INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF HIV-POSITIVE INDIVIDUALS IN GRENADE

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be more severely affected differently such as … Women are historically the victims of social stigma and discrimination." (p. 25)

- "Sexist property, inheritance, custody and support laws mean that women living with HIV and AIDS, who have lost partners or who have been abandoned because they are HIV positive, are deprived of financial security and economic opportunities." (38)

- "Studies show the heightened vulnerability of women, compared to men, to social stigma and ostracism associated with AIDS, particularly in rural settings, thus leaving them shunned and marginalized; this again increases the pressure on them to survive through sex [work]." (38)

- "Women with low status in society, and less access to income-generating opportunities are vulnerable to the economic impact of HIV and AIDS." (37)

### INTER-GOVERNMENTAL SOURCES

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<tr>
<td><em>“[T]he IACHR has recognised that the stigmatization and discrimination of persons living with HIV in the Americas is endemic and mainly affects populations that are most at risk of HIV infection, such as men who have sex with men and trans women who engage in sex work. This has an impact on the quality of life and the health of persons that live with HIV In this sense, the laws that criminalise same-sex intimacy between consenting adults or gender identity of trans persons are an obstacle to reducing stigma and discrimination.”</em> (pp. 108-09)</td>
<td>48-138</td>
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<td><em>&quot;Of particular note is that several OAS Member States continue to have discriminatory laws criminalizing consensual adult same-sex conduct, […] and laws that discriminate based on sexual orientation and gender identity, which negatively impacts on the full enjoyment and exercise of [LGBT persons] of their human rights -including their right to highest attainable standard of health- and severely undermine effective national responses to HIV. The dire impact of the buggery</em></td>
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laws on the human rights of persons most at risk for contracting HIV, such as men who have sex with men and sex workers and on persons living with HIV is an issue of deep concern to the Commission.” (pp. 189-190)

- “[T]he IACHR, the Inter-American Commission on Women, UNAIDS and the Pan-American Health Organization (PAHO) expressed concern over the link between criminalization of consensual same-sex intimacy and the HIV epidemic, because of pervasive social stigma and discrimination. These organizations affirmed that legislation and public policies in force in several OAS Member States have a dire impact on the full exercise of human rights by key populations at higher risk of HIV infection and persons living with HIV, and constitute the main barrier to achieving Universal Access to HIV related services, including prevention and treatment.” (p. 190)

- “The IACHR acknowledges that there are other factors not addressed in this chapter that might make LGBTI persons more susceptible to violence and discrimination, such as disability, age (being elderly), being a parent, living in rural areas, and living with HIV.” (p. 290)

- "Among the most vulnerable to violence are trans women who are human rights defenders and who also engage in sex work. A regional report on the situation of trans women human rights defenders carried out by the Network of Trans Persons from Latin America (REDLACTRANS) pointed to a link between sex work, on the one hand, and activism regarding HIV and human rights, on the other hand. Trans women in Latin America, especially those who engage in sex work, usually feel particularly concerned about HIV. This concern about HIV is often how trans women first come into contact with trans human rights organizations, because of the work such organizations do in the areas of HIV prevention and access to HIV programs." (p. 321)


- “The stigma and discrimination faced by people who test positive for HIV is endemic in the Americas. The IACHR continues to receive information concerning situations that occur as a result of that discrimination, such as violence by health care providers, State agents, relatives, or members of the community; denial of public services; loss
of employment; loss of family and social ties; lack of access to credit; and other direct and indirect forms of marginalization. Discrimination and stigma, in turn, hamper efforts to provide an effective response to the epidemic and have a negative impact on the exercise of the human rights of people living with HIV.”  (p. 423)

- “[A]s a result of the stigma, many people are reluctant to seek medical supervision, and that hampers proper prevention and treatment, the Commissioner added.”  (p. 423)

- “In this regard, the Joint United Nations Programme on HIV/AIDS (UNAIDS) has expressed its alarm over the high rates of discrimination against people who are seropositive and those at a higher risk of contracting HIV (“key populations”). This last group includes men who have sex with men, sex workers and their clients, trans persons, and people who use injectable drugs.”  (p. 424)

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<td>• “Same-sex relations are still illegal in nine Caribbean countries, all of which are part of the British Commonwealth. And while laws are not always enforced, they have a chilling effect on the local LGBT community, which can often face harassment, discrimination and even violence. Sodomy laws also inhibit many LGBT Caribbeans from reaching out to police or HIV/AIDS agencies for help.”  (p. 425)</td>
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|   • “As a region, the Caribbean has the second-highest HIV prevalence rate in the world after sub-Saharan Africa, and although the concentration of the epidemic is outside of the OECS, HIV-related deaths continue to be the leading cause of death among the 25–44 age group in the broader region. . The remaining epidemic is concentrated in key high-risk populations: sex workers and their partners, men having sex with men, and men and women engaged in transactional sex.”  (p. 499) |  |
|   • “Although Grenada ratified the International Covenant on Civil and Political Rights in 1991 without reservation or declaration, there are few signs of a cultural shift that would oblige the upholding of the |  |
civil and political rights of lesbian, gay, bisexual and transgender (LGBT) persons. The law criminalizes consensual same-sex sexual activity between men, which carries a penalty up to 10 years in prison. Arguments have been advanced in favour of repealing the law, but – as has been the case in other Caribbean nations – the Government has met with strong opposition to change.” (p. 499)

- “In October 2014, there was a proposal to the National Consultation on Constitution Reform to expand the bill of rights to include protections for vulnerable populations, including LGBT people as well as other groups such as people living with disabilities. A forum was held in the National Trade Centre that was open to the public and broadcast live. Although the LGBT population is estimated at 6 per cent, the audience was less than receptive.” (p. 500)

- “[U]nofficial reports indicate that discrimination against LGBT persons continues and affects their willingness and ability to seek medical treatment and/or counselling on disease prevention.” (p. 500)


- “On October 19, 2015 Petitioners GrenCHAP and Groundation Grenada argued before the Inter-American Commission on Human Rights (IACHR) concerning Section 431 of the country’s criminal code. The law criminalizes anal sex between consenting adults and continues to be used as grounds for blatant discrimination against homosexual individuals. According to the petitioners, his section conflict with human rights guaranteed by international law, including rights enshrined in the American Convention, namely, the rights to: dignity and privacy; equal protection under the law and non-discrimination; health; and freedom of expression. Further, petitioners contended, the law creates social stigma, condones family and community violence, and prevents homosexuals from accessing counseling and testing for services for HIV/AIDS. Petitioners cited to a United Nations poll data from 2014 which showed that 38% of participants in Grenada reported being homophobic, 52% indicated that they would not “hang out” with someone who is gay, and 57% were not in favor of equal rights for gay, lesbian and bi-sexual populations.” (p. 520)

• Section 435 also impedes public health efforts in the fight against HIV/AIDS despite arguments to the contrary. There is international public health consensus, including in organisations like the Pan Caribbean HIV AIDS Alliance (PanCap) and UNAIDS that laws criminalising same sex intimacy help to drive stigma and discrimination against LGBT which causes LGBT people and particularly MSM to avoid situations where they might have to reveal practices implicating them in homosexuality. Laws criminalising same sex intimacy also impede the ability of health care providers to tailor interventions specifically to MSM who are particularly vulnerable.  (p. 529)

• “The existence of these discriminatory laws in Grenada also contributes to the barriers LGBT people face in accessing to healthcare. LGBT persons continue to face high levels of stigma and discrimination from healthcare workers and auxiliary staff that deters them from visiting health facilities. Reports have has found that HIV prevalence rates are higher among men who have sex with men (MSM) and transgender persons in countries with these punitive laws.”  (p. 529)


• “Stigma and discrimination faced by people with HIV and AIDS remains strong in Grenada, and is believed to be hampering prevention and outreach efforts, along with the ability to expand coverage of HIV testing and counseling efforts.”  (p. 539)


• “High levels of homophobia and violence against gay men cause widespread denial, making people more likely to engage in high-risk behaviour, and increasing the potential for HIV transmission from men who have sex with men…”  (p. 574)

### ACADEMIC SOURCES

• “Respondents linked the stigmatising attitudes and behaviour of others to fear of contamination, HIV’s association with immoral behaviour, and ignorance. All respondents spoke of others’ fears of catching the disease, based on perceptions of the ease of transmission.” (p. 579)

• “HIV acquisition was associated with sexual behaviours and identities that were regarded as immoral. While women included promiscuity in their description of immoral behaviour, and there was some mention of prostitution, it was HIV’s link with homosexuality that dominated respondents’ accounts, particularly those of Caribbean-born respondents.” (p. 579)

• “Ignorance is understood as a general lack of awareness of HIV/AIDS, which is blamed in part on the influence of religion, lack of health promotion especially in the Caribbean, and the refusal of parents to discuss sexual issues with their children. There was also, however, in respondents’ opinions, a refusal to learn about HIV, which they believed was a peculiarly Caribbean phenomenon.” (p. 580)

• “PLWHA’s expectations about others’ reactions to them were dominated by worries about ostracism and disdain (‘scorn,’ as Caribbean respondents put it), violence, blame, and uncontrolled, malicious disclosure (‘scandal’ as a verb in Caribbean vernacular; or gossip) in response to people’s fear of contamination arising from the twin associations of HIV with imminent death and ease of transmission and a tendency for communities to blame HIV acquisition on immoral behavior.” (p. 580)

• “One Grenadian-born man reported that ‘I notice before this happened to me, that people who’ve got HIV and tell their friends, their friends sort of number them like, er, leper … [whispers] ‘They’re HIV, keep away from them.’”” (p. 580)

• “Respondents also expected violent reactions from the community, especially Caribbean-born respondents, who shared more reports of violent incidents than UK-born PLWHA: “Nothing can take gunshot,” said one Jamaican born woman explaining why she had not disclosed her status to a sexual partner. Caribbean-born respondents reported hearing of HIV people’s houses being stoned, burned down (as an act of purification as well as violence), beaten up, killed, and of communities ejecting PLWHA from their neighbourhoods.” (p. 580)
• “Respondents’ feelings about their condition were characterised by depression, alcoholism and suicidal ideation, arising from the association of HIV with likely death and social vilification.” (p. 580)

MEDI A SOURCES


• “The idea that HIV is inherently gay is sometimes what fuels the hate and stigma associated with the LGBTI population, especially towards Men who have sex with Men.” (p. 592)


• “AIDS experts in the Caribbean tell us that there will not be sustainable progress in the fight against the disease unless we seriously tackle the problem of discrimination and perceived stigma associated with the disease.

Additionally, the pressure to end discrimination against persons because of their sexual preferences has been heightened by some of the Caribbean's leading medical researchers.

Thus the issue of the decriminalization of homosexuality, which could lead to the reduction in the levels of homophobia in the Caribbean, is one of the most contentious issues that the region has had to confront.

This is important because although UNAIDS reports that prevention programmes worldwide are yielding better results, the global AIDS pandemic continues to be a major concern.” (p. 598)

• “Although prejudice is directed at all persons who have AIDS, no matter how they contracted the disease, homosexuals with and without AIDS feel the greatest pressure from society because of their life style.

Homophobia, defined as an extreme and irrational aversion to homosexuality and homosexuals, is rampant in the Caribbean. . . This level of discrimination makes little sense since the dominant form of transmission of AIDS in the Caribbean is heterosexual and not homosexual.
Nevertheless, in the context of fighting the spread of AIDS there have been suggestions that unless the Caribbean community takes measures to reduce homophobia, gay men who are affected by the virus will remain in the closet and continue pretending that they are heterosexual to avoid the pain of being outcasts of society.

What this does is to cause carriers of the disease to remain underground and thus fuel the spread of AIDS.” *(p. 598)*

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<td>• “Access to HIV testing is a human right. However, many barriers to HIV testing remain. Stigma and discrimination are very common in the Caribbean and can deter people from taking an HIV test and getting treatment for the disease. This is due to a lack of education about the subject, false beliefs about transmission and HIV associated sexual practices. Some persons living with HIV continue to be shunned by family, peers and the wider community, while others report discriminatory behaviour towards them in healthcare and education settings, erosion of their human rights, and psychological damage.” <em>(p. 601)</em></td>
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<td>• “He stated that many of the persons and families affected by HIV/AIDS, because of the stigma and discrimination, sometimes suffer a lot inside since there’s still the silence around HIV.” <em>(p. 603)</em></td>
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<td>• “With the latest entries on social media aimed at alienating and discriminating against an individual who is allegedly living with HIV, we again need to be mindful of how we treat other people.” <em>(p. 607)</em></td>
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<td>• “HIV is a disease with stigma and we have learned with experience, not just with HIV and AIDS but with other diseases, countries for</td>
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many reasons are sometimes hesitant to admit they have a problem.”  
(p. 610)

- “One of the major challenges that Persons Living with HIV/AIDS (PLHIV) face is unemployment. This adversely impacts their capacity to provide daily meals, which are an essential component of treatment adherence.”  (p. 613)


- “The official made references to a PAHO commission Terborg study, which found a few years ago that while Men who have Sex with Men (MSM) have access to STI and HIV-related services, such as knowledge, condoms, early treatment of STIs, and HIV testing, there were many who complained about the quality of the services, particularly public health services. He pointed out that MSM living with HIV have stressed the double burden of stigma and discrimination; firstly, they suffer stigma and discrimination based on their sexual lifestyles; and secondly, because they are HIV positive.”  (p. 622)
Tab 1
GRENADA 2018 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Grenada is a parliamentary democracy with a bicameral legislature. Observers considered the March 13 elections to be generally free and fair. The New National Party won all 15 seats in the House of Representatives and selected Keith Mitchell as prime minister.

Civilian authorities maintained effective control over the security forces.

Human rights issues included criminalization of consensual same-sex sexual activity between adults, although the law was not enforced during the year, and child labor.

The government investigated and prosecuted officials who committed violations.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and there were no reports government officials employed them, with the exception of flogging, a common form of punishment for petty crimes such as traffic violations, theft of agricultural products, and petty larceny.

Prison and Detention Center Conditions
Prison and detention center conditions did not meet international standards. Overcrowding was a serious problem.

**Physical Conditions:** In August there were 460 prisoners in the country’s sole penitentiary, which was designed for 198 persons. The Grenada Human Rights Organization claimed the prison often held up to six to eight prisoners per cell, exceeding the UN recommendation of no more than three per cell. In the male block, potable water normally was available in prison hallways but not in the cells.

**Administration:** Authorities conducted proper investigations of credible allegations of mistreatment.

**Independent Monitoring:** The prison visiting committee and the prison welfare officer conducted monthly visits and accepted allegations of mistreatment.

d. **Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements.

**Role of the Police and Security Apparatus**

The Royal Grenada Police Force (RGPF), led by the police commissioner, maintains internal security. The country does not have a military force. The RGPF encompasses the coast guard, a special service unit, a firefighting unit, immigration and border control, and other specialized units. The RGPF is supplemented by 193 rural constables. The police force reports to the minister for national security, a portfolio held by the prime minister.

Civilian authorities maintained effective control over the RGPF, and the government has effective mechanisms to investigate and punish abuse. There were no reports of impunity involving security forces during the year.

**Arrest Procedures and Treatment of Detainees**

The law permits police to detain persons on suspicion without a warrant, but they must bring formal charges within 48 hours. Authorities generally respected this limit. Authorities granted detainees access to a lawyer of their choice and family members within 24 hours. The law provides for a judicial determination of the
legality of detention within 15 days after arrest. Police must formally arraign or release a detained person within 60 days, and the authorities generally followed these procedures. There was a functioning system of bail, although persons charged with capital offenses are not eligible. Only upon recommendation from the governor general may a judge set bail for detainees charged with treason.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

Trial Procedures

The law provides for the right to a fair and public trial, and an independent judiciary generally enforced this right.

There is a presumption of innocence, and the law protects persons against self-incrimination and requires the police to explain a person’s rights upon arrest. The accused has the right to remain silent and to seek the advice of legal counsel. The law allows a defense lawyer to be present during interrogation and to advise the accused on how to respond to questions. Defendants and their counsel generally had adequate time and facilities to prepare a defense as well as free assistance of an interpreter. Defendants have the right to a trial without undue delay, although case backlogs meant periods of several months to a year before many cases went to trial. Defendants have the right to confront their accusers, present evidence, call witnesses, and appeal. Trials are open to the public unless the charges are sexual in nature or a minor is involved.

The court appoints attorneys for indigents in cases of murder or other capital crimes. In criminal cases that reach the appellate stage, the court appoints a lawyer if the defendant is unable to afford counsel. According to the Grenada Human Rights Organization, many defendants did not have access to legal counsel, and the government lacked adequate legal aid resources to serve demand. With the exception of foreign-born drug crime suspects or persons charged with murder, the courts granted most defendants bail while awaiting trial.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.
Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary for civil matters including human rights violations. The civil court system encompasses a number of seats around the country at which magistrates preside over cases. Defendants may appeal all High Court decisions, including human rights decisions, to the Eastern Caribbean Supreme Court.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, and the government generally respected this right. Independent media were active and expressed a wide variety of views without restriction.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority.

According to the International Telecommunication Union, 59 percent of the population used the internet in 2017.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.
c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

Protection of Refugees

Access to Asylum: The law does not provide for the granting of asylum or refugee status, and the government has no established formal channels for providing protection to refugees or asylum seekers. There were no reports of refugees attempting to enter the country in 2017.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: In general elections held on March 13, the New National Party won all 15 seats in the House of Representatives, defeating the largest opposing party, the National Democratic Congress. The Organization of American States observer mission deemed the elections generally free and fair.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials. The Integrity in Public Life Commission is responsible for combating corruption, while the Ombudsman’s Office, as an independent organ with the powers to investigate maladministration, has a role as well.
Corruption: There was a perception, particularly among the political opposition and some media outlets, that the government did not implement the law effectively. There were no cases or allegations of public corruption during the year.

Financial Disclosure: The law requires all public servants to report their income and assets, beginning with members of the Integrity in Public Life Commission. The commission monitors and verifies disclosures but does not publicly disclose them except in court. The commission must note failure to file a disclosure in the official gazette. If the office holder in question fails to file in response to this notification, the commission may seek a court order to enforce compliance, and a judge may impose conditions as deemed appropriate.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The ombudsman has authority to investigate complaints from persons who object to government actions they deem unfair, abusive, illegal, discriminatory, or negligent.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, and stipulates a sentence of flogging or up to 30 years’ imprisonment for a conviction of any nonconsensual form of sex. Authorities referred charges involving rape or related crimes for prosecution.

The law prohibits domestic violence and provides for penalties at the discretion of the presiding judge based on the severity of the offense. The law allows for a maximum penalty of 30 years’ imprisonment. The central statistical office reported cases of domestic violence against both women and men. Police and judicial authorities usually acted promptly in cases of domestic violence.
According to women’s rights monitors, violence against women nevertheless remained a serious and pervasive problem.

Crimes involving sexual violence rose 13 percent during the year. Police launched a special victims unit and hotline to deal with this category of crimes.

**Sexual Harassment:** The law prohibits sexual harassment, but there were no criminal penalties for it. The government noted it was a persistent problem.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** Women generally enjoyed the same legal status and rights as men, and there was no evidence of formal discrimination in education. The law mandates equal pay for equal work.

**Children**

**Birth Registration:** Citizenship is derived from birth in the country or, if abroad, by birth to a Grenadian parent upon petition. There is universal birth registration.

**Child Abuse:** Government social service agencies reported cases of child abuse, including physical and sexual abuse. Authorities placed abused children in either a government-run home or private foster homes. The law stipulates penalties ranging from five to 15 years’ imprisonment for those convicted of child abuse and disallows the victim’s alleged “consent” as a defense in cases of incest.

**Early and Forced Marriage:** The legal minimum age for marriage is 21, although persons as young as 18 may be married with parental consent in writing.

**Sexual Exploitation of Children:** A statutory rape law applies when the victim is 16 years old or under. Penalties are 30 years’ imprisonment if the victim is less than age 14, and 15 years’ imprisonment if the victim is 14 to 16 years of age. The law prohibits the posting and circulation of child pornography. The law also prohibits the importation, sale, and public display of pornography. The law prohibits sale and trafficking of children for prostitution, for the production of pornography, or for pornographic performances.

**International Child Abductions:** The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the
Anti-Semitism

There is a small Jewish community. There were no reports of anti-Semitic acts.

Trafficking in Persons

There were no confirmed reports during the year that Grenada was a source, destination, or transit country for victims of human trafficking.

Persons with Disabilities

Discrimination against persons with disabilities is generally prohibited. Although the law does not mandate access to public transportation, services, or buildings, building owners increasingly incorporated accessibility features into new construction and premises renovation. The government provided for special education throughout the school system; however, most parents chose to send children with disabilities to three special education schools operating in the country, believing the three schools offered better conditions for learning.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law criminalizes consensual same-sex sexual activities between men and provides penalties of up to 10 years’ imprisonment. The government did not actively enforce the law. The law makes no provision for same-sex sexual activities between women. No laws prohibit discrimination against a person based on sexual orientation or gender identity in employment, housing, education, or health care.

Society generally was intolerant of consensual adult same-sex sexual conduct, and many churches condemned it. Most lesbian, gay, bisexual, transgender, and intersex persons were not open about their sexual orientation, gender identity or expression, or sex characteristics.

HIV and AIDS Social Stigma
It was common for family members to shun persons with HIV/AIDS. They also faced discrimination in housing and employment. The government encouraged citizens to visit a doctor for tests and treatment.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers to form and join independent labor unions, participate in collective bargaining, and, with some restrictions, conduct legal strikes. The law prohibits antunion discrimination. It requires employers to recognize a union that represents the majority of workers in a particular business but does not oblige employers to recognize a union formed by their employees if the majority of the workforce does not belong to the union.

While workers in essential services have the right to strike, the labor minister may refer disputes involving essential services to compulsory arbitration. The government’s list of essential services is broad and includes services not regarded as essential by the International Labor Organization. Essential services include employees of the electricity and water companies; public-health and protection sectors, including sanitation, airport, seaport, and dock services (including pilotage); fire departments; air traffic controllers; telephone and telegraph companies; prisons and police staff; and hospital services and nursing.

The government and law enforcement officials respected freedom of association and the right to collective bargaining. Employers generally recognized and bargained with unions even if a majority of the workforce did not belong to a union.

The government generally enforced labor laws. Penalties were sufficient to deter violations.

Administrative and judicial procedures were subject to lengthy delays and appeals. Labor organizations continued to seek a change in labor laws to ensure timely resolution of disputes following labor action.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, including specifically prohibiting the sale or trafficking of children for exploitive labor. The law
establishes penalties of 25 years’ imprisonment, a fine of $500,000 East Caribbean dollars (XCD) ($185,000), or both for forced labor, or one million XCD ($370,000) for child trafficking, including forced child labor. The penalties were sufficient to deter violations. The government effectively enforced the law. The law does not sufficiently prohibit, however, the trafficking of children, because it requires the use of force, threats, abuse of power, or other forms of coercion to carry out the offense.

c. Prohibition of Child Labor and Minimum Age for Employment

The statutory minimum age for employment of children is 16 years. The law permits employment of minors under 18 as long as employers meet certain conditions related to hours, insurance, and working conditions set forth in the labor code. There is no explicit prohibition against children’s involvement in hazardous work. The law allows holiday employment for children under age 16 but does not specify the minimum age, types of work, or number of hours permitted for such work.

Inspectors from the Ministry of Labor enforced the minimum age provision in the formal sector through periodic checks. Enforcement in the informal sector was insufficient, particularly for family farms. There was no information on the adequacy of resources, number of inspections, remediation, penalties, or on whether such penalties were sufficient to deter violations.

Also, see the Department of Labor’s Findings on the Worst Forms of Child Labor at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination in respect to employment or occupation regarding race, color, national extraction, social origin, religion, political opinion, sex, age, or disability. The law does not prohibit discrimination in respect to employment or occupation regarding language, HIV-positive status or other communicable diseases, sexual orientation, or gender identity. There is no penalty for violating the law, but authorities stated the country adheres to International Labor Organization guidelines and standards. In general the government effectively enforced the law and regulations.

e. Acceptable Conditions of Work
The law provides for a national minimum wage. The minimum wage for domestic workers, for example, was $4.50 XCD ($1.70) per hour, while that for security guards was $8.00 XCD ($3.00) per hour. The government estimated the poverty income rate at $6,200 XCD ($2,300) per year. According to the 2008 Country Poverty Assessment by the Caribbean Development Bank, 38 percent of the population lived below the poverty line.

The government sets health and safety standards. Workers can remove themselves from situations endangering health or safety without jeopardizing their employment if they reasonably believe the situation presents an imminent or serious danger to life or health.

Enforcement, including wages, hours, occupational safety, and other elements, is the responsibility of the Ministry of Labor. Labor inspectors are responsible for the full range of labor rights inspections, including workplace safety and the right to organize. Labor officers worked with employers in sectors such as energy, agriculture, and construction to promote appropriate clothing, health checks, and pesticide safety. The government effectively enforced minimum wage requirements and reported no violations of the law concerning working hours. The government did not always enforce occupational health and safety regulations.

The government informally encouraged businesses to rectify violations without resorting to formal channels for compliance that included fines and penalties. The government provided no information on the amount the law sets for fines or other penalties.
Tab 2
NATIONAL WORKPLACE POLICY
ON
HIV and AIDS

Ministry of Labour

GRENADA

February 2015
Preface

Grenada's response to HIV/AIDS pandemic has been that of high-level political commitment and collaboration with both local and international partners. In the same spirit, this policy has been developed through a joint effort by government, employers, workers, civil society organisations, and the private sector.

The ILO code of practice on HIV/AIDS and the world of work has been used as a guiding tool during the development of this policy. The aim of the national policy is to provide a framework for prevention of further spread of HIV and mitigation of the socio-economic impact of the epidemic within the world of work.

This policy recognises HIV/AIDS as a workplace issue, which should be treated like any other serious illnesses/conditions in the workplace. It emphasizes the importance of promoting and protecting human rights, participation of people living with HIV/AIDS, gender equality as well as prevention, care, support and treatment as the major tools to be used in addressing the impact of HIV/AIDS in the world of work.

This policy will guide the overall response to HIV/AIDS in the world of work in Grenada. I therefore call upon all the other stakeholders to emulate the Governments' commitment in the fight against HIV/AIDS, which is one of the greatest challenges of mankind in this century.

This national policy has marked yet another milestone in the Government's determination and commitment to protect the rights and dignity of all workers irrespective of their HIV status. The main objective is that of promoting decent work in the face of the HIV/AIDS pandemic.

Hon. Elvin Nimrod
MINISTER for LABOUR
Foreword

The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are of fundamental concern to the world of work, because the great majority of people at risk of infection and developing AIDS are of working age. It significantly affects the patterns of employment and production at the sector and aggravates poverty at individual levels.

This policy focuses on the workplace, where the majority of the working population spends most of their active lifetime. The Human Immunodeficiency Virus was first reported in Grenada in 1984; however, focus on the workplace is still inadequate. It is therefore essential to develop a clear national policy to safeguard workers with HIV and guide the response to HIV within the world of work.

This national policy is a timely and much needed contribution towards the nationwide efforts to meet the challenges of AIDS and it is expected to stimulate a significant impact. The National Policy on HIV/AIDS and the World of Work covers all workers and prospective workers, all employers and prospective employers from the public and private sectors both formal and informal. It also covers all workplaces and contracts of employment including the informal sector and the self-employed as well as all practices related to human resources that form part of the policy component of any organisation.

The policy spells out the key principles underlying its implementation namely: non-discrimination; confidentiality; HIV testing; greater involvement of Persons Living with HIV/AIDS; promotion of prevention; treatment, care and support; and gender concerns in the world of work. The goal is to provide a framework for prevention of further spread of HIV and mitigation of the socio-economic impact of HIV/AIDS within the world of work.

The policy also outlines the roles of key stakeholders from government, employers, workers, private sector including the informal, people living with HIV/AIDS and civil society organisations. This national policy has been developed through a consultative process, culminating with a presentation at the Sustainable Development Council of Grenada.
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Definitions and Abbreviations

**Affected Person** is any human being whose life has been changed in any way by HIV/AIDS due to the broad impact of the epidemic. It is includes, but not exclusive to, a person who is infected with the virus or any person in close relation to that infected person, such as a family member, friends and the wider community.

**AIDS** Acquired Immune Deficiency Syndrome, a cluster of medical conditions, often referred to as opportunistic infections and cancers resulting from the breakdown of the immune system.

**Anti-retroviral drugs** Medications used to inhibit the multiplication of HIV in the human body. Specific combinations are used in the treatment of HIV Infection.

**ART** Antiretroviral Therapy.

**Confidentiality** the right of every person to have their health and personal information kept private.

**Decent Work** Respect for the fundamental principles and the right to work, be employed and have income generating opportunities social protection, social security, social dialogue and tripartism at work.

**Discrimination** The unfair and unjust treatment of an individual by an organization or by other workers in the workplace based on the HIV status or perceived HIV status.

**Employer** The Government of Grenada as represented by the Permanent Secretaries, Private Sector as represented by the Chief Executive Officers and Managers, Heads of Department and anyone who offers wages/salaries or give instructions to persons under their direct supervision.

**Employee** any person working under any form of arrangement, be they temporary, voluntary or permanent.

**Gender Differences** in the social roles, status, responsibilities and power accorded to males and females based on their biological sex.
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<tr>
<th>Term</th>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus that attacks and weakens the human immune system by attaching itself to, and destroying important cells that control and support the immune system. It may ultimately destroy the human immune system, resulting in AIDS.</td>
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<tr>
<td>HIV negative</td>
<td>The absence of HIV in an individual’s body. This can be ascertained by specific tests to detect HIV infection</td>
</tr>
<tr>
<td>HIV positive</td>
<td>The presence of the virus (HIV) in a person’s body ascertained by specific medical tests to detect HIV infection</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>Opportunistic Infections</td>
<td>Illnesses caused by various organisms which do not necessarily cause disease in persons with healthy immune systems to the organs of the body.</td>
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<td>Peer Educator/Counsellor</td>
<td>A trained person who develops and implements a program to meet the social, psychosocial, educational and/or training needs of members of the social group.</td>
</tr>
<tr>
<td>Physician</td>
<td>A trained medical doctor licenced to practice medicine in Grenada</td>
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<td>PLWHA</td>
<td>Persons Living with HIV or AIDS</td>
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<tr>
<td>PMTCT</td>
<td>Prevention of Mother to Child Transmission</td>
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<tr>
<td>Post Exposure Prophylaxis (PEP)</td>
<td>Measures to be instituted after possible exposure to HIV</td>
</tr>
<tr>
<td>Public Sector</td>
<td>The entity which manages and regulates the affairs of the country under the Government of Grenada</td>
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<tr>
<td>Prophylaxis</td>
<td>Treatment given or action taken to prevent the disease</td>
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<tr>
<td>Term</td>
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<td><strong>Reasonable accommodation</strong></td>
<td>Modifications/adjustments to the work environment or the job that is reasonably practicable enabling persons living with HIV and AIDS to have access to or participate in active employment</td>
</tr>
<tr>
<td><strong>Screening</strong></td>
<td>Measures, whether direct HIV testing or indirect (assessment of a person's risk taking behaviour) to ascertain the status of an employee or job applicant. It may also include the questioning of a person as to tests already taken, medication or any relevant matter</td>
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<td><strong>Social Dialogue</strong></td>
<td>The process of consultation and negotiation between management and workers on any work related issue including the effective management of HIV and AIDS in the workplace</td>
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<tr>
<td><strong>Stigma</strong></td>
<td>The labelling of persons living with, affected by or associated with HIV and AIDS</td>
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<tr>
<td><strong>Tripartite</strong></td>
<td>Equal participation and representation of Government, employers' and workers' organizations at the national, sectoral and organizational levels</td>
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<tr>
<td><strong>Undue Burden</strong></td>
<td>Financial or other constraints imposed on the business due to the provision of reasonable accommodation for employees living with HIV/AIDS</td>
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<tr>
<td><strong>Universal Precautions</strong></td>
<td>A simple standard of infection control practices to minimize the risk of infection by blood borne pathogens. The practice of treating ALL cases although there is the possibility of HIV infection</td>
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<tr>
<td><strong>VCT</strong></td>
<td>Voluntary Counselling and Testing</td>
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<tr>
<td><strong>Vulnerability</strong></td>
<td>Socio economic disempowerment, cultural or other contexts, or work situations that make workers susceptible to the risk of HIV infection</td>
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<tr>
<td><strong>Workplace</strong></td>
<td>A place where workers perform their activity</td>
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Acknowledgements

The Ministry of Labour expresses its appreciation to the International Labour Organization (ILO) for the support and guidance in drafting the policy. Sincere gratitude goes to the individual members of the Technical Working Group for their valued contribution and time spent drafting the policy.

The members represented the following organizations: Grenada Employers' Federation, Grenada Trades Union Council, Ministries of Health, Social Development, Education, Foreign Affairs and Legal Affairs.

Special thanks go to Ms. Francine Foster of the Ministry of Legal Affairs and Ms Judy Benoit of the Ministry of Health for their contribution in finalizing and validating the policy.

Special thanks to the staff of the Ministry of Labour for their contribution and to the Chairman – Mr. Michael A. D. Horsford.
1. Introduction

According to the International Labour Organisation in its Recommendation concerning HIV and AIDS in the world of work, 2010, the HIV/AIDS epidemic is now a global crisis, and constitutes one of the most formidable challenges to development and social progress. Specialists predict that the epidemic can erode gains achieved over decades in development, and has the potential to undermine the economy with associated adverse social and political implications.

HIV and AIDS are also major threats to the world of work with a youthful population, since the most affected groups coincide with the economically productive and mobile ages of 15 to 54 years. As expected, HIV and AIDS affect the formal and informal sectors through increased expenditure on medical bills, welfare and burial expenses as well as increased insurance premiums.

Additional cost will be incurred to train, hire or recruit workers to replace those who are unable to work because of HIV and AIDS related illness or disability. Of greater concern is the unwarranted stigma and discrimination against workers and persons living with HIV or AIDS. HIV sickness and death from AIDS can also result in more children entering the workforce for survival of their families, which can exacerbate the worst forms of child labour at the workplace.

The situation is worsened by the fact that women have a recognised role of providing care in the family as well as in the community. Their work is more likely to be interrupted, either through their own illness or the need to provide care to someone close to them. Consequently, women and children are more vulnerable to the socio-economic impact of HIV/AIDS.

The National Policy on HIV/AIDS and the World of Work provides the principles and framework for a national response. This policy forms the basis for the development of workplace policy guidelines, which address specific issues related to the workplace response to HIV and AIDS. The policy applies to all employers and workers, including applicants for work, within the public and private sectors. It also applies to all aspects of work, both formal and informal.
This policy was developed as part of the national response to HIV and AIDS in the world of work. This directive emanates from the National Policy on AIDS which designates the Ministry of Labour, as the government institution to take the lead in developing the policy; and to provide the broad guidelines related to the sector level intervention. The policy aims to promote the Decent Work Agenda in spite of the epidemic and is in keeping with the commitments to the ILO Convention.

It is expected that key stakeholders will utilize this Policy as the basis for development of their own policy guidelines that support the response to HIV/AIDS within their specific workplace situations to ensure a uniform and fair approach to the management of HIV and AIDS, and the impact in the world of work. It is a dynamic document that will guide the planning and mounting of a response to HIV and AIDS within the world of work, and will be periodically reviewed and updated based on the results from monitoring the impact of HIV and AIDS within the world of work.

This policy was formulated in consultation with the tripartite body which comprises the Trades Union Council and the Grenada Employers Federation and the Ministry of Labour. This policy reflects the International Labour Organisation (ILO) Convention 111 and Recommendation 200; and the ILO Code of Practice to ensure a consistent and equitable approach in the management and response to reducing the stigma and discrimination of persons living with and affected by HIV/AIDS.

