A free bird leaps on the back of the wind
and floats downstream till the current ends
and dips his wing in the orange sun rays
and dares to claim the sky.

But a bird that stalks down his narrow cage
can seldom see through his bars of rage
his wings are clipped and his feet are tied
so he opens his throat to sing.

The caged bird sings
with a fearful trill
of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.

Maya Angelou

The free bird thinks of another breeze
and the trade winds soft through the sighing trees
and the fat worms waiting on a dawn bright lawn
and he names the sky his own.

But a caged bird stands on the grave of dreams
his shadow shouts on a nightmare scream
his wings are clipped and his feet are tied
so he opens his throat to sing.

The caged bird sings
with a fearful trill
of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.
ACKNOWLEDGEMENTS

Positive Vibes Trust recognises and gratefully acknowledges the contribution of the Convening participants who offered their time, expertise and insight to the Synthesis Working Group, the reflective process from which this report emerges.

Dr. Johanna Kehler  
Executive Director  
AIDS Legal Network, South Africa

Flavian Rhode  
Executive Director  
Positive Vibes Trust

Anna Mmolai-Chalmers  
Executive Director  
LeGaBiBo, Botswana

Friedel Dausab  
Executive Director  
Out-Right Namibia, Namibia

Arvind Narrain  
Geneva Director  
ARC International

Abigail Solomons  
Programme Manager-Namibia  
Positive Vibes Trust

Urvarshi Rajcoomar  
Consultant Advisor: Regional advocacy and influencing  
Positive Vibes Trust

Marlow Newman-Valentine  
Project Manager  
Positive Vibes Trust

Sanmari Steenkamp  
Programme Manager: Counselling  
LifeLine/ChildLine, Namibia

Vivek Divan  
Queer and health rights activist and lawyer  
India

Francesca Alice  
Monitoring, Evaluation and Learning Specialist  
Positive Vibes Trust

Ricardo Walters  
Consultant Advisor: Strategic initiatives  
Positive Vibes Trust

This synthesis process would not have been possible without the support of:
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOREWORD</td>
<td>5</td>
</tr>
<tr>
<td>ABOUT THIS DOCUMENT: KNOWLEDGE CAPTURE, KNOWLEDGE SYNTHESIS</td>
<td>6</td>
</tr>
<tr>
<td>BACKGROUND: GLOBAL CONVENING ON DECRIMINALISATION</td>
<td>7</td>
</tr>
<tr>
<td>OF HOMOSEXUAL CONDUCT</td>
<td></td>
</tr>
<tr>
<td>ON DECRIMINALISATION</td>
<td>8</td>
</tr>
<tr>
<td>WAYS OF THINKING</td>
<td>9</td>
</tr>
<tr>
<td>CONCEPTS</td>
<td>9</td>
</tr>
<tr>
<td>VALUES</td>
<td>11</td>
</tr>
<tr>
<td>BRIDGING THE DISCONNECTS: HUMANS, HUMAN RIGHTS AND THE LAW</td>
<td>14</td>
</tr>
<tr>
<td>WAYS OF WORKING</td>
<td>16</td>
</tr>
<tr>
<td>PRINCIPLES AND PRACTICE</td>
<td>16</td>
</tr>
<tr>
<td>READINESS AND PREPAREDNESS</td>
<td>18</td>
</tr>
<tr>
<td>HOW DO WE KNOW WHEN WE’RE READY?</td>
<td>18</td>
</tr>
<tr>
<td>6 STEPS TO GETTING READY</td>
<td>20</td>
</tr>
<tr>
<td>A ‘RECIPE’ FOR EFFECTIVE LITIGATION</td>
<td>20</td>
</tr>
<tr>
<td>PLANNING FRAMEWORK: STRATEGY AND DESIGN</td>
<td>23</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>25</td>
</tr>
</tbody>
</table>
FOREWORD

Never would I have imagined that seventeen years after I left Swakopmund, the place where I was born and grew up—where I experienced so much hurt due to how I expressed myself—that I would participate in a conversation about the decriminalisation of consensual, same-sex, sexual conduct.

A conversation where, for the first time, Namibia has a seat at the global table.

The decriminalisation meeting was a serendipitous moment in time for me: Where my personal journey, the values and beliefs I hold dear, the work of Positive Vibes and the partnerships we have nurtured conspired to allow us to host THIS conversation. I was particularly excited that the Diversity Alliance Namibia, LifeLine/ChildLine and other partners were in the room to reflect on what we have heard and learned, and to assess where we are at as a country in our journey towards equal rights and justice for LGBT+ persons; to discuss strategies where decriminalisation might be a viable element to the further realisation of those rights.

As an organisation, we pride ourselves on learning and reflection from the processes we participate in. It felt only fitting to offer a process to synthesise and distil the rich conversation and learning from this Convening into a knowledge piece to look back on and use as a compass as we each embark or continue our country journeys towards the decriminalisation of consensual, same-sex, sexual conduct. On behalf of the Synthesis Working Group, we hope you find the document as illuminating as we found the time we spent working on it.

A big thank you to the Open Society Foundation who supported the development of this piece, and to our global colleagues offering their hearts and minds in the many conversations that generated this meaningful content.

FLAVIAN RHODE
Executive Director,
Positive Vibes Trust

An essential outcome for all meaningfully participating in the Convening was increasing our collective knowledge base and learning about the global interconnectedness of national-level efforts to decriminalise consensual, same-sex, sexual acts. This would ensure that all of us as participants and, significantly, practitioners, are better equipped to conduct campaigning, litigation, and advocacy on decriminalisation in national contexts.

The conversations woven through the entire week demonstrated that decriminalisation in many countries is sometimes perilous, challenging, difficult and complex, often demanding a nuanced, multi-pronged approach to advocacy. While there are several pathways activists can use aimed at decriminalisation, ranging from litigation, legal reform to community or local action, what is of critical importance is how such advocacy (in its broader sense) is conducted, for whom and by whom. Especially encouraging was the fact that this meeting provided activists with a basis to fuel strategy and identify opportunities for decriminalisation, including setting aside focus for taking forward the discussion on the prospects for decriminalisation in Namibia. A number of local organisations, activists and policy-makers joined us in this pivotal moment.

As we know, securing rights for LGBT+ people is key to more equal societies and addressing stigma and discrimination, prejudice and intolerance. It is also key to improved access to healthcare and other services that are the cornerstone of all our programmes, work and activities. The reality is that these rights have to be fought for and they can only actualise as a result of activism, commitment and individual and collective action. Positive Vibes has been accompanying and supporting these processes through its people-centred and people-driven values and methodologies as part of its strategy across Africa. This knowledge synthesis is one such manifestation of our longitudinal accompaniment.

We are energised by and sincerely hope that this principle and strategy guideline will be an important, though perhaps small, next step in the path to equality, rights and freedom of sexual and gender identity and expression for all.

