of Section 250 of the Criminal Code. The hearings of the case have been postponed due to COVID.

### **Official records and data**

CSOs found it difficult to make the case for review of sexual offences laws and, in particular, for the decriminalization of consensual same-sex sexual acts. Adding to the constraints that most CSOs face in acquiring resources and technical capacity—which were supplemented by international actors—data remains a major obstacle. In proving the adverse impact of Section 250 of the Criminal Code, CSOs cannot rely on comprehensive and disaggregated data from official records.

In challenging the criminalisation of consensual same-sex sexual acts, the CSOs could not rely on data on conviction rates for prosecutions under Section 250. The argument of the opponents to decriminalisation was that prosecution for the crime prescribed in Section 250 has been sporadic, however official data is not available. CSOs have strongly rebutted this, clarifying that the criminalisation of consensual same-sex sexual acts has ramifications beyond prosecution for sexual activities. The existence of Section 250 creates a hostile legal environment for LGBTIQ+ persons who are unable to seek adequate protection from the law and access healthcare due to the prevailing discriminatory, antagonistic and intimidating system. They refrain from seeking legal redress and assistance, fearing physical and psychological harm. Additionally, the lack of comprehensive and disaggregated data collected by law enforcement bodies makes it difficult for CSOs to have official corroboration of the extent of the impact of the legal and social environment on the LGBTIQ+ community, particularly with regard to incidents of violence and discrimination. Equally, socio-economic disaggregated data is insufficient to prove the impact of inadequate legislation on the rights of LGBTIQ+ persons.

In planning, implementing and follow-up the PLS availability of data, in particular gender and diverse ability disaggregated information, is key. Addressing this point would better enable Mauritian CSOs to engage and/or undertake PLS.

### **Engagement with policy and lawmakers**

Despite being a small country with a population of approximately 1.3 million people, in Mauritius, LGBTIQ+ CSOs have a difficult time connecting and engaging with

*“They invest in what pleases the eyes but they do not address human development, inclusion and equality”*

Mauritian LGBTIQ+ Activist



institutional actors such as policy and lawmakers. The strong effect of religion on politics makes politicians prone to engage on social issues through a religious prism for political expediency. Additionally, in a society in which older people influence politics, changing laws to address the stigmatisation and discrimination of the LGBTIQ+ community is framed as an attempt to subvert social dynamics and corrupt the society. In private, policy and lawmakers express sympathetic views in favour of LGBTIQ+, but in public, they are cautious and often withdrawn.

CSOs reported that the Government lacks structured mechanisms for inclusive stakeholders' consultations. For example, the National Steering Committee on Gender Mainstreaming established in July 2010 was only accessible to Government representatives.

Opportunities for direct interaction between CSOs are limited and often it is up to international players, such as the international diplomatic community, to create spaces, both domestically and abroad, for engagement between CSOs and institutional representatives, for both formal and informal discussions. For example, in December 2018 the EU Delegation to Mauritius, in cooperation with the National Human Rights Commission, organised a forum debate on "Promoting and Protecting Human Rights for LGBTI Persons"<sup>17</sup> in which Government officials were in attendance along with international experts and representatives of LGBTIQ+ organisations.

This direct engagement is crucial to develop familiarity and reciprocal trust between CSOs and lawmakers. In particular, it emerged that when such interaction occurs in a safer environment, namely during international events held abroad, lawmakers are less defensive and more genuine, frank discussions occur. With the current situation of severe travel restrictions imposed in response to the COVID-19 pandemic, activists' ability to engage and influence policy and lawmakers is significantly affected.

**A virtuous circle: key factors and actors**

These factors and players are the same that would be of relevance in the planning, implementation and follow-up phases of a PLS, whether it is State or CSO-led.