2. Background

In recognising the global pandemic of HIV and AIDS, the United Nations General Assembly (UNGA) convened a Special Session in 2001, at the end of which a Declaration of Commitment to HIV/AIDS entitled Global Crisis – Global Action, was adopted. Three decades into the AIDS pandemic, ten years after the adoption of the Declaration of Commitment on HIV/AIDS and five years after the adoption of the Political Declaration on HIV/AIDS, Member States reviewed progress at the 2011 UN General Assembly High Level Meeting and also agreed to chart the future course of the global AIDS response.

In these high level meetings of the United Nations, it was recognized that the HIV prevention programs were failing to reach those at greatest risk, and that further interventions were needed to address stigma and discrimination associated with HIV and AIDS. There is no doubt that the stigma and discrimination are key barriers to access to prevention, treatment and support programmes.
In Grenada, the first HIV case in Grenada was in 1984, more than twenty years ago. HIV and AIDS are no longer localized diseases, but a nationwide problem. While the Ministry Of Health, with the National AIDS Unit has made progress in understanding it, challenges still remain. There is still no vaccine or cure for the infection and the number of people who are infected by HIV continues to increase.

The national response to the epidemic has been characterized by open and participatory policy as well as top-level political commitment. The open and concerted response to HIV and AIDS and the surveillance work by the team has reaped benefits. The Voluntary Counselling and Testing service offered gives citizens an opportunity to confront the disease with knowledge that there is confidentiality.

Between January and July of 2014, the Ministry of Health has reported 15 new cases of HIV, of which 12 are males and 3 are females. The number of AIDS related deaths for the period ending July 31st 2014 are six (6) of which four are males and two are females. The fifteen to fifty four (15 – 54) age range accounts for four hundred and thirty four cases representing eighty three (83%) of the total cases. Of these cases, two hundred and seventy eight are men and one hundred and fifty six are women.

The statistical data published by the Central Statistical Office shows that Grenada has a youthful and productive population. Since the majority of the population is within the working age, HIV/AIDS poses a great threat to livelihood and the economy. This epidemiological profile reveals that persons between the ages of 15 and 49 are the most affected by the virus. This group represents the reproductive and most productive sector of our society.

2.1 Policies and related Instruments

Legislation

Grenada has no legislation on HIV and AIDS with respect to the workplace. However, in the ILO Rapid Mapping Exercise entitled HIV/AIDS and the World of Work – Grenada, there was widespread recognition of the need for legislation to protect the rights of persons living with HIV and AIDS.

2.2 Policy and Strategy

The Government of Grenada is mindful of the implications for small island states like Grenada. The GoG recognises the threat that HIV and AIDS pose to the productive segment of the labour force, the socio economic
impact of the disease on families and communities through reduced earning capacity. Likewise, the GOG will be impacted by the high medical costs; loss of skilled persons and a reduced population.

The Ministry of Health has developed a policy of HIV and AIDS in Grenada in 2007 with the goal of reducing the incidence of infections and to improve the quality of life of persons living with and affected by HIV and AIDS. In addition, the policy elucidated on HIV and AIDS in the Workplace and highlighted the role and responsibility of the employers, the Trade Unions and the Ministry of Labour.

The National HIV/AIDS Strategic Plan 2009 – 2015 aims to strengthen the national response in the following strategic areas:-

- Prevention
- Stigma and Discrimination reduction;
- Universal access to treatment and care services;
- Support for Persons affected by HIV;
- Governance and institutional systems
- Strategic information.

In 2008, the Trades Union Council produced a policy document on on HIV/AIDS in the Workplace, in which the GTUC and its affiliates commit themselves in ensuring that all persons living with and affected by HIV AIDS and other life threatening diseases are not discriminated against. The GTUC further reiterated its commitment to education and prevention activities being integrated into occupational health and safety programmes, and to provide care and support for persons living with HIV and AIDS.

This policy is based on the ILO Recommendation concerning HIV and AIDS and the world of work 2010 (No 100) and the accompanying Resolution for the promotion and implementation of the Recommendations which reflect the strong support of the tripartite constituents. The policy is also premised on the Constitution and in accordance with the Constitution, the Labour Laws of Grenada, the ILO Code of Practice; and other national and regional policies and instruments including the regional consultative workshops organised by the CARICOM Secretariat; and managed by the Caribbean Tripartite Council.

The policy was developed to ensure a consistent and equitable approach in the management of, and response to reducing the stigma and discrimination of persons living with, and affected by HIV and AIDS in consultation with the tripartite body. The policy was developed by a tripartite committee and is the result of extensive consultation with
representatives of employers, workers, public and private sector representatives, and persons living with HIV and AIDS.

3. HIV, AIDS and the World of Work

In this Policy, the ‘world of work’ refers to the environment within the workplace comprising workers and employers as well as the socio-economic aspects/relations that exist at the workplace. It embraces the unique tripartite structure and approach of the International Labour Organisation (ILO), which ensures that representatives of Government, employers and workers have a forum for negotiation, consultation or exchange of information on issues of common interest related to the workplace.

HIV and AIDS strike hard at the most vulnerable groups in society including the poorest of the poor, women and children, exacerbating existing problems of inadequate social protection, gender inequalities and child labour. HIV and AIDS disrupt production by affecting the work force both directly and indirectly. Absenteeism due to that is related to HIV and AIDS, leads to direct loss in productivity. Furthermore, there is an increase in medical and welfare costs that eventually includes funeral and burial expenses for the workers and/or their immediate families.

On the other hand, the disease disrupts production through reduction in supply to the work force that results from loss of workers and changes in the composition as the skilled and experienced workers succumb to AIDS. A high turnover in the workforce also means that more resources will be spent on training and education of new groups of workers.

While the empirical evidence is not available, that both government and private savings are being squeezed by the HIV and AIDS epidemic, it creates a vicious cycle by reducing economic growth, which can lead to increased poverty, which in turn facilitates further spread of HIV as a result of reduced household expenditure on health and nutrition, and the likelihood of ‘sex for money’.

The workforce is particularly vulnerable in respect to exposure to HIV because workers spend a significant proportion of their daily hours of activity within the workplaces. This gives a lot of opportunity for social interaction of a sexual nature with people who are not spouses, or regular partners. This scenario provides a fertile ground for spread of HIV unless specific precautions are taken to reduce risk of transmission within the world of work.
HIV and AIDS may disrupt production, can lead to discrimination in employment, heighten gender problems of imbalance and inequity, and increases the burden on women. Therefore, there is need to effectively and sustainably, address these and other effects of HIV and AIDS in the world of work.

In Grenada, some private businesses have initiated their own institutional efforts and interventions to deal with HIV/AIDS and its effects in their workplaces. However, there is need to put in place a national policy that guides the overall response to HIV/AIDS within the world of work.

3.1 Human Rights

The Grenada 1973 Constitution Order guarantees the fundamental human rights and freedom for all persons in the country.

3.2 The Gender Dimension of HIV/AIDS

It should be recognised that HIV and AIDS affect women and men differently. There are extenuating circumstances in which women will be more severely affected differently such as:-

- The informal sector is dominated by women who are heads of households. Recently, the National Insurance Board (NIB) has made it mandatory for self employed persons to be registered and to receive NIS benefits. This is not widespread.
- Caring for HIV-infected family members is usually the responsibility of women and girls;
- Women are historically the victims of social stigma and discrimination;

3.3 Labour Legislation

The legal instruments which needs amendment to reflect HIV and AIDS in the workplace are the following:-

- Grenada Constitution
- Grenada Labour Code
- NIS Act (Workmen's Compensation)
- Factories Act
- Accident and Disease
- Agricultural Workers Amenities Act
4. **Scope**

The National Policy on HIV/AIDS in the world of work will apply to:

- All workers and prospective workers from the public and private sectors, both formal and informal.
- All employers and prospective employers from the public and private sectors, both formal and informal.
- All workplaces and contracts of employment including the informal sector and the self-employed.
- All practices related to human resource that form part of the policy component of any organisation.

The policy on HIV/AIDS and the world of work covers the following areas:

1. Non-discrimination on the basis of known or perceived HIV status
2. Confidentiality
3. HIV testing within the workplace
4. Greater involvement of people living with HIV/AIDS
5. Promotion of prevention, treatment, care and support
6. Gender concerns in the world of work

This policy document will be applicable to persons employed in uniformed services, migrant workers and workers in all sectors of economic activity.

**4.1 Goal**

The goal of the national policy is to provide a framework for prevention of further spread of HIV and mitigation of the socio-economic impact of HIV/AIDS within the world of work in Grenada.

**4.2 Objectives**

1. To provide guidelines for employers, workers and the Government on prevention, management and mitigation of the impact of HIV/AIDS within the world of work.
2. To provide guidelines for employers, workers and the Government in order to eliminate stigma and discrimination within the world of work on the basis of perceived or real HIV status
3. To provide a framework for monitoring and evaluating the effectiveness of measures taken to combat HIV and AIDS within the world of work
4. To provide a framework for monitoring and evaluating the impact of HIV/AIDS within the world of work
5. To promote care, treatment and support within the world of work for people living with HIV and AIDS

4.3 Outputs of Policy Implementation

Implementation of the policy is expected to yield the following:

a. HIV/AIDS prevention, management and mitigation activities present in the world of work
b. Stigma and discrimination on basis of HIV status eliminated from the world of work
c. Effectiveness of measures to combat HIV monitored within the world of work
d. Impact of HIV/AIDS mitigation monitored within the world of work
e. Support and referrals to appropriate care and treatment to people infected and affected by HIV and AIDS within the world of work
f. Greater quantitative knowledge and awareness on HIV/AIDS present within the world of work.

5. Policy Statement

The Government of Grenada in collaboration with employers, workers and trade unions including all organisations representing PLWHAs is committed to providing a safe and healthy work environment that enables productivity and normal life within the workplace.

The Government further commits to the implementation of a pro-active and comprehensive HIV and AIDS workplace programme which includes:

- Articulation with respect to HIV and AIDS in the Workplace;
- An open, informed and safe working environment through employee education programme; and
- Provision of an environment that has zero tolerance for stigma and discrimination against persons known or perceived to be affected by HIV and AIDS.
5.1 GUIDING PRINCIPLES

The guiding principles that underpin this policy are based on scientific knowledge of the impact of HIV and AIDS, epidemiological knowledge about the distribution and transmission of HIV and proven intervention and care. In addition, recognition is given to the rationale for respecting the human rights, privacy and self determination of persons living with HIV/AIDS, in line with the Grenada Constitution. The policy aims to protect persons living with HIV and AIDS, and sets standards so that tripartite members and other stakeholders can work collectively to manage, reduce and ultimately, eliminate the spread of HIV and AIDS.

The following principles must be respected:

5.1.1 Recognition of HIV and AIDS as a Workplace Issue

- HIV/AIDS should be recognized and treated as a workplace issue and should be treated like any other serious illness/condition in the workplace.

5.1.2 Non Discrimination

- No termination of employment on grounds of positive HIV status. Infected persons should be able to work as long as they are able to perform their duties in available, appropriate work;
- Access to and benefit from prevention, treatment, care and support in relation to HIV and AIDS. The workplace should play a role in facilitating access to these services;
- Protection of rights of PLWHA's in the areas of advancements, promotions, benefits, discharge, discipline, layoffs, privileges of employment, compensation, training and other terms of employment;
- No victimization nor refusal to work with a fellow employee or employer infected or affected by HIV/AIDS;
- The protection of workers in occupations that are particularly exposed to the risk of HIV transmission
- Workers benefit, including medical schemes should not discriminate, directly or indirectly against any person on the basis of HIV status.
5.1.3 Confidentiality and Non disclosure

- An individual’s health condition is a private matter. Access to personal data relating to the workers’ medical profile should be bound by confidentiality consistent with ILO Code of practice: Protection of Workers’ Personal Data 1997.

- Protection of the fundamental right to privacy. No obligation by the worker to inform an employer or other workers of his/her HIV status;

- Where a worker chooses to voluntarily disclose his or her HIV or AIDS status to management, this information should not be disclosed to others without the worker's expressed consent.

5.1.4 HIV Testing

- No compulsory HIV testing requirement for recruitment, promotion or career development, in particular employees, job seekers and job applicants on the grounds of real or perceived HIV status;

- HIV testing within the world of work should be conducted in accordance with the national policy guidelines for voluntary counselling and testing.

5.1.5 Gender Equality

- Promotion of gender awareness with respect to roles, sexuality, relationships and norms as these influence HIV/AIDS prevention, care, treatment and support activities in the world of work.

- Gender specific programmes at the workplace should seek to inform men and women of their rights and responsibilities.

- Promotion and prevention options that target males and females equally within the world of work for the reduction of women’s and men’s vulnerability to HIV;

- Response to HIV/AIDS within the world of work must be sensitive to the critical role played by women and girls in providing care to sick family members and the community;
5.1.6 Greater Involvement of People Living with HIV/AIDS

- Employers and workers should create space within the workplace for the involvement and active participation of persons living with HIV/AIDS in all prevention, care and mitigation activities. This will strengthen the response to the epidemic by putting a human face and voice to persons not directly affected;

- Social partners should initiate, develop and encourage support groups for workers living with HIV/AIDS and to ensure that persons are not stigmatised or subject to discrimination.

5.1.7 Promotion of Prevention, Treatment, Care and Support

Prevention, treatment, care and support must be addressed simultaneously in the workplace. Critical areas include the following:

- Promotion of voluntary counselling and testing services for HIV within the workplace and related places;
- Regulation of HIV related goods and services for HIV;
- Promotion of a healthy and safe working environment that contributes to prevention of HIV in the workplace;
- Provisions on guidelines for the management of accidental exposure to HIV within the workplace;
- Employers shall develop and implement extensive educationally based training programmes for all employees in collaboration with the relevant agencies that exist;
- Provide the necessary care and support for family members who are infected;
- Information should be made available to all employees that are easily accessible within the workplace.

5.2 Policy Implementation Strategies

Advocacy and leadership are essential in streamlining the response to HIV/AIDS within the world of work. The workplace must take the lead and be proactive in creating awareness about HIV/AIDS within the world of work. The tripartite structure promoted by the International Labour Organisation (ILO) reflects the conviction that the best solutions arise through social dialogue in the form of national tripartite consultations and cooperation involving the Government, employers and workers for collective bargaining at the enterprise or institutional level.
The National Policy on HIV and AIDS developed by the Government of Grenada designates the Ministry of Labour the responsibility to develop national programmes of action on HIV and AIDS in the context of the world of work. Further, the Ministry of Labour is responsible for collaborating with social partners on the International Labour Organisation instruments to give effect to the 2001 ILO Code of Practice on HIV/AIDS and the world of work.

The Ministry of Labour in collaboration with the Tripartite HIV/AIDS Workplace Policy Committee and the National HIV/AIDS Council will be responsible for the implementation of this Policy. The Labour Commissioner will be the Focal Point on the overall implementation of this policy.

Each workplace shall designate a focal point for the purpose of creating a coordinating mechanism for the implementation of this policy.

The implementation will include:-

- Collaboration with the joint health and safety committee that will be responsible for ensuring that the policy is being effectively implemented and adhered to.
- Providing appropriate education and training programmes for the employers and employees of the organization.
- Providing gender sensitive education and information on how to prevent the transmission and spread of HIV.
- Assessing the impact of the epidemic on the workplace and the needs of the workers living with and affected by HIV/AIDS with ongoing program evaluation.
- Further develop and implement prevention initiatives as necessary and appropriate.
- Monitor the implementation of the national workplace policy
- Report to the National AIDS Council on the progress of the national workplace policy periodically
- Periodic review of the policy.

5.3 Government

The Government has a key role to play in the implementation of an effective response to HIV/AIDS prevention and control. The role will be to create the enabling framework of policies and laws to effect public and private action. These actions will ensure that those affected by the epidemic are protected from all forms of discrimination and stigmatisation. The Ministry of Labour shall implement legislative and administrative
measures to protect PLWHA from discrimination, to ensure confidentiality and to prevent termination of employment on the basis of their HIV/AIDS Status.

5.4 Employers

Employers should:

- Work in partnership with employees and their representatives to develop a workplace policy and programme;
- Institute appropriate policies that protect the rights of workers, including the right to non-discrimination and to confidentiality of HIV status;
- Ensure implementation of workplace programme including Employee Assistance programmes;
- Where appropriate, provide reasonable accommodation for workers living with HIV and AIDS;

5.5 Employees

Employees should:

- Participate in programmes offered by the employer designed to provide information on all aspects of HIV and AIDS;
- Follow agreed procedures for the handling of workplace accidents which may result in an exposure to blood and other fluids;
- Refrain from behaviour detrimental to the health and safety of others; and ensure that the respect and dignity shown to co-workers is not adversely affected by the knowledge that the co-worker is a person with HIV or AIDS.

5.6 Trade Unions

Trade Unions should:

- Inform the membership of the pertinent issues related to the protection of workers' rights, including those with HIV and AIDS;
- Ensure confidentiality the health status of workers;
- Ensure non-discriminatory practices;
- Provide Education and training programmes for members;
- Include provisions to protect workers living with HIV and AIDS in collective bargaining agreement;
- Integrate the ILO Code of Practice into existing and new working agreements;
6. **Monitoring and Evaluation**

The Ministry working in collaboration with tripartite partners shall encourage the smooth implementation of this policy at the workplace.

In order to encourage compliance with this policy,

I. The National HIV and AIDS Workplace Committee will be responsible for the monitoring and Evaluation of this policy through the Labour Commissioner;

II. The National HIV and AIDS Workplace Committee will develop an implementation plan to assess the progress of the implementation;

III. The Labour Officers will be responsible for the monitoring of the policy and shall submit monthly reports to the Labour Commissioner;

IV. Quarterly Reports shall be submitted to the Permanent Secretary.

V. Grievance, misunderstanding or conflict arising out of the implementation of this policy, shall be subject to the provisions of the Labour Code and related Acts, and other workplace redress mechanisms;

VI. This policy will be reviewed every 2 years.

The proposed indicators for monitoring and evaluation are contained in Annex 4.

---

7. **Endorsement**

This policy shall be submitted to the Sustainable Development Council, the Senior Managers Board and the Cabinet for endorsement. The approved document will be made available to key stakeholders including the Chair of the National AIDS Council.
APPENDICES

APPENDIX 1
Guidelines on Adapting the Policy At The Organizational Level

The following are guidelines for organizations to adapt this policy to the needs of their organizations which should be based on a number of varying factors inclusive of size, financial and human resources.

1. The organization should appoint a focal point or a committee consisting of representatives from management, employees and union representative, if available. The committee should work closely with the health and safety committee and be responsible for ensuring that the various aspects of the policy are effectively implemented and adhered to. In some cases where human resources and other resources are limited, the organization may opt to broaden the scope and mandate of the existing health and safety committee to include the responsibility for ensuring that the various aspects of the policy are being effectively implemented and adhered to.

2. The terms of reference of the responsible parties as identified above including scope of work and level of decision-making authority should be determined either by the responsible parties, or both.

3. The responsible parties should examine the needs of the organization, and review the framework at the national level in order to determine how the policy framework can adjust to the specific workplace. In order to make this process more meaningful, a confidential baseline study should be conducted in order to determine the level of awareness and knowledge about HIV and AIDS among employees.

4. The responsible parties should also assess the additional resources that already exist, both within the organization as well as outside of the organization, which they can draw on to make the process more effective. These resources may include legislation, existing policies in the workplace such as policies on acceptable performance standards, policies on discrimination etc; national HIV and AIDS committees, occupational health professionals employed in the workplace, national policies on issues related to HIV and AIDS etc.
5. The responsible parties should draft the revisions to the policy framework and a work plan having done the appropriate needs assessment and stakeholder consultations.

6. The draft policy and work plan should be circulated to the staff for feedback. In some cases it may be necessary to guide the staff through the process by having sessions with them to explain the content of the draft document, and solicit their feedback on the document. If this approach is used, the facilitator, who could either be an existing employee or may be an objective person hired by the organization for this purpose, would capture the feedback from the group(s) to be incorporated in the document. Another approach would be to utilize the committee members to get feedback from their constituents. This approach would allow for more honest and open feedback, and would yield a final document that truly captures the needs and interests of the employees in the organization.

7. Once the feedback is captured and the workplace policy and work plan are finalized, the responsible parties should identify additional persons to be responsible for the implementation of the workplace policy and work plan, and identify appropriate resources and timelines for the various activities in the work plan.

8. The workplace policy and work plan, with the list of persons:

   (a) Should be made available to all employees. In some cases, where financial constraints may be a consideration, copies of this information should be placed at strategic points for employees to access when necessary. The dissemination of information should include educational sessions for employees to highlight key aspects of the workplace policy and work plan, especially emphasizing their responsibility in ensure adherence to clauses contained in the policy.

   (b) The policy should include redress or consequences for breaches of any of the provisions contained therein.

9. The responsible parties should establish a monitoring mechanism to ensure the implementation of the work plan and continuous review of the impact of the policy.
APPENDIX 2

Stakeholder Responsibilities

Responsibility of Employers

Employers must:

- Work in partnership with employees and their representatives to develop a workplace policy and programme.

- Institute appropriate policies that protect the rights of workers, including the right to non-discrimination and to confidentiality of HIV status.

- Ensure the implementation of workplace programmes.

- Where appropriate provide reasonable accommodation for workers affected by HIV or AIDS.

- Ensure satisfactory performance of workers.

Responsibility of Employees

The employee must:

- Participate in programmes offered by the employer designed to provide information on all aspects of HIV and AIDS;

- Follow agreed procedures for the handling of workplace accidents which may result in an exposure to blood and other body fluids;

- Refrain from behaviour detrimental to the health and safety of others;

- Ensure that the respect and dignity shown to co-workers is not determined by the knowledge that the co-worker is a person with HIV or AIDS.
APPENDIX 3

Gender issues at the workplace

Aspects of inequality

Women with low status in society, and less access to income-generating opportunities are vulnerable to the economic impact of HIV and AIDS. Women are more likely to be in the urban informal sector, in subsistence farming, and sometimes in the most poorly paid jobs in the formal sector. This means a low income for many and little social or economic security, in terms of savings, insurance or social security.

Violence against women at the workplace

Women may find themselves in positions of weakness and dependence at the workplace which easily lead to sexual harassment and abuse.

The Gender Dimension

HIV and AIDS affect women and men differently in terms of vulnerability and impact. There are biological factors which make women more vulnerable to infection than men and structural inequalities in the status of women that make it harder for them to take measures to prevent infection, thus intensifying the impact of AIDS on them.

- Many women experience sexual and economic subordination in their marriages or relationships, and are therefore unable to negotiate safe sex or refuse unsafe sex.
- The power imbalance in the workplace exposes women to the threat of sexual harassment
- Poverty is a noted contributing factor to AIDS vulnerability and women make up the majority of the world's poor; in poverty crises, it is more likely to be a girl child who is taken out of school or sold into forced labour or sex work.
- The burden of caring for HIV-infected family and community members fall more often on women and girls, thus increasing workloads and diminishing income-generating and schooling possibilities.

1 Adapted from How to Deal with HIV AND AIDS in the Workplace – ILO Programme on HIV AND AIDS and the world of work (ILO/AIDS)
- Sexist property, inheritance, custody and support laws mean that women living with HIV and AIDS, who have lost partners or who have been abandoned because they are HIV positive, are deprived of financial security and economic opportunities.

- Men are more likely to take health and sexual risks which put them at greater risk.

- Studies show the heightened vulnerability of women, compared to men, to social stigma and ostracism associated with AIDS, particularly in rural settings, thus leaving them shunned and marginalized; this again increases the pressure on them to survive through sex.

- The work that women carry out – paid or unrecognized – is more easily disrupted by AIDS: for example, women dominate the informal sector where until recently, there was no social security coverage for self employed persons. Fewer women than men are covered by social security or occupation-related health benefits.

- Self employed persons still remain unregistered with the National Insurance Scheme including women.

- Men are over-represented in a number of categories of vulnerable workers, and may also find themselves through their employment in situations which expose them to unsafe sex between men.

- Given the prevailing power relations between men and women, men have an important role to play in adopting and encouraging responsible attitudes to HIV and AIDS prevention and coping mechanisms.
APPENDIX 4

Proposed Indicators for Monitoring the Impact

Monitoring of the socio-economic impact of HIV/AIDS in the world work following implementation of the workplace policy can be monitored through periodic surveys that are conducted using indicators that could be adapted from the following:

1. Openness about HIV/AIDS

Openness about one's HIV status is geared to reduce stigma at the workplace and is a reflection of a strong prevention programme / effort. With reduced stigma at the workplace, more workers will be expected to be open about their HIV status. This may be indirectly related to the implementation of the Policy, which encourages social dialogue that involves cooperation between the employers, workers and government as well as the people living with HIV/AIDS.

Definition:
No. of workers who voluntarily and openly declare their HIV status in a year Total/ number of workers officially known to be infected with HIV

2. Care and Support of PWHAs

The Policy promotes the principle that access to care and support should be made available to all workers including persons living with HIV/AIDS and their dependants without discrimination. If this principle is practiced, then the proportion will be one or close to one. The definition of care and support will be in line with the organisation or institution's regulations.

Definition:
No. of HIV infected workers receiving care and support in a year/ Total number of workers officially known to be infected with HIV in the year

3. Availability HIV/AIDS workplace policies and guidelines

The Policy clearly stipulates that workplaces should have HIV/AIDS policies and guidelines. The policy guidelines will address the principles that are outlined within the national Policy. All the principles are taken to be equally important and organisations will be in three groups according to whether they have written documents referring to the principles:

Category Index

a. No policies or guidelines 0
b. Some policies and guidelines exist 1-3
c. All policies and guidelines exist 4
APPENDIX 5

Relevant ILO Conventions, Recommendations, Codes of Practice and Guidelines

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166).

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Collective Bargaining Convention, 1981 (No. 154)

Occupational Safety and Health Convention, 1981 (No. 155), and Recommendation (No. 164).

Occupational Health Services Convention, 1985 (No. 161) and Recommendation (No. 171).

Employment Injury Benefits Convention, 1964 (No. 121)

Social Security (Minimum Standards) Convention, 1952 (No. 102).

Nursing Personnel Convention, 1977 (No. 149).

Migration for Employment Convention (Revised), 1949 (No. 97)

Part-Time Work Convention, 1994 (No. 175)

Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190)


Protection of workers’ personal data: An ILO code of practice (Geneva, 1997).

2 Adapted from How to Deal with HIV AND AIDS in the Workplace – ILO Programme on HIV AND AIDS and the world of work (ILO/AIDS)


APPENDIX 6
Selected Educational and Training Material and Other Information


American Federation of Teachers: HIV AND AIDS education project (Washington, DC, undated)


Canadian Union of Public Employees: Information kit on HIV AND AIDS and the workplace (Ontario, 2000).

Communications Workers of America: CWS and US West respond to AIDS (1994).


Public Services International: Focus (Ferney-Voltaire), Vol. 8, No. 1.

Service Employees International Union: *AIDS education project* (undated).


The Building Trades Groups of Unions Drug and Alcohol Committee: *AIDS: Get real, get safe* (Sydney, undated).


APPENDIX 7

Workplace Policies and Programmes

To ensure a comprehensive approach to equality of treatment for all workers, inclusive of persons infected and affected by HIV and AIDS, the following policies, programmes and practices should form part of the organisation’s infrastructure.

Policies on such issues such as:

1. Occupational Health and Safety
2. Acceptable Performance Standards
3. Discrimination in the Workplace
4. Harassment in the Workplace
5. Recruitment, Selection and Placement
6. Promotions
7. Flexible Work Arrangements
8. Confidentiality
9. Sick Leave and Absenteeism
10. Code of Discipline

Programmes and practices such as:

1. Programme of Care and Support
2. Employee Assistance Programme
3. Facilitation of Voluntary Confidential Counselling and Testing (VCT)
4. Training and Education
5. Physical Accommodation
APPENDIX 8

Roles and Responsibility

1. Role of Government

Office of the Prime Minister

- Supervise the implementation by Ministries and Departments of the activities related to HIV/AIDS control, prevention, care and support plus mitigation of its impacts at the workplace

Ministry of National Security

- Develop and implement HIV/AIDS prevention programmes for the Police Force, Immigration and Prisons staff;
- Develop and implement HIV/AIDS prevention programmes for the inmates, prisoners and offenders in the community service; and
- Develop and implement HIV/AIDS prevention programmes for people entering and leaving the country.

Ministry of Labour

- Carry out consultation, seminars, workshops and research in order to monitor progress in the implementation of this policy and to assist the employer and workers' organisations to develop their response to the epidemic;
- Design and implement awareness and advocacy campaigns to ensure the co-operation of all partners;
- Spearhead Legislative Reform and support service focusing on anti-discrimination, public health protection, privacy, confidentiality, equality and criminal laws; and improving the status of marginalized and vulnerable groups;
- Ensure, that the rights of workers with HIV/AIDS are not infringed, as stipulated in this policy and any relevant labour legislation; and
- Strengthen the enforcement mechanism, such as labour inspectorate, occupational safety & health to deal with HIV/AIDS related matters.

Labour Advisory Board

- Advise the Minister of Labour on all matters related to labour including those pertaining to HIV/AIDS
Ministry of Health

- Focus on workplace with the implementation of health sector based interventions to prevent the sexual, blood-borne and vertical transmission of HIV, through IEC, control of STD and promotion of voluntary counselling and testing;
- Lead the process in developing and strengthening strategies for prevention, care and support involving other sectors, NGO and the private sector;
- Provide appropriate health facility-based care and treatment for persons with HIV-related conditions;
- Ensure implementation, coordination, monitoring and standardization of community home based care;
- Establish a universal infection control guideline for surgical dental, embalming, tattooing and similar procedures;
- Provide technical support to other ministries and sectors as they develop and implement their HIV/AIDS prevention and care activities; and
- Integrate HIV/AIDS into all health promotion activities and services.

National AIDS Commission

The National AIDS Commission will ensure joint and appropriate application of the policy by all stakeholders
- Spearhead joint resource mobilization efforts as well as advocate for the provision of national public and private resources as needed for implementing the policy;
- Support and promote broad partnerships to facilitate effective, wide and appropriate implementation of the policy with a view to respond to HIV/AIDS ethically and effectively;
- Together with the Ministry of Labour, undertake joint monitoring and evaluation of the implementation of the policy in the public and private sectors; and
- Collate and disseminate useful information as well as identify policy gaps for proper planning and decision-making.

Ministry of Finance and Energy; Ministry of Economic Development, Planning, Trade and Co-operatives

- Ensure that adequate resources are made available to Ministries for HIV/AIDS prevention care and support;
- Co-ordinate external support agencies, financial contribution for HIV/AIDS prevention, care and support;
- Avail finances to ensure that ministries can provide care, support and treatment to their workers
Department of Public Administration

- Develop or review the relevant policy guideline on HIV/AIDS prevention, care, support and impact mitigation and guide implementation of activities in the public service;
- Plan for the implementation of HIV/AIDS prevention, care and support activities for Public Officers and other target groups reached through the Ministries' routine activities;
- Implement co-ordinate and monitor HIV/AIDS prevention, care and support activities in the public sector;
- Make forecasts and projections for the future supply and demand of human resource by taking into account the epidemic's long-term effect;
- Ensure that adjustment of human resource is in place for projected attrition due to HIV/AIDS; and
- Ensure that workplace HIV/AIDS education and prevention programmes are implemented for all ministries, departments and local government.

Ministry of Legal Affairs

- Conduct a comprehensive legislative audit review of labour laws and other legal instruments in the view of HIV/AIDS prevention and protection of the rights of affected & infected workers; and
- Recommend legislative changes among the listing of legislation on health and safety in which AIDS can be included as a communicable disease and the prohibition of workplace discrimination based on HIV infection.

Ministry of Education

- Integrate HIV/AIDS education into all levels and institutions of education; and
- Responsible for the implementation of this policy in the educational sector.

Ministry of Agriculture, Lands, Forestry, Fisheries and the Environment

- Ensure that workplace HIV/AIDS education and prevention programmes are implemented within the Agricultural sector;
- Develop and implement HIV/AIDS interventions for farming and fishing communities to mitigate the impact of HIV/AIDS on Agricultural production; and
- Monitor the impact of HIV/AIDS on the Agricultural sector.
2. Role of Employers and their Organisations

The employer in consultation with key stakeholders within the workplace including but not limited to the workers' representatives, workers living with HIV/AIDS, safety and health officers should develop policies and guidelines on HIV/AIDS at the workplace. The workplace policy should be comprehensive and address the principles outlined within this document. It should be communicated to all concerned in simple and clear terms; be reviewed and updated periodically and monitored for effectiveness of implementation.

- Formulate sound HIV/AIDS policy, around the principle of non-discrimination, equality, confidentiality, care and support with an equitable set of policies that are communicated to all staff and properly implemented, including protection of the rights at work and protection against any discrimination at work; and
- Responsible for the implementation of this policy.

3. Role of Workers and their Organisations

- Initiate dialogue on HIV/AIDS between employers and workers and to actively participate in the development and implementation of workplace prevention programmes i.e. awareness campaigns, dissemination of information and education, care and support;
- Participate in the development of workplace policies; and
- Participate in mainstreaming of HIV/AIDS into the workplace policies and programmes.

4. Role of Civil Society Organisations

This includes the Non-governmental organisations including People Living with HIV and AIDS, Faith-based organisations, community based organisations and cultural institutions.

Civil society organisations should develop and implement sustainable innovative HIV/AIDS prevention and care projects and activities, in line with priorities articulated in the National Aids Policy and Strategy, and the Workplace Policy on HIV and AIDS.
Tab 3
ENDING VIOLENCE and other human rights violations based on sexual orientation and gender identity

A joint dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations
English title:

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Ending violence and other human rights violations based on sexual orientation and gender identity:

A joint dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations
Acknowledgments

The preparation and organisation of the joint dialogue on sexual orientation and gender identity was made possible by the support and engagement of members of the African Commission on Human and Peoples’ Rights (ACHPR), the Inter-American Commission on Human Rights (IACHR) and the United Nations (UN) human rights mechanisms. In particular, the contributions of the focal persons identified in each mechanism to prepare the dialogue were critical. The focal persons were Commissioners Pansy Tlakula and Lawrence Mute (ACHPR), Commissioners Rose-Marie Belle Antoine and Tracy Robinson (IACHR), and Professor Christof Heyns (UN). Staff members of the secretariats of ACHPR and IACHR also played key roles in supporting the joint dialogue. The technical, logistical and financial support of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the High Commissioner for Human Rights (OHCHR) is acknowledged with great appreciation.

The papers provided as annexes to this publication were written and reviewed as follows:

- Annex 4: Norms, case law and practices relevant to sexual orientation and gender identity in the African human rights system. This paper was written by Professor Frans Viljoen, Director of the Centre for Human Rights, University of Pretoria.
- Annex 5: Norms, cases and practices relevant to sexual orientation and gender identity in the Inter-American human rights system. This paper was written by Mauricio Albarracín, independent consultant. It was reviewed and edited by Fanny Gómez-Lugo and Elizabeth Abi-Menshed of the Secretariat of IACHR.
- Annex 6: Norms, case law and practices relevant to sexual orientation, gender identity and intersex status in the United Nations system. This paper was written by Sheherezade Kara, independent consultant. It was reviewed and edited by Michael van Gelderen of OHCHR.
- Annex 7: HIV, human rights and sexual orientation and gender identity. This paper was written by Patrick Eba, Luisa Cabal and Christine Kim of UNAIDS.

The contribution of Professor Frans Viljoen and the Centre for Human Rights was invaluable in coordinating the development of the papers, facilitating the joint dialogue and preparing the present publication.

Photographs credit to: *Violence based on perceived or real sexual orientation and gender identity in Africa* published by PULP 2013, Irinnews and Getty Images.
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Key concepts and terms

What does ‘LGBT’ mean?

LGBT stands for the terms ‘lesbian, gay, bisexual and transgender’. While these terms have increasing global resonance, other terms may be used to describe people who are attracted to persons of the same sex and those who have non-binary gender identities (such as hijra, meti, lala, skesana, motsoalle, mithli, kuchu, kawein, travesty, muxé, fa’afafine, fakaleiti, hamjensgara and Two-Spirit). It is therefore particularly important to use and respect the names, terms and pronouns that people use to refer to themselves. In a human rights context, lesbian, gay, bisexual and transgender people face both common and distinct challenges.