LEE MONDRY
Deputy Director,
Positive Vibes Trust
ABOUT THIS DOCUMENT | KNOWLEDGE CAPTURE, KNOWLEDGE SYNTHESIS

This document emerges from the Open Society Foundation (OSF) Global Convening on the Decriminalisation of Homosexual Conduct, held in May 2017 in Swakopmund, Namibia.

It is the third of a set of three complementary documents produced from the Convening, including:

1. A review of literature and resources related to action towards the decriminalisation of homosexual conduct.
2. Summary Report: Global Convening on Strategies towards Decriminalisation of Homosexuality, a report recording the content, process and outcomes of the Convening.

Whereas the first and second volumes were generated through desktop study and rapporteuring respectively, this third volume is the product of a Synthesis Working Group process. The group comprised a small number of Convening participants who volunteered to meet daily after the formal programme concluded, to reflect together, extract meaning from content and conversations, and surface essential themes and implications related to decriminalisation strategy and practice.

Group members had the function to observe and diligently listen; to tune into the content, dialogue and spirit of the meeting, paying careful attention to what was being said: what thoughts, threads and opinions were most strongly expressed? What seemed to be a recurring or reinforcing trend? Where was the place of strongest feeling or conviction or passion? Where were the points of disconnection, tension or conflict? And, in amongst all the voices, what might be conspicuously absent, not being said, or not being heard?

This exercise in knowledge capture and synthesis—a complementary process to the main event—was based on a simple premise: that these kinds of events typically offer a wealth of content, exposing participants to an often overwhelming abundance of information, knowledge, experience and expertise. Good events with strong content invariably generate new knowledge products from the flow of inspiration and release of energy between participants. All too often, however, such thematic and technical richness risks being lost, either insufficiently distilled or inadequately consolidated to easily translate into application following the Convening.

Ultimately, through all the rich content and experience represented from around the world during the Convening, might there be a ‘recipe’ for effective action to achieve decriminalisation? What raw ingredients in the right quantities and optimal environment—acted upon through the right combination of method, technique, equipment—lead to success? And what ways of thinking and working underpin responsible good practice?

Reflective conversation at the end of each day contributed to a text that:

- explores decriminalisation as a philosophical, conceptual, and practical exercise;
- explores ways of thinking in relation to decriminalisation: concepts, values and alternative language with which to frame the nature of the work;
- highlights ways of working: principles, practices, strategies and approaches for effective decriminalisation action.

Who is this for?

The nuance and complexity of action towards decriminalisation should not be minimised or oversimplified. Nor should a generic, common context for each national jurisdiction be inferred.

Whilst the observations and conclusions of this document may have broad application and prove interesting to a general audience, they may be particularly useful for activists, legislators and rights-based programmers at the INITIAL or INTERMEDIATE-MATURING stages of their respective journeys into decriminalisation, to inform analysis, assessment, planning and design, and to frame language and concepts helpful to articulating the meaning and focus of that work.
OSF is the leading global human rights donor funding the decriminalisation of consensual, same-sex, sexual conduct. OSF has developed a distinct grants portfolio that supports three strategic pathways to achieving decriminalisation—litigation, legislative reform, and community-level campaigning and advocacy—across more than a dozen eligible countries where legal reform may have regional significance.

Whilst OSF itself has a panoramic overview of this work around the world, i.e. of the synergies between the three strategic pathways and of the impact of one country’s reform on the many countries in that region, most grantees have a less global perspective, focusing more on their local realities. These partners work largely at national level in their respective countries and, where reform is spearheaded by either litigators or civil society activists, each actor would benefit from broadened, integrated insight into the legal, political, and community-mobilising approaches of the others to more effectively align strategy.

A convening of largely African grantees was organised through the OSF Human Rights Initiative (HRI) in Durban, South Africa in 2014, a time when efforts to decriminalise consensual, same-sex, sexual acts were emergent in most places in the world. Significant maturation of the movement has been realised since then, through combinations of litigation, legislative advocacy, and community action to promote the human rights of LGBT+ people, progress set to continue through a raft of opportunities to advance decriminalisation around the world.

To better prepare partners who work as legislators, activists and litigators in the field, and to mark progress, capture learning and fuel strategy, the Global Convening brought together a broader constituency of grantees than in 2014, in Swakopmund, Namibia, 9-11 May 2017, followed by a National Conference on decriminalisation in Namibia on 12 May 2017.

Collectively, the meetings aimed to:

- bring lawyers, activists and communications professionals together to discuss national and global decriminalisation strategies;
- facilitate sharing of existing knowledge, skills and experience amongst practitioners;
- illustrate the global interconnectedness of national-level efforts to decriminalise consensual, same-sex, sexual conduct;
- better equip participants to conduct campaigning, litigation, and advocacy on decriminalisation in national contexts.

Notably, this second Convening broadened its content from a concentrated focus on strategic litigation in the first Convening in Durban (2014) to a more comprehensive and integrated focus on the three interconnected, potentially reinforcing strategies: litigation, legislative reform and community-advocacy.
ON DECRIMINALISATION

The criminalisation of private, consensual, sexual activity between adults of the same-sex—and the characterisation of such conduct as unnatural or perverse is, arguably, the greater offense; it is—in its unadulterated rejection of diversity and autonomy—an assault on personhood, a denial of humanity, an outlawing of identity. Yet seventy-five countries around the world still criminalise same-sex sexual conduct; that equates to as many as 174 million people who face prosecution because they either identity as LGBT+ or engage in same-sex, sexual practice without associating it to any particular sexual orientation or gender identity.

There is nothing euphemistic in criminalisation. Such language is suffused with prejudicial meaning and intent. Criminalisation is not simply to ‘do something illegal’ or to ‘commit an offense’. To be criminal, in many jurisdictions, is to be classified in the same category as those responsible for treason, murder, rape, violent and harmful assault. Criminals are seen as dangerous, anti-social, subversive, threatening or hazardous to society. Their necessary subduing legitimises the extraordinary exercise of authority by those tasked with security, order and justice.

It follows then, that when human beings whose only offense is the expression of their identities are made criminal, there can be no such thing as benign criminalisation. That law—no matter the extent to which it may or may not be actively enforced—is not harmless. It underpins stigma, discrimination, marginalisation and exclusion, fuelling prejudice, homophobia and hate speech. It casts an ever-present cloud of fear, uncertainty, anxiety and hypervigilance that are the antithesis of freedom. It erodes self-concept, leading to a host of unhealthy psychological conditions and behavioural patterns related to reconciling sexual orientation, gender identity or gender expression with a society where the expression of those identities is disallowed and de-legitimised. It presents a barrier to responsible health-seeking behaviour and effective appropriation of services. And it attempts to shrink the space within civil society for LGBT+ association. More overtly malicious, criminalisation exposes LGBT+ persons to harassment, persecution, abuse and violence; to the threat of arrest, prosecution and conviction. And, as criminals—effectively, ‘unapprehended felons’ as poignantly described by recognised South African rights activist, Judge Edwin Cameron—that law facilitates the systemic denial of rights and protections of LGBT+ persons by the State responsible for upholding and defending those rights.