Sexual Offences Law Draft Bill 2019 & Decriminalisation	
Public Events	Intersectional Movement
Complementary Litigation & Reform	Media
Victim-Centred Approach	Diplomatic Community
Evidence & Stories Of Victims	International Observers/Events
International Technical Assistance Programmes	International Human Rights Mechanisms
Champions	Long Term Engagement

10 Index Mundi, Mauritius Demographics Profile. Available at: [https://www.indexmundi.com/mauritius/demographics\\_profile.html](https://www.indexmundi.com/mauritius/demographics_profile.html)

11 Human Rights Committee considers the report of Mauritius, 24 October 2017

<https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22287&LangID=E>

12 Discussion Paper "Reform of Law on Sexual offences involving physical contact between the perpetrator and the victim" LRC\_R&P 131, April 2019, <http://lrc.govmu.org/English/Documents/Reports%20and%20Papers/Discussion%20Paper%20Reform%20of%20Law%20on%20Sexual%20Offences.pdf>

13 The Kolektif Drwa Imin (KDI) is a group of NGOs and collectives, comprising of Collectif Arc-En-Ciel, Gender Links, Kolektif Drwa Zanfan Morisien, PLS and the Young Queer Alliance.

14 National Human Rights Commission of Mauritius, Annual Report 2019, May 2020. Available at:

<https://nhrc.govmu.org/Lists/AnnualReports/Attachments/9/NHRC%20ANNUAL%20REPORT%202019.pdf>

15 Young Queer Alliance, 'Four Mauritians seek to establish equality and freedom under the law for LGBT persons before the Supreme Court of Mauritius', 17 September 2019. Available at: <https://youngqueeralliance.com/2019/09/17/four-mauritians-seek-to-establish-equality-and-freedom-under-the-law-for-lgbt-persons-before-the-supreme-court-of-mauritius/>

16 CAEC, 'Plainte pour inconstitutionnalité de l'article 250 - Communiqué de presse - 25.10.19'. Available at:

<http://www.collectifarcenciel.org/communiquede-presse-25-10-19/7>. CAEC, 'Plainte pour inconstitutionnalité de l'article 250 - Communiqué de presse - 25.10.19'. Available at: <http://www.collectifarcenciel.org/communiquede-presse-25-10-19/>

17 See Supra, 5. National Human Rights Commission of Mauritius, Annual Report 2019, May 2020. Available at:

<https://nhrc.govmu.org/Lists/AnnualReports/Attachments/9/NHRC%20ANNUAL%20REPORT%202019.pdf>

### **13.3 Pakistan: A success story of traditional values and strategic allies**

In Pakistan, transgender women and eunuchs are considered a third gender known as Khawajasira. This group does not include trans-masculine identities.

Traditionally, Khawajasira were held in high regard in pre-colonial Pakistan as they were considered those whose prayers were answered by God. As such, they were advisors to the emperors. During the British colonial era, this aspect of local culture was condemned as falling outside of Victorian morality. The colonial power imposed its neo-Christian values and banned cross-dressing. As a result, the status of Khawajsira gravely deteriorated and they were victims of discrimination and violence. Other discriminatory attitudes and religious values further contributed to the vulnerability and disenfranchisement of the transgender community in Pakistan.

Human rights violations and discrimination on the basis of gender identity are still prevalent and a big challenge for Pakistan. The transgender community and other marginalised minorities face stigma, discrimination and violence, including harassment, mistreatment and exclusion from society, the public health care system, education system, employment and other institutions of government. They face different forms of abuse, ranging from exclusion from society to brutal murder. Most transgender people work in the informal economy and remain vulnerable to exploitation and abuse, subjected to trafficking, extortion and forced prostitution. The marginalization of the transgender community is a by-product of outdated colonial laws.

#### **The Legal Environment at a glance**

##### **Constitutional protection**

Article 25 of the Pakistani constitution protects all citizens from discrimination on the basis of sex. Additionally, Articles 14, 25A and 28 of the Constitution safeguard their rights, dignity and status. However, these constitutional provisions were not operationalised into law and protection mechanisms at the ground level.

The Constitution does not recognize the right to marriage for transgender people.