What is ‘sexual orientation’?

Sexual orientation refers to a person’s physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person’s identity. Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people (sometimes known as ‘straight’) are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

What is ‘gender identity’?

Gender identity reflects a deeply felt and experienced sense of one’s own gender. A person’s gender identity typically corresponds with the sex assigned to them at birth. For transgender people, their sense of their own gender does not correspond to the sex they were assigned at birth. In some cases, their appearance and mannerisms and other outwards characteristics may conflict with society’s expectations based on gender norms.
What does ‘transgender’ mean?

Transgender (sometimes shortened to ‘trans’) is an umbrella term used to describe a wide range of identities – including transsexual people, cross-dressers (sometimes referred to as ‘transvestites’), people who identify as third gender, and others whose appearance and characteristics do not correspond with the sex they were assigned at birth and/or are perceived as gender atypical. Transwomen identify as women but were classified as male when they were born. Transmen identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

What is ‘intersex’?

An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male, female, both or neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people. Intersex people suffer specific human rights violations based on their sex characteristics.

What are ‘homophobia’ and ‘transphobia’?

Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people; transphobia denotes an irrational fear, hatred or aversion towards transgender people.
# List of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>ECOSOCC</td>
<td>Economic, Social and Cultural Council of the African Union</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<tr>
<td>IACtHR</td>
<td>Inter-American Court on Human Rights</td>
</tr>
<tr>
<td>LGBT</td>
<td>lesbian, gay, bisexual and transgender (persons)</td>
</tr>
<tr>
<td>LGBTI</td>
<td>lesbian, gay, bisexual, transgender and intersex (persons)</td>
</tr>
<tr>
<td>MSM</td>
<td>men who have sex with men</td>
</tr>
<tr>
<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
</tr>
<tr>
<td>OAS</td>
<td>Organisation of American States</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>PLHIV</td>
<td>people living with HIV</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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Message of support

We congratulate the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights and United Nations Human Rights Mechanisms for their leadership in holding this important joint dialogue on sexual orientation and gender identity.

Protecting human rights for all, and ending violence, criminalisation, discrimination and other human rights violations against lesbian, gay, bisexual, trans and intersex persons, are priorities for our organisations and for the entire United Nations system.

This timely dialogue builds on many achievements in each system, including resolution 275 of the African Commission and the work of several of the Commission’s thematic rapporteurs; resolutions of the Organization of American States and the work of the Rapporteurship on the rights of lesbian, gay, bisexual, trans and intersex persons at the Inter-American Commission; and the work of United Nations agencies, treaty bodies, and special procedures, and resolutions at the United Nations Human Rights Council.

The richness of the discussions and the innovative ideas and experiences shared by experts from the African, Inter-American and United Nations human rights systems illustrate the value of such dialogues and exchanges to address the common challenges that we all face as we seek to combat human rights violations, including those committed on the basis of sexual orientation and gender identity.

We take good note of the findings of the dialogue, including with regards to gravity and range of human rights violations documented by the mechanisms in all regions. We welcome the emphasis on the full applicability of international and regional human rights treaties to such violations, as well as the opportunities for further collaboration and action by States and other stakeholders for the effective respect and protection of the human rights of all persons, including lesbian, gay, bisexual, trans and intersex persons.

Our organisations stand ready to support future efforts in this regard.

Zeid Ra’ad Al Hussein
High Commissioner for Human Rights

Michel Sidibé
Executive Director
Joint United Nations Programme on HIV/AIDS

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Foreword

Over the years, the African, Inter-American and United Nations human rights systems have forged important partnerships on a wide-range of human rights issues and approaches. Grounded in the universality of human rights, the three systems have collaborated through actions ranging from joint statements to joint meetings and country visits, the exchange of information on country situations, individual cases and thematic issues, as well as relying on each other’s case law, decisions and procedural developments.

This collaboration has been anchored in frameworks such as the 1993 Vienna Declaration and Programme of Action, the regular dialogue between global and regional human rights mechanisms mandated by the Human Rights Council, the 2009 Memorandum of Understanding between the Organisation of American States and the African Union, the 2012 Addis Ababa Roadmap between the special procedures of the UN Human Rights Council and those of the African Commission on Human and Peoples’ Rights and the 2010 and 2014 Memorandums of Understanding between the Office of the UN High Commissioner for Human Rights and the African Union Commission and Inter-American Commission on Human Rights, respectively.

The joint dialogue held on 3 November 2015 in Banjul was firmly located within these frameworks. This timely dialogue enabled each institution to exchange information and experiences, to review approaches, challenges and good practices within each system, and to reaffirm our common resolve to address the serious human rights violations based on sexual orientation and gender identity that take place in all regions.

This report and the accompanying background papers capture the content and outcomes of the joint dialogue. We hope that it can provide a basis for further collaboration in future and that States and other stakeholders will find it useful to inform their efforts to combat violence, discrimination and other human rights violations based on sexual orientation and gender identity.

Pansy Tlakula
President
African Commission on Human and Peoples’ Rights

James Cavallaro
President
Inter-American Commission on Human Rights

Christof Heyns
UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
Final report: Joint thematic dialogue on sexual orientation and gender identity*

SUMMARY

On 3 November 2015, a joint dialogue on sexual orientation and gender identity was held between the African Commission on Human and Peoples’ Rights (African Commission or ACHPR), Inter-American Commission on Human Rights (Inter-American Commission or IACHR), and United Nations (UN) human rights mechanisms in Banjul, The Gambia, ahead of the 57th ordinary session of the African Commission. The dialogue hosted by the African Commission was supported and organised by the Office of the High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

It built on recent developments in the African, Inter-American and UN human rights systems in relation to sexual orientation and gender identity. The dialogue allowed for interactive discussions among the three human rights systems on substantive issues relating to sexual orientation and gender identity including:

- Rights to life, integrity, freedom from torture, prohibition of violence and related rights;
- Right to liberty, freedom of association and assembly, freedom of expression, human rights defenders and related rights; and
- Right to health and other economic social and cultural rights.

Critical areas of exchanges and agreement during the meeting, as well as emerging avenues for future actions and collaboration were related to:

Application of international and regional human rights treaties

Participants emphasised the full applicability of existing fundamental human rights standards enshrined in international human rights law to the rights of LGBTI persons, including regional and international human rights treaties adopted and ratified by member states, and the jurisprudence and interpretation of these norms by regional and international human rights mechanisms.

* The final report on the dialogue was adopted by the ACHPR at its 19th Extraordinary Session and was also approved by the IACHR and UN participants in the dialogue.
Range and gravity of human rights violations documented by the mechanisms

Participants discussed the range and emphasised the gravity of violations of fundamental human rights based on sexual orientation or gender identity. LGBTI people face different sets of human rights violations, including killings, torture, violence including sexual violence, arbitrary detention, criminalisation, discriminatory laws and practices, arbitrary restrictions on freedoms of assembly, association and expression and multiple forms of discrimination based on other factors such as sex, race and age. Participants also discussed the serious health impact of human rights violations against LGBT and intersex persons, including the impact of legal and structural barriers on their vulnerability and access to HIV and other health services.

Experience and approaches in the three systems

These approaches include incorporating relevant questions, observations and recommendations during country reviews, general comments, country visits, thematic reports, recommendations and precautionary measures on individual cases and letters of allegation emanating from the mechanisms. These approaches also involve adopting resolutions, public statements, holding consultations, engaging with and building relations with LGBT and intersex civil society organisations and human rights defenders, public hearings, expert meetings and public and private advocacy with States on implementation of recommendations.

The pertinence of the mainstreaming approach

Participants discussed strategies that incorporate LGBTI issues within the relevant norms, principles and thematic, country and other mandates of each mechanism. Discussions highlighted the importance of an incremental and pragmatic approach within a given context to advance the effective protection of the human rights of all persons regardless of their sexual orientation and gender identity.

2016 as an opportunity for promoting tolerance and respect for the human rights of everyone in Africa

The African Year of Human Rights provides opportunities for the African Commission and other regional stakeholders in Africa to advance an agenda for greater understanding about and appreciation for diversity, including diversity in sexual orientation and gender identity, and for embracing and respect for LGBTI persons on the continent.

Collaboration between human rights mechanisms

Participants welcomed the thematic dialogue as a positive example of collaboration between regional and international mechanisms, building on existing frameworks of cooperation between human rights system. They agreed to building on this dialogue, by exploring further possibilities for collaboration, including collaboration between thematic mandate holders from the three systems on specific human rights violations faced by LGBTI persons.
Participants at the Joint thematic dialogue on sexual orientation and gender identity

African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights, and United Nations

3 November 2015

Kairaba Hotel, Banjul, The Gambia
INTRODUCTION

1 On 3 November 2015, a joint dialogue on sexual orientation and gender identity was held between the African Commission on Human and Peoples’ Rights (African Commission or ACHPR), Inter-American Commission on Human Rights (Inter-American Commission or IACHR), and United Nations (UN) human rights mechanisms in Banjul, The Gambia, ahead of the 57th ordinary session of the African Commission.

2 The dialogue was hosted by the African Commission, and was supported and organised by the Office of the High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The dialogue was attended by ten members of the African Commission and chaired by its Chairperson, Commissioner Zainabo Sylvie Kayitesi. The Inter-American Commission was represented by its Chairperson, Commissioner Rose-Marie Belle Antoine, the Rapporteur on the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, Commissioner Tracy Robinson and the Deputy Executive Secretary, Ms Elizabeth Abi-Mershed. The UN human rights system was represented by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Christof Heyns, and the Rapporteur of the UN Committee against Torture, Professor Satyabhoosun Gupt Domah. In addition, representatives of UNAIDS, OHCHR and the United Nations Development Programme (UNDP) attended the dialogue as observers. The dialogue was facilitated by the director of the Centre for Human Rights at the University of Pretoria, Professor Frans Viljoen. The full list of participants is attached in Annex 1. The agenda is attached as Annex 2.

Context, justification and structure of joint dialogue

3 At its 55th Ordinary Session in 2014, the African Commission adopted resolution 275 on ‘Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity’. Resolution 275 is attached in Annex 3. This resolution builds on previous work by the ACHPR on the issue, including by the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Rights of Women, the Special Rapporteur on Freedom of Expression and Access to Information, the Committee for the Prevention of Torture in Africa, the Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV (HIV Committee), and the Working Group on Economic, Social and Cultural Rights. For instance, in 2011 the Commission adopted a definition of the concept ‘vulnerable and disadvantaged groups’ in the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter, as including ‘lesbian, gay, bisexual, transgendered and intersex people’. Furthermore, in a number of promotional visits, Commissioners raised issues relating to the protection of the human rights of LGBT people.

4 Starting in 2008, the Inter-American Commission on Human Rights (IACHR) has increasingly been addressing
violence and discrimination faced by persons in the Americas, because of their perceived or actual sexual orientation, gender identity, and/or gender expression, or because their bodies differ from what is commonly considered standard for female or male. Since then, the General Assembly of the Organisation of American States (OAS) has adopted resolutions every year condemning all forms of discrimination and violence against persons on the basis of their sexual orientation, gender identity and expression and encouraging states to promote public policies that protect LGBTI persons. In November 2011, the IACHR created a specialised Unit within its Executive Secretariat on the rights of LGBTI persons. In November 2013, the IACHR turned this Unit into a Rapporteurship on the rights of LGBTI persons and appointed a Rapporteur, effective on 1 February 2014.

5 Since the early 1990s, the United Nations (UN) human rights treaty bodies\(^3\) and special procedures\(^4\) have repeatedly expressed concerns in relation to the extent and severity of discrimination and violence against individuals on the basis of their sexual orientation and gender identity. The UN High Commissioner for Human Rights, the UN Secretary-General and several UN entities, including UNAIDS, have also repeatedly made recommendations to member States to take measures to prevent and address such human rights violations. The UN Human Rights Council has adopted two resolutions expressing grave concern at such acts of violence and discrimination committed in all regions of the world (A/HRC/RES/17/19 and A/HRC/RES/27/32) and which, among others, requested the UN High Commissioner for Human Rights to report on the subject. The two reports submitted thus far by the High Commissioner on this issue (A/HRC/19/41 and A/HRC/29/23) have found evidence of a pattern of widespread human rights violations, perpetrated against persons on the basis of their sexual orientation and gender identity, too often with impunity.

6 Building on ACHPR resolution 275, resolutions by the OAS and UN Human Rights Council, as well as other work of the ACHPR, IACHR and UN human rights systems on addressing human rights violations committed on the basis of sexual orientation and gender identity, there is an opportunity to exchange information and share experiences and lessons learned in this area. To support this, a dialogue on sexual orientation and gender identity was agreed between the ACHPR, IACHR and UN human rights systems, with the support of OHCHR and UNAIDS.

7 The dialogue was held within existing frameworks, including the 1993 Vienna Declaration and Programme of Action, the regular dialogue between UN and regional human rights mechanisms mandated by the Human Rights Council, the 2009 Memorandum of Understanding (MoU) between the OAS and the African Union (AU), the 2012 Addis Ababa Roadmap between the ACHPR and UN Special Rapporteurs and the 2014 Joint Declaration between OHCHR and the IACHR. The dialogue aimed to facilitate the exchange and sharing of information and experiences between the three human rights systems on human rights violations based on sexual

\(^3\) Inter alia, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture and the Committee on the Rights of the Child.

\(^4\) Inter alia, the Special Rapporteurs on extrajudicial, summary or arbitrary executions, extreme poverty, peaceful assembly and of association, opinion and expression, health, human rights defenders, torture, violence against women, and the Working Group on arbitrary detention.
orientation and gender identity. It also discussed the evolution in the approach that each system has taken to address this thematic issue, linkages between this thematic issue and other thematic issues in the context of the protection and promotion of human rights, as well as good practices and challenges.

8 The one-day dialogue was structured around three key substantive sessions and a closing session on opportunities for continued dialogue and collaboration. The substantive issues discussed during the dialogue were:

- Rights to life, integrity, freedom from torture, prohibition of violence and related rights;
- Right to liberty, freedom of association and assembly, freedom of expression, human rights defenders and related rights; and
- Right to health and other economic social and cultural rights.

9 Each session was initiated by a brief introduction followed by reflections and perspectives by each mechanism and then a general discussion involving all participants.

10 To support the sharing of experiences and discussions at the dialogue, five background papers were developed and provided to participants ahead of the meeting on the following:

- Key concepts and notions relating to sexual orientation and gender identity;
- Norms, case law and practice relevant to sexual orientation and gender identity in the UN human rights system;
- Norms, case law and practice relevant to sexual orientation and gender identity in the Inter-American human rights system;
- Norms, case law and practice relevant to sexual orientation and gender identity in the African human rights system; and
- HIV, human rights and sexual orientation and gender identity.

Key issues discussed and opportunities for future collaboration

11 Below is a summary of the issues discussed during the joint dialogue, with a focus on critical areas of exchanges and agreement, as well as emerging avenues for future actions and collaboration.

Application of international and regional human rights treaties

12 Participants from the three systems emphasised the applicability to LGBTI persons of existing fundamental human rights standards enshrined in international human rights law, including regional and international human rights treaties adopted and ratified by member states, and the jurisprudence and interpretation and elaboration of these norms by the African Commission, the Inter-American Commission and UN human rights mechanisms.
These include the rights to life, physical integrity, freedom from torture and cruel, inhuman or degrading treatment or punishment, the right to liberty and not to be subjected to arbitrary arrest or detention, freedom of association and assembly, freedom of expression, the right to health, employment, education, housing and other economic, social and cultural rights, as well as standards relating to the protection of human rights defenders.

Participants highlighted that no ‘new’ or specific rights were being advanced in any of the three systems in relation to LGBTI persons, but rather the application and elaboration of existing fundamental human rights standards in relation to a specific group. This approach is in line with what has been done in relation to other groups – not referred to in name in the relevant instruments – that face particular sets of human rights violations. All three mechanisms had interpreted the principle of non-discrimination as extending to all persons, including LGBT persons and other groups that face discrimination.

Participants emphasised that the principles and notions of human dignity and personhood, universality, non-discrimination and equality before the law are common foundational and cross-cutting principles in all three systems. As such these common values and principles were highlighted multiple times throughout the joint dialogue.

Participants further discussed the range of State obligations under international and regional human rights law. This includes the obligation to respect, to protect and to fulfil human rights, and the obligation to exercise due diligence including in preventing human rights violations, in investigating, prosecuting and providing remedy for human rights violations, and in creating an enabling environment for the effective enjoyment of all human rights and the work of human rights defenders, without discrimination.
Range and gravity of human rights violations documented by the mechanisms

17 Participants discussed the range of violations of fundamental human rights that individuals face on the basis of their sexual orientation or gender identity. These include killings, the application of the death penalty, violence including mob attacks, rape and other forms of sexual violence, torture and cruel, inhuman or degrading treatment or punishment both in detention and medical settings, the criminalisation of consensual same-sex conduct between adults, the criminalisation of cross-dressing, and other discriminatory laws that are used to harass, detain and punish people on the basis of their sexual orientation, their gender identity or their gender expression. These violations also include arbitrary interference with the privacy of individuals, arbitrary and discriminatory restrictions on the freedoms of assembly, association and expression of LGBT persons, discrimination and denial of care in health settings and the discriminatory treatment of LGBT persons including in health, education, employment and housing. Incitement to hatred and violence against LGBT persons by the media and other stakeholders was also highlighted as a common concern. Participants also highlighted the dissemination of negative stereotypes and stigmatising language with regards to persons based on their sexual orientation and gender identity, as contributing to human rights violations that they face in all contexts.

18 It was stressed that LGBT people face many different sets of human rights violations, including multiple forms of discrimination based on other factors such as sex, race and age. Some populations are specifically vulnerable to some violations: for example, lesbian and transgender women face a high incidence of rape and other sexual violence including so-called ‘corrective’ rape. Transgender women are specifically targeted for killings and abuse by both State and non-State actors, including in detention. Human rights defenders working on the protection of the human rights of LGBT persons have been identified as a group particularly vulnerable to human rights violations.

19 Several participants highlighted specific aspects of human rights violations against persons on the basis of their sexual orientation and gender identity, including clear patterns of killings, the particular cruelty and brutality of many killings and acts of violence against LGBT persons, the participation or complicity of State actors in many of the violations, lack of investigation of human rights violations against LGBT persons and of prosecution of the alleged perpetrators, high levels of impunity, obstacles in accessing the judiciary and of obtaining effective remedy for violations.
Participants also discussed the serious health impact of human rights violations against LGBT persons. In particular, it was noted that high HIV incidence and prevalence among LGBT people in many regions of the world are caused, among others, by structural factors, such as stigma, discrimination, violence and other human rights violations that LGBT people face. These human rights violations contribute to making members of these populations – particularly transgender people, gay men and other men who have sex with men – vulnerable to HIV while at the same time hindering their access to and uptake of HIV prevention, testing and treatment services. A study conducted in four Southern African countries found that lesbian and bisexual women who reported forced sex by men were more likely to be HIV positive than those who did not. In addition, several studies and reports from across the world have shown that sexual violence against LGBT people has serious negative health and other social consequences for this population.

The meeting noted that most state parties already include concern for gay men and other men that have sex with men (MSM) in their HIV prevention programmes, thus, at least by implication, accepting the actual occurrence of sex between men within their jurisdictions and the need for a health sector response that is not punitive but rather positively addresses the specific health concerns that they have.

Participants noted that the pattern of human rights violations faced by LGBT persons contrasts with the universally applicable international and regional human rights standards that each mechanism is mandated to uphold. This gap between human rights standards and their effective application to LGBT persons was of concern to all participants, and further reflected the need for this dialogue.

Experience and approaches in the three systems

The meeting discussed approaches taken by mechanisms in each system in relation to human rights violations based on sexual orientation and gender identity. These approaches include incorporating relevant questions, observations and recommendations during country reviews, general comments, country visits, thematic reports, recommendations and


precautionary measures on individual cases and letters of allegation emanating from the mechanisms. Actions and approaches also include adopting resolutions, public statements (including joint statements between mechanisms), as well as holding consultations, engaging with and building relations with LGBT and intersex civil society organisations and human rights defenders, public hearings, expert meetings and public and private advocacy with States on implementation of recommendations. Further approaches include integrating the issue within the work of different thematic mandates and studies, establishing a register of cases of killings and violence, inquiries, awareness raising activities, dialogue with state parties and multiple stakeholders. In the Inter-American system, actions and approaches were catalysed by the creation of a specific unit within the secretariat of the Inter-American Commission, and later the establishing of a specific Rapporteur on the issue.

22 The meeting highlighted many common approaches that had been successful and had led to positive change, including focusing on the overarching goals of ending violence and discrimination against persons based on their sexual orientation and gender identity. Resolutions focusing on these overarching goals have been adopted in all three systems.

23 Participants also highlighted that the past decades have seen positive developments in Africa, the Americas and at the United Nations, with an increasing number of States repealing laws that criminalise consensual same-sex relations, establishing protective legislation that prohibits discrimination, including on the grounds of sexual orientation or gender identity and implementing policies to safeguard the rights of LGBT and intersex persons. The meeting therefore stressed the importance of recognising and further publicising positive developments in this thematic area. In the Americas, this includes the OAS resolutions, the work of the IACHR Rapporteurship on the rights of LGBTI persons and the many positive policy and legal developments at national level, throughout the region, to effectively protect these rights. At the UN level, this includes the General Assembly and Human Rights Council resolutions, the recommendations of UN treaty bodies and special procedures and of the Universal Periodic Review (UPR) process, and the work of the UN system as a whole, including by the Secretary-General, OHCHR and UNAIDS. In Africa, participants highlighted the work of the African Commission including through its resolution 275 as well as the work of its thematic mandates, the absence of criminal sanctions in many States on the continent and the recent removal of criminal provisions in others, the legal prohibition of discrimination in employment, positive judgments by several national courts in the region to uphold the right of LGBT persons and human rights defenders working on these issues, the work of national human rights institutions to protect LGBT persons, and the acceptance of UPR recommendations on this issue by several African States.

24 At the same time, participants discussed common challenges in addressing human rights violations based on sexual orientation and gender identity, including lack of understanding and opposition from some member states to references to human rights violations based on sexual orientation and gender identity, as well as legislative and other efforts to increase or broaden the scope of discriminatory laws that criminalise LGBT persons. High levels of criminalisation, stigmatisation and
prejudice were highlighted as common challenges in the Caribbean and Africa.

25 The importance of ensuring an enabling environment and democratic space for human rights defenders and civil society organisations working for the protection of the human rights of LGBT and intersex persons is seen as critical to ensuring that they carry out their work safely and effectively without facing violence, threats and persecution. Ensuring that these defenders are able to access human rights mechanisms was seen as essential.

26 Participants discussed the importance of finding and strengthening avenues for partnership, alliances and dialogue between all stakeholders on this issue, including between human rights institutions and political, development and peace and security institutions. Such dialogues should include member states, expert human rights bodies, courts, civil society organisations, national human rights institutions and regional and international organisations. In the African context, engagement and dialogue between the African Commission and AU organs and strategic allies would be critical to forging greater understanding, collaboration and support on the issue. This dialogue should involve AU human rights bodies such as the African Court on Human and Peoples’ Rights, the African Commission and the African Committee of Experts on the Rights and Welfare of the Child as well as other political AU organs such as the Permanent Representatives Committee, the Pan-African Parliament and the AU’s Economic, Social and Cultural Council (ECOSOCC). Independent African experts could contribute to these exchanges and dialogues as resource persons, as appropriate. The potential role of the African Commission in a continental dialogue involving state parties and other stakeholders to follow up on UN Human Rights Council resolutions 17/19 and 27/32 and resolution 275 of the African Commission, could also be explored.

27 Participants reflected on parallels between the struggle for the protection of the human rights of LGBT people and intersex persons, and the struggles against human rights violations against women including combatting sexual violence, domestic partner violence, female genital mutilation, as well as racist violence and discrimination, human rights violations against persons with disabilities, and other human rights violations that have been at one time justified on the basis of some traditional values, religious beliefs or culture. Participants highlighted that culture, religion and tradition are neither static nor monolithic, and that through time many have changed to reject practices that constitute human rights violations. Key principles relating to the pre-eminence of human rights norms and principles in the interpretation and application of cultural and traditional values were highlighted as relevant in the context of sexual orientation and gender identity, as was done in relation to combatting human rights violations against women and against persons on the basis of skin colour, disability, etc. Moreover, many traditional, cultural and religious values, including in Africa and the Americas, are based on the same principles that underpin human rights, including love, respect for others and for their human dignity.

28 The collection of data and documentation of evidence was seen by participants as a powerful tool to be able to identify the nature and range of human rights violations and trends in the level of (reporting on) violations. While participants stressed that the State has a duty to monitor human rights
violations in order to design an appropriate public policy response, only a handful actually collect data on human rights violations against LGBT and intersex persons – in the rest the burden falls on civil society organisations and other stakeholders to try to collect and systematise evidence of such violations. Data and evidence is critical to understand the extent and gravity of violations and to advocate for the adoption of measures to prevent, address and redress human rights violations faced by LGBT and intersex persons. Nonetheless, participants also highlighted the difficulties in collecting information in contexts where LGBT persons face high levels of violence, criminal sanctions and discrimination based on their sexual orientation or gender identity. It was stressed that not all persons who face human rights violations on the basis of their sexual orientation, conduct or gender identity, identify with the terms lesbian, gay, bisexual or transgender, and that limited availability of statistics should not detract from the need to implement binding human rights norms.

Proposed avenues for making violations and threats to LGBT and intersex persons more visible include the setting up of a registry to systematically record ongoing violations of this nature, as was done by the Inter-American Commission during a period of fifteen months (between January 2013 and March 2014). However, the limited human resources at the level of the African Commission and its Secretariat may be an obstacle to achieving such an ambitious undertaking. To overcome this difficulty, the Commission may identify partners (such as civil society networks, scientific bodies, or academic institutions) with which it could collaborate to keep an updated record of violations. Drawing from the Inter-American Commission’s experience and practice, the African Commission may also consider, on the basis of submitted evidence, to conduct public hearings on pertinent issues related to discrimination and violence against LGBT and intersex persons.

The pertinence of the mainstreaming approach

Participants discussed strategies that incorporate an approach anchored in regional and international norms and principles with an incremental and pragmatic approach within a given context to advance the effective protection of the human rights of all persons regardless of their sexual orientation and gender identity. This includes mainstreaming attention to human rights violations based on sexual orientation and gender identity across the full range of thematic work in each system. For instance, more than ten UN Special Procedures thematic mandates and more than five of the UN human rights treaty bodies have addressed the rights of LGBT persons through their mandated work. Such mainstreaming approaches are already been
implemented by the African and Inter-American systems, and could be further expanded.

31 Participants discussed possible approaches for the African Commission to build on its Resolution 275 on the ‘Protection against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity’. The AU political organs have called on AU member states to implement the decisions and recommendations of the African Commission, which includes resolution 275. The resolution therefore provides a fundamental normative and political anchor to the work of the African Commission and member states on this thematic issue.

32 A series of suggestions were made regarding the implementation of a mainstreaming approach to sexual orientation and gender identity in the practice and work of all three systems:

(a) the inclusion of questions about violence and discrimination on the grounds of real or perceived sexual orientation or gender identity to State delegations;
(b) the adoption of Concluding Observations and recommendations related to sexual orientation and gender identity, where relevant;
(c) raising relevant aspects related to this issue, and arising from relevant resolutions, during visits to State Parties;
(d) drafting a thematic report on the subject of human rights violations on the basis of sexual orientation and gender identity, including those highlighted in relevant resolutions;
(e) the inclusion of issues related to sexual orientation or gender identity in the exercise of the mandates of thematic mechanisms.

33 The joint dialogue highlighted that all three systems had already incorporated some of these.

34 In the case of the African Commission, this was also the case, and resolution 275 and the current dialogue provide an opportunity to continue to consistently do so in future, including through the work of the Commission as a whole and the ongoing work of the thematic mechanisms as highlighted in point (e) above. In particular, this includes the work of the following thematic mandates which are particularly relevant to implementation of resolution 275: the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Rights of Women in Africa, the Special Rapporteur on Freedom of Expression and Access to Information in Africa, the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, the Committee for the Prevention of Torture in Africa, the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa, the HIV Committee, the Working Group on Economic, Social and Cultural Rights and the Working Group on Communications.

35 Moreover, the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter adopted in 2011 by the African Commission include a definition of the ‘vulnerable and disadvantaged groups’ that explicitly comprises ‘lesbian, gay, bisexual, transgendered and intersex people’.

36 Strengthening a common understanding and internal capacity building around the issue within each system was also viewed as critical, to ensure improved coherence in approach, including with external stakeholders. The briefing documents for the dialogue on terms and concepts, norms, case law and practices related to sexual orientation and gender identity in the three human rights systems can provide a basis for this effort.

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In addition, changing mind sets and public attitudes was also seen as critical to the respect for the human rights of LGBT persons. Participants highlighted the importance of education and raising awareness among the broader public as well as public officials, including through human rights education. OHCHR’s Free & Equal campaign, campaigns and advocacy efforts by UNAIDS, and work on social media by IACHR and UN mandate holders were highlighted as positive examples of reaching out to broader audiences.

The recent adoption of the Sustainable Development Goals (SDGs) that incorporate strong principles of human rights and of ‘leaving no-one behind’ provides an important opportunity to address human rights concerns within the development agenda, and was seen as an opportunity to engage with member states and other stakeholders on human rights issues including the rights of LGBTI persons.

2016 as an opportunity for promoting tolerance and respect for the human rights of everyone in Africa

The year 2016 will be celebrated as the African Year of Human Rights with a special focus on the rights of women. It was suggested that the African Commission could use this opportunity to advance an agenda for greater understanding about and appreciation for diversity in African States, including diversity in sexual orientation and gender identity and embracing and respecting LGBT and intersex persons on the continent.
Avenues for future collaboration between human rights mechanisms and next steps

41 Participants welcomed the thematic dialogue as a positive example of collaboration between regional and international mechanisms, building on existing frameworks of cooperation between human rights systems. Participants noted that this thematic dialogue was a good practice that could be replicated and extended to other thematic areas, such as the rights of persons with disabilities.

42 Participants from the African Commission valued the dialogue as an opportunity to strengthen the internal capacity of the Commission and further elaborate on possible approaches to address human rights violations on the basis of sexual orientation and gender identity from the perspective of the African Charter. This will help strengthen the Commission’s exercise of its mandate and its engagement with all stakeholders. It was suggested that the papers prepared for the dialogue can also support this process.

43 Participants agreed that the meeting was productive, informative and thought-provoking. In particular, the Chairpersons of both the African Commission and Inter-American Commission and UN mandate holders expressed satisfaction that the dialogue was useful and beneficial in informing their future activities and approaches, particularly those of the African and Inter-American Commission, as two similarly placed institutions.

44 It was agreed that, ideally, such dialogues should continue, at least on an annual basis, coinciding with a session of either of the two Commissions. The possibility was also raised of future dialogues alternating between the seats of the two Commissions.

45 It was further suggested that, building on this dialogue, further possibilities for collaboration should be explored. These possibilities include collaboration between thematic mandate holders from the three systems on specific human rights violations faced by LGBT and intersex persons, including through joint statements, joint country visits, the exchange of staff, such as a legal officer of the African Commission spending some time with the Inter-American Commission to observe the activities of and obtain practical experience about the functioning of the Inter-American Commission’s Special Rapporteur on the rights of LGBTI persons. An immediately achievable possibility is the exchange of relevant information between all three sets of mechanisms. To this end, focal points could be designated at the level of each of the Commissions and their Secretariats and within the UN human rights mechanisms.

46 Similarly, collaboration should also be strengthened between regional systems and UN human rights mechanisms as well as UN agencies, which are increasing their work to uphold the equal rights of LGBT and intersex persons. Entry points in this regard are recommendations by UN treaty bodies and Special Procedures to member states in each region, as well as the UPR process of the UN Human Rights Council. It was noted that some 13 African States have between them accepted 36 UPR recommendations on upholding the rights of LGBT persons, thus opening the possibility for the African Commission drawing on the UPR experience in its engagement with African States, together with follow up
on the implementation of recommendations by treaty bodies and special procedures.

47 OHCHR and UNAIDS pledged to support future collaboration on issues raised during the thematic dialogue and UNAIDS expressed its commitment to continue to support the HIV Committee in its endeavours. The summary of the key points discussed during the dialogue contained in this report are published, together with the final agenda, participant list and four briefing documents prepared for the meeting on the norms, case law and practices related to human rights, sexual orientation and gender identity in the African (Annex 4), Inter-American (Annex 5) and United Nations human rights system (Annex 6) and the briefing paper on HIV, human rights, and sexual orientation and gender identity (Annex 7).
## Annexes

### Annex 1: List of participants

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<td>Frans Viljoen</td>
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<td>Federica Donati</td>
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<td>Michael van Gelderen</td>
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<td>Maria Vivar Aguirre</td>
<td>Human Rights Officer, Civil Society Unit, OHCHR</td>
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<td>Christian Tshimbalanga</td>
<td>Consultant, HIV, Health and Development, Regional Service Centre for Africa, UNDP</td>
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Annex 2: Agenda of joint dialogue, 3 November 2015

8:30 – 9:45 Session 1: Welcome, introductions and preliminary comments
- Welcome by Commissioner Zainabo Kayitesi, Chairperson, ACHPR
- Remarks by Commissioner Rose-Marie Belle Antoine, Chairperson, IACHR and Professor Christof Heyns, UN Special rapporteur on extrajudicial, summary or arbitrary executions
- Expectations and preliminary comments by Commissioner Lawrence Mute, ACHPR
- Introduction of all participants
- Introduction to key concepts, issues and briefing papers by facilitator, Professor Frans Viljoen, Centre for Human Rights, University of Pretoria

9:45 – 11:30 Session 2: Right to life, integrity, freedom from torture and related rights
- Introduction – Key points from briefing papers
- Initial reflections by Professor Christof Heyns, UN Special rapporteur on extrajudicial, summary or arbitrary executions; Commissioner Tracy Robinson, Rapporteur on the rights of LGBTI persons, IACHR; and Commissioner Lawrence Mute, Committee for the prevention of torture in Africa, ACHPR
- General discussion

11:45 – 13:00 Session 3: Right to liberty, freedom of association and assembly, freedom of expression, human rights defenders and related rights
- Introduction – Key points from briefing papers
- Initial reflections by Commissioner Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information, ACHPR and Maina Kiai, UN Special rapporteur on the rights to freedom of peaceful assembly and of association (by video)
- General discussion

14:15 – 15:30 Session 4: Right to health and other economic social and cultural rights
- Introduction – Key points from briefing papers
- Initial reflections by Commissioner Soyata Maiga, ACHPR; Commissioner Rose-Marie Belle Antoine, Chairperson, IACHR and Ms Elizabeth Abi-Mershed, Deputy Executive Secretary, IACHR
- General discussion

15:30 – 16:30 Session 5: Exploring opportunities for continued dialogue and collaboration
- General discussion
- Closing remarks by Commissioner Zainabo Kayitesi, Chairperson, ACHPR; Commissioner Rose-Marie Belle Antoine, Chairperson, IACHR; and Professor SG Domah, Rapporteur, UN Committee Against Torture
Annex 3: Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity

_The African Commission on Human and Peoples’ Rights (the African Commission), meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014:_

**Recalling** that Article 2 of the African Charter on Human and Peoples’ Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status;

**Noting** that such violence includes ‘corrective’ rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail;

**Further alarmed** at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa;

**Deeply disturbed** by the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

(1) **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;

(2) **Specifically condemns** the situation of systematic attacks by State and non-
state actors against persons on the basis of their imputed or real sexual orientation or gender identity;

(3) Calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and

(4) Strongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights in Luanda, Angola, 28 April to 12 May 2014.
Annex 4: Norms, case law and practices of sexual orientation and gender identity in the African human rights system

INTRODUCTION

1 Until recently issues related to sexual orientation and gender identity have not featured prominently in the African human rights system. Although the ‘African human rights system’ comprises a number of treaties and three institutions (the African Commission on Human and Peoples’ Rights (African Commission), the African Court on Human and Peoples’ Rights and the Committee of Experts on the Rights and Welfare of the Child), the focus here falls on the founding treaty, the African Charter on Human and Peoples’ Rights (African Charter), and the institution that has by far been most relevant to the topic, the African Commission. Even so, the African Commission and its Secretariat have historically paid limited attention to this thematic concern. Reacting to increased attention from civil society, and the then pending application for observer status of the Coalition of African Lesbians (CAL), the Commission in 2008 took a firm step forward when it requested the Secretariat to draft a discussion paper on the topic. The paper, ‘Sexual orientation under the African Charter on Human and Peoples’ Rights’, which has not been made public, was in 2010 discussed in the context of the consideration of the application for observer status of CAL. Following some tentative references to the issue in the exercise of some facets of its mandate, the Commission in 2014 made its first comprehensive pronouncement on the issue through a resolution.