Decriminalisation is both the aspiration towards—the hope for, the dream of—and the call for liberty that confronts the injustice that makes of human identities and expression, a cage to limit freedom.

Against that darkness of fear, ignorance, bigotry, tradition and moralism, decriminalisation trains a lens on those fundamental rights afforded all human beings—enshrined in international treaties and covenants, and in the respective Constitutions and national laws of countries around the world—to live full, free lives of dignity, in the pursuit of happiness.

"There can be no such thing as benign criminalisation ..."

It challenges the legitimacy of a law that robs human beings of their inalienable rights on the basis of sexual orientation and expression; and extends the opportunity for societies to reach for the vision of care, compassion and humanity to which their highest laws and noblest aims aspire.

WAYS OF THINKING | CONCEPTS

Approaching decriminalisation is as much a philosophical exercise—a meditation on such concepts as humanity, personhood, freedom, morality, the meaning of the law, the nature of society and the rights and obligations of the individual—as it is a practical exercise interpreting, debating and applying the law. Such ways of thinking frame an elementary conceptual framework through which to approach decriminalisation, and may prove especially interesting and valuable to activists and programmers as they conceive, design and operationalise strategy.

1. Decriminalisation is a process of change that presents an opportunity for law to bridge individuals, communities and populations into conversation about values, virtues and the meanings of fraternity and society. At its best, the decriminalisation process is a **SOCIAL-LEGAL intervention**, where social action triggers a legal response, and legal action triggers a social response: a double helix, the two strands of which interact through an approach that is person-centred.

2. Legal reform and social reform are inextricably bound together. Both are necessary to achieve sustained change to the lived reality of those familiar with marginalisation, persecution and prejudice. **CHANGING LAW** is not easy and does not happen in a vacuum: **CHANGING MINDS** takes time. Legal reform, however, is made easier for potentially progressive elected officials and public duty-bearers when the prevailing attitudes and popular opinion of society are more favourable. Transformed attitudes and social norms contribute to an environment where changes to policy and law are enabled.

3. **HUMAN RIGHTS** are the fundamental rights and freedoms accorded all human beings. States have an obligation to promote, defend and protect these rights under the Universal Declaration of Human Rights, the foundation of international human rights law. Violation of these rights provides a constitutional basis for challenge to the laws that criminalise consensual, same-sex, sexual conduct.

Central arguments for decriminalisation include:

- a. Criminalisation violates the right to **PRIVACY**
- b. Criminalisation violates the right to **DIGNITY** (including autonomy and self-determinism)
- c. Criminalisation violates the right to **NON-DISCRIMINATION**
- d. Criminalisation violates the right to **EQUALITY UNDER THE LAW**
- e. Criminalisation violates the right to **FREEDOM OF ASSOCIATION**

4. The **Constitution CONFIRMS rights**; it does not confer them. Such rights are not privileges granted by the State; they are a natural entitlement due to all people by virtue of their being human, and are affirmed through and protected under the Constitution. Citizens then, are not passive supplicants waiting for the State to favour them with rights—they have agency and legitimacy to expect and claim that which is naturally and rightfully theirs.

5. In the intersecting discourses on sociology, the law, morality and politics, two spheres of activity exist; two distinct realms in which people operate:

The **PUBLIC SPHERE** in which people come together to enact society in pursuit of common good and public interest, and from which emerges agreements on values, ideals and behaviours that are governed and regulated through law. Within that public sphere, the precedents and precepts of the law outweigh the unique moral, social or political preferences of individuals.

The **PRIVATE SPHERE** in which individuals—within for instance, their respective homes and families—exercise a degree of autonomy, freedom and personal authority, without interference or regulation from the State and without specific responsibility or accountability to the collective.
The boundaries that describe and delimit these spheres however, are constantly in flux, the discourse around their appropriate interaction constantly evolving. These distinctions become critically significant to the debate on sexuality, freedom of expression, and to the legitimacy of laws that criminalise consensual, same-sex, sexual conduct. For instance, is the freedom to express sexuality a matter of private or public interest? Should the State have the right to regulate the private actions of consenting adults in the privacy of their homes?

Action towards decriminalisation may support the evolution of thinking about these two spheres of society, highlighting that:

i. A dominant public sphere, where the majority interest (or perspective on what constitutes safe and appropriate moral, cultural and social values) outweighs and overshadows the rights of the individual within the private sphere, leads to oppression and the exclusion of people who express themselves differently from participation in social life.

ii. Respecting the rights of individuals to act for themselves in the private sphere, relatively unregulated by public institutions, is preferable, until the boundaries between private and public become entirely inflexible and impermeable. Completely separated, independent public and private spheres—where people are free to act one way in private, provided that identity is hidden in public; a ‘don’t ask, don’t tell’ scenario—leads to suppression and social erasure, and cannot be an acceptable ideal.

iii. A third option exists within progressive societies, where the public and private spheres are better integrated, so that people of different views and orientations are inclusively accommodated within the societal collective. Diversity, rather than being polarising or damaging, is recognised to be in the public interest, contributing to common good. The wellbeing of those who express differently—in a society where fear and trauma are absent, and where households and families are not sundered—is undeniably for the public benefit.

6. **Morality** remains a principle motivator for many common public sphere arguments for the criminalisation of same-sex, sexual conduct: that such conduct is an offense against religious and cultural standards; that it undermines and erodes the stability of family and society. But several counter-arguments exist to challenge that presumably unassailable standard, amongst those:
• That the **RIGHT TO PRIVACY** subsists in issues of both sexual conduct and morality and in fact, religion. Choices for personal faith and religious practice (or the absence of either) are not regulated in the public sphere. Nor is what happens between two adults, by consent in private, the concern of the State. It should not be subject to restriction or regulation. What happens in the private space is subject to private morality.

• That a popular standard of morality—even when that subjective set of beliefs is held in common by the majority—does not automatically satisfy the test of **SUFFICIENCY**. It may well be that same-sex, sexual conduct draws public disapproval from some quarters of society, perhaps even distaste or disgust. Still, distaste and unease are not sufficient rationale to justify the limitation of human rights in the absence of other substantive evidence of public harm.

• Morality is not static; it is dynamic. There is **EVOLUTION** in thinking and perception of what constitutes right and wrong that shifts from generation to generation. Present-day laws that persist based on historic, inherited and possibly outdated ideas of morality should be tested against—and possibly give way to—newer, contemporary conceptions of freedom.

