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*The Right Honourable Boris Johnson MP  
 Foreign Secretary of the United Kingdom of Great Britain and Northern Ireland  
 Foreign & Commonwealth Office  
 King Charles Street  
 London SW1A 2AH*

21 June 2018

**Open letter to the Foreign Secretary of the United Kingdom of Great Britain and Northern Ireland, the Right Honourable Boris Johnson MP, from the International Bar Association's Human Rights Institute**

Dear Minister,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI), in light of the recent positive development made by the Bermuda Supreme Court with respect to the human rights of the LGBTI citizens of Bermuda, to express our concern at the failure of the United Kingdom Government to advise his Excellency the Governor of Bermuda to withhold the Royal assent to the seriously discriminatory legislation purportedly adopted by the legislature of Bermuda.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 170 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI understands that, in May 2017, the Supreme Court of Bermuda decided in a properly constituted and fully argued decision that citizens of Bermuda were entitled to marry persons of the same sex. Following this, the legislature introduced amending legislation purporting to reverse the Supreme Court's decision, by exempting same-sex marriage from the operation of the *Human Rights Act*, and enacting a different, lesser entitlement ('civil union') to take effect from 1 June 2018. The IBAHRI has received reports that the Supreme Court of Bermuda, on Wednesday 6 June, found this reversal to be inconsistent with the Bermudan constitution and therefore invalid.

The IBAHRI welcomes the steps taken by the Supreme Court to protect basic rights of the LGBTI minority in Bermuda and encourages further action towards the protection against the diminution of such rights. This decision aligns with the international principles of non-discrimination and

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equality before the law enshrined in the *International Covenant on Civil and Political Rights* (ICCPR), and the values of equality and respect protected in the *Charter of the Commonwealth*. It also aligns with the policy and actions of successive Governments of the United Kingdom and statements by successive ministers of the United Kingdom.

However, the IBAHRI also takes this opportunity to note some continuing issues of concern. The IBAHRI understands that, pursuant to the law of Bermuda, the Bill to enact discriminatory consequences discussed above was presented to His Excellency the Governor of Bermuda for the signification of the Royal Assent. The Bill was reserved for the provision of legal advice by the United Kingdom Government on whether the Royal Assent should be withheld on the basis of the deprivation, thereby effected, of the human rights of LGBTI citizens of Bermuda. The matter was debated in the United Kingdom Parliament on 29 January 2018, and the result was that the Governor of Bermuda signified the Royal Assent by signing the Bill into law. In this way, the United Kingdom Parliament became itself an actor in the deprivation of human rights and equality of LGBTI Bermudan citizens. While the Prime Minister of the United Kingdom (Rt Hon. Theresa May MP) offered apologies at the Commonwealth Heads of Government Meeting (CHOGM) in London in April 2018 for the past introduction into dominions, colonies and territories of the United Kingdom of laws that criminalised LGBTI people, thereby exposing them to legal inequality, hostility and violence, it had the opportunity of avoiding such consequences in the present case but failed to act in accordance with its own laws and asserted principles.

The IBAHRI also expresses its disappointment over the persistent failure of the Commonwealth of Nations, the Secretariat of which is hosted in London, at the recent CHOGM to take steps to urge the repeal, in many member countries, of similar criminal laws that result in many cases of death, violence, discrimination and injustice. The final communique of CHOGM 2018 did not mention this issue, despite many representations made to the Organisation and despite the terms of the *Charter of the Commonwealth* that reaffirm the principles of equality and non-discrimination governing all Commonwealth citizens. The public silence of the United Kingdom Government at this omission is profoundly disappointing.

As the report of the *Eminent Persons Group* urged at CHOGM in 2009, in a unanimous report, the repeal of such laws is an urgent necessity, not only on the basis of human rights and the Commonwealth's own *Charter*, but also on the basis of ensuring an effective response to HIV/AIDS in Commonwealth countries where rates of infection are significantly higher than in countries without such laws. The silence of the Commonwealth on these issues is contrary to human rights and the resolution of the IBA Council *Repeal of criminal laws that impose penalties relating to certain sexual conduct* (adopted 24 May 2014). Your own silence at that time, especially given the United Kingdom's own continuing responsibilities in the case of Bermuda, was most disappointing.

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In light of the above, the IBAHRI calls on you, as Foreign Secretary of the United Kingdom of Great Britain and Northern Ireland, to ensure the protection of rights of the LGBTI minorities in its Overseas Territories and in Commonwealth member nations. Furthermore, the IBAHRI urges your Government to take all possible measures to encourage the repeal of legislation that deprives the human rights and equality of LGBTI Bermudan citizens, and citizens of the Commonwealth generally, through the initiation of an active and transparent dialogue with the Commonwealth of Nations on this important matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hans Corell'.

Ambassador (ret) Hans Corell  
IBAHRI Co-Chair

A handwritten signature in black ink, appearing to read 'Michael Kirby'.

The Hon Michael Kirby AC CMG  
IBAHRI Co-Chair

Cc

*The Right Honourable Patricia Scotland QC  
Secretary General of the Commonwealth of Nations  
Marlborough House  
Pall Mall, St. James's  
London SW1Y 5HX*

*The Honourable David Burt, JP MP  
Premier of Bermuda  
The Cabinet Office  
105 Front Street, Hamilton  
Pembroke Parish  
Bermuda*

*His Excellency Mr John Rankin CMG  
Governor of Bermuda  
Governor's Office Hamilton  
11 Langton Hill  
Pembroke  
H.M 13  
Bermuda*

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