NORMS: THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

2 The African Charter on Human and Peoples’ Rights (African Charter), adopted in 1981, is the main AU human rights treaty. It has the advantage of having been ratified by all African Union (AU) member states, with the exception of South Sudan. Similarly to the other regional and United Nations (UN) human rights treaties, the African Charter does not contain any explicit reference to sexual orientation or gender identity.

A Non-discrimination on basis of sexual orientation and gender identity

3 As with the other treaties, the African Charter’s provisions strongly support the conclusion that every person enjoys the Charter rights irrespective of her or his sexual orientation or gender identity. In fact, the Commission’s 2014 ‘Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity’ (Resolution 275),1 departs from the

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1 Adopted at the 55th Ordinary Session of the African Commission in Luanda, Angola, 28 April – 12 May 2014.
premise that sexual orientation and gender identity are grounds for non-discrimination under the Charter. Although the debate whether sexual minorities are rights-holders under the Charter therefore seems to have been settled, four brief supporting contentions are made below:

**All-encompassing provision on rights-holders**

4. The African Charter grants rights to everyone, without distinction, under a State party’s jurisdiction. The formulation that ‘every individual’ is entitled to the rights in the Charter is repeated in twelve of its provisions.2 The use of the related terms ‘every human being’, ‘no one’ and ‘every citizen’ confirms the inclusive and all-embracing scope of rights holders under the Charter,3 and strongly supports the conclusion that individuals should therefore not cease to be rights-holders under the Charter merely on the basis of their sexual orientation or gender identity.

**Broad and open-ended non-discrimination provision: ‘other status’**

5. Article 2 of the African Charter is a general non-discrimination provision. It underlines that all the rights in the Charter are to be enjoyed without discrimination of any kind. For example, articles 5 of the Charter, which prohibits torture and other cruel, inhuman and degrading treatment or punishment, has to be read with article 2 of the African Charter. Article 2 provides that individuals are entitled to the rights under the African Charter ‘without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status’.4 The use of the phrases ‘such as’ and ‘or other status’ clearly shows that the list of grounds for non-discrimination is not exhaustive. Leaving the list of grounds open suggests that the drafters foresaw that the African Charter ought to allow for an expansion of the specific grounds, thus accepting the principle that the exact content of the Charter is not frozen in time, but evolves.

6. There is no limit to the number of grounds that are recognised. Earlier, the Commission has pronounced itself against discrimination based on another non-enumerated ground, disability,5 clearly establishing that ‘other status’ can be interpreted broadly to include grounds other than those listed under article 2 of the African Charter. Further, even though the Charter does not mention the concept ‘indigenous person’, the Commission has in its practice, resolutions and communications recognised this concept and protected the rights of ‘indigenous peoples’ in the absence of any reference to the word or concept ‘indigenous’ in the Charter. This stands as an unequivocal example that the protection of the Charter is not denied to groups merely because the Charter does not explicitly list that group by name, and a refutation to the notion that protecting the rights of a lesbian, gay, bisexual, transgender (LGBT) or intersex person would be tantamount to illegitimately creating ‘new rights’.

7. In one of its decisions on a communication, Zimbabwe Human Rights NGO Forum v Zimbabwe, the

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2 Arts 2, 3, 5, 6, 7, 9, 10, 11, 12, 15, 16 and 17.
3 In art 2, the right of ‘every human being’ to respect for life is reiterated; art 8 provides that the freedom of conscience of ‘no one’ may be restricted; and art 13 provides for the rights of ‘every citizen’.
4 (Emphasis added) art 2 is akin to art 14 of the European Convention, art 1(1) of the American Convention.
Commission mentioned ‘sexual orientation’ as a ground of non-discrimination. It affirmed that the aim of the non-discrimination principle under article 2 of the Charter is to ‘ensure equality of treatment for individuals irrespective of a number of grounds, including “sexual orientation”’. It should be noted that this reference to sexual orientation is made in passing (as an obiter dictum), as this observation had no bearing on the issue at hand or the outcome of the case. However, this inclusive understanding of non-discrimination has been given added weight through the Commission’s subsequent restatement of this wording in a decision adopted in 2009, Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Zimbabwe, and in its General Comments on article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Broad and open-ended non-discrimination provision: ‘sex’ (and ‘gender’)

It may also be argued that ‘sex’, a factor already explicitly provided for in article 2 of the Charter, should be understood to include ‘sexual orientation’. It may be argued that the adoption of the African Charter predates the more common use of terms such as ‘sexual orientation’. Sexual orientation is an aspect of ‘sexuality’, and therefore, of ‘sex’. At the request of the State, the Human Rights Committee in Toonen v Australia clarified that the meaning of ‘sex’ in the listed grounds of non-discrimination under article 2 of ICCPR includes sexual orientation. Persuasive reliance can be placed on this decision, on the basis of articles 60 and 61 of the Charter. By the same token, ‘gender’ should be interpreted to include ‘gender identity’. This is particularly important in respect of the Women’s Protocol, which defines ‘women’ as ‘persons of female gender’.

Broad and open-ended non-discrimination provision: the only logical inference

The logic of the Charter – a holistic reading, informed by its object and purpose – also demands that non-discrimination be understood broadly, because exclusion from the ambit of article 2 would have the far-reaching effect of foreclosing reliance on all other Charter rights. It is, quite obviously, unthinkable that an African lesbian woman may – for example – not invoke the right not to be tortured or the right to a fair trial before the African Commission (or the African Human Rights Court) just because of her sexual orientation.

Violence (including rape, torture and killings) on the basis of sexual orientation and gender identity

The extent of State-sponsored and non-State violence based on real or perceived sexual orientation and gender identity across Africa is set out in a civil society-compiled report, Violence based on perceived or real sexual orientation and gender identity in Africa, which was launched in the presence on a number of members of the African Commission during the NGO Forum preceding the 54th session of the African Commission.

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7 Communication 284/2003, para 155: ‘Article 3 guarantees fair and just treatment of individuals within the legal system of a given country. The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.’
8 Para 4.
10 Art 1(k) (emphasis added).
in 2013. On the basis of this report, civil society and members of the Commission were mobilised; the NGO Forum adopted a resolution on this topic, and, at its next ordinary session, the Commission adopted the groundbreaking Resolution 275. This resolution departs from the premise that ‘corrective’ rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail on the basis of sexual orientation and gender identity are in fact occurring in African states; and emphasises that these acts amount to violations of article 3 (equal protection of the law); article 4 (respect of life and the integrity of the person); and article 5 (prohibition of torture and other cruel, inhuman and degrading treatment or punishment) of the African Charter. The 2014 resolution builds on and reaffirms the Commission’s condemnation of all forms of sexual violence.12

C Freedom of expression, association and assembly

11 National legislation restricting or criminalising the meeting of LGBT persons, and disallowing legal recognition to associations of LGBT and intersex persons have stifled the right to free expression, association and assembly of these individuals. A number of provisions of the African Charter are of relevance in this regard – in particular articles 9, 10 and 11, which respectively deal with freedom of expression, association and assembly. Although the Commission has not expressed itself directly on any of these aspects, it has emphasised that freedom of expression implies the obligation on authorities to ‘promote diversity’ and to take into account the interests of ‘vulnerable or marginalised groups’.13

D Limitation and to Charter rights and their potential justification

12 The fact that LGBT and intersex persons are rights-holders does not detract from the fact that their rights, like the rights of everyone else, may be limited, but only in a rational process guided by article 27(2) of the Charter and the jurisprudence of the Commission and Court. Any limitation by a state of their rights will have to be assessed by the Commission or Court on a case-by-case basis according to the basic principles of limitation it has previously elaborated. Where a state seeks to limit an established right, the limitation must be ‘strictly proportionate with and absolutely necessary for the advantages that are to be obtained’14 and most importantly, ‘may not erode a right such that the right itself becomes illusory’.15 This substantive standard, which itself reflects an expression of the collective morality and common interest, acknowledges the primacy of the individual and his or her rights while allowing for consideration of broader social concerns.

13 Two potential grounds for the limitation of the rights of LGBT persons have been raised by some stakeholders: (a) African morality and traditional values allow or even require discrimination against LGBT people; (b) The moral majority demands the limitation of their rights.


‘African value system’ and ‘African family values’

14 At first glance, some may claim that the Charter’s emphasis on ‘values of African civilisation’ and the family as ‘custodian of morals and traditional values recognised by the community’ may pose a justification for laws discriminating against lesbian, gay, bisexual and transgender persons. Nevertheless, aside from the absence of definitions or agreement on what are the values of African civilisation, or agreed definitions of the family as well as moral and traditional values either in Africa or internationally, a factual enquiry further casts a shadow over the veracity of the characterisation of same-sex relations or transgender persons as ‘un-African’. Relations between consenting adults of the same sex and persons with diverse gender identities and expressions are not alien to traditional African societies and there is no doubt that African lesbian, gay, bisexual, transgender and intersex persons also exist today, in Africa. The argument that protecting the rights of LGBT and intersex persons would be destructive to African ‘family values’ is not based on any credible evidence and makes several unjustified assumptions. First, it ignores the fact that LGBT and intersex persons have long been part of African civilisations and families and have yet to cause a collapse in the wellbeing of the family. Second, it denies that LGBT and intersex Africans play important roles in upholding the best and most important values of Africa in all fields, including cultural, social, scientific, political and economic life. Finally, it refuses to acknowledge that African LGBT and intersex persons are often heads-of-households supporting their families and in need of the kinds of protections the development of the African Charter was meant to afford. Indeed, the African Commission has interpreted the notion of ‘family’ in a broad sense, calling on states to take measures ‘to abolish such customs, ancient laws and practices as may affect the freedom of choice of a spouse’ and has recognised that contact with one’s family is essential for an individual’s dignity.

15 The question is not whether ‘homosexuality’ or being transgender or intersex, as such, is accepted by the majority, but rather whether tolerance for and acceptance of diversity and of minorities has value in a particular society. Clearly, in multi-lingual, multi-ethnic and multi-religious states, which predominate in Africa, the tolerant accommodation of divergence and of minorities and the protection of their fundamental rights should be of paramount importance to the African Commission and state parties to the Charter.

Majority morality

16 Linked to the argument based on (African) morality is the contention that...
discrimination against sexual minorities reflects the moral views of the majority. Although scant scientific evidence exists about public opinion, it could be assumed that this contention is partially correct. Nevertheless, human rights norms and legally binding standards were developed and adopted by States, including those on the African continent, precisely to protect, among others, the rights of minorities and those who are subject to marginalisation from violence, discrimination and other human rights violations. Though some members of the public, and in some countries, even majorities, might support violence against ethnic minorities or persons with albinism, discrimination against girls and women based on their gender, or practices such as early and forced marriage and female genital mutilation, or even public lynching of persons accused of crimes – the fact that public opinion is in favour can in no way justify violations of rights and obligations of States enshrined in the African Charter. The African Commission has made it clear that the Charter’s interpretation cannot be defined with reference to the views of the majority, even as it is reflected by Parliament, acting on their behalf. In Legal Resources Foundation v Zambia, the African Commission held that justification of limitations cannot be derived solely from popular will: ‘Justification ... cannot be derived solely from popular will, as this cannot be used to limit the responsibilities of states parties in terms of the Charter.’

II INSTITUTIONS AND PRACTICES RELEVANT TO SEXUAL ORIENTATION AND GENDER IDENTITY

17 The Commission’s mandate may be divided into its ‘protective’ and ‘promotional’ aspects. The first relates to ‘communications’; the second relates to the examination of state reports, studies and statements by its special mechanism, the adoption of standards, the conduct of promotional visits to state parties, and the granting of observer status to NGOs. This part of the paper identifies how matters related to sexual orientation and gender identity have gradually been incorporated into the Commission’s exercise of its mandate.

A Communications/complaints

18 The Commission’s protective mandate consists in the main of the consideration of complaints (‘communications’) submitted by individuals and by States. Under the Charter, this is not an optional procedure, but follows automatically from a State’s ratification of the Charter. In this respect, the African Charter differs from all UN human rights treaties, in respect of which individual complaints procedures are optional. In the course of the exercise of this aspect of its mandate, the Commission has not had the opportunity to deal head-on with an argument about equality based on sexual orientation or gender identity. In one communication, Courson v Zimbabwe, the complainant asked the Commission to consider the legal status of homosexuals in Zimbabwe, the criminalisation of sexual conduct between men, and statements made by senior political figures against such practices. However, the complainant withdrew the case. The Commission thus has not had the occasion to express a view on the topic.

23 Arts 45 and 55 of the African Charter.

This photo shows the fingers of Ousmane Diallo, holding a picture of his son Madieye Diallo, whose body was exhumed by an angry mob because they believed him to be gay. (AP Photo/Ricci Shryock)
B    State reporting

19 The examination of State reports makes up the mainstay of the Commission’s promotional mandate. Article 62 of the African Charter requires States to submit a report every two years on the legislative and other measures taken to give effect to the rights in the Charter. A number of problems have over the years beset this process. Some States have never submitted a report, and most States have reports overdue. The Commission’s failure to consistently and without delay make public its concluding observation has impeded follow-up, accountability and continuous dialogue. The Guidelines for reporting are cumbersome, and a more recent summarised version is too terse. In any event, the Guidelines make no mention of sexual orientation or gender identity. Oral examination takes place in public, and all Commissioners are provided with an opportunity to ask questions of States. NGOs or other participants may be present, but only as observers. NGOs may supply the Commission with information relevant to the report under consideration, for example in the form of an ‘alternative’ or ‘shadow’ report. The questions posed by Commissioners during the examination of reports are mostly well-informed and incisive, and often rely on supplementary information provided by civil society. Consequently, reporting States are increasingly taking the process relatively seriously, as exemplified in the large and senior delegations representing reporting States during oral examinations.

20 There is an emergent trend among some Commissioners to pose pertinent questions related to sexual minorities to State delegations. In doing so Commissioners have made clear that they recognise the rights of all individuals are protected by the African Charter, regardless of their sexual orientation or gender identity. In this respect, it is clear that the Commissioners relied on information supplied by NGOs. In one of the first examples, Commissioner Pityana at the 29th session of the Commission, in 2001, asked questions of the Namibian delegation about the treatment of gay and lesbian persons in that country.25 During the examination of the South African state report in 2005, Commissioner El Hassan referred to the possibility of marriage between people of the same sex.26 He then asked what the position in South Africa is, referring to article 18(3) of the African Charter, which postulates the family as the natural unit and basis of society. The Minister of Justice, who headed the South African delegation, expressed the view that the principle of non-discrimination on the basis of sexual orientation does not derogate from the African Charter. She added that the Constitution enjoins the South African government to respect the rights of all its people. If members of these communities ‘push the frontiers of the right’ (for example, claiming the right to marriage), it does not pose a dilemma, and it is for the South African courts to decide the matter on the basis of the Constitution.

22 Another example is the examination of Cameroon’s report at the Commission’s 39th session in 2006, indicating the Commission’s willingness to accept that the protection of sexual minorities may fall within the ambit of the Charter. Responding to information provided by

26 Authors’ personal notes taken during the African Commission’s thirty-eighth session.
NGOs, several Commissioners raised concerns about the treatment of gay persons in the Cameroonian legal and penal system. For example, Commissioner Malila asked questions related to the trial process and wanted to know whether subjecting the suspects to invasive medical examinations contravenes article 5 of the African Charter, and Commissioner Alapini-Gansou raised the lack of tolerance on the grounds of people’s sexual orientation. In its concluding observations, the Commission expressed its concern for the upsurge of intolerance towards sexual minorities.28

This trend subsequently continued, with issues related to sexual orientation featuring in the Concluding Observations adopted in respect of Mauritius, Cameroon, and Uganda. In its Concluding Observations on the 2nd to 5th reports of Mauritius, covering the period 1995 to 2008, the Commission commended the State for ‘adopting the Equal Opportunities Act 2008, which prohibits discrimination on the grounds of age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex and sexual orientation’.29 In its Concluding Observations on Cameroon’s 3rd periodic report, adopted in 2014, the Commission identified, among the factors restricting the enjoyment of rights guaranteed by the African Charter, the following: ‘The judicial harassment, offences against life and other violations of the rights of human rights defenders, in particular the rights of defenders working in the area of sexual orientation’.30 In its recommendations, the Commission called on the government to ‘take appropriate measures to ensure the safety and physical integrity of all persons irrespective of their sexual orientation and maintain an atmosphere of tolerance towards sexual minorities in the country’.31 In its Concluding observations adopted after the consideration of Uganda’s 4th periodic report, the Commission commended the state for investigating and prosecuting the perpetrator of the murder of Mr David Kato, the activist for the rights of LGBT persons.32

C Special mechanisms

24 The Commission has over the years established a wide array of special procedures, referred to as ‘Special rapporteurs’, ‘Working Groups’ or ‘Committees’. One of these procedures has a particular and expressly stated relevance to sexuality rights, while some of the others (without any explicit mandate related to the issue) have to a limited extent ‘mainstreamed’ SOGI-related issues into their activities.

25 Acknowledging that sexual conduct cannot be equated with sexual identity, particularly in Africa where the ‘open’ acceptance of a ‘gay identity’ is quite rare due to societal stereotyping and pressure, the Commission established a Committee on the Protection of the Rights of People Living with HIV (HIV Committee) mandated to ‘integrate a gender perspective and give special

Notes of Judith Oder, Lawyer, Africa Programme, Interights, who attended the session (on file with author).


30 Para xxxvi.

31 Para 11(xiii).
attention to persons belonging to vulnerable groups, including women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners’.

26 A number of special mechanisms have made occasional reference to sexual orientation and gender identity, and the rights of LGBT and intersex persons. The Special Rapporteur on Human Rights Defenders in Africa, Commissioner Alapini-Gansou, having received information that ‘The Anti-Homosexuality Act, 2014’ was promulgated in the Republic of Uganda, issues a press statement, expressing concern that the Act would violate the rights of freedom of expression, association and assembly, protected under the African Charter. She further urged ‘the Ugandan authorities to take the necessary measures to abrogate or amend the law’. On the occasion of the International Day in Support of Victims of Torture the Commission and its Committee for the Prevention of Torture (CPTA) called upon African States and non-State actors to fulfil their responsibilities as reflected in the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines). In particular, it called on States to ‘take legislative and administrative measures prohibiting and punishing all forms of violence, including violence targeting persons on the basis of their imputed or actual sexual orientation or gender identity’.

27 Some of the special mechanisms of the Commission have shown an openness to issue joint statements with other regional and the UN’s special procedures, for example, on the International Day in Support of Victims of Torture, and, most pertinent to this discussion, on the International Day Against Homophobia and Transphobia. The latter was adopted on 17 May 2014, by a number of UN Special rapporteurs, the Inter-American Commission, an Organisation for Security and Co-operation in Europe (OSCE) expert, and the Commission’s Special Rapporteur on Human Rights Defenders in Africa. Two Africans holding UN human rights mandates, Mr Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Ms Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders, also joined the statement. Another declaration was also adopted on the same occasion in May 2015.

33 Resolution on the Establishment of a Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV, 26 May 2010.

34 http://www.achpr.org/press/2014/03/d196/.


D Standard-setting (resolutions; guidelines)

28 In 2011, the Commission adopted a definition of the concept ‘vulnerable and disadvantaged groups’ in the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter, as including ‘lesbian, gay, bisexual, transgendered and intersex people.’ The Commission adopted its first resolution devoted to sexual orientation and gender identity in 2014, calling on states to ensure that human rights defenders, including those advocating for the rights of sexual minorities, are allowed to work in an ‘enabling environment’ that is ‘free of stigma, reprisals or criminal prosecution’ as a result of their human rights protection activities, including the rights of sexual minorities. Significantly, both sexual orientation and gender identity are mentioned in the context of violence by states and non-state actors. This resolution in many ways corresponds with the Organisation of American States (OAS) resolutions of 2008 to 2012.

E Promotional visits

29 Promotional visits provide an opportunity for the Commission to engage State officials and to sensitise them to thematic issues of emerging concern, including non-discrimination on the grounds of sexual orientation and gender identity. For example, during its promotional visit to Namibia, in 2001, the Commission delegation interrogated the criminalisation of same-sex sexual relations, as reflected in the mission report. In its promotional mission to Uganda, 25-30 August 2013, the Commission delegation (comprising four Commissioners: Tlakula, Asuagbor, Kaggwa, and Manirakiza) noted that the ‘delegation referred to reports of the obstruction of the operations of NGOs working in the areas of lesbian, gay, bisexual, and transgender (LGBT) rights, who are allegedly precluded from registering to operate legally as is required under law, and noted with concern that LGBT persons have the same rights as everyone else.’ Most importantly, it recommended that the government should ‘expand access to ARVs to all key populations, including homosexuals’.

F Relationship with civil society: Observer status to NGOs

30 The African Commission has developed a close relationship with civil society. It grants observer status to NGOs, on the basis of its ‘Resolution for the Granting and for Maintaining Observer Status with the African Commission on Human and Peoples’ Rights, 1999’. NGOs with observer status receive and may contribute to the Commission’s agenda; and are entitled to take the floor during the Commission’s public sessions. Up to

38 Para 1(e).
39 Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, adopted at the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights in Luanda, Angola, 28 April - 12 May 2014.
41 Report of the Promotional Mission to the State of Namibia, 2 - 6 July 2001, DOC/OS(XXX)/244, p 7: In response, the Permanent Secretary reportedly took the position that ‘penal law is silent on homosexuality as such but specifies practicing sodomy as a crime’, and added that ‘no person had yet been arrested in Namibia because of their sexual orientation’.
43 Ibid, para 245.
date, the Commission has granted observer status to close to 500 NGOs.

31 In 2008 CAL, working for the protection and promotion of the rights of lesbian, bisexual and transgender persons in Africa, applied to be granted observer status with the African Commission. In 2010, the African Commission decided to decline this application. The two inter-related legal reasons provided for the refusal were that: (i) CAL’s objectives were not consonant with the AU Constitutive Act and African Charter; and (ii) the Charter does not explicitly recognise the rights to non-discrimination on sexual orientation or gender identity, or the rights of LGBTI persons.45

32 After some time, CAL re-applied. On 25 April 2015, the African Commission voted in favour of granting the CAL observer status. The implication is that CAL’s objectives, which are aimed at the advancement of gender equality and social justice and the protection of the rights of particularly vulnerable individuals, meet the criterion of having objectives and activities ‘in consonance with’ the fundamental principles and objectives in the AU Constitutive Act and the African Charter.46 This decision provoked reaction from the AU political organs (see below, III.A).

III POLITICAL ORGANS AND PROCESSES WITHIN AU RELEVANT TO SEXUAL ORIENTATION AND GENDER IDENTITY

33 The African human rights system has been established and functions within the African Union (AU). It is therefore inevitable that there would be some resonance between the legal and political strands within the AU. The African Commission reports to the highest political organs within the AU, the AU Assembly of Heads of State and Government (Assembly) and the Executive Council. Closely linked to, and increasingly integrated into the AU, the New Partnership or Africa’s Development (NEPAD) has set up a mechanism of a political nature, the African Peer Review Mechanism (APRM). This part of the paper considers the actual and potential extent to which these political processes have or may impact on the African human rights system.

44 The application for observer status was submitted to the Commission in May 2008, and deferred on numerous occasions until it was eventually considered in May 2010, at the Commission’s 47th session.

45 See 28th Activity Report of the African Commission, AU Doc EX.CL/600 (XVII), para 33: ‘The reason being that, the activities of the said Organisation do not promote and protect any of the rights enshrined in the African Charter.’ Further clarification was provided by members of the Commission during question time at a conference organised by the Centre for Human Rights, University of Pretoria, in July 2011, celebrating 30 years since the entry into force of the African Charter.

46 The activities and principles of CAL are consistent with the following provisions of the AU Constitutive Act: promotion of human rights (art 3(h)); promotion of gender equality (art 4(f)); and promotion of social justice (art 4(h)).
A      AU Assembly and Executive Council

34 The AU has largely been silent on sexual orientation. Like the OAU before it, the AU has as yet not pronounced itself officially on sexual orientation, as such. It has however on three occasions shed some – somewhat contradictory – light on its position.

35 First, at the May 2006 Special Summit of the African Union on HIV/AIDS, in Abuja, the AU elaborated a clear ‘common position’ on HIV, which defined the concept of ‘vulnerable people’ to include men who have sex with men (MSM).\(^{47}\) Second, the AU Assembly at the July 2010 session in Kampala, on the urging of Egypt, adopted a resolution related to a perceived loss of ownership of the human rights agenda. Without referring explicitly to sexual orientation, the Assembly ‘strongly’ rejected attempts to ‘impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework’.\(^{48}\) A subsequent AU Assembly session was organised around the theme of ‘shared values’ concluded in a very general statement that made no reference to private conduct, or sexual orientation, but reiterated that all OAU/AU treaties are part of the ‘shared value’ system of Africans.\(^{49}\)

36 The third and most recent came in June 2015.\(^{50}\) In the exercise of its mandate, the Commission in March 2015 granted observer status to an NGO advocating for the rights of women – including lesbian women, the Coalition of African Lesbians (CAL). This decision provoked the most explicit political response to date. When the AU Executive Council considered the Commission’s Activity Report containing the CAL decision, it ‘request[ed]’ the African Commission to ‘take into account the fundamental African values, identity and good traditions, and to withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values’; and to ‘review its criteria for granting Observer Status to NGOs’ and to ‘withdraw the observer status granted to the Organization called CAL, in line with those African Values’.\(^{51}\) A request for an advisory opinion, aimed at clarifying the extent to which the AU political organs may direct the Commission to adopt a particular interpretation of the African Charter, has been directed to the African Court on Human and Peoples’ Rights.\(^{52}\)

B      The African Peer Review Mechanism (APRM)

37 NEPAD established the APRM as a voluntary process of submission to review by ‘peers’ (fellow heads of state) of a country’s record in political, economic and corporate governance. Its substantive basis is the Declaration on Democracy, Political, Economic and Corporate Governance, which sets out the principles to which the participating states agree to adhere. Primarily a codification of existing standards adopted by the OAU/AU and other international organisations such as the UN, the Democracy and Governance Declaration accords ‘an importance and


\(^{49}\) AU Doc Assembly/AU/ Decl.1(XVI), Declaration on the theme of the Summit: ‘Towards greater unity and integration through shared values’.

\(^{50}\) See eg Murray and Viljoen, supra n 24, 86.


\(^{52}\) Request for Advisory Opinion 2/2015, Centre for Human Rights and Coalition of African Lesbians.

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urgency all of its own’ to human rights. States accept the APRM process by signing a Memorandum of Understanding on the APRM (MOU). So far, 34 states have signed the MOU. Although the APRM review process provides an opportunity to interrogate the protection of sexual minority rights, none of the country reviews has so far paid any attention to this aspect.

FOR MORE INFORMATION

Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity
http://www.achpr.org/sessions/55th/resolutions/275/

Resolution on the Establishment of a Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV
http://www.achpr.org/sessions/47th/resolutions/163/

http://dx.doi.org/10.17159/1996-2096/2015/v15n1a1
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Ndashe, S ‘Seeking the protection of LGBT rights at the African Commission on Human and Peoples’ Rights’ 15 Feminist Africa 17-38
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http://www.pambazuka.org/en/category/features/68956
INTRODUCTION

1 The objective of this paper is to review the main standards, cases, and practices related to the rights of lesbian, gay, bisexual, trans, and intersex (LGBTI) persons in the Inter-American human rights system. To achieve this aim, the paper examines the work of both the Inter-American Commission on Human Rights (the Commission, Inter-American Commission, or IACHR) and the Inter-American Court of Human Rights (the Court, Inter-American Court, or IACtHR), which over recent years have developed an important and wide-spanning corpus of norms on the protection of sexual orientation and gender identity (SOGI) within the framework of the American Convention on Human Rights (American Convention, Convention or ACHR).

2 For the purposes of this paper, the author used the following sources: petitions and cases decided by the IACHR and IACtHR; thematic and country reports by the IACHR; precautionary measures granted by the IACHR; press releases by the IACHR; resolutions of the Organization of American States (OAS); and other documents produced by the inter-American system. The cornerstone of these protections is found in the case of Atala Riff y Niñas v Chile 1 (Atala v Chile or Atala case) by the Court, which established the baseline for protection of sexual orientation and gender identity under the American Convention.

3 This paper is divided into three sections. Section I refers to the norms and case law related to the rights of LGBTI persons. This section analyses the protection of SOGI under the Convention as framed in the Atala v Chile case, as well as other relevant cases decided by the IACHR. It also summarises the actions of the IACHR in relation to violence and discrimination, including making reference to: laws that criminalise SOGI; restrictions on the freedom of expression and association; economic, social and cultural rights (health, education, and employment); and the right to family life. Section II highlights institutional measures taken by the Commission and Court to guarantee the protections of the human rights of LGBTI persons in the Americas. These institutional changes include the creation of the LGBTI Unit of the IACHR, which later became a Rapporteurship.

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Section III describes the role of the OAS Assembly in establishing and protecting the rights of LGBTI persons.

1 NORMS AND CASE LAW

A General doctrine for the protection of SOGI in the Inter-American human rights system: The Atala v Chile case

4 The American Convention does not include a direct reference to SOGI. The IACHR and the IACtHR have developed SOGI-related standards based on the cases presented for review, according to their institutional functions. Since the late nineties, cases and reports concerning SOGI have been presented to the Commission and the Court. However, only in the last ten years have specific protections been developed, especially in the wake of the Atala v Chile case before the Inter-American Court, a cornerstone decision containing the SOGI protection doctrine as formulated by the Inter-American system.

5 The Atala case referred to the international responsibility of Chile for discriminatory treatment and interference in the private and family life of a mother on the basis of her sexual orientation. The case centred on the result of an internal judicial process against Karen Atala that stripped her of the custody and care of her daughters. The Court determined that the rights of Karen Atala and her daughters were violated – in particular their rights to equality and non-discrimination, protection of privacy and dignity, protection of the family, the rights of children, and judicial guarantees of due process. This was the first judicial decision of the Inter-American system regarding SOGI. The Court had to define the sphere of protection with regard to SOGI, especially given the State’s argument that there was no international consensus about the protection of these categories under the Convention.

6 The Court determined that sexual orientation and gender identity are included within ‘any other social condition’ and therefore constitute protected grounds under article 1(1) of the Convention, which establishes that the rights and freedoms established within the Convention are guaranteed ‘without any discrimination’ on these grounds and other enumerated ones. In arriving at this conclusion, the Court reaffirmed that equality and non-discrimination are *jus cogens* norms and are therefore the cornerstone of international public law. According to the Court, States have both the duty to respect the rights of persons by not discriminating against them – whether *de jure* or *de facto* – and to protect them against discriminatory conduct by other persons. The IACtHR considered that sexual orientation and gender identity should be included as protected categories due to the evolving nature of the interpretation of treaties, based on article 29 of the American Convention on Human Rights. In bolstering its analysis of the evolution of interpretation of the American Convention on this particular issue, the Court took into account OAS General Assembly resolutions, which since 2008 have called for the effective protection from violence and discrimination of LGBTI persons. In addition, the Court took into account decisions of the European Court of Human Rights and UN human rights bodies, which have found that non-discrimination based on SOGI is protected under their respective human rights treaties. In the words of the Court: ‘the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently,
no domestic regulation, decision, or practice, whether by [S]tate authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation. 2

B Killings, sexual violence and other forms of violence based on prejudice

7 The Americas is one of the regions with the highest levels of violence in general, and the highest number of reported cases of violence against LGBTI persons. Through its various decisions on cases of violence committed by state and non-state actors, the Court has established that under the American Convention, the rights to life (article 4), physical integrity (article 5), and personal freedom (article 7) must be respected and guaranteed according to article 1(1) of the ACHR, which includes the duty to apply due diligence in the effective investigation of all acts of violence, and the obligation to avoid impunity. 3 In particular, the Court has considered that certain forms of violence can be construed as discrimination, as it did in the case of the mass killings of women in Ciudad Juarez, Mexico. 4 The Court concluded that States must not only respect the right to life and personal integrity but must also guarantee these rights through the adoption of prevention measures, investigation and punishment, as well as guarantees of non-repetition, especially with regard to communities that have been historically discriminated against.

8 In its 2015 Report on Violence against LGBTI persons the IACHR incorporated the concept of violence based on prejudice, which had been developed by academia, to examine violence committed against LGBTI persons. In this Report the IACHR indicated that violence based on prejudice ‘is a concept that signals an understanding of violence as a social phenomenon, as opposed to violence being understood as taking place in isolation.’ 5 Further the

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2 Ibid. Para 91.
3 In that respect, the Court established in the Velásquez Rodríguez case: ‘166. The second obligation of the States Parties is to “ensure” the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation’. See case of Velásquez-Rodríguez v Honduras, Judgment of 21 July 1989 (Reparations and Costs) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf.
Commission found that violence based on prejudice requires context and social complicity and has a symbolic impact sending a message to the whole LGBT community. As such, the IACHR concluded that violence against LGBT persons constitutes a contextualised social violence in which the perpetrators’ motivation needs to be understood as complex and multi-faceted, and not only as an individual act. Similarly, the IACHR found that violence against intersex persons constitutes violence based on prejudice towards persons whose bodies differ from the standard for male and female bodies.

For many years, the Commission has systematically analysed violence based on sexual orientation and gender identity in the region. For instance, the IACHR received information on this topic during its 1992 onsite visit to Colombia, where it was presented with reports of a practice known as ‘social cleansing’, consisting of the selective killings of ‘prostitutes, street children, vagabonds, beggars and homosexuals’. Throughout the years the IACHR has continued following-up on this issue. For example, in the 2013 Report on the human rights situation in Colombia, the Commission indicated that this practice was being perpetrated by illegal armed groups, which use pamphlets to threaten LGBT persons and LGBT human rights defenders by declaring them military targets. According to the IACHR, the situation is aggravated by the levels of impunity and the lack of investigation by authorities in cases of violence against LGBT persons in the context of the internal armed conflict.

Starting in 2008, but more specifically since 2012 the Commission, through the Unit on the Rights of LGBTI Persons – which later became the Rapporteurship on the Rights of LGBTI Persons – has conducted a thorough monitoring of the violence against LGBTI persons in the Americas through its press releases and country reports. In a December 2014 press release, the Commission launched the results of its Registry of Violence, a monitoring tool that reviewed the media and reports from civil society organisations over the course of 15 months (from January 2013 to March 2014). During this period, the IACHR received information of at least 594 LGBT persons who were killed and 176 LGBT persons who were the victims of serious, non-lethal attacks. The majority of persons killed were gay men and trans women and, in many of the cases, the extreme cruelty of the acts was an additional cause of concern. According to the data collected by the IACHR, 80% of trans women killed were 35 years old or younger, and the


8 Following the IACHR, this paper uses the LGBTI acronym when referring to lesbian, gay, bisexual, trans and intersex persons, and the LGBT acronym, when referring to violence only experienced by lesbian, gay, bisexual, and trans persons. See IACHR, Report on Violence (n 5 above).