• In as much as culture, tradition, social norms and conventional values are commonly invoked as standard morality shared by the vast majority of society, there is a different reality: **DIVERSITY**. In any one society, there is no single common standard for what constitutes public morality based on religion, culture or tradition. Public morality is diverse, plural and multifaceted. There is, for one thing, an absence of definition. No judicial evidence exists to demonstrate, define or illustrate what specifically constitutes public morality. Who decides on that definition, and on what constitutional or material basis is it valid or accurate? In the absence of a legitimate definition of standard morality, many arguments—for example, that homosexuality is a threat to family—might be countered by drawing on alternative perspectives from within the diverse spectrum of morality, but no less valid: that **criminalisation constructs and promotes stigma against homosexual people that threatens the fabric of families. The stress, fear and alienation that come with and through oppressive and punitive laws are harmful to families, family values and the integrity and stability of households.**

7. **CONSTITUTIONAL MORALITY** is a higher law than subjective personal or popular morality. This is a morality not defined by discrete culture, tradition or religion, but by constitutional supremacy. Such ideals, values and aspirations are inscribed in constitutional text that recognises diversity, and where non-discrimination is entrenched in a nation’s ideological DNA.

Under the sway of constitutional morality, the popular preference of the many should not justify the persecution of the few. The perceptions and perspectives of the majority should not trump protection and defence of the rights of the minority. Subjective, personal morality should not limit the pursuit of liberty and dignity of the individual. And, if the constitution ultimately guarantees the right to the pursuit of liberty, the right to love cannot be legitimately state-determined. Such regulation and prohibition violates dignity, self-determinism, autonomy and privacy, and does not contribute to the pursuit of liberty, fraternity or equality.

**WAYS OF THINKING | VALUES**

The work of decriminalisation engages, by necessity, with the technicalities and language of law and policy, and with the systems and infrastructure behind their engineering, to systematically dismantle legislation that unjustly limits liberty.

In this lies a subtle risk: that in the effort to be expedient, the exercise of decriminalisation becomes academic, technical, and systems-driven, disconnected from the humanity on which its human rights defence is predicated; or that people and communities become clumsily or carelessly handled in pursuit of the goal.

It can be argued that a certain integrity of process is necessary, in which noble ends do not justify careless means.

If decriminalisation is based in a human rights paradigm; if defending and restoring the dignity of disenfranchised people constitute the driving conscience for the work; and if that work is to remain a dynamic interplay between the social and the legal, then several values should underpin strategy and practice:

1. **A person-centred approach**

People remain at the heart of this social-legal intervention: human beings whose personhood is contested and violated through the laws that criminalise them, and whose sense of
self and community may either be strengthened or bruised through the execution of a decriminalisation strategy. Keeping personhood at the centre of the work means:

• humanising the argument against criminalisation by sensitively drawing out and respectfully drawing from the personal stories that frame the lived experience of LGBT+ people, and the effects and impacts of these laws on their lives. Too easily is the human story reduced to a list of impersonal issues and agendas, or so problematised that it inadvertently dims the humanity that is the core of the work.

• appreciating and respecting the agency of people, their right to self-determinism and their capacity to make decisions for themselves about their own lives. This requires that people are sufficiently informed in order to consent to a course of action that affects them; that they have access to a process where their participation is possible and meaningful; that they are empowered to exercise choice and accountability.

• keeping the subject of the work in focus, despite attempts by law-makers to distract, redirect or distort perspective by counter-argument or defensive rhetoric. The subject of the work is the violation of a human right, and provided the burden of proof by the claimant is satisfied when that challenge is brought, onus shifts to the State to justify the limitation of the rights of that person. Those who have been violated should not continue to be victimised or burdened by the State's unwillingness or inability to acknowledge its legal liability.

• recognising that legislators and judges are humans too, not simply cogs in a machine or instruments of a system. However adversarial they may present within that establishment, they themselves have a personal human experience and are not immune to the humanity of others.

2. Do no harm

The integrity of a person-centred approach within a human rights paradigm depends on action that is responsible, considered and conscientious. Decriminalisation strategies must consider the possible consequences of action on populations—especially within small populations—to avoid victimisation:

• The ends do not justify the means if those means result in the careless exposure of individuals and communities to harm.

• LGBT+ people must remain the subjects of the decriminalisation action, not the objects upon which action is taken, even by well intentioned others. Supported by allies, LGBT+ people must assess the levels of threat and vulnerability implied by a proposed course of action, and make informed choices to either accept or reject that degree of risk; to decide whether the longer-term gain merits the potential for short term harm.

It is important, however, that observing the ‘do no harm’ value not lead to immobilisation or stagnation of progress within the movement. It is possible to assess risk and develop counter-strategies to minimise, avoid, distribute or transfer risk so that some progress remains possible.

3. Consultation

This is a word so commonly used in contemporary development or socio-political processes that it has almost been stripped of distinct meaning, too freely and interchangeably used to mean ‘communication’, ‘information’, ‘orientation’, ‘briefing’ or ‘preparation’. But these are not the same thing. Consultation is an action, at its most authentic practised by those seeking to support, stimulate and include others who are most central to an issue, and to learn from their engagement and experience. Whilst organisations are not necessary in order for people in communities to meet, think and talk together, their appropriate presence may help that process advance more smoothly. Successful consultation catalyses participation, increases local ownership and initiative, and deepens the process of active civic engagement in change.

Authentic engagement and consultation with stakeholders—particularly communities—are necessary throughout the decriminalisation process. They surface critical information and evidence, but their value is considerably more than extractive. Such processes create equity in communities, allowing individuals and groups to fully access the change process and participate as subjects, not objects.

Practitioners and facilitators should watch carefully that consultation is broad and representative, paying careful attention that this level of engagement is not limited to those of privilege—the educated, urban or relatively wealthy. Do those who are most vulnerable and marginalised have access to the process as well?
4. Locally-led action

Decriminalisation is an action located within the social and legal domains of unique cultures and countries. In as much as allies from outside those contexts offer invaluable support—including technical input, expertise, advice, resourcing, provisions for safety and security—they should not substitute local leadership. This is important for a number of reasons: the philosophical considerations around agency and self-determinism; and the political considerations that the credibility and integrity of the call for reform come from within, so they cannot be dismissed as a foreign agenda.

In essence, local groups initiate and lead action; non-local groups (e.g. international allies) support that action, recognising and respecting the authority and exercise of local leadership and supporting its increasingly confident and competent expression. Local leadership, much like ‘consultation’ above, is not the same as ‘local involvement’ or ‘local support’:

• Those who are the subjects of the action must be—to the extent they have determined it safe and reasonable under the circumstances—at the forefront of the movement.
• Those who are allies position themselves as learners from and participants in the local reality. If communities can and should learn from lawyers and organisations about legal issues, lawyers and organisations can and should learn from communities about issues of identity, lived experience and the implications of rights-related actions on the personal lives of individuals, households and neighbourhoods.

5. Legitimacy

Extending from many of the values previously discussed, legitimacy is a function of representation, recognition and authority to exercise voice and leadership; essentially that those who are performing an action are appropriate for that action.