##### **The Penal Code 1860<sup>18</sup>**

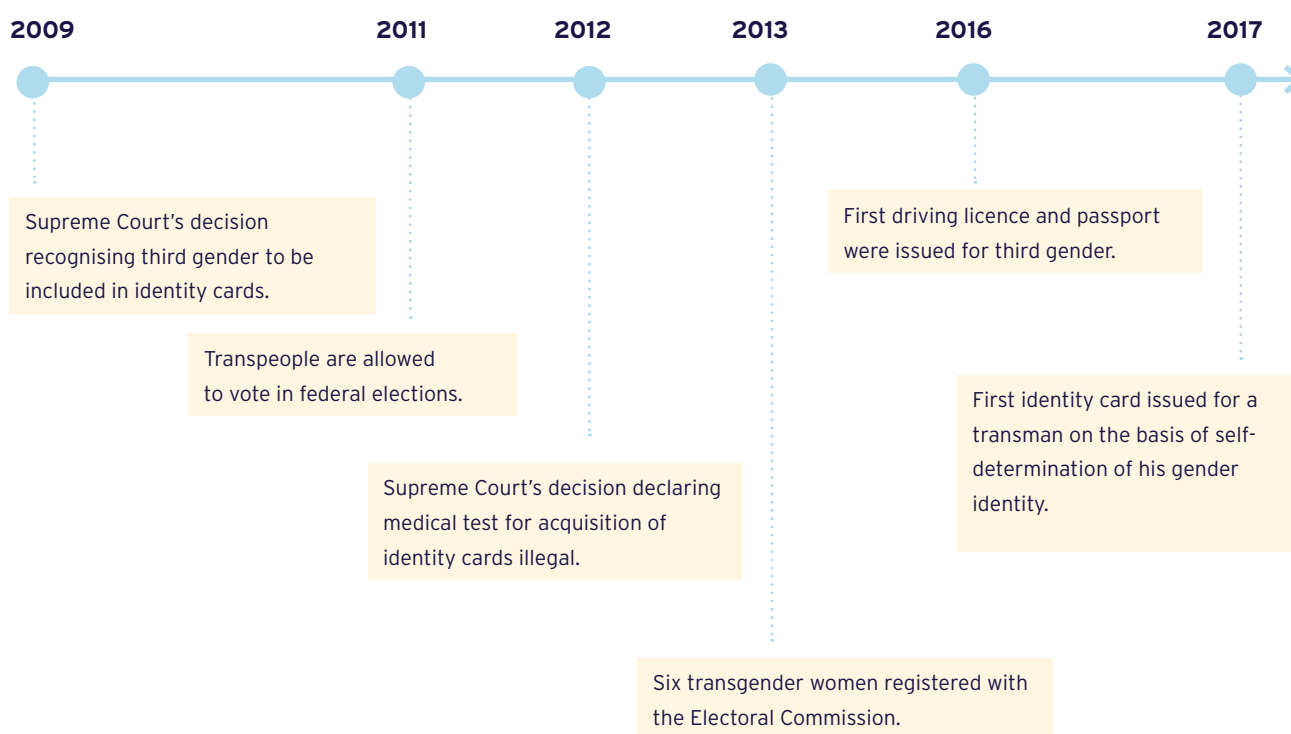
Like most Commonwealth countries, the Pakistani Penal Code of 1860 criminalises consensual same-sex acts and includes provisions on public order, vagrancy and misdemeanour offences that disproportionately affect the LGBTIQ+ community and exposes them to discrimination, violence and deprives them from legal protection. The language of the provisions on sexual offences is anachronistic. The provisions are not gender neutral and are based on morality while failing to address power and violence in the context of sexual offences.

##### **The Offences Against Property (Enforcement of Hudood) Ordinance 1979**

This law enacted in 1979 introduced Sharia Law in the Pakistani legal system and amended the criminal code with the inclusion of offences as defined in Islamic law. With regard to sexual offences, this Ordinance criminalises sexual relations outside of marriage; as a result, all sexual activities between same-sex partners and transgender people are, by default, illegal.

## Key jurisprudence and policy developments

These events could have been stronger triggers for the planning phase of a PLS.