9 IACHR, Report on Violence (n 5 above) para 47.

10 IACHR, Report on Violence (n 5 above) para 47.


13 Ibid.


15 Ibid.
violence against them could be seen as exacerbated by their exclusion, poverty, and social marginalisation. In relation to non-lethal violence, the Commission has pointed out that in many cases it is accompanied by verbal violence. Also, reportedly, lesbian women are more vulnerable to certain types of violence linked to misogyny, such as sexual and domestic violence, and attacks coming from persons close to them or family members. Concerning states’ obligations in this respect, the Commission expressed serious concern about the lack of official data produced and collected by States.  

In certain cases the IACHR has expressed concern about mob attacks and collective acts of prejudice-based violence committed in countries in the Americas. For example, in June 2013, the Inter-American Commission condemned the wave of violence (47 attacks in two weeks) against LGBT persons in Haiti, presumably related to the march against homosexuality led by the Coalition of Moral and Religious Organizations, and repudiated the level of cruelty and brutality these cases displayed.

Through this monitoring work, the IACHR has recognised that some groups of the population are particularly vulnerable to violence, such as transwomen. In August 2012, for example, the Commission learned of 20 killings of trans women in Brazil, the United States, Colombia, and Honduras. In October and November of the same year, it expressed concern over the killings of 34 trans persons in eight countries in the region. These extremely high levels of violence against trans persons provoked an energetic condemnation by the Commission, which issued an urgent call to the States of the region to undertake measures to effectively prevent and respond to violence against trans persons.

In its monitoring of violence based on prejudice against LGBTI persons in the region, the IACHR has found general trends regarding this violence. For example, the Commission has found

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that violence against LGBTI persons is pervasive throughout the Americas; that violence based on prejudice towards non-normative sexual orientations and gender identities is particularly cruel and generally depict high levels of brutality; that there is general underreporting of these acts of violence and the vast majority of countries in the region do not collect data on violence against LGBTI persons. 23 Also, according to the Commission certain types of violence are more invisible than others for different reasons. For example, the IACHR highlights the invisibility of everyday violence against LGBTI persons; violence occurring in private settings; violence against trans men, bisexual persons and intersex persons, among others. 24

14 The IACHR has also documented instances of sexual violence against LGBTI persons. The Commission has noted having received information regarding instances of so-called ‘corrective’ rape, mostly targeting lesbian, bisexual, and trans women, or those perceived as such, including women who are perceived to be ‘masculine’ or who defy traditional gender norms. 25 Regarding this type of violence, the IACHR indicates that it is used to punish nonconforming sexuality or gender targeting persons who defy traditional gender norms because of their sexual orientation, gender identity or expression. 26 The Commission has also indicated that it has received information regarding stigma faced by gay men who are victims of sexual violence, 27 and reports of acts of sexual violence against intersex persons committed with the intention to ‘cure intersex bodies’. 28


24 IACHR, Report on Violence (n 5 above) Ch 4.

25 IACHR, Report on Violence (n 5 above) Executive Summary.

26 As above.


SOY LESBIANA
Soy gay
SOY TRANSEXUAL
SOY BISEXUAL
SOY COMO TÚ
SOY HUMANO
C Torture and other cruel, inhuman or degrading treatment: violence by law enforcement officials and in prisons

15 In many circumstances, the perpetrators of violence are law enforcement agents. The IACHR reports that in many countries in the region there have been complaints of acts of torture, physical and verbal attacks, and cruel, inhuman and degrading treatment.29 Acts of violence and abuse committed by law enforcement and the police are rarely denounced and there are high levels of impunity with regard to these violations. The situation of incarcerated LGBT persons has also been a subject followed by the IACHR, both through its LGBTI Rapporteurship and its Rapporteurship on Persons Deprived of Liberty. The Commission has on various occasions made statements about this issue, manifesting its concern about the conditions of detention, particularly of trans persons.30 In many cases, these conditions do not comply with the differential focus that would guarantee their fundamental rights and dignity due to overcrowding, ill-treatment, discrimination, and barriers to access basic services.31 In 2015, for example, it rejected confinement and isolation measures for LGBT persons that were considered to constitute segregation practices.32 It has also recognised advances in countries such as Argentina, which allowed the transfer of transgender women to women’s prisons, and Brazil, which established safe spaces for LGBT persons in its prisons.33

16 In its 2011 Report on the Human Rights of Persons Deprived of Liberty in the Americas,34 the IACHR called for the protection of detained or incarcerated LGBTI persons because they, along with other vulnerable groups, are at higher risk of suffering human rights violations while in detention.35 Also, it recommended that all OAS member states regulate intimate visits ‘without distinctions based on considerations of gender or sexual orientation’.36 In this trend, in 1999 it is worth noting that the IACHR issued a an admissibility report (following a prima facie or preliminary analysis) regarding a petition filed on behalf of Martha Lucía Alvarez Giraldo,37 who claimed discrimination and violation of her human rights by the State of Colombia for denying her intimate visits with her female partner and for suffering sanctions and persecution when claiming this right.

17 The Commission has also noted the heightened vulnerability of LGBT persons, particularly trans women, to be subjected to sexual violence while in detention, either by other inmates or by custodial staff.38 According to the IACHR, ‘trans women are at a

29 IACHR, Report on Violence (n 5 above).
36 Ibid. Para 604.6.
heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case.\textsuperscript{39} Also, the Commission has noted with concern that in some instances LGBT persons are segregated in detention centres, and that while this measure of segregation ‘arguably responds to a need to guarantee their safety,’ the IACHR has received information about ‘worse living conditions in these cells or units, when compared to other units in the facility,’ as well as ‘the possible limitation of programs and benefits afforded to the general population, which are key to rehabilitation or participating in early release programs.’\textsuperscript{40} In its 2015 Report on Violence against LGBTI Persons in the Americas, the Commission examined the situation of LGBTI persons deprived of liberty and in this regard indicated that ‘discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance’.\textsuperscript{41} In this Report the IACHR made a series of recommendations to OAS member states regarding LGBT persons deprived of liberty, including, but not limited to: (i) ensuring that measures aimed at protecting LGBT persons who are deprived of liberty do not place undue restrictions on them; (ii) restrict the indiscriminate and prolonged use of solitary confinement in places of detention; and (iii) adopt the necessary measures to ensure that the decision on where to house trans persons in detention is conducted on a case-by-case basis, with due respect to the person’s dignity, and whenever possible with prior consultation of the person concerned.\textsuperscript{42}

D Discrimination related to laws which criminalise LGBT persons

18 In the Americas, eleven countries criminalise same-sex intimacy between consenting adults in private: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St. Vincent and the Grenadines, Saint Lucia, and Trinidad and Tobago. The Commission has consistently called on the English-speaking countries in the Caribbean to advance in an effective way towards the repeal of laws that criminalise consensual sexual relations between persons of the same sex.\textsuperscript{43} The Commission considers that there is a strong correlation between these norms and violence against LGBT persons, or those perceived to be LGBT, as these laws send a social message that discrimination and violence are condoned or tolerated.\textsuperscript{44} Also, these laws hinder the work of human rights defenders. In November 2014, the IACHR noted that it had received ‘troubling information on how the criminalization of same-sex intimacy in 11 countries impacts the defense of human rights, restricting access to justice and fueling intolerance. According to the information received by the Commission, those who defend

\textsuperscript{39} IACHR, Report on Violence (n 5 above) Ch 4.
\textsuperscript{40} See IACHR Press Release No 53/15 (n 30 above).
\textsuperscript{42} IACHR, Report on Violence (n 5 above) recommendations section.
the rights of LGBTI persons in these countries are viewed as ‘self-avowed criminals’. In addition to the legislation that criminalises same sex intimacy, the Commission found that Guyana had legislation criminalising cross-dressing, or dressing with clothes socially attributed to another gender. For the IACHR, this provision reinforced gender stereotypes and constituted discrimination on the grounds of gender identity and expression.

19 The IACHR also made reference to the impact of laws against vagrancy and loitering, legislation that seeks to protect ‘public morals’ or local misdemeanor codes which, while not directly criminalising same-sex activity or trans persons, are often construed and applied to criminalise LGBT persons. For the Commission, the vaguely defined terms used in these legal provisions opened the door to arbitrary enforcement with respect to persons who are perceived to defy socially established and traditional gender norms, particularly trans persons. Specifically, that these laws ‘facilitate police abuse, extortion, and arbitrary detention, particularly of trans sex workers, and often without effective judicial oversight,’ through highly subjective and prejudiced interpretations of the vague concept of ‘public morals’.

20 The Commission has equally recognised the measures that have been adopted by other countries in the region to decriminalise conduct related to diverse aspects of sexual orientation and gender identity, including in Argentina and Ecuador. The IACHR has also praised statements by high government officials, including prime ministers from countries in the region that still criminalise same-sex intimacy, in favor of the rights of LGBT persons. Also, the IACHR has expressed concern over the existence of laws that ban the entry of gay persons in Belize and Trinidad and Tobago.

21 In its 2015 Report on Violence against LGBTI Persons in the Americas, the IACHR

46 IACHR, Report on Violence (n 5 above) Ch 3.
47 As above.
49 As above.
makes reference to the existence of these laws, their impact on violence against LGBT persons and makes a series of recommendations in this regard. The Commission notes "[t]hese laws provide a social sanction for abuse, breed intolerance, and have been used to justify arbitrary detention, police abuse, and extortion and torture. As a result, LGBT persons are drawn into the criminal justice system and subjected to more violence. Once such persons are incarcerated or otherwise implicated in the justice system, this situation can in turn give rise to further incidents of discrimination and violence." In this regard, the Commission urged OAS member states in the region which ‘have laws criminalizing consensual sex and sexual intimacy between adults of the same sex, serious and gross indecency laws – in as much as they criminalize same-sex intimacy, and legislation criminalizing cross-dressing, to repeal those laws, and, in the interim, to impose an explicit and formal moratorium on enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten or extort LGBT persons or those perceived as such." Additionally, the Commission recommended member states to ‘review legislative frameworks that criminalize and stigmatize sex workers.’

E Freedom of association and human rights defenders

The IACHR has on a consistent basis followed the work of human rights defenders protecting the LGBTI population. In its Second Report about the Situation of Human Rights Defenders in the Americas, the Commission found that the main obstacles throughout the region to protecting this group are killings, threats, criminalisation of activities, high levels of impunity for acts that violate the freedom of association, and discrediting and stigmatisation of human rights defenders. In particular, regarding the risks to life and personal integrity of the defenders of the human rights of LGBTI persons, the IACHR has adopted 11 precautionary measures to protect these persons in Jamaica, Mexico, Honduras, Guatemala, and Belize. Additionally, the Commission has demanded that States create and consolidate participation spaces for human rights defenders of LGBTI persons, especially for the design and discussion of public policies.

23 Also, the Commission found that in Honduras, the coup d’Etat perpetrated in 2010 meant an upsurge in the violence experienced by LGBT persons in that country, manifesting itself in an increase in the killings of leaders and defenders of the rights of this population. The Commission highlighted the case of

54 IACHR, Report on Violence (n 5 above) Executive Summary.
55 Ibid.
56 IACHR, Report on Violence (n 5 above) Ch 7.
Walter Trochez, a defender and activist for LGBT persons, who was assassinated after being accused of belonging to the resistance forces. In 2015 the IACHR condemned the killings of Francela Méndez and Diana Sacayán, trans human rights defenders in El Salvador and Argentina, respectively. In its 2015 Report on Violence against LGBTI Persons in the Americas, the IACHR makes an in-depth analysis of the situation of human rights defenders and issues a series of recommendations to OAS member states to protect them from violence and discrimination.

F  Freedom of expression

The American Convention prohibits discourse that consists of ‘advocacy of national, racial, or religious hatred that constitute[s] incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin’ (article 13.5 of the American Convention). This differs from the International Covenant on Civil and Political Rights, which prohibits a concept that also includes incitement to discrimination: ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’. Despite the absence of a mention of discrimination in the definition of what constitutes incitement to lawless violence in the American Convention, the IACHR has expressed its concern with negative statements by state authorities against LGBTI persons and the defenders of their rights. Such discourses are reprehensible as they have disastrous effects not only on the recognition of the rights of the LGBTI population but also through the intimidation of the defenders of their rights, which serve to accentuate the vulnerability of these groups, placing them at high risk of violence.

In its 2015 Report on Violence against LGBTI Persons, the IACHR and its Special Rapporteur on Freedom of Expression held that article 13(5) of the American Convention applies to hate speech that ‘incites lawless violence against a group on the grounds of sexual orientation, gender identity, and/or bodily diversity’. In it, the IACHR and its Special Rapporteur on Freedom of Expression recommend that ‘States should establish appropriate sanctions for hate speech that incites lawless violence by public officials.’ The IACHR and its Special Rapporteur on Freedom of Expression have also indicated that in their response to hate speech, States must adopt a ‘comprehensive approach that goes beyond legal measures and includes preventive and educational measures’. As such, they have indicated that ‘States should implement
measures to strengthen the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community, as well as to promote awareness of issues that concern LGBTI persons.\textsuperscript{69} Furthermore, that States should ‘create an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that provide information to and voice needs of LGBTI individuals and groups.’\textsuperscript{70} And finally, the IACHR and its Special Rapporteur recommended ‘that States encourage media to play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by addressing issues of concern to groups that have historically suffered discrimination and providing an opportunity to them to speak and to be heard.’\textsuperscript{71}

27 Regarding the right to health, the IACHR has recognised that the stigmatisation and discrimination of persons living with HIV in the Americas is endemic and mainly affects populations that are most at risk of HIV infection, such as men who have sex with men and trans women who engage in sex work. This has an impact on the quality of life and the health of persons that live with HIV. In this sense, the laws that criminalise same-sex intimacy between consenting

\textsuperscript{69} As above.
\textsuperscript{70} As above.
\textsuperscript{71} As above.
adults or gender identity of trans persons are an obstacle to reducing stigma and discrimination. For this reason, the IACHR has recognised that education is central to preventing discrimination and has recommended that the States establish positive measures to guarantee the rights of these persons.73

28 Also regarding the right to health, the Commission has expressed concern over the existence of centres which pretend to ‘cure homosexuality’ in Ecuador,74 and other countries in the Americas,75 where particularly young lesbian women and gay men are subject to all forms of violence, including rape. The Commission also found that even though ‘gender identity is not determined by body transformations, surgical interventions or medical treatment’, these ‘could be necessary for the construction of the gender identity of some trans persons’.76 In this regard, in its 2015 Violence Report, the IACHR affirmed that ‘the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirmation surgeries and other related body modifications.

The prevalence in Latin America of informal and risky gender affirmation procedures causes a high number of (preventable) deaths of trans women.’77

29 Regarding the rights of intersex persons,78 the Commission has expressed concern about the information it received regarding systematic and generalised human rights violations that they are subjected to, because their bodies differ from the standard female and male bodies. As such, the IACHR has been informed that intersex infants and children are subjected to all types of medical interventions, without their informed consent or that of their parents. Most of the time, these interventions are irreversible in nature and aimed at ‘normalizing’ their genitals, in the attempt to make them look ‘more female’ or ‘more male.’ These interventions, in the judgment of the IACHR, are rarely medically necessary and cause intersex children and adults great harm, including, but not limited to, chronic pain and life-long trauma, genital insensitivity, sterilisation, and mental suffering, which is partly caused by the secrecy involving these procedures. Therefore, the Commission indicated that States must review these medical procedures on persons under the age of 18 in order to guarantee the dignity and rights of boys and girls.79

30 Regarding the right to work, the IACHR has examined discrimination at the

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75 IACHR, Report on Violence (n 5 above) Ch 4.

76 IACHR, Report on Violence (n 5 above) Ch 1.

77 IACHR, Report on Violence (n 5 above) Ch 5, para 382.

78 Persons whose bodies differ from the ‘standard’ female and male bodies, because of differences in chromosomes, gonads, genitals or hormones.

workplace. With regards to employment discrimination, the IACHR presented the case of Homero Flor Freire v Ecuador to the IACtHR in December 2014. This case is about the alleged international responsibility of Ecuador in the dismissal of Homero Flor Freire, an active member of the Ecuadorian army in accordance with the Rules of Military Discipline, because of alleged acts of same-sex intimacy. The Commission recommended that the State of Ecuador make full reparation to the victim and to publicly recognise that Homero Flor Freire was discharged from the Ecuadorian Army in a discriminatory manner. Further, the Commission recommended adoption of measures by the State to ensure that people who work in the Ecuadorian Army or in any of its offices or sections are not subject to discrimination based on their actual or perceived sexual orientation, among other measures. The Commission also congratulated ‘the State of Argentina for establishing a minimum quota of at least one percent of trans persons for jobs in the public sector in the Province of Buenos Aires’. The IACHR found a link between policies that uphold the economic and social rights of trans persons and violence, indicating that such policies are ‘a means to prevent poverty, violence and discrimination faced by trans persons in the region.’

Specifically with respect to trans persons, the IACHR has received information about the lack of recognition of trans persons’ gender identity, the violence they suffer, and the violation of their economic, social, and cultural rights. In this regard, the IACHR has taken note ‘of the vicious cycle of violence, discrimination, and exercise of rights. As the petitioners indicated, trans women’s lack of access to formal employment is due in large part to exclusion and discrimination in family, educational, and social arenas.’ As a result, trans women ‘have to resort to occupations that place them at greater risk of suffering violence and becoming criminalised, which in turn means that they have even fewer possibilities for working in the formal sector.’ In this trend, the IACHR has affirmed ‘trans persons face poverty, social exclusion and high rates of lack of access to housing, pressing them to work in highly criminalized informal economies, such as sex work or survival sex. As a result, trans women are profiled as dangerous, making them vulnerable to police abuse, criminalization and to be imprisoned.’

The IACHR has also called on OAS member states to adopt gender identity laws and undertake specific measures to ensure that trans persons have access, without discrimination, to employment, social security, housing, education and

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84 As above.
86 As above.
87 As above.
The Commission has also noted the ‘close link between exclusion, discrimination and the short life expectancy of trans persons’. On the occasion of the 2015 International Transgender Day of Remembrance, the IACHR urged OAS member states to adopt measures to increase the life expectancy of trans persons in the Americas.

H Legal protection and recognition of gender identity

With regard to gender identity, in 2015 the IACHR praised the efforts of Colombia and Mexico City in allowing trans persons to change the sex marker on identity cards through simple administrative procedures, in accordance with the respect for their dignity. Likewise, it welcomed the 2013 reform by the District of Columbia in the United States to ease the modification of gender identity on birth certificates of trans persons. The state of California in the United States allowed trans children to use school restrooms that they feel more comfortable using and Peru imposed sanctions on a bar that denied access to a transgender woman because of her gender identity. In addition, the IACHR has consistently requested that States take into account the possibility that different acts of violence, killings, attacks, and other crimes against LGBTI persons might be motivated by the gender identity or gender expression of the victims.

I Protection of the family and definition of the family

The IACHR established in the Atala case that families made up of LGBT persons are protected by the Convention because ‘the American Convention does not define a limited concept of family, nor does it only protect a “traditional” model of the family’. Even though the case that the Court studied was related to the biological children of Karen Atala, the Court recognised that Atala, her partner, and her daughters were a family protected under article 17 of the Convention.

Recently, the IACHR presented a case to the IACtHR against Colombia (Ángel Alberto Duque), in which the protection of same-sex couples under the American Convention is discussed as a central issue. Mr Duque lived with his same-sex partner until the partner died. Considering their relationship to each other and shared livelihood, Mr Duque petitioned Colombian authorities to obtain a survivor’s pension, which is included in the current laws. However, his claim was consistently denied through the administrative and judicial process. According to the petition, such exclusion from the possibility of obtaining a survivor’s pension was based on the fact that it was a claim from a same-sex partner. The Colombian State based its denial on the protection of the family and the financial sustainability of the general pension system. For the...
Inter-American Commission, the family is protected by the American Convention, and the differential treatment is not justified because the concept invoked by the State is limited and excludes the diverse family forms that exist, such as those made up of same-sex couples.97

II INSTITUTIONAL CHANGES IN THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS TO GUARANTEE THE RIGHTS OF LGBTI PERSONS

36 As examined above, the IACHR has been fundamental in the process of recognition and protection of the rights of LGBTI persons in the Americas. The mission of the Commission and Court is to promote and protect human rights in the region. The bodies of the Inter-American system consider that LGBTI persons are a group of persons who have been historically and systematically subjected to discrimination and violence. On the part of the IACHR, it has engaged in actions such as the issuing of statements about the human rights situation of LGBTI persons, denouncing human rights violations, condemning acts of violence against this population, reprimanding States about it, granting precautionary measures in favor of persons in grave risk, creating a new institution dedicated to the rights of LGBTI persons, and elevating cases before the IACtHR that involve LGBTI persons as victims of human rights violations. Specifically, as of October 2015 the Commission has issued six reports on admissibility,102 three

decisions on merits, one inadmissibility report, one friendly settlement and sent three cases to the Court. These cases refer to issues of discrimination in terms of employment and pension benefits and protection of families. The Commission has also included analysis on issues regarding sexual orientation and gender identity in its annual thematic reports in other areas and country reports.

37 In November 2011, the Commission took a fundamental step in strengthening the protection of the LGBTI people by announcing the creation of the Unit for the rights of lesbian, gay, bisexual, trans, and intersex persons. The Unit was conceived as part of the integrated perspective on the protection of human rights that has been considered before the Commission in favor of historically discriminated groups. The Unit was crucial in establishing the foundation of the work of the Commission in the protection and promotion of human rights of LGBTI persons in the Americas; it has denounced violations through press releases, conducted promotional activities, and held expert meetings, among other activities.

38 On 8 November 2013, the Inter-American Commission created the Rapporteurship on the Rights of LGBTI Persons with the purpose of giving specialised attention and continuing the work carried out by the former LGBTI Unit in the advancement and protection of their rights. As of November 2014, the Commission, through the Rapporteurship, had received more than 50 petitions against 16 member states; granted 11 precautionary measures for the protection of rights; held 6 regional expert meetings; prepared two sections on the rights of LGBTI persons for the country reports on Colombia and Jamaica; issued more than 30 press releases condemning violence against the LGBTI population and has denounced the lack of action on the part of the States; held more than 30 public hearings, with the participation of 22 countries and more than 70 NGOs; and monitored more than 1500 news reports.

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105 Report No 81/09, Petition 490-03, Friendly Settlement, X, Chile, 6 August 2009.


reports about violence against LGBTI persons. In November 2015, the IACHR approved the first thematic report focusing exclusively on the human rights of LGBTI persons in the Americas, which focused on violence. This report consists of a regional analysis of killings, acts of torture and other forms of violence against LGBTI persons, including at the intersection with race, ethnicity, sex, migration situation, deprivation of liberty, and poverty, and includes a series of recommendations to OAS member states in order to prevent, investigate, punish and provide reparations and redress concerning acts of violence against LGBTI persons.

Civil society organisations that promote and defend the rights of LGBTI persons have been key in this process of institutional change and the protection of their rights. Their main actions have been: denouncing situations and providing information about human rights violations to the IACHR; requesting audiences by subject and by country before the IACHR; presenting cases and requests for precautionary measures before the IACHR; preparing amicus briefs to provide judicial and factual elements for contentious cases at the IACHR and IACHR; participating in the OAS General Assembly to promote the resolutions about human rights, sexual orientation, and gender identity; providing concepts to the Inter-American Judiciary Committee to develop the human rights conventions; and providing information to the IACHR during its onsite visits.

III THE ROLE OF THE OAS GENERAL ASSEMBLY IN PROMOTING THE RIGHTS OF LGBTI PERSONS

The OAS General Assembly has been an institution of fundamental importance to the promotion of the rights of LGBTI persons in the Americas through seven resolutions about ‘Human Rights, Sexual Orientation, and Gender Identity.’ The first resolution was approved in 2008 and expresses ‘concern about acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity.’ Over the following years, the terms of the resolution were broadened and have been made more complete on each subsequent occasion. For example, in 2009, the Assembly broadened the resolution to include the following issues: condemnation of violence and human rights violations against persons because of their sexual orientation and gender identity; State investigations of violent acts; protecting defenders of human rights of LGBTI persons; and the role of organs of the Inter-American system, in particular the IACHR, in continuing to work on these issues.

The 2010 resolution maintained the earlier issues and expanded the statement to include ‘ways to combat discrimination of persons because of their sexual orientation and gender identity.’ The 2011 resolution asked the IACHR and the Inter-American Judiciary Committee for a judicial and conceptual study on the matter. Afterwards, in the 2012 resolution, the IACHR was asked to...
conduct a study on the laws that limit the human rights of persons as a consequence of their sexual orientation or gender identity and to create a guide to stimulate the decriminalisation of homosexuality.

42 The resolutions of 2013 and 2014 maintained a similar structure, expanding to other areas of rights, but several States began to include footnotes (seven in 2013 and thirteen in 2014) to avoid considering the decriminalisation of homosexuality and to avoid making changes that allow the recognition of the families of LGBTI persons. For example in the footnotes of the 2014 resolution, Jamaica and Saint Vincent and the Grenadines disagreed with the use of the terminology of ‘gender expression’ on grounds that it is ambiguous and that these words do not have consensus in international law. Other countries, such as Guatemala and Ecuador, considered that the non-recognition of same-sex marriage is not a discriminatory practice.

43 In addition, the OAS General Assembly approved two human rights treaties, which for the first time in the Inter-American system explicitly include sexual orientation and gender identity as protected categories and require measures against discrimination on these grounds. These treaties are: the Inter-American Convention against All Forms of Discrimination and Intolerance;\(^\text{116}\) and the Inter-American Convention on Protecting the Human Rights of Older Persons.\(^\text{117}\) These treaties are open for signature and ratification by OAS member states, and as of February 2016 have yet to come into force.

\(^{116}\) See Inter-American convention against all forms of discrimination and intolerance \url{http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance.asp}

\(^{117}\) See Inter-American convention on protecting the human rights of older persons \url{http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp}
FOR MORE INFORMATION


IACtHR, Angel Alberto Duque v Colombia, Merits Report (sent to the IACtHR and pending a decision), Case 12,841, 2 April 2014, http://www.oas.org/en/iachr/decisions/court/12841FondoEn.pdf


Annex 6: Norms, case law and practices relevant to sexual orientation, gender identity and intersex status in the United Nations system

INTRODUCTION

1 The Universal Declaration of Human Rights (Universal Declaration) provides a foundation for subsequent human rights treaties, and has served as a critical tool for the protection of the human rights of lesbian, gay, bisexual and transgender (LGBT) as well as intersex persons. Equality and non-discrimination are fundamental human rights principles embodied in the Universal Declaration, the Charter of the United Nations and the core international human rights treaties.

2 The human rights mechanisms of the United Nations (UN) have increasingly brought attention to human rights violations based on sexual orientation, gender identity and intersex status, including killings, sexual violence, torture, attacks on human rights defenders, denial of free expression and assembly, arbitrary detention, discriminatory laws, and discrimination in access to education, health care, housing, and education.

3 While this paper focuses on human rights violations based on sexual orientation and gender identity against LGBT persons, it also has some references to human rights violations against intersex persons based on their intersex traits or status.

4 A range of tools have been used by the UN human rights mechanisms and entities to address these issues, including:
   - Articles, op-eds, opinion pieces, letters to the editor, press releases
   - Booklets, fact sheets, handbooks, infographics
   - Case studies, reports, research
   - Consultations, expert meetings
   - Country missions and reports, State reviews, recommendations
   - Decisions on individual cases
   - Discussion papers, issue papers, guidelines, general comments
   - Joint statements/declarations
   - Letters of allegation, urgent appeals
   - Policy briefs, position statements

UN STANDARDS ON VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

A Rape, torture, killings and other forms of discriminatory violence

5 The rights to life, liberty, security of person, privacy and freedom from torture, cruel, inhuman or degrading treatment are enshrined in the
International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). UN human rights mechanisms have affirmed that these rights apply to all persons, regardless of sexual orientation, gender identity or intersex status.

Death penalty

6 The UN Special Procedures have repeatedly raised concern about the use of the death penalty as punishment for consensual same-sex relations between adults. As confirmed by the Commission on Human Rights (the predecessor of the UN Human Rights Council) and the Human Rights Committee, the use of the death penalty in these circumstances is a violation of article 6 of the ICCPR, which provides that, in countries that have not abolished the death penalty, a ‘sentence of death may be imposed only for the most serious crimes.’

Killings

7 UN human rights mechanisms have drawn attention to extrajudicial killings committed by both State and non-State actors based on actual or perceived sexual orientation or gender identity. Examples include killings for purpose of so-called ‘social cleansing,’ LGBT persons killed by police, floggings, stonings and killings of women by communities aiming to restrict and regulate female sexuality, brutal murders of gay men, lesbians, transgender persons and LGBT human rights defenders. Sexual orientation and gender identity have been recognised as grounds for protection from extrajudicial, summary and arbitrary executions by the UN General Assembly. States are required to exercise due diligence in preventing, investigating, punishing and redressing extrajudicial killings, including in instances where the victim has been targeted on grounds of sexual orientation, gender identity or intersex status.

Torture and other cruel, inhuman or degrading treatment

8 States are obliged under international law to prohibit, investigate, punish and provide redress for torture and other cruel, inhuman or degrading treatment. The Committee Against Torture has highlighted that the protection of certain minority or marginalised individuals or populations especially at risk of torture is a part of the state obligation to prevent torture or ill treatment, affirming that ‘States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of sexual orientation or transgender identity’.

9 Certain forms of abuses against LGBT and intersex persons may cross a
threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment. Examples include denial of medical treatment, verbal abuse and public humiliation, a variety of forced or coercive procedures such as sterilisation, forcible anal examinations of persons suspected of engaging in homosexual activities, invasive virginity examinations conducted by health-care providers, forced hormone therapy and genital-normalising surgeries on intersex children and unethical and harmful so-called ‘therapies’ to change sexual orientation. The Committee on the Rights of the Child has noted that children who are lesbian, gay or transgender are particularly vulnerable to violence. Lesbians and transgender women are also at particular risk because of gender inequality and power relations within families and wider society.

**Arbitrary detention**

10 States have an obligation to protect the right not to be subjected to arbitrary arrest and detention. Arrest or detention on the basis of sexual orientation, gender identity or intersex status, whether pursuant to a court order or otherwise, is arbitrary and is a breach of international law. States are obliged to refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.

11 UN mechanisms have called upon States to fulfil these obligations by repealing laws used to arrest or punish individuals based on their sexual orientation and gender identity, including laws criminalising homosexuality and cross-dressing, and have rejected attempts to justify such laws on grounds of the protection of public health or morals. Furthermore, all persons under arrest, regardless of their sexual orientation, gender identity or intersex status, are entitled to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

**Right to privacy**

12 Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. As confirmed by UN human rights mechanisms, the criminalisation of consensual same-sex relations between adults in private violates the rights to privacy and to non-discrimination and constitutes a breach of international human rights law. In addition, human

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17 A/HRC/19/41 (2011). Para 21
18 UDHR, art 9; ICCPR, art9; CRC, arts 37(b) & (d).
22 UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [Principles for the Protection of Persons under Detention], adopted by General Assembly resolution 43/173, 9 December 1988, Principles 10 and 11.
23 See, for example, Toonen v Australia, Communication No 488/1992, UN Doc CCPR/C/ SO/D/488/1992 (1994); CCPR/C/TGO/CO/4; CCPR/C/UGA/CO/3; CCPR/C/GRD/CO/3; CEDAW/ C/UGA/CO/7; A/54/38/Rev.1; CRC/C/CHL/CO/3.
rights mechanisms have stressed the importance of encryption and anonymity on the internet in protecting the privacy of persons persecuted on basis of sexual orientation and gender identity.24

Hate speech

13 Under international law, everyone has the right to freedom of expression. However, the exercise of the right to freedom of expression should not violate the rights and freedoms of others, including the right to equality and non-discrimination. The human rights of LGBT and intersex persons are undermined when deep-rooted hatred and incitement to violence based on sexual orientation, gender identity or intersex status is manifested and expressed. Various forms of expressions of hatred against LGBT persons, including by politicians, the media, religious leaders and others, have been addressed by UN human rights mechanisms over the years.25 International human rights law recognises that the right to freedom of expression can be restricted where it presents a serious danger for others and for their enjoyment of human rights.26

Asylum and refuge

14 Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation, gender identity or intersex status.27 A State may not remove, expel or extradite a person to any State where that person would face a threat to their life or freedom, including violence, arrest, discrimination, persecution, torture, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation, gender identity or intersex status.28

B Freedom of expression, association and assembly

15 The rights to freedom of expression, association and assembly for all persons without discrimination based on any grounds are protected under the Universal Declaration and the ICCPR.

Freedom of expression

16 Everyone has the right to freedom of opinion and expression,29 regardless of sexual orientation, gender identity or

24 A/HRC/29/32.
26 UDHR, art 19(3).
27 UDHR, art 14(1); Convention relating to the Status of Refugees (1954).
29 UDHR, art 19; ICERD, art 5(d)(viii); ICCPR, art 19; CRC, art 13.
intersex status. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation, gender identity or intersex status, through any medium and regardless of frontiers.

17 The Human Rights Committee considered that the Russian Federation had violated the right to freedom of expression under article 19(2) (read in conjunction with article 26 on the right to non-discrimination) of the ICCPR in Fedotova v Russian Federation (2012) by establishing an administrative sanction and a fine on an individual for having publicly expressed positive messages about her sexual orientation near a secondary school.

Freedom association and assembly

18 Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. In Alekseev v Russian Federation (2009) the Human Rights Committee considered that by banning the Moscow Gay Pride March the Russian Federation had violated the right to peaceful assembly under article 21 of the ICCPR. Anyone may form and have recognised, without discrimination, associations related to sexual orientation, gender identity and intersex status, as well as associations that distribute information to or about, facilitate communication among, or advocate for the rights of LGBT and intersex persons. UN human rights mechanisms have drawn attention to the arbitrary denial to register human rights associations working to protect the human rights of LGBT persons, underscoring State party obligations under article 22 of the ICCPR.

C Discrimination

19 Everyone is entitled to enjoy all human rights without discrimination, including discrimination on the basis of sexual orientation, gender identity or intersex status. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. Discrimination includes any distinction, exclusion, restriction or preference based on sexual orientation, gender identity or intersex status which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation, gender identity or intersex status may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.


UDHR, art 20; ICCPR, arts 21 & 22; CRC, art 15; ICERD, art 5(d)(ix).


See, for example, A/HRC/26/29/Add.1, 10 June 2014: Botswana.

UDHR, art 2; ICERD, art 5; ICCPR, art 2(1); ICESCR, art 2(2); CEDAW, art 3; CAT, art 1(1); CRC, art 2; ICRMW, art 1(1).


UDHR, art 7; ICCPR, art 26.

CEDAW/C/GC/28 (2010).
The section below examines some of the areas where individuals are particularly susceptible to discriminatory treatment, marginalisation and restrictions on enjoyment of rights because of their sexual orientation, gender identity or intersex status. Additional areas of concern not addressed here include discrimination in employment, housing and social benefits.

Health

21 Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation, gender identity or intersex status. Criminal laws and homophobic, sexist, transphobic and other discriminatory practices and attitudes on the part of health-care institutions and personnel may deter LGBT persons from seeking health services, which in turn has a negative impact on efforts to tackle HIV/AIDS and other health concerns. Concerns include breaches of confidentiality, stigma and violence. The Committee on the Elimination of Discrimination against Women has expressed concern about lesbian, bisexual, transgender and intersex women as victims of abuses and mistreatment by health service providers and has recommended the abolishment of requirements for psychiatric assessment, sterilisation and surgery for transgender women who wish to obtain legal recognition of their gender identity. Intersex children, who are born with atypical sex characteristics, are often subjected to unnecessary surgery, performed without their informed consent.