Legitimacy within political movement and social reform is a complex issue and often contested. In a multi-stakeholder process such as decriminalisation, how legitimacy is qualified and by whom are not easily determined. It is, however, a vital consideration for movement building and to offset fragmentation and factions. Reflecting on the following questions may help that consideration:

• Within the process of decriminalisation, who has the right to speak to the experience of violated individuals and communities? Is this appropriate?
• Who has the right to participate in that process, and from what position of power? Who is this work about—for whose benefit? With whom does ownership lie? Is this appropriate?
• Who has the right to lead and represent—and who cedes that authority and mandate to act on behalf of others? Is this appropriate?

Activists should do due diligence to ensure the interests of the maximum number of people are being represented, an indicator of legitimacy that may only be possible to achieve through robust consultation.

6. Team approaches

Successful decriminalisation is the result of multiple levels of collaboration and cooperation:

• within the movement through alliance-building across constituent communities, groups and organisations;
• between institutions within a country (e.g. coordination between the Office of the Ombudsman and the Human Rights Commission);
• between sectors (across disciplines and stakeholder groups; e.g. public health; human rights; gender; civil society; private sector);
• between countries to generate comparative jurisprudence.

7. Social transformation

Whilst criminalisation is imposed and enforced through an act of law, decriminalisation is most effectively facilitated in the interplay between the social and the legal.

Legal engagement—especially through litigation—is an important step towards decriminalisation, and potentially towards creating an environment receptive and conducive to more robust reform. But it cannot be an end in itself. Legal change is no substitute for changed hearts and minds. The work of decriminalisation requires engagement with local communities and relationships, with prevailing attitudes and social norms.

Legal challenge may be necessary to provoke and catalyse social discourse. Conversely, shifts in attitude (both individual and societal) enable and embolden potentially
progressive law-makers to act on their convictions and effect change, with reduced fear of attracting popular disfavour. Community advocacy, education and sensitisation matter, as critical contributing factors to achieving legislative reform, the enactment of law and its enforcement, and to materially improved quality of life for LGBT+ people within the society in which they live.

WAYS OF THINKING | BRIDGING THE DISCONNECTS: HUMANS, HUMAN RIGHTS AND THE LAW

As discussed:

Decriminalisation is a process of change that presents an opportunity for law to bridge individuals, communities and populations into conversation about values, virtues and the meanings of fraternity and society. At its best, the decriminalisation process is a SOCIAL-LEGAL intervention, where social action triggers a legal response, and legal action triggers a social response: a double helix, the two strands of which interact through an approach that is PERSON-CENTRED.

It is this critical, person-centred approach that reconciles a common disconnect amongst citizens in communities whose human experience is rich and profound, but whose literacy in rights or law is low. Human rights and the law remain abstract, impractical concepts, out of reach until the humanness of their applications bring them fully alive to those with agency to exercise them. Four challenges define this common disconnect:

1. The law is technical and clinical, exercised as a specialist science by legal professionals. It is contained to the corridors of the court, largely inaccessible in vocabulary, language and practice to the people for whose benefit it exists, and is therefore exclusive.
2. People who suffer under oppression and suppression feel disconnected from and distrusting of the law that is the vehicle for their marginalisation and exclusion; it is not primarily perceived by them to be a resource for their liberation.
3. There is an inherent power disparity within the discourse of law, between those in the legal fraternity with literacy in law, and much of the general community who are lay people, and cannot participate in conversation around the law on equal footing. This intimidating disparity makes productive dialogue and equitable public participation challenging to achieve and, around opposing viewpoints, disproportionately weights that dialogue in favour of contestation, rather than resolution.
4. The language, platforms and paradigms for dialogue and discourse are typically defined by historic or inherited traditions and socialisation that subsist unchallenged in contemporary society (e.g. concepts of ‘Africanness’; ‘morality’; ‘unnatural sexuality’; etc.)

Therefore, success in achieving a genuine SOCIAL-LEGAL dynamic through decriminalisation, where personhood is central, lies in:

- reframing, reclaiming or disrupting the familiar language of discourse around human rights in general, human rights amongst LGBT+ persons in particular, and decriminalisation as an issue of law.
- introducing alternative language and arguments that complement the traditional legal discourse and create fresh context in which to locate it.
- elevating the discourse beyond the remedial and corrective towards the aspirational.
- testing notions of the law—and their social, political and cultural meanings—with communities as well as legal technicians.

Such alternative ways of thinking and speaking might include that:

1. The decriminalisation discourse reflects the vision of the society we wish to be, and the values we wish to embody: inclusion, dignity, liberty, freedom of choice, care of the vulnerable.
2. The decriminalisation discourse goes beyond a polarised debate about ‘public vs. private’. Diversity is, in fact, for the public benefit and in the public interest.
3. The letter of the law (appealing to logic, reason and intellect) should be interpreted and experienced through the spirit of the law (appealing to conscience, heart, values, virtue, empathy), not as something lifeless and mechanistic. This is necessary to speak to litigators, legislators and the judiciary, and laymen, communities and society alike.
4. To speak of decriminalisation in many post-colonial jurisdictions reflects our shared experience of a history of struggle, a yearning for liberation and a search for hope. Decriminalisation signals the sustained pursuit of freedom and liberty by people collectively familiar with oppression; it is simply one step further in the progressive realisation of what it means to be a society, fully free. One issue, against the backdrop of many before it. This shared experience draws on our genealogies—our successive and compound histories, our anthologies, stories, myth and narrative—of struggle and hope, the memory of a people that ties the collective action of our past and the achievements of our present to the greater freedoms of a future not yet seen, but longed for. In this struggle, as with others before it, we find our fit as individuals with other individuals, as free people in a free society.

5. The discourse on decriminalisation invites a shared conversation on identity, where legal thinking combines with social discourse to challenge and perhaps shift our perspective on who we are as a collective society, and who defines us. To dialogue around LGBT+ identity and freedom is to reflect on our corporate identity and freedom, especially in relation to post-colonial independence and indigenousness. Filtered through the critical lenses of anthropology, culture, and history—honestly confronted and deconstructed to test our claim to independence—do our present societal norms, attitudes, and standards accurately reflect who we were before colonisation? Before the imposition of penal law? Can we lay claim to these values as authentically ours, or are they simply vestiges of a former time where they served to undermine our nativeness? What resides in our cultural memory of who we are, and in our collective aspiration of the identities we wish to reclaim from oppression?

6. The discourse on decriminalisation reflects our common moral aspiration, where constitutional morality transcends the subjective morality of religious, cultural, racial or traditional hegemony as a nation’s highest value and virtue. And law serves as both pathway and vehicle to move society towards that highest and noblest of goals. To this end, access to democratic and constitutional processes, and public participation are requirements and expectations, so that citizens and communities actively engage in the passage of law.

"Well you better listen my sisters and brothers, 'cause if you do you can hear There are voices still calling across the years. And they're all crying across the ocean, And they're cryin' across the land, And they will till we all come to understand. None of us are free. None of us are free. None of us are free, one of us are chained. None of us are free."