## Transgender movement and the adoption of the Transgender Persons Act 2018<sup>19</sup>

In 2005, consultations and a report on HIV interventions and the transgender community gave further strength to the mobilization of the transgender community. However, the transgender community already had the support structure provided by the traditional hierarchical system of kinship known as Guru-Chela, whereby young transgender women (Chela) are adopted by a mentor (Guru) who provides for their shelter, food and protection in exchange of their contribution to the functioning of the household.

In 2016, as a result of at least five grave incidents of violence against transgender women, CSOs, activists and gurus organised nationwide protests that were widely covered by national media. Additionally, international organisations supported CSOs and activists with capacity development, visibility and agency. The creation of a safe space for dialogue and interaction between CSOs and activists and key policy makers and parliamentarians outside Pakistan was key. The alternative report submitted in 2017 by CSOs for Pakistan's Universal Periodical Review before the Human Rights Council also generated momentum and international pressure on the Government to address the conditions of the LGBTIQ+ community. This international pressure combined with strengthened media coverage of LGBTIQ+ rights and cases contributed to sensitizing the general public.

An alternative report, in the context of a PLS, could have been both a trigger and an important submission during the implementation of the PLS.

## Double drafting and approval of the bill

In 2017, the Senate Functional Committee on Human Rights tasked the National Human Rights Commission (NHRC) to draft legislation to address the rights of the transgender community. Supported by UNDP, the NHRC rolled out provincial consultations, not open to trans activists, and the results failed to address the needs of the trans community which did not support the draft bill produced by the NHRC.

A parallel CSO-led initiative was initiated in May 2017 that included trans activists and CSOs working on LGBTIQ+ and women's rights. With the support of pro-bono lawyers and international funding, they drafted a second bill and conducted sensitization campaigns amongst the LGBTIQ+ community and engaged with policy makers to champion the new law.

As a result, a National Task Force (NTF) was set up by the Federal Ombudsman's Office and included senators, policy experts, academics, activists and members of the transgender community. The NTF meetings were a unique opportunity for lawmakers and members of the community to engage directly and it succeeded in producing an inclusive bill to protect transwomen and transmen alike.

The two parallel processes led to the submission to the Senate of two separate bills.

**Engaging the Council of Islamic Ideology:  
a turning point**

The meeting between NTF and the Council of Islamic Ideology, which is responsible for ensuring that every law in Pakistan is in line with Islamic principles and values, was a turning point in the process. The NTF used scientific research, religious texts and Islamic jurisprudence, including reference to parts of the Coran recognising that trans people are given both genders by Allah, and the Council of Islamic Ideology decided to approve this bill instead of the one drafted by the NHRC that was later withdrawn.

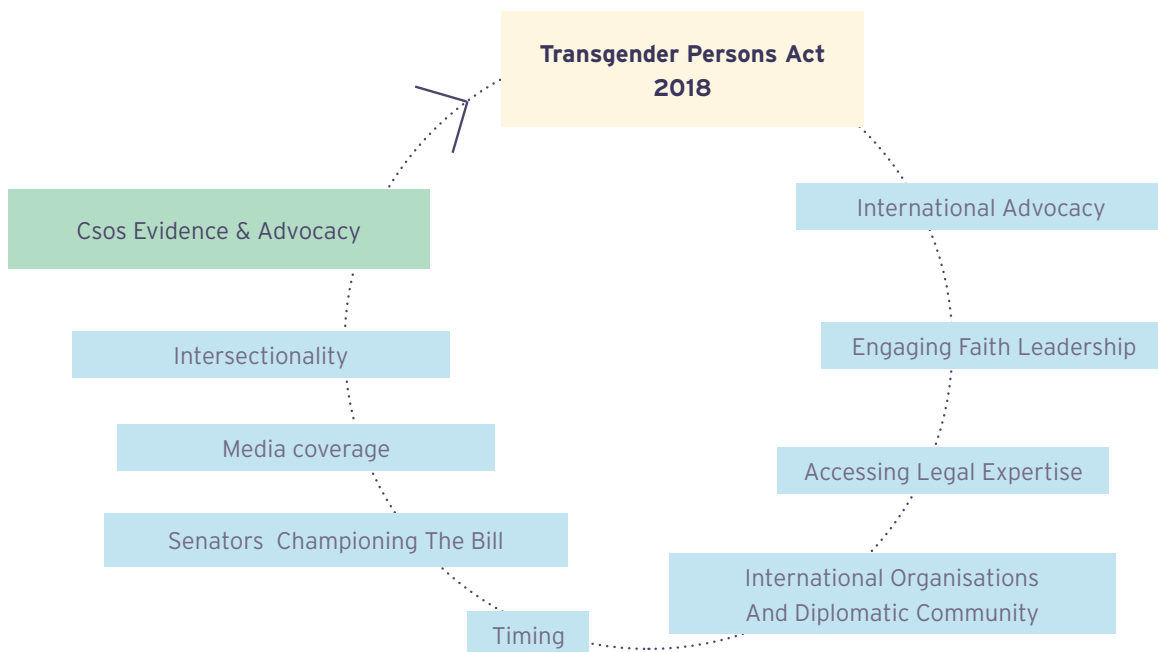
The NTF bill was approved by the Senate Functional Committee on Human Rights in February 2018 and, a month later, the Senate unanimously passed. In May 2018, the bill was introduced in the National Assembly where it was passed and signed into law by the then acting President.