Education

23 Everyone has the right to education, without discrimination on the basis of their sexual orientation, gender identity or intersex status. Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading to them being refused admission or being expelled. LGBT and intersex youth frequently experience violence and harassment, including bullying, from classmates and teachers in school. States should adopt specific legislation prohibiting discrimination in education against persons based on sexual orientation, gender identity or intersex status and take measures, in particular awareness-raising, to ensure that LGBT and intersex persons are not discriminated against in their access to education.

40 UDHR, art 25; ICERD, art 5(e)(iv); ICESCR, art 12; CEDAW, art 12; CRC, art 24; CESCR General comment No 14 (E/C.12/2000/4), para 18.
41 CCPR/C/MXR/CO/4, para 12; A/HRC/14/20, paras 22-23.
42 A/HRC/14/20, para 21.
43 CEDAW/C/CRI/CO/5-6, para 40.
44 CEDAW/C/BEL/CO/7.
45 CAT/C/DEU/CO/5.
46 UDHR, art 26; ICERD, art 5(e)(v); ICESCR, art 13; CEDAW, art 10; CRC, art 28; E/CN.4/2001/52 (2001).
49 E/C.12/PER/CO/2-4.
Right to recognition before the law

24 Everyone has the right to recognition everywhere as a person before the law. Transgender persons are entitled to legal recognition of their preferred gender identity, including in their official documents. Each person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No-one should be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity. No-one should be subjected to pressure to conceal, suppress or deny their sexual orientation, gender identity or intersex status.

Access to justice

25 United Nations human rights mechanisms have condemned the persistence of impunity for human rights violations based on sexual orientation, gender identity and intersex status and repeatedly called for investigation, prosecution and punishment, and reparations for victims. Reported concerns raised by UN mechanisms include ineffective police action, failure to register cases, loss of documents, inappropriate classification of acts, including physical assault as a minor offence, and investigations guided by stereotypes and prejudices.

II ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

A UN Special Procedures

26 The UN Special Procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The Special Procedures have increasingly drawn attention to a broad range of violations of the human rights of LGBT and intersex people in both thematic and country-specific contexts. Mandate holders present reports to the Human Rights Council annually, engaging member States and accredited NGOs in interactive dialogue on the content of their reports. The Special Procedures have a number of tools at their disposal for addressing violations of the rights of LGBT and intersex persons.

27 Mandate holders have consistently raised these issues as part of their country visits. For example, in 2015 the Special Rapporteur on extrajudicial, summary and arbitrary executions drew attention to the persecution of LGBT persons in a country report on the Gambia, and the Special Rapporteur on the right to health expressed concern about discrimination against trans-gender women in Malaysia.

50 UDHR, art 6; ICCPR, art 16; CEDAW, art 15; CRC, art 8.


53 For more on the UN Special Procedures, visit www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx.


56 A/HRC/29/33/Add.1, 1 May 2015: Malaysia.
They have also included sexual orientation, gender identity and intersex issues in their thematic reports. A 2014 report of the Special Rapporteur on human rights defenders for example noted that defenders of the rights of LGBT and intersex persons are among those most at risk.\(^{57}\)

To better inform their work, mandate holders sometimes hold consultations or attend conferences or meetings that include addressing the rights of LGBT and intersex persons. For example, in preparation for a report on gender-related killings, the Special Rapporteur on violence against women invited defenders of the rights of LGBT and intersex persons to an expert consultation on the theme of her report.\(^{58}\) Similarly, the Special Rapporteur on the freedom of association and assembly included defenders of the rights of LGBT and intersex persons in an expert consultation to inform a report on challenges faced by groups most at risk when exercising or seeking to exercise the rights to freedom of peaceful assembly and association.\(^{59}\)

Special Procedures can act on individual cases by sending letters of allegation and urgent appeals to governments. Often these are sent jointly between mandate holders. In 2006, Special Rapporteurs on violence against women and human rights defenders sent a joint letter of allegation regarding the arbitrary denial of registration of an organisation working on the rights of transgender people.\(^{60}\) In 2013, mandates on freedom of expression, freedom of association and assembly, human rights defenders and extrajudicial executions sent a joint urgent appeal regarding the murder of a defender of the rights of LGBT persons and acts of intimidation against other human rights defenders.\(^{61}\)

Special Procedures have been involved in the development of new human rights guidance documents and principles. For example, along with judges, academics, a former UN High Commissioner for Human Rights, members of treaty bodies, NGOs and other experts, UN Special Procedures were part of the group that developed and adopted the Yogyakarta Principles on the Application of International Human Rights Law Relating to Sexual Orientation and Gender Identity.\(^{62}\)

Mandate holders are required to present their reports to the Human Rights Council on an annual basis and to engage in an interactive dialogue with UN member states. They have regularly included issues pertaining to the human rights of LGBT and intersex persons in their statements to the Council and have responded to State criticisms of their attention to these issues. For example, during the 26th session of the Human Rights Council the Special Rapporteur on the rights to freedom of peaceful assembly and association highlighted LGBT and intersex persons as being among those most at risk of violations of these rights. At the end of the interactive dialogue, the Special Rapporteur addressed in great detail the claims of some States regarding the cultural relativity of LGBT and intersex issues. In his response he cited excerpts of the Human Rights Council and African Commission for Human and Peoples’ Rights resolutions on sexual orientation and gender identity.\(^{63}\)

\(^{57}\) A/HRC/28/63/Add.1, 4 March 2015.
\(^{58}\) A/HRC/20/16/Add.4.
\(^{59}\) A/HRC/26/29.
\(^{61}\) A/HRC/26/29/Add.1, 10 June 2014: Cameroon.
\(^{62}\) http://yogyakartaprininciples.org/principles_en_about.htm.
Finally, mandate holders have also issued joint statements, letters and press releases. For example, in 2010, the Special Rapporteurs on the situation of human rights defenders and on the right to freedom of expression issued a joint statement on the proposed anti-homosexuality bill in Uganda. The Special Rapporteur on the right to freedom of expression has also published a cross-regional joint declaration recognising that LGBT and intersex persons struggle in equal enjoyment of the right: ‘Ten key challenges to freedom of expression in the next decade’ with the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe; the Special Rapporteur on Freedom of Expression of the Organization of American States; and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information.

B Treaty monitoring bodies

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. The principles of equality and non-discrimination are present in all of the major human rights treaties and provide the central theme of some of the international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The treaty bodies have increasingly addressed human rights issues relating to sexual orientation, gender identity and intersex status.

Treaty bodies have raised the rights of LGBT and intersex persons in their ‘lists of issues’ prior to reporting. For example, in its list of issues and questions in relation to the eighth periodic report of the Russian Federation, the Committee on the Elimination of Discrimination Against Women requested information from the State party on violence and discrimination against lesbian, bisexual, transgender and intersex women.

Committee experts can also participate in thematic briefings during sessions to develop their understanding of a particular issue or in order to get up-to-date information from relevant stakeholders. For example, members of the Committee on the Rights of Persons with Disabilities engaged in a briefing with civil society experts on the human rights of intersex persons during its review of Germany in March 2015.

During the review of a State party’s implementation of the treaty, committee members have the opportunity to engage in dialogue with the State delegation, as well as with civil society and other stakeholders. For example, in response to a question by the chairperson of the Committee Against Torture about the situation of LGBT persons, Croatia addressed conditions of detention for LGBT

More on treaty bodies is available at www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx.
CEDAW/C/RUS/Q/8.

64 Joint Statement from the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on protection of the right to freedom of opinion, 1 March 2010: Uganda.
65 A/HRC/14/23/Add.2.
persons in prisons. The consideration of the State report by the treaty bodies culminates in the adoption of concluding observations and recommendations to the State. Treaty bodies have addressed an increasingly broad range of violations of the rights of LGBT and intersex persons in concluding observations and recommendations. In its concluding observations on Ukraine, adopted in 2014, the Committee on Economic, Social and Cultural Rights expressed concern about discrimination on the grounds of sexual orientation and gender identity in employment, social security, health care and education and regretted the lack of information on measures taken to combat and prevent such discrimination. The Committee recommended that the State party take all the necessary measures to combat and prevent discrimination against LGBT persons and ensure enjoyment of the Covenant rights on an equal basis with others.

Finally, treaty bodies occasionally issue joint statements with other human rights mechanisms addressing a particular country situation or theme. For example, in May 2015, the Committee on the Rights of the Child, along with UN Special Procedures mandate holders, the Inter-American Commission on Human Rights, the African Commission on Human and Peoples’ Rights and the Council of Europe, issued a joint statement calling for an end to discrimination and violence against lesbian, gay, bisexual, transgender and intersex young people and children.

70 E/C.12/UKR/CO/6 (2014).

40 The treaty bodies also produce general comments or general recommendations that serve as authoritative guides for States on how to implement and interpret the conventions to which they are a party, including through providing substantive guidance on specific articles of each Convention. For example, the Committee on the Elimination of Discrimination against Women’s most recent General Comment, no 33 on women’s access to justice, recognises that discrimination and criminalization obstruct access to justice for lesbian, bisexual and transgender women and that intersex women also face discrimination in accessing justice.

73 CRC, UNSPs, IACHR, ACHPR, CoE: ‘Discriminated and made vulnerable: Young LGBT and intersex people need recognition and protection of their rights International Day against Homophobia, Biphobia and Transphobia’ (17 May 2015).
III THE POSITION OF THE UN

A General Assembly and Human Rights Council

41 A series of joint statements on sexual orientation and gender identity delivered by UN member states at the UN General Assembly and Human Rights Council between 2005 and 2011, provides evidence of increasing support among member states to address these issues at the UN.74

42 Since 2000, the UN General Assembly has included a reference to sexual orientation in its biennial resolutions on extrajudicial, summary and arbitrary executions,75 as did the former Commission on Human Rights.76 The latter had also addressed the use of the death penalty for sexual relations between consenting adults in its annual resolutions on the death penalty between 2002 and 2005.77 In recent years the General Assembly resolution on executions also covered gender identity as a ground for protection.78

43 In June 2011 the Human Rights Council adopted the first UN resolution on ‘human rights, sexual orientation and gender identity.’79 It adopted a follow up resolution on this theme in September 2014.80 The 2011 resolution was led by South Africa and tabled jointly with Brazil, a combined effort reflecting South Africa’s commitment to non-discrimination on the basis of sexual orientation as enshrined in its Constitution, and Brazil’s experience of resolutions on this theme at the Organisation of American States (OAS). The Human Rights Council resolution took its title from the OAS resolutions and the text and theme was closely based on earlier OAS texts, focusing on violence and discrimination as the areas of consensus. The resolution was

75 See, for example: A/RES/57/214; A/RES/59/197; A/RES/61/173; A/RES/63/182; A/RES/65/208; A/RES/67/168; A/RES/69/182.
78 A/RES/69/182/.
81 States supporting the resolution: Argentina, Belgium, Brazil, Chile, Cuba, Ecuador, France, Guatemala, Hungary, Japan, Mauritius, Mexico, Norway, Poland, Republic of Korea, Slovakia, Spain, Switzerland, Thailand, Ukraine, UK, USA, Uruguay.
States against the resolution: Angola, Bahrain, Bangladesh, Cameroon, Djibouti, Gabon, Ghana, Jordan, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Moldova, Russian Federation, Saudi Arabia, Senegal, Uganda.
Abstentions: Burkina Faso, China, Zambia.
Co-Sponsors of the resolution: Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Honduras, Iceland, Ireland, Israel, Italy, Luxembourg, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania...
adopted by a vote of 23 to 19, with 3 abstentions.81

Human Rights Council resolution 17/19 called for the UN High Commissioner for Human Rights to commission a study ‘documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity’.

The second Human Rights Council resolution was led by Brazil, Chile, Colombia and Uruguay, further building on the successes of the resolutions at the regional level, and it passed with an increased vote margin (25 to 14, 7 abstentions), reflecting the trend for increased support by member states to address these issues at the international level. It requested the High Commissioner to update the 2011 report ‘with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards’. The update was presented to the Human Rights Council in June 2015.82

Both reports contained a number of concrete recommendations to member states and to the Human Rights Council to respond to human rights violations based on sexual orientation and gender identity. The second report included recommendations regarding the human rights of intersex persons.

47 Agencies and entities in the UN system have increasingly addressed human rights issues relating to sexual orientation, gender identity and intersex status in recent years, including through research, reports, policy briefs, awareness raising materials, press releases and op-eds and joint statements. An early and important milestone was passed in 1994 when the World Health Organisation clarified that homosexuality was neither a disorder nor a disease when it removed sexual orientation from the International Classification of Diseases.83 Since then other UN entities have made efforts to integrate issues concerning LGBT and intersex persons into their work, including the OHCHR, the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the United Nations Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). For example, in 2013 the ILO issued the results of a pilot research on discrimination on the basis of sexual orientation and gender identity.84 In 2014, UNDP released a discussion paper on transgender health and human rights,85 and UNICEF published an issues paper on eliminating discrimination against children and parents based on sexual orientation and/or gender identity.86 The OHCHR has dedicated efforts to produce an

81 Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.
83 http://www.who.int/classifications/icd/en/.
84 ILO. ‘Discrimination at work on the basis of sexual orientation and gender identity: Results of pilot research’ (September 2013).
86 UNICEF. Current issues no 9 ‘Eliminating discrimination against children and parents based on sexual orientation and/or gender identity’ (2014).
awareness-raising campaign, ‘Free & Equal’, and related materials, such as fact sheets and infographics, relating to the human rights of LGBT and intersex persons.\textsuperscript{87}

In 2014, the OHCHR, UNDP, UNFPA, UNHCR, UNICEF, UN Women, ILO, UNESCO, WHO, the World Bank and UNAIDS issued a joint report providing a snapshot of the work of UN bodies in combating discrimination and violence based on sexual orientation and gender identity, and related work in support of LGBT and intersex communities around the world, together with a contact list of focal points in each UN entity and links and references to documents, reports and other materials that can be consulted for further information.\textsuperscript{88}

Recently, the ILO, OHCHR, UNAIDS, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO issued a joint statement calling on States to act urgently to end violence and discrimination against LGBT and intersex adults, adolescents and children.\textsuperscript{89}

C Universal Periodic Review

The Universal Periodic Review is a peer review process whereby all UN member states are given recommendations on human rights on a four and a half year cycle. The working group reviews are based on three input documents: a national report, a compilation of UN information, and a summary of stakeholder submissions.\textsuperscript{90}

To date at least 36 UPR recommendations on SOGI issues have been accepted by African States, including by Cameroon, Cape Verde, Côte d’Ivoire, Equatorial Guinea, Ghana, Kenya, Mauritius, São Tomé and Príncipe, Seychelles, South Africa, Swaziland, Uganda and Zambia. Accepted recommendations on SOGI issues by African States include recommendations on investigating attacks and threats, protecting LGBT and intersex human rights defenders, launching awareness campaigns, fighting violence and discrimination based on SOGI, adopting anti-discrimination legislation, ensuring the right to health without discrimination, decriminalising same-sex relations between consenting adults, and establishing human rights education programmes for police, prison and judicial staff on these issues.\textsuperscript{92}

\textsuperscript{87} http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTFactSheets.aspx.
\textsuperscript{88} UN agencies: ‘The Role of the United Nations in Combating Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity: A Programmatic Overview’ (November 2014).
\textsuperscript{89} http://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx.
\textsuperscript{90} http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.
\textsuperscript{91} http://arc-international.net/global-advocacy/universal-periodic-review/.
\textsuperscript{92} http://s.upr-info.org/1VHfvwa.
FOR MORE INFORMATION

Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people

Office of the High Commissioner for Human Rights – sexual orientation and gender identity
www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx

International Commission of Jurists – database of UN references to sexual orientation and gender identity
www.icj.org/advanced-search-for-sogi-un-database/

UPR Info – database including Universal Periodic Review references to sexual orientation and gender identity
http://s.upr-info.org/1xnZGfM

Programmatic overview of UN entity work on sexual orientation and gender identity

Booklet, ‘Born Free and Equal’

UN Free & Equal campaign
www.unfe.org/en
Annex 7: HIV, human rights and sexual orientation and gender identity

INTRODUCTION

In recent years, new HIV cases have been declining in most parts of the world. However, UNAIDS’ data shows that among transgender people, gay men and other men who have sex with men (MSM), new HIV infections (HIV incidence) appear to be rising in several regions.

Source: UNAIDS, Gap report, 2014, p 205

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1 The term ‘men who have sex with men’ describes males who have sex with males, regardless of whether or not they have sex with women or have a personal or social gay or bisexual identity. UNAIDS UNAIDS terminology guidelines, revised version, 2011, p 30, available at http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_en.pdf (accessed 27 October 2015).

2 UNAIDS The gap report, p 203.
High HIV incidence and prevalence are mainly caused by structural factors, such as stigma, discrimination, violence and other human rights violations that lesbian, gay, bisexual and transgender (LGBT) people face. These human rights violations contribute to making members of these populations – particularly transgender people, gay men and other MSM – vulnerable to HIV while at the same time hindering their access to and uptake of HIV prevention, testing and treatment services.

This background paper describes how human rights violations based on sexual orientation and gender identity (SOGI) negatively impact the response to HIV. It also shows that creating legal and social environments for LGBT people that are based on human rights has important public health benefits, including for the response to HIV.

I HUMAN RIGHTS VIOLATIONS BASED ON SOGI NEGATIVELY IMPACT HIV RESPONSES

Criminalisation, violence, discrimination and other human rights violations based on SOGI are contrary to international human rights law. Moreover, available evidence shows that they have significant negative consequences on the HIV epidemic and public health.

A Human rights violations limit access to HIV education, prevention, treatment and care services for LGBT people

Human rights violations based on SOGI contribute to creating an environment of fear that drives LGBT people away from HIV services. In Senegal, the arrest in 2008 of nine HIV prevention and outreach personnel working with MSM and charges against them for ‘acts against nature’ negatively impacted HIV prevention efforts. According to a study conducted in Senegal following these arrests:

All participants reported pervasive fear and hiding among MSM as a result of the December 2008 arrests and publicity. Service providers suspended HIV prevention work with MSM out of fear for their own safety. Those who continued to provide services noticed a sharp decline in MSM participation.

More recently in Nigeria, research has shown the negative impact on access to HIV treatment and care of the passage of new legislation criminalising same-sex sexual conduct and related activities, including higher numbers of gay men and other MSM reporting fear of seeking health care services.

In places where same-sex sexual relations are criminalised, possession of HIV and health commodities that are associated with or labelled for use by MSM, such as lubricants, has been used as evidence in criminal cases.

The use of such evidence and prosecutions based on these grounds are likely to further stigmatise and compromise the use of HIV prevention methods by MSM and other LGBT people.

Perceived homophobia, transphobia, ignorance and insensitivity within the health care system, have also been shown to affect

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3 While it often refers to LGBT people in general, this paper mostly addresses the health and HIV challenges faced by gay men, men who have sex with men and transgender people. This is because there is more available research on these populations in the context of HIV. While lesbian women and intersex persons are not the focus of this paper, the human rights violations that they face and the potential or actual resulting impact on their health, including vulnerability to HIV, should be recognised and addressed.


5 As above.


access to and uptake of HIV services by LGBT people. In Botswana, Malawi and Namibia, MSM also report being denied access to HIV and health services based on actual or perceived sexual orientation. Poor access to health care services among MSM translates into ‘underutilization of services, such as HIV voluntary counselling and testing, and ultimately to low self-awareness of HIV sero-status’ among this key population.

In many contexts, fear of negative consequences (including violence, prosecution, denial of services and judgemental attitudes) hinders MSM from disclosing their same-sex practices to their medical practitioners. An assessment conducted in four Caribbean countries (Guadeloupe, Suriname, Cuba, and Antigua) shows that MSM were less likely to seek medical attention for anal symptoms than for penile symptoms, and that many MSM conceal their sexual behaviour from care providers. In Malawi, Botswana and Namibia, more than 80% of MSM have not disclosed their same-sex sexual practices to a health practitioner. This situation has serious implications for providing information, protection and quality health care services for this population because MSM have different HIV risks as compared to heterosexual men suggesting that the consistent association between discrimination events and [sexually transmitted infection] STI variables is reflective of the role of stigma in the general sexual health of MSM. Clinicians likely will not assess for anal [human papillomavirus] HPV infection, among other STIs, among men unless they are aware that these men are at specific risk for these infections.

Similarly, stigma and discrimination in the health system alongside lack of knowledge of transgender people’s health-related needs by health personnel has been shown to deter transgender people from using HIV services. A qualitative study in San Francisco, in the United States, showed that where transgender women had negative or transphobic experiences in the health-care system in the past, they were reluctant to seek HIV testing for fear that a diagnosis would require additional interaction with health-care providers.

Lack of understanding of sexual orientation, gender identities and expressions, insensitivity to the needs of LGBT people, the persistence of a heteronormative construct of sexuality as well as binary constructions of sex and gender (between male and females) have been shown to also compromise access to appropriate health and HIV services for gay men, MSM and transgender people. For instance, many healthcare providers still refer to transgender individuals by the name and sex they were assigned at birth instead of the name associated with their self-identified gender. As a result, needed health care services are not offered or denied to people based on wrong assumptions. For instance, prostate screening is not offered to transgender women and transgender men may be denied Pap smear.

Widespread violence, including sexual violence, against LGBT people in many settings not only violates their human rights and drives them away from health and HIV services; it also exposes them to serious risk of HIV infection. A study conducted in four

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10 As above, p 2.


12 Fay et al (n 9 above) p 9

13 UNAIDS (n 2 above) p 224.


15 As above.


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Southern African countries found that lesbian and bisexual women who reported forced sex by men were more likely to be HIV positive than those who did not. In addition, several studies and reports from across the world have shown that sexual violence against LGBT people has serious other negative health and social consequences for this population, including lower sense of belonging, risk of suicide, mental distress, alcohol and drug abuse and increased risk of STIs.

In many settings, a significant proportion of young transgender women engage in selling sex. This is often a result of social exclusion, economic vulnerability and difficulty in finding employment. In El Salvador, close to 47% of transgender women reported that their main income is earned by selling sex. Transgender women who engage in sex work are at increased risk of HIV infection. A systematic review and meta-analysis in 2008 reported an overall HIV prevalence of 27.3% among transgender women who engage in sex work.

Human rights violations hinder the development and implementation of effective HIV programmes for LGBT people

In many contexts, including in Africa, legal barriers (such as criminalisation of same-sex sexual relations and gender expression), social and moral constructs linked to same-sex sexual relations, and the binary gender construct hinder the ability of relevant government departments and other actors involved in the HIV response, to design and implement effective HIV prevention, treatment, care and support programmes for MSM and transgender people.

HIV prevention and education programmes often fail to specifically target MSM and transgender people and are not adapted to their health needs. According to reports from 20 countries in both 2009 and 2013, the percentage of gay men and other MSM reached by HIV prevention programmes fell from 59% to 40%. An international review concluded that less than one in ten gay men and other MSM receive a basic package of HIV prevention interventions. In Malawi, only 17% of MSM reported to have been exposed to specific HIV prevention messaging for MSM, and only 35% of the participants had tested for HIV. In Zambia, 73% of MSM had misinformation about HIV, thinking that anal sex was safer than vaginal sex. Lack of HIV prevention tools and messaging for MSM and other gay men compromises their ability to know and reduce the risk of HIV infection for themselves and their sexual partners. Similarly, treatment and care services to address the specific health needs of LGBT people, including anorectal health services for gay men and other MSM are often limited or not available in many health facilities.

Overall, transgender people, gay men and other MSM are being left behind in the

19 UNAIDS (n 2 above) p 217.
20 As above.
21 UNAIDS (n 2 above) p 218.
22 UNAIDS (n 2 above) p 208.
24 Fay et al (n 9 above).
25 Fay et al (n 9 above) p 2.
In 2010, MSM benefited from less than 2% of HIV prevention resources globally. The vast majority of investments in HIV services for gay men and other MSM comes from international donors instead of national spending. This is primarily because in countries where same sex relations are criminalised, governments are not investing in the health of LGBT people. 

In many regions, critical gaps exist in HIV surveillance, epidemiological and programmatic research for MSM and transgender populations. Lack of data on HIV among LGBT populations has far-reaching consequences, as it renders them further invisible and limits the ability of governments and others to develop and appropriately fund programmes aimed at addressing their health needs.

II ENABLING SOCIAL AND LEGAL ENVIRONMENTS FOR LGBT PEOPLE ARE CRITICAL TO EFFECTIVE HIV RESPONSES

Evidence from more than 30 years of response to HIV shows that effective responses to HIV among transgender people, gay men and other MSM require: (i) ending criminalisation and other human rights violations against LGBT people; and (ii) promoting legal and social conditions that enable meaningful participation of LGBT people in HIV and health programmes.

C Ending human rights violations based on SOGI is critical to HIV and health responses

Protecting the human rights of LGBT people, including MSM and transgender people is not only intrinsically right; it is also a public health imperative. In many countries where same-sex sexual relations are not criminalised and where stigma and discrimination have been reduced, MSM are more likely to take up HIV prevention, treatment, care and support services. For instance, Brazil’s efforts to decrease homophobia and stigma in health care settings, schools, and broader society is an example of human rights-based HIV prevention programming that has reached 3,074,980 MSM – an estimated coverage of 96%.

A number of global health institutions, including UNAIDS and the World Health Organisation, have called for ending human rights violations against LGBT people as a critical step to effective HIV responses. In particular, the 2011 WHO guidelines on Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people, recommends that

Legislators and other government authorities should establish antidiscrimination and protective laws, derived from international human rights standards, in order to eliminate discrimination and violence faced by MSM and transgender people, and reduce their vulnerability to infection with HIV, and the impacts of HIV and AIDS.

28 UNAIDS (n 2 above), p 210.
D Meaningful participation of LGBT people in HIV and health programmes is necessary to ending the AIDS epidemic

The involvement of community organisations has been critical to current global successes against the AIDS epidemic. Civil society and community organisations provide much needed HIV education, prevention, treatment support and care services to populations who are often underserved or are fearful to seek these services. However, community organisations working with MSM and transgender people face serious legal and social barriers that limit their efforts to provide HIV and health services for these populations.

Punitive laws have caused outreach organisations and health service providers to stop or reduce the scope of their activities owing to the fear of harassment and prosecution.\(^3^4\) As a result, coverage and access to HIV services for these populations remains inadequate. In many countries, LGBT people are not able to constitute associations or organisations to advance the human rights and health of members of their communities. In some countries, legislation prohibits any organisation from supporting LGBT people. However, in a landmark 2014 judgement, the High court of Botswana held that the refusal by the government to register the organisation known as LEGABIBO (Lesbians, Gays and Bisexuals of Botswana) violates the rights to freedom of expression, assembly and association protected by the country’s constitution.\(^3^5\) In its heads of arguments before the High Court, LEGABIBO had noted that once registered, it ‘will provide an opportunity for lesbians, gays and bisexuals to be part of an association providing information on human rights and serving as an advocate for their rights, particularly the right to access to health services’.\(^3^6\)

These limitations not only infringe on freedom of association; they also compromise the ability of LGBT people and individuals supporting them to organise and participate meaningfully in the design and implementation of programmes to provide HIV-related services to populations affected by the HIV epidemic. This is particularly concerning because studies have confirmed that involvement of MSM and transgender people in peer outreach and other community-level interventions results in a 25% reduction in HIV risk behaviour.\(^3^7\) UNAIDS therefore calls on all countries to create legal and social conditions to enable LGBT people and the organisations supporting them to fully participate in HIV and health responses.

CONCLUSION

Laws that criminalise adult consensual same-sex sexual relations and other punitive laws used against LGBT people infringe on human rights, undermine the effectiveness of HIV programmes, and limit the ability of members of these populations to seek and benefit from HIV programmes. On the contrary, a legal environment that protects human rights and ensures access to HIV programmes without discrimination, including for transgender people, gay men and other MSM helps to achieve an effective

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37 WHO, UNAIDS, GIZ, MSMGF and UNDP (n 33 above) p 46.
and rights-based response. \textsuperscript{38} UNAIDS, WHO and other global health organisations therefore call for urgent actions to end criminalisation, violence and other laws and practices that violate the human rights of LGBT people as necessary to advancing public health and ending the AIDS epidemic.

\textsuperscript{38} See UNAIDS (n 2 above); Beyrer et al (n 32 above); and also WHO, UNAIDS, GIZ, MSMGF and UNDP (n 33 above).
Tab 4
Violence against LGBTI Persons
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas

2015
www.iachr.org
The Inter-American Commission on Human Rights (IACHR) is grateful for the financial support provided by the Arcus Foundation, Chile, Denmark, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Netherlands, the United Kingdom, and the United States of America between 2011 and 2015. The drafting and publication of this Report was made possible by these financial contributions. The content of this Report is to be attributed solely to the IACHR.
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EXECUTIVE SUMMARY
EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “the Commission,” or “IACHR”) is concerned about the high levels of violence against lesbian, gay, bisexual, trans, and intersex (LGBTI) persons, or those perceived as such in the Americas and the lack of an efficient response from the States. This is evidenced by the lack of adoption of effective measures to prevent, investigate, sanction and provide reparations to acts of violence committed against LGBTI persons, under the due diligence standard. Even though the IACHR acknowledges some steps forward in some Member States of the Organization of American States (hereinafter “OAS”), violence against LGBTI persons is pervasive throughout the Americas.

2. This Report focuses particularly on the acts of physical violence committed against persons with non-normative sexual orientations, identities and gender expressions, or whose bodies vary from the standard for female and male bodies in the Americas. In relation to the acts of violence against lesbian, gay, bisexual and trans (LGBT)\(^1\) persons, the IACHR highlights that these acts often show high levels of cruelty. For example, in several cases documented by the IACHR, the lifeless bodies of LGBT persons show signs of torture, mutilation of their genitalia; and their bodies have been quartered and marked with signs that indicate high levels of prejudice.

3. In this Report, the Commission focuses on violence against LGBT persons as a contextualized social violence in which the perpetrators’ motivation needs to be understood as complex and multi-faceted, and not only as a individual-based act. In this regard, the IACHR understands that acts of violence against LGBT persons, commonly referred to as “hate crimes,” homophobic or transphobic acts, are best understood under the concept of violence based on prejudice against non-normative sexual orientations and gender identities (hereinafter “violence based on prejudice”). Violence based on prejudice is a social phenomenon, addressed toward specific social groups, such as LGBT persons, it has a symbolic impact and sends a message of terror to the LGBT community in general. Similarly, the IACHR considers violence against intersex persons as being violence based on prejudice against bodily diversity, and more specifically against persons whose bodies differ from the socially accepted standard for female and male bodies.

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\(^1\) The IACHR uses the LGBTI acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the LGBT acronym.
Chapter 3

4. With respect to legislation that expressly criminalizes same-sex intimacy, the IACHR notes that eleven OAS Member States in the Commonwealth Caribbean maintain laws criminalizing private, consensual, adult sexual activity, and one such state has legislation that criminalizes cross-dressing, which has an impact on the lives of trans persons. Even if prosecutions are not common, the IACHR notes that this type of legislation contributes to an environment that condones discrimination, stigmatization, and violence against LGBT persons. These laws reinforce existing societal prejudices and increase the negative effects of such prejudices on the lives of LGBT persons, particularly in contexts where the violence based on prejudice against LGBT persons is pervasive. These laws provide a social sanction for abuse, breed intolerance, and have been used to justify arbitrary detention, police abuse, and extortion and torture. As a result, LGBT persons are drawn into the criminal justice system. Once such persons are incarcerated or otherwise implicated in the justice system, this situation can in turn give rise to further incidents of discrimination and violence. Further, the Commission is of the view that these legal provisions violate the principles of equality and non-discrimination, in accordance with international human rights law.

5. The IACHR urges the States of the region that still have laws criminalizing consensual sex and sexual intimacy between adults of the same sex, serious and gross indecency laws —in as much as they criminalize same-sex intimacy—, and legislation criminalizing cross-dressing, to repeal those laws, and, in the interim, to impose an explicit and formal moratorium on the enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten, extort or commit acts of violence against LGBT persons or those perceived as such.

6. The Commission has also received reports on the impact of laws against vagrancy and loitering, legislation seeking to protect “public morals,” or “public order,” or local misdemeanor codes that, while not directly criminalizing same-sex activity or trans persons, are often construed and applied to criminalize LGBT persons. Vague definitions of outlawed conduct open the door to arbitrary application and enforcement with respect to persons who are seen as defying socially established and traditional gender norms, particularly trans persons. For example the mere presence of a trans person in public may be interpreted as an “obscene exhibition” by police – or same-sex couples publicly displaying affection. These laws, via highly subjective and prejudiced interpretations of the vague concept of “public morals” and similar terms, contained within them, facilitate police abuse, extortion, and arbitrary detention, particularly of trans sex workers, and often without effective judicial oversight.

7. The IACHR recommends that OAS Member States repeal legal provisions that penalize public conduct on the grounds of protecting vaguely defined concepts of “public morals,” and similar terms, which are applied disproportionately to LGBT persons and which have the effect of criminalizing them.
Chapter 4

8. The Report describes the multiple forms of lethal and non-lethal violence against LGBTI persons including violations of the right to life in the form of extrajudicial executions by State actors, or with their acquiescence, and killings by non-State actors. The findings of a Registry of Violence prepared by the IACHR, during a fifteen-month period (between January 1, 2013 and March 31, 2014) suggest that the majority of the victims of killings and other serious acts of violence were gay men and trans women, or persons perceived as such. Serious non-lethal violence against LGBT persons is committed both by state and non-state actors but the IACHR has continuously received information about acts of violence against LGBT persons perpetrated by law enforcement agents, including acts of torture, degrading or inhumane treatment, excessive use of force, illegal and arbitrary detentions, and other forms of abuse. Illegal and arbitrary detention is another significant concern in the context of police abuse against LGBT persons.

9. The Report also addresses rape and other acts of sexual violence that LGBT persons are subjected to. The IACHR has received information concerning the related stigma faced by gay men who are victims of sexual violence, and the obstacles in reporting this violence. The Commission has also learned of instances of “corrective rape,” mostly targeting lesbian, bisexual, and trans women, or those perceived as such, including women who are perceived to be “masculine” or who defy traditional gender norms. Sexual violence, incorrectly called “corrective” is used to punish persons who defy traditional gender norms because of their sexual orientation, gender identity or expression. The IACHR found that the essence of this crime is the punishment for non-normative sexuality or non-conforming gender.

10. The Inter-American Commission is very concerned about information it has received concerning the human rights violations carried out against intersex persons because their bodies do not physically conform to the medically and culturally defined standards for “female” and “male” bodies. These include sex-assignment and genital surgeries that are performed without informed consent of intersex persons. Most of these procedures are reported to be irreversible in nature and aimed at attempting to “normalize” the appearance of the person’s genitals. Such surgeries and procedures have been reported to cause intersex children and adults great harm, including —but not limited to— chronic pain, lifelong trauma, genital insensitivity, sterilization, and diminished or lost capacity for sexual pleasure. Often these surgeries result in forced or coerced sterilization. According to the information received, these interventions are standard practice in countries across the Americas. The IACHR also notes that there is limited access to justice for intersex persons and their families.

11. The IACHR recommends that OAS Member States make necessary amendments to law and policy to prohibit medically unnecessary medical procedures on intersex children and adults, when it is administered without their prior, free, and informed consent, except in cases of medical risk or necessity. Non-medically necessary surgeries and other medical
intervention should be delayed until intersex persons can decide for themselves.

12. Further, the information received by the IACHR points to instances in which LGBT persons or those perceived as such are subjected, usually by their parents or relatives, to psychotherapeutic treatment, internment in “clinics” or camps, and physical and sexual abuse, particularly targeting young women and adolescent girls. The Pan-American Health Organization (PAHO) and UN human rights experts have affirmed that such treatments serve no medical purpose and represent a severe threat to the health and human rights of the affected persons.