‘None of us are free’ Solomon Burke
WAYS OF WORKING | PRINCIPLES AND PRACTICE

Earlier sections of this document explored decriminalisation through the conceptual and the philosophical, those elements that constitute ways of thinking within an approach. Decriminalisation is also an action, made smoother through the application of several principles and practice that constitute ways of working.

1. Comparative jurisprudence

Jurisprudence is the theory or philosophy of law, the principles that make the law; the science of law that governs how and why it is applied. It develops, accumulates and evolves with case law; those past rulings that become precedent and subject to analysis, review and critique.

No one case stands alone—there is an interconnectedness within international law. Where collaboration and cooperation are observed values within a strategy for decriminalisation—and especially when that cooperation extends across country borders and regions—rulings on an issue in one jurisdiction may have significance for a range of applications in jurisdictions elsewhere; and every case, whether lost or won, is an opportunity to generate jurisprudence: a theory and knowledge of law from which to learn from and draw upon in future action.

It follows that a judgement—whether a loss or a win—potentially affects others optically, politically and judicially, both regionally and globally. And not always for the better: whilst a win may generate important precedents on which to draw in another jurisdiction, an accumulation of losses gives evidence to opponents elsewhere.

While it is not necessary to win every case—provided one can ‘win forward’ each time (gaining ground, generating jurisprudence, building momentum, gathering social awareness and support)—it is preferable to bring easier, more ‘winnable’ cases earlier in a long-term decriminalisation strategy, in order to build a body of evidence, than to start with more difficult cases that present a comparably lower chance of success.

Strategic coordination across jurisdictions between allied stakeholders makes good sense to maximise the potential for and application of comparative jurisprudence.

2. Incremental litigation

‘Incremental’ simply means advancing by adding a step at a time. In many jurisdictions, it may be more effective to challenge a component of a full law, rather than the full law from the outset. For instance:

- it is arguably easier to achieve decriminalisation of consensual, same-sex, sexual conduct as one step towards achieving legalisation of same-sex marriage.
- decriminalisation may not yet be achieved, but successful litigation on other ‘component’ issues, e.g. freedom of association; employment anti-discrimination; military service; transgender rights; child custody, etc., creates stepping stones towards that higher goal.

Starting simply reduces the complexity that makes for more difficult wins. Small steps act as building blocks to grow jurisprudence and open the door for more ambitious action. At the same time, there is no such thing as a small victory—each win counts—and successful challenge of one component inspires activists and communities to want to do more.

3. Appealing to the heart; appealing to the mind

Despite the expansively diverse spectrum of personality and preference, there is a universality to what it means to be human. A person is a person; and everyone is a person, including those who present as adversaries and opposition. And human beings respond to human incentives. Such arguments that line the path to decriminalisation must appeal to both:

- the HEART (inviting empathy, relating personal stories and lived experience, invoking values); and
- the MIND (applying logic, challenging intellect, satisfying rationalism with robust evidence and sophisticated argument, invoking constitutional conscience).
4. Cohesive, integrated, coordinated approach

Many components acting in concert contribute to an efficient, effective approach:

- The dynamic interconnectedness of the legal and social environments.
- The optimal interaction of litigation, legislative reform and community mobilisation for advocacy to maximise impact of these strategies.
- The availability and reliability of those elements that serve as a foundation upon which robust strategy and confident action are constructed: compelling evidence, institutional capability, psychosocial support and resourcing.

- Disciplined, accountable, transparent internal communication within the community of respondent stakeholders.
- Well-crafted and carefully managed external communications planning to engage broader public discourse, attitudes, perceptions and values.

To offset the effect of fragmentation, it is important that these complementary components benefit from structures and processes for integration and coordination.
WAYS OF WORKING | READINESS AND PREPAREDNESS

The criminalisation of consensual, same-sex, sexual conduct is unquestionably a violation of human rights. For human rights activists and progressive law-makers then, the relevance, appropriateness and necessity of decriminalisation need not be debated. Invariably though, in every context, the question of readiness becomes a significant consideration. ‘Are we ready? Is it the right time?’

Activists engaged in the work of decriminalisation agree that there is seldom, if ever, a ‘right time’ to act. This is not surprising; it is unrealistic to expect the establishment to smoothly usher in favourable conditions with which to disrupt the accepted status quo. There are however, certain markers and proxy indicators in the social and legal environments that may signal more conducive conditions for action. Cultivating vigilance and sensitivity towards these conditions, both in the external socio-political and legal environments, and in the internal LGBT+ community environments, will support activists to:

• be dynamically responsive to opportunities as they present themselves;
• strategically and tactically position their work to create or influence those conditions where they may not yet exist;
• make critically important strategic choices about the form and substance of their work towards decriminalisation to best suit the context and environment in which they operate (e.g. when litigation is necessary to break the deadlock of an unfavourable, unresponsive environment).

"Timing is never right. But it’s better to have intention, capacity and resources, even when the timing is wrong, than to have no capacity when the time is right …"

ASSESSMENT: HOW DO WE KNOW WHEN WE’RE READY?

1. IMPETUS: Is there a compelling TRIGGER/STIMULUS to catalyse action?
   a. What is surfacing in the public discourse that might be the opening of a broadersocietal conversation? Are law-makers asking, ‘Why do we need to decriminalise’?
   b. Has there been a criminal case of human rights violation (e.g. violence; hate crime; assault or abuse; police extortion or harassment; etc.) that demands urgent response, even before the community is ideally organised?
   c. Is there an opportunity to strategically contribute one discrete component towards longer-term legislative reform through incremental litigation (often by challenging the legality of a law or action that limits human rights)?
   d. Is there evidence of and initiative towards broad constitutional reform within the country?

2. EXTERNAL: Are there ENABLING CONDITIONS at play within the socio-political environment that suggest a reasonably favourable climate for action?
   a. Are human rights, LGBT+ issues or decriminalisation presently enjoying increased public profile and attention? Are they featuring in societal conversation and debate?
   b. Are there opportunities to shape rationale and rhetoric for decriminalisation through the entry-point of other high profile platform issues (e.g. HIV)?
   c. Are there recognisable ally office-bearers in legislature or the judiciary, sensitive to or supportive of human rights and decriminalisation, or open to influence?
   d. Are there any broad legislative reform processes underway to modernise, streamline and update existing laws (e.g. wholesale review and reform of criminal provisions and procedural rules; or expansion of the definition of rape to include male victims) where decriminalisation could be integrated, without being isolated as a standalone intervention?
3. INTERNAL: Have activists sufficiently SELF-ASSESSED the strength of their case and the capacity of their community to advance that case (particularly in an external, socio-political environment that is hostile and unsupportive, and where litigation may be the only viable option for movement)?

a. Is there a sufficiently strong legal argument to be made? (Has a right been violated? Can that violation be demonstrated? Is there sufficient evidence to support the challenge?)

b. Is there a litigant prepared to bring a case?

c. Does any precedent exist for a challenge to constitutionality?

d. To what extent does the legal environment of that particular jurisdiction satisfy the conditions under which decriminalisation action becomes most viable?
  • Firmly established and strongly protected constitutional rights: personal privacy, equality before the law, non-discrimination, dignity.
  • Rights are enforceable in the courts.
  • Standing: legal eligibility to bring a case or challenge. Who is the permissible, acceptable litigant—–is it an individual, or an organisation?
  • Constitutional supremacy: that the constitution is the highest form of law taking precedence over all other laws and superior to the institutions it creates, including the legislature.
  • No savings clause: a provision made in certain laws to restrict the degree to which those laws might later be repealed. A built-in mechanism to immunise that law from challenge. Savings clauses are major impediments to bringing constitutional reform.
  • An effective judiciary, as fully enshrined and defined in Article 8 of the Universal Declaration of Human Rights.