The support of Senators who championed the bill and the timing of its drafting and tabling, namely in the last year of the legislature, ensured the success of the Bill.

The engagement, in the context of a PLS, would have been particularly relevant in the implementation phase with the engagement of key stakeholders in the process of assessing the impact of the law/s under scrutiny.

**A virtuous circle: key factors and actors**

These factors and players are the same that would be of relevance in the planning, implementation and follow-up phases of a PLS, whether it is State or CSO-led.



## **The Transgender Persons Act 2018: highlights**

Individual self-determination is at the core of the Act, which allows the citizens of Pakistan to self-identify their gender. The law established the rights of transgender persons to be fully recognized in the legal system, including having all personal documents, such as passport, driving licence and identity cards issued according to their self-identified gender. The Act incorporates strong provisions for access to health care, education, public offices and in their property rights. It explicitly prohibits discrimination against transgender persons in the workplace and harassment based on sex, gender identity and gender expression. The law places detailed obligations on the Government to operationalize protection of the transgender community including by setting up shelters, separate prisons and by the periodic sensitization of civil servants and law enforcement officers. The Act indicates the Constitution, Civil and Penal Codes as the enforcement measures, thereby delineating heavy penalties for assault, unlawful eviction and harassment.

## **The way forward**

With the adoption of the Transgender Persons Act, the situation slowly changes. However, there are still significant shortcomings in the operationalization of the law and adaptation with the adoption of provincial laws. The Act has not been implemented in small towns and villages where most Pakistanis live. Additionally, financial resources have not been allocated to tackle discrimination and ensure access to services by expediting the adoption of internal business processes<sup>20</sup>.

The process to dismantle decades of stigma, marginalization and violence through legal scrutiny and reform is long and difficult. Due to the current COVID-19 pandemic, further stumbling blocks stand along this path. With no international travel and donor funding re-prioritised, the golden opportunity for activists to engage in dialogue with parliamentarians during international events is no longer an option. In the prevailing climate of discrimination and exclusion, policy makers and parliamentarians are not inclined to meet LGBTIQ+ activists in Pakistan. This, coupled with the severe restrictions of MPs activities, block activists' access to lawmakers.

The transgender community in Pakistan remains largely confined in the informal peer protection system and informal economy. Socio-economic hardships and violence against transgender people and human rights defenders promoting LGBTIQ+ rights remain grave in Pakistan. The accountability mechanisms referred to in the law need to be activated and resourced. Colonial discriminatory provisions in the Penal Code need to be scrutinized and the individual cases of violence brought to the attention of the general public in order to undertake legislative assessment and reform.

In light of the above, this legislation could represent a good opportunity for CSOs in Pakistan to lobby the Parliament for a PLS or to programme a CSO-led PLS either on the enactment of the law.