13. The IACHR and its Special Rapporteurship on Freedom of Expression reaffirm that the right to freedom of expression is important in order to guarantee the right to equality to groups that have suffered from historical discrimination. The Commission and its Special Rapporteurship also highlight that according to principles of pluralism and diversity, freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information considered inoffensive but also in cases of speech that is shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population. The American Convention on Human Rights (“American Convention” or “Convention”) establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights of other persons. These limitations must be exceptional in nature, and comply with the requirements established in Article 13(2) of the American Convention. Specifically, Article 13(5) of the American Convention prohibits hate speech that constitutes “incitement to lawless violence or to any other similar action against any person or group.” The IACHR and its Special Rapporteurship affirm that Article 13(5) includes hate speech that incites lawless violence against a group on the grounds of sexual orientation, gender identity, and bodily diversity.

14. According to the standards established under the American Convention, speech cannot be prohibited simply because it expresses an inflammatory, stigmatizing, or offensive idea or opinion. Rather, it must specifically incite violence or other similar action before it rises to the level of an act that must be punishable under criminal law. The imposition of sanctions under the charge of advocacy of hatred – as prohibited by Article 13(5) of the Convention – requires a high threshold because, as a matter of fundamental principle, prohibition of speech must remain an exception. The IACHR and its Special Rapporteurship on Freedom of Expression highlight that a comprehensive approach that goes beyond legal measures and includes preventive and educational measures should be adopted to address and respond to hate speech. States should implement measures to strengthen the obligations of public broadcasters to serve the informational and expressive needs of this community, as well as to promote awareness of issues that concern them. States should also create an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that provide information to and voice needs of LGBTI persons. Further, States should establish appropriate sanctions for hate speech that incites lawless violence by public officials. Finally, the IACHR and its Special Rapporteurship recommend that States encourage media to play a positive role in
countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have historically suffered discrimination an opportunity to speak and to be heard.

Chapter 5

15. The experiences of violence by lesbian, gay, bisexual, trans, and intersex persons are diverse. In this Report, the IACHR examines the situation of violence faced by persons at the intersection of non-normative sexual orientations, gender identities, and variations in sex characteristics, on the one hand, and the following factors on the other: ethnicity; race; sex; gender; migration status; age; status as a human rights defender; and poverty. These groups can suffer from a continuous cycle of violence and discrimination caused by impunity and a lack of access to justice. The situation of persons deprived of liberty is addressed in chapter four.

16. In this Report, the IACHR also notes that pervasive violence, prejudice, and discrimination in society at large and within the family hinder trans women’s possibilities to access education, health care services, safe shelters, and the formal labor market. In turn, homelessness and exclusion from education and the formal labor market make trans persons more susceptible to diverse forms of violence. Violence against trans persons, particularly trans women, is the result of a combination of factors: exclusion, discrimination and violence within the family, regarding education, and in society at large; lack of recognition of their gender identity; involvement in occupations that put them at a higher risk for violence; and high rates of criminalization. Latin American organizations report that the life expectancy of trans women in the region is between 30 and 35 years of age. According to the data collected by the IACHR, 80% of trans persons killed during a 15-month period were 35 years of age or younger. The IACHR has received consistent reports showing that trans women who are sex workers are particularly vulnerable to community violence, including killings by individuals, their clients, illegal armed groups or gangs.

17. The IACHR notes as well that there is a strong link between poverty, exclusion, and violence. LGBT persons living in poverty are vulnerable to police profiling and harassment, and consequently to higher rates of criminalization and imprisonment. According to the information received, LGBT youth experience high levels of homelessness, which heightens their risk of being subjected to violence. The Commission notes that shelters and foster care group homes are often unsafe for LGBT persons, particularly trans and gender non-conforming persons. Further, the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirming surgeries and other related body modifications, which may be necessary to some trans persons in their process of constructing their identity.

Chapter 6

18. States have various obligations with respect to violence against LGBTI persons, including measures to prevent, investigate, prosecute, punish and provide reparations. With respect to prevention, States must develop data collection
measures to study and assess the extent and tendencies of violence based on prejudice against LGBTI persons. There are certain measures that States should take regarding their legal framework which could have a concrete impact on prevention efforts, such as the adoption of hate crimes laws, the inclusion of sexual orientation and gender identity as factors which increase criminal penalties, and the legal prohibition of non-medically necessary surgeries or interventions on intersex children and adults, without informed consent. Despite the shortcomings in the implementation of hate crimes legislation, the IACHR considers that the enactment of these provisions has a symbolic impact in recognizing these types of violence and in sending a strong message to society as a whole that the State takes these crimes seriously.

19. Further in the area of prevention of violence, OAS Member States must adopt a legal framework to specifically protect persons from discrimination based on sexual orientation, gender identity, and bodily diversity. This framework must include non-discrimination laws, amendments to existing non-discrimination laws to include these grounds, and gender identity legislation. The right to equality and non-discrimination entails that States are not just obliged to provide equal protection before the law to all persons under their jurisdiction, but also that they must adopt legislative measures, public policies, and other measures that are necessary to guarantee the effective exercise of this right. In this trend, the Inter-American Commission and the Inter-American Court have interpreted that sexual orientation and gender identity are protected categories under “any other social condition” under Article 1.1 of the American Convention.

20. In this Report, the Inter-American Commission underscores how important it is for States to adopt measures to eradicate the stigma and negative stereotypes of LGBTI persons that fuel discrimination and violence against them. The IACHR has affirmed that positive public statements by State authorities are key in combating stigmatization of LGBTI persons, since States play a crucial role in leading social change to combat discrimination and social prejudices. State policies directed at educating the public about human rights with a gender and diversity perspective should not be restricted to educational environments. Rather, they should be crosscutting in every field in which the State operates. The Commission also underscores the importance of involving civil society in the development of public policies to address the human rights of LGBTI persons. LGBTI organizations, groups, and individuals should be systematically consulted and made part of decision-making processes in the drafting of policies and legal provisions that affect their rights.

21. Regarding criminal investigations, the Commission finds that there is significant underreporting of acts of violence against LGBTI persons in OAS Member States. According to the information received, in general terms, LGBTI persons and their relatives encounter numerous obstacles and barriers in accessing justice, including: ill-treatment by police officers when they attempt to report crimes; fear of retaliation and re-victimization (which affects victims, relatives and witnesses); fear of disclosing one’s sexual orientation or gender identity; lack of legal aid programs or limited availability of affordable, qualified and respectful legal counsel; and lack of sensitivity or
training of State officials who play a role in the justice system ("justice operators"), including judges and public prosecutors, among others.

22. When States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which can in turn fuel further violence and leads to victims’ mistrust of the justice system. The Commission notes that accurate statistics on conviction rates in cases of violence against LGBTI persons in countries in the region range from limited to non-existent. Lack of judicial statistics further complicates the analysis of situations of impunity in cases of violence against LGBTI persons. Nevertheless, several States and civil society organizations have compiled enough information to contrast the high number of killings with the low number of cases in which investigations were opened in those countries. Similarly, there is a great difference between the number of cases in which investigations were opened and those in which a final decision was handed down. The results that have been brought to the attention of the Commission speak of disturbing levels of impunity.

23. The IACHR has consistently received information concerning serious deficiencies in the investigation of cases of violence based on prejudice toward non-normative sexual orientations and gender identities. In more closely examining what is driving this impunity, the IACHR finds in this Report that there are deficiencies in the investigation and prosecution of these cases of violence throughout the region. These deficiencies include prejudice against non-normative sexual orientations and gender identities in the carrying out of the investigations themselves, and lack of a differentiated approach. The usual consequence of allowing biased assumptions to taint the investigative effort is that — instead of thoroughly collecting evidence and conducting serious and impartial investigations — police officers and other justice system agents direct their actions toward finding evidence that confirms their prejudiced theory of events, which in turn frustrates the purpose of the investigation and may lead to the invalidation of the proceedings. Such assumptions may also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all.

24. The IACHR has received information establishing that, due to prejudice in the justice systems in countries in the Americas, killings of LGBT persons, are not categorized as crimes motivated by prejudice, as often as they should be. For example, in the case of killings of lesbian, gay, and bisexual persons, they are often characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. With respect to trans persons, the investigations are generally biased and based on prejudice from the outset, characterized from the beginning as crimes solely related to criminal activity.

25. The IACHR acknowledges that there are challenges in determining whether or not such violence is based on prejudice, particularly in the absence of a confession of a prejudice-based motive. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence. Specific factors, referred-to in this Report, including particular types of evidence.
and the presence of certain circumstances surrounding the violence, may be valuable in indicating the existence of such prejudice-based motivation. States must ensure from the very beginning of the investigation that there is an examination of the motives of the attack, and that this examination includes opening lines of investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims. Given the generalized context of violence, the IACHR is of the view that the investigations should be initiated under the theory that the crime was based on prejudice. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.

26. The Commission urges States to take all necessary measures to apply due diligence in preventing, investigating, and punishing violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, with the latter including education and health facilities. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to adopt all necessary measures in the search for the truth, in order to clarify what happened and unmask possible discriminatory motives.

27. The Commission is concerned about information it has received regarding courts in the region that have partially or fully excused crimes such as murder or assault against LGBT persons because the attacks in question were supposedly committed in response to non-violent same-sex sexual advances, or because of the gender identity of the victim. The IACHR urges OAS Member States to undertake the necessary legal and public policy changes to expressly establish that the sexual orientation, gender identity, or gender expression of victims can never be used to establish a partial or full justification of crimes committed against them.

28. The IACHR highlights that in addition to opening lines of investigation at the outset of the investigation that take into account whether the crime was committed based on prejudice, and to conduct investigations that are free of stereotypes related to diverse sexual orientations and gender identities; OAS Member States must take into account the general context of bias, prejudice, and violence against LGBTI persons in their countries, which may be more profound in places outside of the major cities. In addition, in conducting these investigations, State authorities should rely on expert witnesses who are able to identify the often nuanced discrimination and prejudice against LGBTI persons that is pervasive and embedded in the societies of the region. States are further encouraged to consult civil society organizations and LGBT activists in order to adequately craft protocols that set out the indicators of potential prejudice-motivated crimes that are relevant to investigations in the given country.

29. The IACHR calls on OAS Member States to adopt measures to guarantee that LGBTI victims of human rights violations and their relatives have effective access to reparations, in accordance with inter-American legal standards. States must design and implement reparations programs that take into account the specific needs of lesbian, gay, bisexual, trans, and intersex persons, and which are the result of consultative processes with civil society organizations that defend the rights of LGBTI persons.
CHAPTER 1

INTRODUCTION
INTRODUCTION

A. Background

1. In the past years, the IACHR has been receiving increasing amounts of information on the human rights situation of lesbian, gay, bisexual, trans and intersex (LGBTI) persons in the Americas. The sources of this information include oral and written presentations during public hearings, information received through visits by the Commission, petitions and requests for precautionary measures, and communication from other actors in the Inter-American System. The information received indicates that LGBTI persons, or those perceived as such, are subject to various forms of violence and discrimination based on the perception of their sexual orientation, their gender identity or gender expression, or because their bodies differ from the socially accepted standard for female and male bodies. These situations of violence and discrimination are in clear violation of their human rights as recognized in Inter-American and international human rights instruments.

2. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the Americas. The IACHR found that during a period of fifteen months (between January 2013 and March 2014) there were at least 770 acts of violence committed against LGBT persons, which included 594 killings. As will be
discussed in Chapter 4 of the Report, the IACHR notes that the low number of complaints of acts of violence renders violence based on prejudice invisible throughout the region. Many of these attacks were committed with verbal violence motivated by prejudice based on the perception of the sexual orientation or gender identity of the victims. Acts of violence against LGBT persons, or those perceived as such, are particularly cruel and in some instances characterized by levels of brutality exceeding that of other hate crimes. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has noted “grotesque homicides” perpetrated with broad impunity, allegedly at times with the “complicity of investigative authorities.” According to the information received and as will be examined in this Report, there are high levels of impunity regarding this violence.

As a result of several years’ work by civil society organizations in the context of the Organization of American States (OAS) political bodies, and particularly thanks to the work of the Coalition of LGBTTTI Organizations of Latin America and the Caribbean, the OAS General Assembly adopted a historic resolution on human rights, sexual orientation and gender identity in 2008. In consecutive years, the OAS General Assembly adopted other resolutions calling on OAS Member States to eliminate all forms of discrimination and violence against LGBTI persons. In these resolutions, Member States gradually agreed on key issues such as the need to: prevent and investigate crimes against LGBTI persons and bring their perpetrators to justice; produce data on violence against LGBTI persons; protect human rights defenders; guarantee access to justice for LGBTI persons; adopt public policies to combat discrimination against persons based on their sexual orientation or gender identity; ensure access to political participation by LGBTI persons; avoid undue approved medical protocols, and is not reported in the media, or denounced by the families or organizations. Further, feelings of shame and fear of societal discrimination, contribute to the invisibility and secrecy around these acts of violence against intersex persons. IACHR, Press Release No. 153A/14, Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014, Annex to Press Release No. 153/14. December 17, 2014.


6. This Coalition encompasses several organizations working on sexual orientation, gender identity and bodily diversity from Latin America and the Caribbean region, and conducting advocacy before the OAS on these issues. The acronym LGBTTTI stands for lesbian, gay, bisexual, travesti, transsexual, transgender, and intersex.

7. OAS, General Assembly, Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2435 (XXXVIII-O/08), adopted at the fourth plenary session, held on June 3, 2008.

interference with the private lives of LGBTI persons; and protect intersex people with respect to medical practices which may violate their human rights.

4. In 2010, as part of its Strategic Plan for 2011-2015, the IACHR adopted a Plan of Action specifically addressing the rights of LGBTI persons. In March 2011, the IACHR decided to give special thematic emphasis to the rights of LGBTI persons, stating that “the Commission has confirmed that LGBTI persons face serious discrimination, both in fact and in law, in the countries of the region. Among other violations, the IACHR has received information about murders, rapes, and threats to which LGBTI persons are victims. [Further], LGBTI persons face significant barriers in their access to health, employment, justice, and political participation.”9 In November 2011, the Inter-American Commission created a specialized unit within its Executive Secretariat (the Unit on the Rights of LGBTI Persons, hereafter “the LGBTI Unit”), and in November 2012, it designated Commissioner Tracy Robinson to be in charge of the LGBTI Unit.

5. On November 8, 2013, the IACHR established the Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons10 to ensure specialized attention to this work.11 On February 1, 2014, the LGBTI Rapporteurship became fully operational, continuing the work of the former LGBTI Unit.12 The LGBTI Rapporteurship has four pillars of work: (i) preparation of regional, sub regional and/or thematic reports on the human rights of LGBTI persons; (ii) processing of petitions claiming human rights violations based on sexual orientation, gender identity or bodily diversity; (iii) monitoring the human rights situation of LGBTI persons in the Americas; and (iv) providing specialized technical advice to OAS Member States and OAS political organs.13

B. Methodology of the Report

6. In the drafting of this Report, the Commission has received valuable information from different sources on violence against LGBTI persons. Over the last ten years (between March 2005 and October 2015), the IACHR held 37 public hearings specifically devoted to the situation of LGBTI persons, and more than 16 public hearings in which the situation of the rights of LGBTI persons has been discussed within a broader context of human rights violations.14 Between 2011 and 2013 the

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10 Referred to in this Report as the “Rapporteurship on the Rights of LGBTI Persons,” the “LGBTI Rapporteurship,” or simply, “the Rapporteurship.”
14 Public hearings before the IACHR (audio and video) are available at www.iachr.org.
IACHR held six meetings of experts in order to identify the main challenges and best practices in the protection of the rights of LGBTI persons, particularly on the topics of health, violence and impunity, employment, political participation, education and culture, and families.\textsuperscript{15} Further, in December 2014, the Commission published its findings of an analysis of 770 acts of violence committed against LGBT persons during a fifteen-month period (between January 1, 2013, and March 31, 2014), which informed this Report.\textsuperscript{16} In the drafting of this Report, the IACHR has also relied on other sources of information, such as reports from governments, international organizations and experts, international and local civil society organizations, and news reports.

7. In October 2013, the IACHR issued a questionnaire to gather further information on violence against LGBTI persons, which also informed this Report.\textsuperscript{17} The Commission received responses from 18 OAS Member States: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, United States, Uruguay and Venezuela.

8. The Inter-American Commission also received 34 responses from civil society organizations: Asociación por los Derechos Civiles (ADC), United Belize Advocacy Movement (UNIBAM), Igualas ante la Ley, Casarão Brasil, Gabinete de Assessoria Jurídica às Organizações Populares (GAJOP), Liga Humanista Secular do Brasil, Egale Canada, Fundación Igualas, Organización de Transexuales por la Dignidad de la Diversidad (OTD), Corporación Caribe Afirmativo, Colombia Diversa, Fundación Manos que Construyen Paz, joint participation of Colombian organizations (Colectivo Entre Tránsitos, Fundación Procrear, Fundación Santamaría, Grupo de Apoyo Transgenerista (GAT), Grupo YPAR, Escuela de Gobierno, Universidad de los Andes, PAIS - Facultad de Derecho, Universidad de los Andes), Asociación Silueta X, TransLatin@ Coalition, Asociación de Mujeres Alas de Mariposas, Colectivo Transformación, Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), Guyana Trans United (GTU), Society Against Sexual Orientation Discrimination (SASOD), Madre, Red Lésbica Cattrachas, Santa Clara University’s International Human Rights Clinic, Centro de Apoyo a las Identidades Trans A. C., Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México (UNAM), GESSAC, Centro de Derechos Humanos de la Facultad Libre de Derecho de Monterrey, Centro de Denuncias de VIH/SIDA y DDHH, Promsex, Amnesty International, Red Latinoamericana y del Caribe para Personas Trans (Redlactrans), Ovejas Negras, Acción Ciudadana contra el SIDA (ACCSI), Diverlex, and Fundación Reflejos de Venezuela.\textsuperscript{18}

9. The IACHR is grateful for the financial support provided by Chile, Denmark, Netherlands, United Kingdom, United States, the Joint United Nations Programme

\textsuperscript{15} Summaries, press releases and information regarding these meetings of experts are available at www.iachr.org.


\textsuperscript{17} The Questionnaire is available in English, Spanish, Portuguese and French at www.iachr.org.

\textsuperscript{18} Three people also provided responses to the questionnaire in their personal capacity: Tijon Cox, Ximena Gauché Marchetti, and Ronald Céspedes.
on HIV/AIDS (UNAIDS), and the Arcus Foundation, between 2011 and 2015. These important contributions allowed the Commission to further its work on the promotion and protection of the rights of LGBTI persons in the region, and were key in the preparation and adoption of this Report. Additionally, the IACHR acknowledges the support provided by the Cyrus R. Vance Center for International Justice, through its Human Rights and Access to Justice Program, and its collaborating firms and attorneys through the Pro-Bono Network of lawyers. This support came in the form of research on the legislation and jurisprudence of many countries in the region regarding the rights of LGBTI persons.

C. Terminology

10. The Inter-American Commission takes note of the varied terms used to define and characterize persons and movements linked to diverse sexual orientations, gender identities and expression, and bodily diversity. This section outlines terminology commonly used to refer to these groups and identities, and that will be used in the present Report.

1. Diversity in orientations, identities and bodies

11. While the Commission has adopted an easily recognizable acronym to name its Rapporteurship, it is important to note that the Rapporteurship on the Rights of LGBTI Persons addresses human rights issues related to sexual orientation, gender identity, gender expression and bodily diversity. In this Report, the IACHR will also use other terminology such as non-normative sexualities and identities to refer to non-heterosexual and transgender identities that defy traditional gender norms. The Commission also embraces each person’s self-identification as a guiding principle. Thus, it is possible that some persons who are the focus of the Rapporteurship’s work may not identify themselves as belonging to the categories implied by the acronym “LGBTI.” The IACHR also acknowledges that the terminology used in this Report may see greater or lesser usage in different regions within the Americas.

12. Some civil society organizations point out that the “LGBTI” acronym has weaknesses, chief among them being that it groups together persons who may face significantly different human rights violations.19 This is readily apparent in the case of intersex persons, for example, because human rights violations faced by intersex persons are not represented when discussing issues of sexual orientation or gender identity. For this reason some intersex activists and human rights defenders oppose the association of intersex persons with LGBT groups and causes, especially when this linkage erases the unique issues intersex persons

As one civil society organization has pointed out, “like LGBT people, intersex people experience stigmatization and discrimination because they fall outside of expected binary sex and gender norms. Intersex is part of LGBTI because of bodily diversity and intersex status, not because of sexual orientation and gender identity.” Further, this acronym, “may put out of sight culturally specific sexual and gender identities, giving the wrong impression that those identities originated in the West, and only recently.”

13. There is ample documentation of the existence of Two-spirit and diverse ancestral sexualities in indigenous peoples and groups, prior to colonization. Some indigenous groups and/or persons are known for their “gender diversity, which includes the fluid nature of sexual and gender identity and its interconnectedness with spirituality and traditional world views.” Two-spirit persons have both feminine and masculine spirits. Two-spirit “recognizes gender as a continuum and includes diverse identities, sexual orientations and social roles.”

14. Further, the IACHR is aware that there are multiple notions of sexuality and sexual orientation that do not necessarily fall into predetermined notions of persons being heterosexual, gay, lesbian or bisexual. For example, the Inter-American Commission takes note of accounts of Mati workers in Suriname, whose roots are traced back to West Africa. The term Mati has been used to broadly and generally
define “working class-women who typically have children and engage in sexual relationships with men and with women, either consecutively or simultaneously.”

The fluidity of sexual behavior is an essential element of Mati work, and the concept of Mati itself is not deemed to be a static identity. Further, Mati work also challenges many conventional conceptions of sexuality and gender by demonstrating that it is possible to have a female gender identity without a fixed sexual orientation. Other accounts of women-loving women, who do not necessarily identify as lesbians, have been recounted in Dominica, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago.

The IACHR takes note of the complexity and diversity of sexual orientations, gender identities and bodies. In this Report, the Inter-American Commission examines the situation of violence faced by persons based on the perception that their sexual orientation, and/or gender identity or gender expression defy traditional gender norms and roles, or because their bodies differ from those of the standard concepts of female and male. Since this violence is based on the perception that other persons have on the orientations, identities, expressions and bodies, this violence manifests itself regardless of whether the person who is the victim of violence self-identifies as lesbian, gay, bisexual, trans or intersex.

2. Sex as a Social Construct

The Commission notes the rich development in intersex and queer scholarship of the idea of “sex” as a socially constructed concept, which is key to understand the violations of human rights of intersex persons. This idea transcends the concept of sex as male or female, and as a biological phenomenon. Under this theory, sex assignment is not an innate biological fact; rather, persons are socially assigned a sex at birth based on the perception others have of their genitals. While in most cases persons are easily classified as female or male, some presentations of the body are perceived as “ambiguous,” and the sex assignment is not immediate. The “anatomic sex, and its presumed dichotomy (male/female), are the result of an ideological reading.” Moreover, “labeling someone as a man or a woman is a social decision. We may use scientific knowledge to help us make the decision, but only our beliefs about gender – not science – can define our sex. Further, our beliefs about gender affect what kinds of knowledge scientists produce about sex in the first place.” This “gender ideology” precedes the reading of the genitals,

33 Cabral, Mauro and Maffia, Diana. “Los sexos ¿son o se hacen?,” Buenos Aires, Argentina, 2013 (available only in Spanish; free translation by the IACHR).
34 Fausto-Sterling, Anne. Sexing the body, New York, United States: Brown University, 2000, p. 3 (available only in Spanish; free translation by the IACHR).
implies the existence of a “natural sex,” and is sufficiently strong so as to “discipline the bodies that do not comfortably adapt to the reading that is expected of them.”35 In this regard, in the cases of intersex persons even though doctors might take into account biological factors, sex assignment at birth is often the result of cultural considerations such as the “correct” size for a penis or vagina.36

17. Consequently, the concept of intersexuality has been developed to describe “all those situations in which an individual’s sexual anatomy does not physically conform to the culturally defined standard for the female or male body.”37 Another definition states that intersex persons “are born with atypical variations in physical sex characteristics, including atypical genetic, hormonal or anatomical characteristics.”38 In this context, bodily diversity refers to a wide range of presentations of the body which vary from the “standard body”, for example, variations in the sexual anatomy that expand beyond the cultural conceptions of how male and female bodies should be. Intersex is an umbrella term which encompasses this bodily diversity. In fact, there are many intersex variations, and at least 30 or 40 body presentations of intersex persons are known by science. 39 Intersex persons may identify as intersex, as men, as women, as neither or as both.40

18. In this regard the IACHR welcomes the position, articulated by the National Institute Against Discrimination, Xenophobia and Racism of the Ministry of Justice, Security and Human Rights of Argentina (referred to by its Spanish acronym INADI), that genitalia and sex assignment are two distinct concepts and there is no inevitable connection between them. INADI has said that the categorization of a man or a woman is a “social, cultural and institutional” act.41

35 Cabral, Mauro and Maffia, Diana. “Los sexos ¿son o se hacen?” Buenos Aires, Argentina, 2013 (available only in Spanish; free translation by the IACHR).
37 Cabral, Mauro. Interview with Benzur, Gabriel. “Cuando Digo Intersex. Un diálogo introductorio a la intersexualidad,” 2005 (available only in Spanish; free Translation by the IACHR).
39 Document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled Intersex issues in the ICD: a revision, drafted following a consultation held in Geneva on 8-9 September 2014, p. 2. This statement also affirms that “most intersex characteristics are not pathological, but express healthy variation amongst human bodies.”
3. Sexual Orientation, Gender Identity, Gender Expression

19. A person’s sexual orientation is independent from the sex assigned to that person at birth, and independent from that person’s gender identity. The IACHR has indicated that sexual orientation “constitutes a fundamental component of the private life of an individual... There is a clear nexus between the sexual orientation and the development of the identity and life plan of an individual, including his or her personality, and [relationships] with other human beings.”\textsuperscript{42} The Inter-American Court has further indicated that person’s sexual orientation is “linked to the notion of freedom and a person’s right to self-determination and to freely choose the options and circumstances that give meaning to his or her existence, in accordance with his or her own choices and convictions.”\textsuperscript{43} According to the Yogyakarta Principles,\textsuperscript{44} sexual orientation is defined as “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”\textsuperscript{45}

20. According to the Yogyakarta Principles, gender identity is “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”\textsuperscript{46} Trans persons is the umbrella term often used to describe the different variants of gender identity (including transsexuals, travestis,\textsuperscript{47} transformistas, among others), whose common denominator is that their sex assigned at birth does not match that person’s gender identity.\textsuperscript{48} Gender identity is not determined by body transformations, surgical interventions or

\textsuperscript{42} IACHR, Application before the Inter-American Court of Human Rights in the case of Karen Atala and daughters, Chile, Case 12.502, September 17, 2010, paras. 111 and 116.


\textsuperscript{44} The Yogyakarta Principles are a set of principles guiding the application of international human rights law in relation to sexual orientation and gender identity. The Principles were adopted by a diverse group of human rights experts, including judges, academics, a former UN High Commissioner for Human Rights, Special Procedures (independent human rights experts) of the UN Human Rights Council, independent experts, members of treaty bodies, NGOs and others. Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2006.


\textsuperscript{47} There is a wide range of political positions around the use of the term travesti (as used in Spanish or Portuguese). Some groups of trans activists have pointed out that this term is derogatory, while other groups see the term travesti as a political term with great significance. See, for example, The Declaration of Feminist Travestis, XI Feminist Meeting of Latin-American and the Caribbean, Mexico City, Mexico, 2009.

\textsuperscript{48} In Rothblatt, Martine A. The Apartheid of Sex: A Manifesto on the Freedom of Gender, New York, United States: Crown Publishers, 1995. Dr. Martine Aliana Rothblatt developed this generic category, which the trans social movement and academia have used as a term to encompass the various expressions of trans identity. See also Serano, Julia. Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity, Emeryville, United States: Seal Press, 2007.
medical treatment. However, these could be considered necessary in the construction of the gender identity by some trans persons.

21. There is a certain degree of consensus concerning terms used by trans persons: the term *trans women* typically refers to persons whose sex assigned at birth was male while their gender identity is female; whereas the term *trans men* refers to persons whose sex assigned at birth is female while their gender identity is male. The term *trans person* could also be used by someone who self-identifies outside the male/female binary. Further, some trans women self-identify as women, and some trans men self-identify as men.

22. The term *gender expression* refers to the outward manifestation of one’s gender. The International Commission of Jurists (ICJ) has indicated with respect to gender expression that “[t]he notion of what properly constitutes male or female norms has been a source of human rights abuses against individuals who do not fit or conform to the stereotypical models of masculine or feminine. Personal deportment, mode of dress, mannerisms, speech pattern, social behavior and interactions, (...) and the absence of an opposite-sex partner are all features that may subvert gender expectations.”49 It has further affirmed that gender expression is visible and can be a source of identification, especially when, through characteristics such as dress, mannerisms and modification of the body it subverts traditional expectations of gender expression.50

23. There are other terms that are also sometimes used such as *queer*51 or *gender non-conforming persons*. The latter concept refers to persons who do not agree with or who do not follow the social ideas or stereotypes about how they should behave or express themselves based on the sex they were assigned at birth.52 The terms *trans persons* or *gender non-conforming* can also be used as umbrella terms to include concepts such as transsexual, *travesti*, gender-queer, Two-Spirit, among others.53 Nevertheless, not all trans persons are gender non-conforming and vice versa.


51 There are different approaches to the term *queer* as an identity category. It is used as an “umbrella term” by the range of sexual orientations and identities that go beyond the “LGBT” acronym. See, for example, Eli R. Green, Eric N. Peterson, *LGBTQI Terminology*, LGBT Resource Center, UC Riverside, 2003-2004. Likewise, the concept “gender-queer” is a general term for persons whose gender identity goes beyond the male/female binary. See Heartland Trans* Wellness Group, *Trans and Queer/LGBTQIA Terminology*, p. 5. Also, “queer movements” make reference to the exclusions, failures in the politics of representation and the effects of re-naturalization of all identity politics. If we can say that in a political sense, queer movements are “post-gay,” then we can affirm that from a theoretical perspective, queer theory comes as reflection of the mistakes of feminism (both essentialist and constructive feminism) of the eighties: liberal feminism.” See, e.g. Jesús Carrillo interviews Beatriz Preciado, “*Entrevista con Beatriz Preciado*,” October 2004 (available only in Spanish; free translation by the IACHR).


CHAPTER 2
UNDERSTANDING AND DEFINING VIOLENCE AGAINST LGBTI PERSONS
24. The Inter-American Commission notes that while there has been jurisprudence and decisions by international and regional human rights bodies on the concept of discrimination based on sexual orientation and gender identity, these have not yet adopted a comprehensive definition of prejudice-based violence regarding sexual orientation, gender identity, or bodily diversity. However, the IACHR notes that members of academia have developed useful concepts surrounding the issue of violence against LGBTI persons, which may contribute to the development of approaches by international human rights bodies. In this chapter, the IACHR will first examine the main characteristics and particularities of violence against LGBTI persons. Second, the IACHR will address concepts such as heteronormativity, cisnormativity and the sex and gender binaries, as well as stigmatization and discrimination against LGBTI persons. Further, the IACHR will examine the concept of violence based on prejudice towards diverse sexual orientations, gender identities, and persons whose bodies defy the socially accepted standards of the “female” and “male” bodies. Finally, the IACHR makes reference to its decisions, jurisprudence by the Inter-American Court and from other bodies on the concept of violence in general and its link to women, taking into account that the only inter-American treaty that addresses violence against a specific sector of the population is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”).

A. Features of Violence against LGBTI Persons

25. Through its monitoring functions, the IACHR has learned about the different features and characteristics generally present in instances of violence against LGBTI persons. Many forms of this violence is based on the desire of the perpetrator to “punish” those identities, expressions, behaviors or bodies that transgress traditional gender norms and roles, or that run contrary to the binary system of male/female. Some targets of this violence include public displays of affection between same-sex couples; and perceived expressions of “femininity” in men or “masculinity” in women. The violence can manifest itself in the use of force by law enforcement agents pursuant to norms of “public morals.” It can also take the form of medical violence done to persons whose bodies differ from the socially accepted standards of the “female” and “male” bodies.
accepted standard for female or male bodies in an attempt to “fix their sex”;\(^{55}\) among other examples.

26. In this Report, the IACHR makes a special emphasis on violence against trans persons, and particularly trans women. As reiterated throughout the Report, the vast majority of trans women are immersed in a cycle of violence, discrimination and criminalization which generally begins at a young age, due to exclusion and violence they are subjected to in their homes, communities and educational institutions. This is coupled to the lack of recognition, in the majority of countries in the region, of their gender identity. Further, as explained in this Report, according to the information received and the data produced by the IACHR, trans women are killed mostly before 35 years of age and are particularly vulnerable to violence by law enforcement agents.

27. The UN High Commissioner for Human Rights has indicated that violence against LGBT persons constitutes “a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.”\(^{56}\) The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that “a considerable proportion of the incidents of torture carried out against [LGBT persons] suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault, in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles.”\(^{57}\) The Special Rapporteur further added that LGBT persons “are disproportionately subjected to torture and other forms of ill-treatment because they [do not] conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”\(^{58}\) This is consistent with the information that civil society organizations have provided to the IACHR. For example, one organization indicated to the Commission that much of the violence and discrimination suffered by lesbian and trans women is perpetrated in order to punish female identities which trespass the limits imposed by normative societies.\(^{59}\)

28. The expression of non-normative sexualities and identities is often in itself regarded with suspicion, considered a danger to society, or seen as a threat to social order and public morals. As it is explained by an academic, public expressions of affection or the uninhibited movement (circulación) in public spaces

\(^{55}\) OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 57.

\(^{56}\) OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 20.


\(^{59}\) IACHR, Public Hearing on Discrimination on the basis of Gender, Race and Sexual Orientation in the Americas, 133rd Period of Sessions, October 23, 2008. Video and audio not available.
of persons with non-normative sexual orientations or gender identities is often a cause of great social anxiety.60 The IACHR has also received information on instances of violence against men and women in reaction to what were perceived to be sexual advances by someone of the same sex.61 Sometimes this type of violence has been “justified” by defendants as “gay/trans panic defense,” an issue that is addressed later in this Report.62 In contrast to same-sex advances being used as a justification for violence, “under the governing regime of heterosexuality, hitting on someone of the opposite sex would be defined as flirting and seen as an accepted model of behavior.”63

29. In certain situations, violence against LGBT persons has also been characterized as a form of “social cleansing.” Since as early as 1993 the IACHR has received information on this phenomenon in the context of the armed conflict in Colombia.64 Academics in the Anglophone Caribbean have indicated that violence “levelled at gays, lesbians and others who are seen to dissent from acceptable social norms is... seen as a ‘cleansing’ exercise ... echoed in dancehall compositions which similarly call for a cleansing of the population through the murder of gays and lesbians.” 65 The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has affirmed that ill-treatment of LGBT persons is believed to have been used to make sex workers leave certain areas, in so-called “social cleansing” campaigns, or to discourage LGBT persons from meeting in certain places, including clubs and bars.66

30. Finally, the UN High Commissioner for Human Rights has indicated that, in many cases, even the “perception” of being gay or trans puts people at risk.67 The African Commission on Human and Peoples’ Rights adopted a 2014 Resolution condemning violence against persons based on “their imputed or real sexual orientation or gender identity,” and called on African Union States to prevent and investigate this type of violence.68 Accordingly, the IACHR has determined that in some situations it is “not so much whether a person recognizes himself or herself


61 See, e.g., Gaystarnews, Brain damaged victim of 2009 Vancouver gay bar bashing has died in nursing home, February 4, 2015.

62 In some instances, judges have mitigated sentences on the grounds that advances of this nature allegedly occasioned disgust, which then led to the violence. See Nussbaum, Martha C. Hiding from Humanity: Disgust, Shame, and the Law. Priceton, United States: Princeton University Press, 2004, pp. 130-134.