• Treaty ratification and domestication status: that nations have consented to be legally bound to the obligations of those international human rights instruments to which they have become signatories, and incorporated those obligations into their respective domestic laws to be applicable and enforceable. Nations have the responsibility to bring their legal provisions in line with their international human rights obligations.

e. How resilient is the community to support a case for decriminalisation and withstand the subsequent resistance and opposition that may accompany such action?

• Risk assessment: What are the potential risks and vulnerabilities, and how might these be mitigated? What opposition and backlash might be anticipated, and how might this be managed?

• Structure: Is there a national or regional civil society movement seeking to effect change, able to hold and drive the process?

f. How technically capable is the community of advancing the desired course of action? How organised are the activists together?

• Does the community have the necessary communications capacity to manage and control messaging? Build a unified voice amongst activists and campaigners (as a fractured community is an inhibitor to progress)?

• Does the community have the necessary technical capacity and resources to execute the required action confidently, competently and effectively? What institutional strengthening is necessary to bridge those gaps in capacity?

e. What is the present political temperature for change in general, and around human rights reform for LGBT+ persons, in particular? Is there any indication of political will?
6 STEPS TO GETTING READY

1. Build the movement
   - Determine common vision and objectives
   - Reach consensus on direction and strategy and approach
   - Strengthen the CAPACITY of the community to participate: rights literacy and the responsibility of rights-bearers to monitor the actions of the State and require accountability.
   - Assert the AGENCY of the community to initiate, to decide and to act.
   - Become informed about the legal instruments, structures and mechanisms available for support, strategy, engagement, petition, recourse.
   - Identify and secure resourcing
   - Develop an effective communications strategy

2. GENERATE EVIDENCE including stories and narrative from the lived experience of community.

3. CULTIVATE strategic allies
   - Domestic
   - Foreign peers

4. SENSITISE JUDGES and PARLIAMENTARIANS
   Look for opportunities and invitations to resource supportive allies occupying these positions of influence with information and intelligence (eg. briefings; shadow reports; communiques on pertinent issues)

5. EXPAND REGIONAL ALLIANCES
   Look for opportunities for cross-border/inter-country collaboration with peers in neighbouring countries who may be making progress on similar issues in a similar cultural context.

6. SECURE a place at the table
   Make every effort to secure legitimate representation and meaningful participation in those spheres of influence and decision-making that determine public policy on issues related to LGBT persons.

“Sometimes you have to sit around the table even with people we are ideologically opposed to in order to get your business done…”

WAYS OF WORKING | A ‘RECIPE’ FOR EFFECTIVE LITIGATION

In the work of decriminalisation, no two contexts are identical: laws, social norms and values vary, levels of coordination and organisation vary within civil society. Whilst there can be no predictable formula guaranteed to achieve decriminalisation across all contexts, there are several, general principles and practices that lay a firm foundation upon which that work can be anchored.

These principles and practices can be—and ideally should be—expressed through a range of interconnected strategies. In that tapestry of complementary interventions, litigation, when appropriate, can be an invaluable catalyst, a process around which activism and community mobilisation are wrapped; a platform to amplify voice, visibility and political impact, through which reform can be influenced.

High-impact decriminalisation strategy, in particular, effective litigation, can be achieved through the following 13 good practice ingredients:

1. Genuine, authentic CONSULTATION with members of the community that:
   a. values and validates the lived experience of community members whose stories and perspectives fuel the conscience of legal or political action;
   b. records those stories to humanise and personalise the experience of violation;
   c. surfaces intelligence and evidence to strengthen a case or challenge.
   d. generates vision;
   e. tests and sharpens will and resolve;
   f. achieves a mandate for action that is legitimate and representative.

2. Develop CLEAR OBJECTIVES: what do we want to achieve?
   What will success look like for us?
3. Design a clear **STRATEGY** and identify a specific **APPROACH**: what will we work towards, and how will we work? For example:

a. Advancing a call for judicial review (in which the courts review the actions or decisions of law-makers and government to determine their validity against the constitution), or moving for constitutional review (in which laws themselves and their validity are challenged against the rights afforded under the constitution);

b. Incremental litigation: addressing components of the law where successful litigation can be more easily achieved (e.g. registration through freedom of association) and can contribute over time to addressing the full law (e.g. decriminalisation);

c. Participating in and contributing to broad legislative reform processes to incorporate and integrate decriminalisation;

d. Accessing a platform for and discourse around decriminalisation through a high-profile entry-point issue (e.g. HIV response and addressing structural/systemic barriers to health access).

4. Analyse the **LEGAL FRAMEWORK** to identify and understand which rights can be used as a base for a case:

   a. the domestic legal framework;

   b. regional or international cases where precedents may have been established;

   c. international treaties and conventions to which the State has or should have acceded;

   d. transnational strategies, where a block of countries in a localised geographic area might act cooperatively to build momentum or develop jurisprudence.

5. Strengthen the basis for and substance of a legal argument by assembling strong **INTELLIGENCE/EVIDENCE** that:

   a. satisfies the onus of proof of violation;

   b. documents the history of engagement to address that violation and seek redress;

   c. demonstrates experience of backlash and abuse;

   d. critically and comprehensively reviews existing cases;

   e. examines context (cultural and social climate; political will);

   f. identifies other processes taking place that are not litigation, but might complement it (e.g. legislative reform, community advocacy, etc.)

6. Reflect on **PREVIOUS ACTION** that might have occurred, either success or failure, to inform present and future strategy:

   a. **What did we learn?**

   b. **Do we have better capacity now than before? Do the primary litigants have better capacity now than before?**

      i. Before the case

      ii. During the case

      iii. After the case

7. Identify and mobilise **RESOURCES**:

   a. Financing, conscious that political reform and litigation are long-term actions that require long-term financial commitments.

   b. Allies, whose roles are carefully defined and described so as to be legitimate, effective and useful.

   c. Legal counsel that is credible and experienced. In many cultural contexts, it is helpful that counsel not be perceived to be too young (therefore not easily dismissed by senior judiciary). In other contexts, it is helpful to have a national who understands the local context and who will not be disregarded as an ‘outsider’ advancing an external liberal agenda. Carefully consider strategies to prepare lawyers through opportunities to immerse and participate in local community consultation, so they learn in, from and with the local community and their engagement is elevated beyond a purely technical intervention.