18 Penal Code (Act XLV of 1860). For example, see Sections 377, 268 and 294. Available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

19 Transgender Persons (Protection of Rights) Act, 2018. Available at [http://www.na.gov.pk/uploads/documents/1528787262\\_286.pdf](http://www.na.gov.pk/uploads/documents/1528787262_286.pdf)

20 Amnesty International, With Transgender Rights, Pakistan has an Opportunity to be a Pathbreaker, 22 January 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/01/with-transgender-rights-pakistan-has-an-opportunity-to-be-a-path-breaker/>

# 14. Resources

## *Listed alphabetically by title*

- C. Rodrigues, A Fairer Future, Law reform and advocacy opportunities for women and PIDSOGIESC+ rights in the Commonwealth Pacific, The Royal Commonwealth Society (RCS), 2019.
- A. Wallace, A Guide for Commonwealth Leaders - Activate Your Power: Engaging Youth to Reform Discriminatory Laws, RCS, 2019.
- F. De Vrieze, A Guide to Post-Legislative Scrutiny - Guide for Parliaments, Westminster Foundation for Democracy (WFD), 2017.
- T. Caygill, A Tale of Two Houses? Post-Legislative Scrutiny in the UK Parliament, European Journal of Law Reform 2, 2019.
- A. Narrain, K. Vance-Mubanga & A. Brody, Building Stronger Equality Movements: Intersectional approaches to advancing women's and LGBT+ rights in the Commonwealth, RCS, 2020.
- M. Mousmouti, Gender-sensitive Post-Legislative Scrutiny - policy paper, WFD, 2020.
- I. Rosenthal, R. Croome & R. Banks, Good Practice in Human Rights Compliant Sexual Offences Laws in the Commonwealth, Human Dignity Trust (HDT), 2019.
- P. Rosario Domingue, "Institutional Law Reform in Small Commonwealth Jurisdictions", 2019.
- A. Muller, Legal Gender Recognition in Botswana, Southern Africa Litigation Centre (SALC), 2020.
- Kaleidoscope Trust, LGBTI+ in the Commonwealth in the Covid-19 Era, The Commonwealth Equality Network (TCEN), 2020.
- Hivos & Cordaid, Making Civic Space Resilient: Covid update, Hivos, 2020.
- I. Rosenthal, J. Linehan, L. Lister & C. Forster, Next Steps Toward Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation (Caribbean & Americas), HDT, 2020.
- Human Dignity Trust, Next Steps Towards Reform: Mapping Good Practice and Gaps in Commonwealth Sexual Offences Legislation, HDT, 2020.
- EvalPartners, Nine questions for strategic advocacy planning, 2013.
- G. Murray & M. Young, Pan-Commonwealth Human Rights, Gender & Sexual Diversity Training Toolkit, HDT, 2019.
- F. De Vrieze, Parliaments in Europe conducting Post-Legislative Scrutiny, WFD, 2020.
- F. De Vrieze & V. Hasson, Post-Legislative Scrutiny Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for its Place in Democracy Assistance, WFD, 2017.
- F. De Vrieze, Principles for Post-Legislative Scrutiny by Parliament, WFD, 2018.
- V. Barnes, L. Manson & L. Muzere, Reform of discriminatory sexual offences laws in the Commonwealth and other jurisdictions - Case study of Belize, HDT.
- F. De Vrieze & P. Norton, The significance of post-legislative scrutiny, The Journal of Legislative Studies 26(3), p. 349 - 361, 2020.
- A. Heitzman, The Smart Marketer's Guide to Google Alerts, 2018.
- R. Mohyidin, With Transgender Rights, Pakistan has an Opportunity to be a Pathbreaker, Amnesty International, 2019.

Westminster Foundation for Democracy (WFD) is the UK public body dedicated to supporting democracy around the world. Operating directly in over 40 countries, WFD works with parliaments, political parties, and civil society groups as well as on elections to help make countries' political systems fairer, more inclusive and accountable.

Kaleidoscope Trust is the UK's leading organisation working to uphold the human rights of lesbian, gay, bisexual and transgender (LGBT+) people in countries around the world where they are discriminated against or marginalised due to their sexual orientation, gender identity and/or gender expression.