8. Prioritise significant engagement with the **COMMUNITY**, promoting **PUBLIC AWARENESS** and education throughout the process:

   a. Develop a detailed, costed and financed Communications Plan;

   b. Communicate to sensitise and inform both the LGBT+ community and society before during and after the case.
9. Offer FACILITATION and CAPACITY-SUPPORT to fully MOBILISE the LGBT+ community to engage and participate in public discourse/narrative on rights. Greater capability and competence to participate will contribute to:
   a. increased momentum;
   b. more robust community organising;
   c. more confident claiming of space and representation within policy discourse to shape and drive a political agenda;
   d. greater visibility and presence of the community;
   e. larger numbers of litigants.

10. Ensure VIGILANT, COMMITTED LITIGANTS through informed choice/consent:
   a. Assess the probable risk and determine the security needs of prospective litigants: physical, reputational, psychological, relational and economic.
   b. Assess the support mechanisms and person-care provisions available to prospective litigants.
   c. Explain possible consequences and implications of being a litigant.
   d. Explain the responsibilities and repercussions (including those of premature withdrawal from the case).
   e. Be realistic and transparent about timeframes, personal isolation, personal and familial exposure, possibility of intimidation.

11. CONTROL MESSAGING through a detailed Communications Strategy and Operational Plan:
   a. Collaborate with the media to shape content and monitor that organisations and individuals are not misrepresented.
   b. Determine who has access to process, people and information? How is communication coordinated across multiple actors in a potential multi-stakeholder alliance? Is the messaging clean and unambiguous?

12. Adopt an integrated SYSTEMS approach:
   a. Work with the judicial establishment to frame and shape the consciousness of judges, lawyers and law students regarding human rights, and the issue of decriminalisation within that rhetoric.
   b. Craft an environment that supports shift: conversations in key spaces, especially amongst political and thought leaders.
   c. Deconstruct and dismantle the power of imposed and inherited colonial laws at the source, by engaging with previously unchallenged prevailing attitudes and norms through community-level advocacy, messaging and communications exercises.

13. CELEBRATE results:
   a. Not every result is a victory, but when losses do happen, lose forward (capitalising on the loss to learn, to reconfigure, to gain incremental ground).
   b. Acknowledge and appreciate action. Commemorate significant moments.
   c. Create space, energy and community that allow inspiration, vision and conviction to flow and be transferred.

APPLYING THE RECIPE CONSIDERATIONS FOR APPROACH:

1. It is important to RECLAIM, REFRAME or RESOLVE problematic or unconstructive language. For instance:
   • Decriminalisation is about ‘dignity of expression’; ‘dignity of identity’; ‘dignity Applying the recipe of choice’; ‘inclusion for all’. The focus is not on ‘exotic sex acts’ as might be a default perception amongst opponents of decriminalisation.
   • Different communities speak different languages that define their practice, belief and cultures. Efforts are necessary to bridge these divides—to demystify language—where they threaten to separate or alienate (e.g. community members vs. legal practitioners; rights vs. religion; person-centred vs. client-centred).

2. Strategies and approaches must adapt to the local context, and the shifting DYNAMICS of COOPERATION and CONTESTATION. Sensitivity and sophistication are necessary to pitch influencing work appropriately, somewhere on a continuum between diplomacy and complementarity to provocation and adversarial challenge.
   • Litigation and legislative reform take time, stamina and perseverance; long-term commitments requiring LONG-TERM FINANCING MODELS. This has implications for the traditional ‘development’ sector and its short-term, project-driven, funding paradigm. What then are the unique roles of community compared to those of ally NGOs? Who leads in a process of strategic, long-term legislative reform (including exercising leadership of donor relations and donor management)?
The work towards decriminalisation requires strategy, together with a measure of dynamic responsiveness to adapt to shifting positions in the legal, social and political environments. Over-planning may act to the detriment of the ability to be rapidly responsive. This template may be useful to guide participatory assessment and initial strategic conversation within a movement coming together around a shared vision for decriminalisation.

**VISION:** What do we want? What does success look like?

<table>
<thead>
<tr>
<th><strong>HOW WILL WE GET THERE?</strong> Priorities for advocacy</th>
<th>What <strong>INTELLIGENCE/EVIDENCE</strong> is informing these priorities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.*</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
</tbody>
</table>

**ROADMAP:** Priority 1* (a separate roadmap for each subsequent priority)

<table>
<thead>
<tr>
<th><strong>RISK AND VULNERABILITY ASSESSMENT</strong> For this priority, what are the potential risk, safety and security considerations?</th>
<th>Who are the <strong>ALLIES</strong>?</th>
<th>Who are the <strong>ANTAGONISTS</strong>?</th>
<th>What <strong>STRATEGIES</strong> or <strong>PROVISIONS</strong> might be necessary to mitigate risk and vulnerability? Or to mobilise allies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTIVITY</td>
<td>WHO?</td>
<td>HOW?</td>
<td>WHEN?</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
<td>------</td>
<td>-------</td>
</tr>
<tr>
<td>A Legal/litigation-related activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B Communications activities and provisions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C Community-related activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D Capacity strengthening activities</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a separate roadmap for each subsequent priority)
CONCLUSION

Decriminalisation is a freedom song sung by those who dream of flight. Other melodies swell that chorus where racism, xenophobia, chauvinism, misogyny or apartheid seal the cage or clip the wing to deny the birthright of those who would fly free.

It echoes the call of Bob Marley’s Redemption Song: for emancipation of the mind and spirit, as much as of the body. And for all who share a history of struggle towards independence—for those who now taste the sweetness of democratic freedom after colonial rule—that call finds its place in harmony with ‘the music of a people who will not be slaves again’.

There is no morality in making identity a crime. Change is necessary: changed minds; changed attitudes; transformed wills and powers. And this is possible to achieve—not easy, certainly not simple, but possible—through combinations of action that speak to both the head and the heart. That invoke the spirit of the law to interpret the letter of the law in language accessible to the people for whose benefit the law exists. Where litigation, legislative reform and advocacy disrupt an unacceptable status quo to provoke societies into honest reflection on the meaning of life lived together. Where the shroud of privilege dissolves to reveal that oppressive laws diminish the humanity of both the oppressor and the oppressed.

Principled ways of working—safe, respectful, inclusive, consultative—allow decriminalisation to be a vehicle to unveil, affirm and strengthen the capacities naturally inherent in human beings: the capacity for belonging and community; for care, and change; for leadership; for hope.

Hope that sustains a vision for a future not yet fully realised:

... of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.