68 African Commission on Human and Peoples’ Rights, 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, adopted at the 55th Ordinary Sessions, Luanda, Angola, April 28 - May 12, 2014.
as [gay], but rather whether he or she is “perceived” as such by third persons or is identified as a member of a given social group” that leads to acts of discrimination or violence motivated by prejudices against LGBT persons.\textsuperscript{69} For example, in July 2012, the IACHR condemned the killing of José Leonardo Da Silva, a 22-year-old man who was killed by a group of men because he was seen walking with his arm around his twin brother.\textsuperscript{70} The Commission has further determined that “the fact that a person may be perceived as having a sexual orientation other than heterosexual does not necessarily mean that this person identifies with that orientation; yet it does not rule out the possibility of being exposed to the discrimination to which persons have historically been subjected due to their sexual orientation or their gender identity or expression.”\textsuperscript{71}

\textbf{B. Heteronormativity, Cisnormativity and the Binary Systems of Sex and Gender}

31. The IACHR finds that there are certain terms, which are key to explaining violence against LGBT persons, or those perceived as such. For example, \textit{heteronormativity}\textsuperscript{72} refers to the cultural bias in favour of heterosexual relationships, under which such relationships are deemed “normal, natural and ideal,” and are preferred over same-gender or same-sex relationships.\textsuperscript{73} \textit{Heteronormativity} is composed of legal, social, and cultural rules that require individuals to act according to dominant and ruling heterosexual patterns.\textsuperscript{74} Regarding the impact of heteronormativity on women, “[s]exual stereotypes operate to demarcate acceptable forms of male and female sexuality, often privileging heterosexuality over homosexuality through stigmatizing lesbian relationships and prohibiting lesbian marriage and family formation, such as through artificial insemination or adoption.”\textsuperscript{75} Also useful is the concept of “sex

\textsuperscript{69} IACHR, Report No. 81/13, Case 12,743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, para. 82.
\textsuperscript{70} IACHR, Press Release No. 84/12, \textit{IACHR Condemns Attack and Murder Based on Perceived Sexual Orientation in Brazil}, July 11, 2012.
\textsuperscript{71} IACHR, Report No. 81/13, Case 12,743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, para. 83. Discrimination and violence against persons based on the association others make, and regardless of self-identification, has been addressed in other cases decided by the Inter-American Court that were not directly related to sexual orientation or gender identity. The Inter-American Court has noted that: “[i]t is possible for a person to feel discriminated by the way other people think about its relation to a group or social sector, independently of whether such perception corresponds to reality or to the victim’s self-identification.” I/A Court H.R., \textit{Case of Perozo et al. v. Venezuela}, Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 380.
\textsuperscript{73} UNESCO, Review of Homophobic Bullying in Educational Institutions, 2012, p. 50.
\textsuperscript{75} Cook, Rebecca and Cusack, Simone. \textit{Gender Stereotyping: Transnational Legal Perspectives}, University of Pennsylvania Press, Philadelphia, United States, 2010, p. 27.
hierarchy,” under which certain expressions of sexuality, such as heterosexuality, are deemed “good, normal, natural, blessed,” while other forms, such as homosexuality, are deemed “bad, abnormal, unnatural, damned.” In other words, “heterosexuality is seen as the natural sexuality and the successful sexual outcome for treated children; penile-vaginal intercourse as the exclusive or more important sexual act; and genital appearance as taking priority over sexual pleasure and sensation.”

32. With respect to gender identity, the term cisnormativity (the “cis” prefix being the antonym of the “trans” prefix) has been used to describe “the expectation that all people are cissexual [or cisgender], that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women.” Cisnormative assumptions are so socially and culturally pervasive that they are difficult at first to even recognize and identify. At issue are deeply and widely held assumptions that all persons are either male or female and that this element defines a person’s sex, gender, gender identity and sexual orientation.

33. Regarding the role of law in these social processes, the IACHR notes that the legal framework in the Anglophone Caribbean in relation to crimes and the family “is progressively more punitive towards those who step outside the boundaries of what is deemed acceptable sex, and affirming of those who meet heteronormative standards of family.” The IACHR also notes that although women’s bodies “have been primary sites of moral regulation since, at least, the colonial era,” men’s bodies have not escaped this. In this regard, men have faced violence stemming from “nationalist anxieties in Anglo-Caribbean states … [which] are a production of a patriarchal power that collapses gender with sex and inscribes male and female bodies with fixed functionalities.”

34. Finally, the binary systems of gender/sex has been referred to as a social and cultural model dominant in western culture which “considers gender and sex as consisting of two, and only two, rigid categories, namely male/man and

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78 From Latin: “trans” (across, on the other side of); “cis” (on this side of).


female/woman. Such a system or model excludes those who do not fit within the two categories,” namely, some trans or some intersex people.84 These criteria are said to constitute value judgments of what males and females are supposed to be.85 The IACHR notes that this has had a concrete and devastating effect on the lives of intersex persons, who are subjected to genital surgery and unnecessary medical treatment prompted not only by a desire to attempt to produce genitalia of the assigned sex, but also to “stabilize particular forms of sexual desire and behavior.”86

C. Stigma, Stereotyping and Discrimination

35. The UN Special Rapporteur on the human right to safe drinking water and sanitation has developed a concept of stigma that is linked to power relations, a concept which the IACHR considers useful in the present context. She has stated that “[s]tigma relates closely to power and inequality, and those with power can deploy it at will. Stigma can broadly be understood as a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups … Stigma attaches itself to an attribute, quality or identity that is regarded as “inferior” or “abnormal.” Stigma is based on a socially constructed “us” and “them” serving to confirm the “normalcy” of the majority through the devaluation of the “other.””87 She further states that although what is considered “abnormal” changes over time and differs depending on the place, “the targets of stigma are always those who do not fit the social norm,” which in some instances is attached “to one’s gender or gender identity, sexual orientation, caste or race.”88

36. Commissioner Rose-Marie Belle Antoine from the IACHR affirmed, when referring to stigma related to HIV, that “stigma and discrimination can be addressed through these legal frameworks, and States must certainly work toward that goal; however, States need to educate, to inform, and to raise awareness, to develop a true culture of human rights.”89 In this trend, the UN Special Rapporteur on the human right to safe drinking water and sanitation has stated that in order to tackle stigma it is necessary to raise awareness of stigmatizing practices pursued under “the

umbrella of culture, religion and tradition.” She adds that “the interpretations of culture on which such practices are based are neither immutable nor homogenous and must therefore be challenged, including by questioning the legitimacy of those who perpetuate stigmatizing practices in the name of culture and uncovering the underlying power dynamics.”

The concepts developed above are useful in explaining how laws are applied to the detriment of persons with diverse sexual orientations and identities (or the perception thereof), due to the use and reinforcement of harmful stereotypes. For example, the IACHR has addressed the stereotypes used by domestic courts in various countries in the region to deny certain human rights to lesbian and gay persons, or persons perceived as such. In its decision on a 2013 case involving a man who was separated from the armed forces under accusations that he allegedly engaged in a sexual act with another man, the IACHR established:

that the criterion used by the military authorities was based on an apparent incompatibility between homosexuality and the regime of military discipline and the military institution itself, without providing reasonable and objective reasons to justify that distinction. The Commission does not find the relationship between means and ends, as between punishing “acts of homosexuality” in the armed forces and upholding the military values sought to be protected, such as honor, dignity, discipline, and extolling civic-mindedness. Stating otherwise would imply ascribing a negative moral value to the sexual act between persons of the same sex itself, in addition to promoting the stigmatization of gay, lesbian or bisexual persons, those perceived as such, or those who maintain relations with persons of the same sex inside and outside the armed forces.

In a case concerning the removal of children from the custody of a lesbian woman because of her sexual orientation, the Inter-American Commission and Court referred to the influence of negative stereotypes against lesbian mothers, and in particular, the prejudiced view that the expression of Karen Atala’s sexual orientation as a lesbian woman would have a harmful impact on her children. In that case the State alleged that removing the woman’s three daughters from her custody was in the best interest of the children. The Inter-American Court ruled that in cases of custody, the “best interest of the child” principle must be based on an assessment of specific parental behaviors and on proven damages to the child’s well-being, not on speculation. As such, the Inter-American Court found that “a determination based on unfounded and stereotyped assumptions about the parent’s capacity and suitability to ensure and promote the child’s well-being and

92 IACHR, Report No. 81/13, Case 12,743, Merits, Homero Flor Freire, Ecuador, November 4, 2013, para. 111. The IACHR noted that the victim maintains that he “ha[d] no information about the occurrence of such facts and that he does not self-identify [as gay].” (para. 81).
development is not sufficient to guarantee the legitimate goal of protecting the child's best interest." On this point, the Inter-American Court concluded that considerations based on stereotypes regarding sexual orientation – which it defined as “preconceptions regarding the attributes, behaviors or characteristics of [gay persons] or the impact these may have on children” – are not admissible.

Regional and international human rights organizations and experts have developed the concept of non-discrimination based on sexual orientation and gender identity. Notwithstanding these developments, the IACHR notes that under international law, with a few exceptions, the concepts of “sexual orientation” and “gender identity” are not expressly included in international human rights treaties as prohibited grounds for discrimination. Consequently, when these rights began to come to the fore, international and regional human rights bodies analyzed these two categories under two long-standing prohibited grounds for discrimination, namely: discrimination by reason of “sex”; and the open-ended clause prohibiting discrimination on the basis of “any other social condition.” Further, the IACHR has likewise indicated that human rights treaties such as the American Convention are “living instruments” that must be interpreted in accordance with current times and evolving conditions. As such the Inter-American Commission and the Inter-American Court have found that sexual orientation and gender identity, are

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95 See e.g., the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted at the Forty-Third regular session of the OAS General Assembly, on June 6, 2013. Further, the Inter-American Convention on Protecting the Human Rights of Older Persons includes specific reference to non-discrimination based on “different sexual orientations and gender identities,” (article 5, “Equality and non-discrimination for reasons of age”). OAS, General Assembly, Inter-American Convention on Protecting the Human Rights of Older Persons, Forty-fifth regular session, adopted at Washington D.C., June 15, 2015, signed that same day by Argentina, Brazil, Chile, Costa Rica and Uruguay.
covered by the phrase “other social condition” under Article 1.1 of the American Convention. This is analogous to the inclusion of such categories in Article 9 of the Convention of Belém do Pará, discussed below.

40. There have also been developments in national legislation, for example, the inclusion of “intersex status” or “sex characteristics” as prohibited grounds for discrimination. In some cases these categories have been introduced expressly, and in other cases they have been interpreted to fall under the concept of discrimination on the basis of “sex.”

D. Violence Based on Prejudice

41. First, the Commission notes that the concepts of prejudice and stereotype are linked. A stereotype has been defined as a “generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group.... [A] stereotype presumes that all members of a certain social group possess particular attributes or characteristics.... [Therefore] an individual, simply by virtue of membership in that group, is believed to conform to the generalized view or preconception.” As to belonging to a social group, it has been established that “[gay persons] can be...

100 Article 1(1) of the American Convention establishes: “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”
101 The first country to include specific reference to intersex persons in equality legislation was South Africa with a 2005 amendment to its 2000 Promotion of Equality and Prevention of Unfair Discrimination Act. This amendment established that the category ‘sex,’ includes ‘intersex.’ Similar legislation has been adopted in Germany, Finland, Scotland, the Autonomous Basque Community in Spain, and Malta. Perhaps the most well-known is the Australian Sex Discrimination Amendment of 2013. This law establishes that a person discriminates against another on the ground of the latter’s intersex status if the discrimination is based on: (a) the aggrieved person’s intersex status; or (b) a characteristic that appertains generally to persons of intersex status; or (c) a characteristic that is generally imputed to persons of intersex status; and if the discriminator treats the aggrieved person less favorably than, in similar circumstances, the discriminator treats or would treat a person who is not of intersex status. It also establishes that a person discriminates against another person on the grounds of the aggrieved person’s intersex status if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of intersex status. The legislation defines “intersex status” as the status of having physical, hormonal or genetic features that are (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. Parliament of the Commonwealth of Australia, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013, Act No. 98 of 2013. Council of Europe, Commissioner for Human Rights. Issue paper: Human Rights and Intersex People. Silvan Agius. May 12, 2015, pp. 44-45.
within the ambit of a social group category, either as a group sharing a common characteristic or because they are perceived as a cognizable group in the society.” The IACHR highlights that this same reasoning applies to persons with non-normative gender identities and expressions, including trans persons. Academically, the concept of prejudice has been deemed preferable to the concept of homophobia “because it [prejudice] conveys no assumptions about the motivations underlying negative attitudes, locates the study of attitudes concerning sexual orientation within the broader context of social psychological research on prejudice, and avoids value judgments about such attitudes.”

42. Hate crime is another useful concept that has been developed to characterize violence against LGBT persons. The term hate crime became popular in 1990 in the U.S. with the passing of the Hate Crimes Statistics Act. The passage of this legislation took place in the context of a wave of racially motivated crimes that were investigated by the Federal Bureau of Investigation (FBI). The definition of hate crime is not universally agreed upon. In Latin America, Uruguay has specifically included “sexual orientation” and “sexual identity,” among other categories such as skin color, race, religion, and national or ethnic origin in its criminal law regarding hate crimes. The Uruguayan legislation defines hate crimes as “acts of moral or physical violence or scorn against one or more persons” based on these categories. In Uruguay, hate crimes carry an additional penalty of imprisonment (between six and twenty-four months), in addition to the penalty imposed for the crime committed. Civil society organizations have adopted a more expansive concept of hate crime to include aggression based on rejection, intolerance, scorn, hate and/or discrimination.


105 Herek, Gregory. The Psychology of Sexual Prejudice, California, United States: University of California, 1999.

106 The Hate Crime Statistics Act (28 U.S.C. § 534) defines hate crimes as “crimes that manifest evidence of prejudice based on race, gender or gender identity, religion, disability, sexual orientation, or ethnicity.” This Act was later amended in 2009 with the passage of the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act, Section 4708 of House Resolution 2647.


109 As examined in Chapter 6 of this Report, a number of OAS Member States have enacted penalty-enhancement laws for crimes committed based on sexual orientation and gender identity.


111 CEJIL (Center for Justice and International Law) and Hivos, “Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua,” [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and (available only in Spanish)]., 2013, p. 24.
43. The Commission has reiterated the link between discrimination and violence against LGBT persons, referring to “the concept of prejudice based on sexual orientation, gender identity, or gender expression” as a means of “understanding violence against [LGBT persons], as it makes it possible to identify the social context in which such violence manifests itself.” In this regard, the IACHR expressed concern over an overall social context in the Americas that is characterized by stereotyped prejudice against LGBT persons. This context of prejudice, along with the failure to properly investigate such crimes, leads to an endorsement of violence against LGBT persons.

44. Violence based on prejudice is a concept that signals an understanding of violence as a social phenomenon, as opposed to violence being understood as taking place in isolation. Crimes based on prejudice are rationalizations or justifications of negative reactions, for example, to non-normative expressions of sexual orientation or gender identity. Such violence requires a context and social complicity; it is addressed toward specific social groups, such as LGBT persons, and it has a symbolic impact. Even when this type of violence is directed against one person or a group of persons, a strong social message is addressed to the whole LGBT community. The IACHR finds that the concept of violence based on prejudice is useful in understanding that violence against LGBT persons is the result of negative perceptions of such persons based on false generalizations, as well as negative reactions to situations that are foreign to “ours.”

45. Not all acts of violence against LGBT persons can be characterized as violence based on prejudice. The IACHR notes the difficulties in determining whether or not such violence is based on prejudice. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence, as will be examined in chapter 6 of this Report.

46. In this Report, the IACHR examines States’ obligations to investigate and prosecute acts of violence against LGBT persons, and the challenges faced in this regard. The
Commission has received information establishing that, due to prejudice in the justice system in countries in the Americas, killings of LGBT persons are often not categorized as hate crimes or as being motivated by prejudice, as they should be. Instead they are characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. When crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim and away from the power structures that reproduce the homophobic stereotypes underpinning the prejudice.\(^{118}\) The high prevalence of violence based on prejudice requires that crimes committed against LGBT persons receive full and unbiased investigation. Further, violence based on prejudice can take place in the context of an intimate relationship, whether same-sex or different sex. When someone who is lesbian, gay, bisexual or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims.

47. In this Report, the Commission will focus on violence against LGBT persons as a contextualized social violence in which the perpetrators’ motivation needs to be understood as complex and multi-faceted, and not only as an individual or as an isolated act. In this sense, the IACHR understands that acts of violence against LGBT persons, commonly referred to as hate crimes (also referred to as bias crimes, homophobic or transphobic acts), are best understood under the concept of violence based on prejudice motivated by the perception towards non-normative sexualities and identities. Similarly, the IACHR considers violence against intersex persons as violence based on prejudice towards bodily diversity, and more specifically towards persons whose bodies are different from the standard for male and female bodies.

48. Societies in the Americas are dominated by underpinning principles of heteronormativity, cisnormativity, sex hierarchy, sex and gender binary systems, and misogyny. These principles, combined with widespread intolerance towards non-normative sexual orientations, gender identities and expressions, and diverse bodies, legitimize violence and discrimination against LGBTI persons or those perceived as such. Violence against LGBTI persons exists as a consequence of social contexts, societies and States which do not accept, and in fact may punish, non-normative sexualities, identities and bodies which do not fit the socially-accepted notion of what defines persons as either female or male. Given this inherent link between discrimination against LGBTI persons and violence against LGBTI persons, the IACHR in this Report urges OAS Member States to adopt comprehensive measures to combat societal and cultural discrimination, prejudice, and stereotypes against LGBTI persons.

E. Violence and Discrimination against Women

49. Finally, the Commission notes that the Convention of Belém do Pará is the only Inter-American instrument that includes a definition of violence against a particular group. The Convention of Belem do Pará defines “violence against women” as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”119 The Inter-American Court of Human Rights has held that discrimination against women includes “gender-based violence,” which has been defined as violence that is directed against a woman because she is a woman or which affects women disproportionately. 120

50. Further, the Inter-American Court had indicated that in patterns of killings of women, violence can only be understood in the context of “socially entrenched gender inequality,”121 influenced by a “culture of discrimination against women.”122 Similarly, the IACHR is of the view that traditional social norms about gender and sexuality and pervasive societal discrimination towards non-normative orientations and identities, and persons whose bodies do not necessarily fit the socially accepted definitions of male and female bodies, fuel violence against LGBTI persons. As explained above, violence based on prejudice requires a socially enabling context.

51. The United Nations Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, has defined “institutional and structural violence” as “any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community.”123 In this vein, she affirmed that “[s]ocietal beliefs that claim that one group of people is superior to another group can be a form of structural violence. Beliefs that perpetuate the notion that males are superior to females, that whites are superior to afro-descendants, that persons without physical or mental impairment are superior to those with disabilities, that one language is superior to another, and that one class position is entitled to rights denied to another, are all factors contributing to structural violence that have become institutionalized forms of multiple and intersecting pathogens.

discrimination in many countries.”124 Similarly, societal beliefs and prejudices that perpetuate the notion that heterosexual, cisgender125 and non-intersex persons are superior to LGBTI persons contributes to a culture of structural violence based on prejudice towards non normative sexual orientations, gender identities and diverse bodies.

52. Finally, the IACHR notes that sexual orientation and gender identity are not expressly included in the Convention of Belém do Pará. However, the IACHR is of the view that the Convention of Belém do Pará is a “living instrument.” Thus, the Commission considers that when Article 9 of the Convention of Belém do Pará126 speaks of the State obligation to take special account of factors of special vulnerability to violence, listing certain examples “among others,” these other factors would necessarily include sexual orientation and gender identity.


125 Cisgender is the term used to refer to persons whose gender identity corresponds with the sex assigned at birth. Cisgender is the opposite of transgender.

126 OAS, General Assembly, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted at Belem do Pará, Brazil, on September 6, 1994. Entry into force on March 5, 1995, Article 9: establishes: “[w]ith respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.” (Emphasis added).
CHAPTER 3

IMPACT OF LAWS THAT CRIMINALIZE LGBT PERSONS ON VIOLENCE
IMPACT OF LAWS THAT CRIMINALIZE LGBT PERSONS ON VIOLENCE

53. In this chapter the Inter-American Commission examines the impact that criminalization of non-normative sexual orientations, gender identities and expressions has on violence against LGBT persons, or those perceived as such. The first part of this chapter examines legislation that specifically criminalizes consensual same-sex intimacy and non-normative gender identities. The second part focuses on the impact on violence against LGBT persons –particularly trans persons– of laws aimed at protecting “public morals,” and similar legislation.

54. The IACHR recognizes the existence of other legislation that discriminates against LGBT persons. Examples include legislation prohibiting entry into countries based on sexual orientation,\textsuperscript{127} legislation establishing different ages of consent for same-sex and different-sex sexual activity,\textsuperscript{128} and sanctions in military or police codes against same-sex sexual activity.\textsuperscript{129} Taken as a whole, discriminatory legislation

\textsuperscript{127}The IACHR has expressed concern regarding legislation in Belize and Trinidad and Tobago prohibiting the entry of “homosexual persons” into those countries. IACHR, Press Release No. 131A/14, Report on the 153\textsuperscript{rd} Sessions of the IACHR, December 29, 2014.

\textsuperscript{128}The age of consent refers to the age at which someone is considered to be legally competent to consent to sexual acts. Some age of consent laws in the region have different ages of consent for (1) same-sex versus opposite-sex activity or (2) anal sex versus other types of sex. Some of these include: [The Bahamas] Sexual Offences and Domestic Violence Act (1991), Section 16(1)(2). Consent for opposite-sex: 16; consent for same-sex: 18; [Canada]: Criminal Code, Section 159(2)(b), R.S.C., 1985, c. C-46. Consent for anal sex: 18; consent for other types of sex: 16. Courts in Ontario, Quebec, and Alberta have declared s. 159 to be unconstitutional as violations of the equality provision of the Canadian Charter of Rights and Freedoms; [Chile] Criminal Code, Article 365. Consent for opposite-sex: 14; consent for same-sex: 18; [Paraguay] Criminal Code, Article 138. Consent for opposite-sex: 14; consent for same-sex: 16. [Suriname] Criminal Code, Section 302. Consent for opposite-sex: 16; consent for same-sex: 18.

\textsuperscript{129}The IACHR received reports about at least four countries in which same-sex activity is directly prohibited in the military or indirectly punished with a disciplinary sanction in the police forces: [Brazil] Military Penal Code, Article 235, criminalizes “pederasty” (“pederastia”), which is to “practice or engage in lewd acts, homosexual or not, in a place under military administration” and establishes a 6 to 12 month detention. The Code dates from 1969, when women were not allowed to join army forces, therefore civil society claims that the term “pederasty” was used to restrict same-sex activity (Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil, received by the IACHR Executive Secretariat on December 24, 2013). Currently, there is a lawsuit pending before the Supreme Court (“Ação de Descumprimento de Preceito Fundamental - ADPF”), requesting that this provision be declared unconstitutional; [Peru] Decree 1.150 regulates disciplinary sanctions in the National Police and establishes expulsion due to “same-sex activity” or sex which “causes scandal and deterioration of the institution’s image”; [Dominican Republic] Law 285 adopted in 1966, Article 210. The Chief of Police of Santo Domingo has argued that LGBT individuals were not eligible to join the police force because of a prohibition of sodomy between officers of the same sex (Human Rights Observatory for Vulnerable Groups
can contribute to a social environment in which it is understood that violence against LGBT persons is tacitly permitted or tolerated, this Report focuses on the subset of discriminatory laws that have the most direct impact on violence against LGBT persons.

A. Legislation Criminalizing Same-Sex Intimacy and Non-Normative Gender Identities

55. First, the IACHR highlights that the main focus of this section is to address the link between legislation criminalizing consensual same-sex intimacy and non-normative gender identities, on the one hand, and violence against LGBT persons, on the other. This chapter focuses on the negative impact of the violation to the rights to life and personal integrity of LGBT persons, or those perceived as such. Nevertheless, the IACHR makes some preliminary comments with respect to the rights to equality and non-discrimination, health and other human rights.

56. In May 2014, the IACHR indicated that it was concerned about the impact of legislation that criminalizes same-sex consensual intimacy in Jamaica and Belize—even when not enforced—particularly with respect to the rights to life, personal integrity, personal liberty, privacy, and access to health and other services.130 Further, it is noteworthy that although the legal restrictions in the countries in the Commonwealth Caribbean relate to the act of intercourse itself; and that the law, formally at least, does not target a person’s status or being, they generally hinder people’s capacity to find work and maintain work.131

57. In July 2012, in an event organized jointly by the OAS, the IACHR and UNAIDS, Commissioner Rose-Marie Belle Antoine noted

Of particular note is that several OAS Member States continue to have discriminatory laws criminalizing consensual adult same-sex conduct, [...] and laws that discriminate based on sexual orientation and gender identity, which negatively impacts on the full enjoyment and exercise of [LGBT persons] of their human rights —including their right to highest attainable standard of health- and severely undermine effective national responses to HIV. The dire impact of the buggery laws on the human rights of persons most at risk for contracting HIV, such as men who have sex with men and sex...

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workers and on persons living with HIV is an issue of deep concern to the Commission.\footnote{132}

58. The IACHR notes that former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has indicated that this type of legislation adversely affects the enjoyment of the right to health of persons who engage in same-sex sexual activity, for example by negatively impacting their health-seeking behaviour and their mental health.\footnote{133} The European Court of Human Rights\footnote{134} and the South African Constitutional Court\footnote{135} have also referred to this impact on the mental health of LGBT persons (in the form of anxiety, guilt and depression) that is brought about by the mere existence of laws criminalizing same-sex intimacy. These laws can also have a dire effect on the implementation of public health policy, including in the context of persons deprived of liberty.\footnote{136}

59. In 2012, the IACHR, the Inter-American Commission on Women, UNAIDS and the Pan-American Health Organization (PAHO) expressed concern over the link between criminalization of consensual same-sex intimacy and the HIV epidemic, because of pervasive social stigma and discrimination. These organizations affirmed that legislation and public policies in force in several OAS Member States have a dire impact on the full exercise of human rights by key populations at higher risk of HIV infection and persons living with HIV, and constitute the main barrier to achieving Universal Access to HIV related services, including prevention and treatment.\footnote{137}

60. With regard to legislation that prohibits sex and intimacy between consenting adults of the same sex, the IACHR takes note of decisions by the UN Human Rights Committee\footnote{138} and the European Court of Human Rights\footnote{139} that such legislation —


\footnote{133} UN, Human Rights Council, \textit{Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover}, A/HRC/14/20, April 27, 2010, para. 17. Further, “[v]iolence can inhibit individuals from seeking access to health services out of fear of reprisals and secondary victimization resulting from identification as a victim of such an attack.” (para. 21).

\footnote{134} ECHR, Norris v. Ireland, No. 10581/83, Judgment October 26, 1988, para. 192.


\footnote{136} For example, in 2009, the Government of Barbados stated that “at this stage [the national government] is not in a position to make an intervention to abolish those laws, just as it is not yet in a position to allow the use of condoms in prison. These two issues are interlinked and have to be addressed together in their totality. It would be necessary to decriminalize consensual sex between persons of the same sex before any decision can be taken on the issue of allowing condoms in prison.” UN, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Barbados, A/HRC/10/73, January 9, 2009, para. 74.

\footnote{137} IACHR, Press Release No. 147/12 \textit{The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas}, December 17, 2012. The IACHR has further indicated that criminalization and its link with stigma towards men who have sex with men have led to a spread of HIV in Jamaica. IACHR, \textit{Report on the Situation of Human Rights in Jamaica}, OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, paras. 292, 293.


whether criminal or disciplinary — is incompatible with international human rights law, including the rights to privacy and equality before the law. The Commission made a similar finding in a 2013 decision concerning the dismissal of a man from the army due to an alleged act of same-sex intimacy. The dismissal was based on a prohibition of same-sex intimacy that existed in the applicable military code at the time. The IACHR found that this provision in the military code was incompatible with the principle of non-discrimination based on (perceived or real) sexual orientation that is enshrined in the American Convention. The IACHR notes that domestic courts have issued similar statements. For example, the Constitutional Court of Colombia has established that sexual orientation cannot itself be considered a basis for punishment, thus legal provisions that “punish solely and exclusively those with that status” entail clear discrimination that promotes the stigmatization of LGBT persons. The Constitutional Court of South Africa has affirmed that such provisions have “no other purpose than to criminalize conduct which fails to conform with the moral or religious views of a section of society.” Further, the IACHR notes similar decisions by the Constitutional Court of Ecuador and the U.S. Supreme Court.

1. “Buggery” or “sodomy” laws

The Inter-American Commission notes that in the Americas there is legislation criminalizing consensual same sex intimacy, as in other regions of the world. These laws can be traced back to their origins in Spanish or British law. The IACHR notes that all countries in Latin America have decriminalized sex between consenting adults of the same sex. For example, since 1997, countries in Latin America such as Ecuador, Chile, Nicaragua and Panama have repealed

IACHR, Report No. 81/13, Case 12,743, Merits, Homero Flor Freire, Ecuador, November 4, 2013, paras. 113-114.
IACHR, Report No. 81/13, Case 12,743, Merits, Homero Flor Freire, Ecuador, November 4, 2013, para. 114.
Constitutional Court of Colombia, Judgment C-507, July 14, 1999, para. 5.11.
Constitutional Court of Ecuador, Judgment No. 111-97-TC, November 27, 1997 declared null the first part of Article 516 of the Criminal Code, which established a penalty of between 4 and 8 years of imprisonment.
Constitutional Court of Ecuador, Judgment No. 111-97-TC, November 27, 1997 declared null the first part of article 516 of the Criminal Code, which established a penalty of between 4 and 8 years of imprisonment. International Commission of Jurists, SOGI Casebook.
El Ciudadano, “Se cumplen 10 años de la despenalización de la sodomía en Chile” [10th anniversary of the decriminalization of sodomy in Chile], July 12, 2009. See also, UN, Human Rights Committee, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007, para. 16.
In 2008 the Nicaraguan Congress adopted a new Criminal Code that decriminalized the crime of “sodomy.” LGBT activists praised this Code, although the women’s rights movement criticized it because it criminalized
the criminalization of anal sex, either through legislative reform, judicial decisions, or presidential orders. Nevertheless, eleven OAS Member States maintain laws criminalizing private, consensual sex between consenting adults of the same sex. These offenses are variously described as “buggery,” “crime against the order of nature” or the crime of “unnatural connexion (sic)”. These laws are, generally speaking, prohibitions against anal sex, and on a literal reading they apply equally to anal sex between men and women and to anal sex between men. In fact, in some jurisdictions these laws are used to prosecute opposite-sex rapes involving anal intercourse. However, in practice, these laws have a disproportionate impact on gay men and other men who have sex with men. Further, the IACHR has also been informed that although the majority of these laws “do not specifically address sexual acts between women, rampant homophobia puts women who do have sex with women, or women who do not conform to a more feminine gender identity, at risk.” Finally, the Commission wishes to highlight that although these laws explicitly target same-sex activity, trans persons, and gender non-conforming persons also experience violence and discrimination, given their visibility.

The legislation punishing sexual conduct between consenting adults in the Anglophone Caribbean originates in the era of colonial rule by Great Britain. In the Anglophone Caribbean, laws criminalizing same-sex intimacy vary greatly both in terms of the definition of the outlawed conduct and the penalty imposed. During the colonial era, English colonists in the Caribbean introduced laws prohibiting “buggery” and acts “against the order of nature,” but did not statutorily define these terms or offer guidance on the legal application or scope of these provisions. Instead, they considered such details vulgar, and left a legacy of laws that often link same-sex intercourse with bestiality and that do not distinguish between consensual and non-consensual, commercial and non-commercial, or private and public acts.

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150 “Sodomy” was criminalized in Panama until 2008, when a presidential decree was issued to modify Article 12 of a 1949 decree which established a penalty of prison from three months to a year, or a fine. See Executive Decree No. 332, Official Gazette dated July 29, 2008.

151 [Antigua and Barbuda] Sexual Offences Act of 1995 (Act No. 9), Section 12 (Buggery); [Barbados] Sexual Offences Act, Chapter 154, Article 9 (Buggery); [Belize] Criminal Code of Belize establishes in its Chapter 101, Section 53 (carnal intercourse against the order of nature) and Section 45 (aggravated indecent assault); [Dominica] Sexual Offences Act 1998, Section 15 (Buggery), article 16 (Attempted buggery); [Grenada] Criminal Code, article 431 (“unnatural connexion”); [Guyana] Criminal Law Act, Chapter 8:01, section 353 (Attempt to commit unnatural offences), Section 354 (buggery); [Jamaica] Offences against the Person Act, Section 76 (Unnatural Crime), Section 77 (attempt); [Saint Kitts and Nevis] Offences against the Person Act, Part XII, Section 56 (Unnatural offences and Sodomy); [Saint Lucia] Criminal Code, Sub-Part C, Subsection 133 (Buggery); [Saint Vincent and the Grenadines] Criminal Code, Section 146 (buggery); and [Trinidad and Tobago] Sexual Offences Act Chapter 11:28, Section 13 (buggery).


153 Regarding Jamaica, for example, see Human Rights Watch, Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica, October 2014, p. 10.

154 HRW, This Alien Legacy: the origins of “sodomy” laws in British Colonialism, December 2008.

155 HRW, This Alien Legacy: the origins of “sodomy” laws in British Colonialism, December 2008.
Since 1986 a number of countries in the Caribbean have amended the provisions in their sexual offences legislation, which deal with buggery, “unnatural crime” and similar offenses, in order to make them stricter.\(^{156}\) A small number of countries had already made similar amendments previously.\(^{157}\) In some instances these modifications increased the penalties for such crimes,\(^{158}\) while in others, the crimes were more clearly defined.\(^{159}\) The Bahamas is the only country member of the CARICOM that has decriminalized same-sex sexual activity between consenting adults in private.\(^{160}\) In 1991, the law was amended to decriminalize this activity,\(^{161}\) but the law as amended still contained a prohibition against same-sex sexual activity in a public space, and, until 2008, there was no corresponding prohibition for opposite-sex couples.\(^{162}\) Additionally, with the 1991 reform, same-sex sexual activity between women was criminalized for the first time. Finally, the use of the narrowly defined term “anal sex” was replaced by the broadly defined term “sexual intercourse,”\(^{163}\) a change which expanded the criminalization of sexual activity.\(^{164}\) This was amended in 2008 in the following terms: “any adult who has sexual intercourse with another adult in a public place (whether male or female)” is guilty of a sexual offence. Currently, all sex in public regardless of whether between same sex or different sex couples is prohibited. The penalty was reduced from twenty years to two years.\(^{165}\) However, there remains a discriminatory provision with respect to the different and older age of consent for same-sex activity as opposed to different-sex activity. Further, The Bahamas’ penal code justifies the use of force


\(^{157}\) For example, in Belize, a 1944 amendment eliminated the requirement of consent for the offence of “unnatural crime,” therefore rendering consent irrelevant to the commission of the crime. See Robinson, Tracy “Authorized Sex: Same-Sex Sexuality and Law in the Caribbean,” in Sexuality, Social Exclusion and Human Rights: vulnerability in the Caribbean Context of HIV, Barrow, de Bruin and Carr (eds), Ian Randle Publishers, 2009, at p. 12.

\(^{158}\) For example, in Trinidad and Tobago the penalties for sex between two adults increased to ten years in the 1986 reform and to twenty-five years imprisonment in the 2000 reform. See Sexual Offences Act, 1986 Chapter 11:28 Act 27 of 1986 (amended by 20 of 1994; 31 of 2000), section 13.

\(^{159}\) In Barbados, for example, the 1992 Sexual Offences Act separated “buggery” from “bestiality,” reducing the sentence for the crime of bestiality. In St. Lucia, a 2004 reform decriminalized anal sex between a man and a woman, and limited the crime to same-sex anal intercourse. See Robinson, Tracy “Authorized Sex: Same-Sex Sexuality and Law in the Caribbean,” in Sexuality, Social Exclusion and Human Rights: vulnerability in the Caribbean Context of HIV, Barrow, de Bruin and Carr (eds), Ian Randle Publishers, 2009, at pp. 13-14.

\(^{160}\) Currently, an ‘unnatural crime’ is committed when there is sexual intercourse between an adult person with another person of the same sex who is a minor; or between adult persons of any gender or sexual orientation in a public space, regardless of consent. The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99, section 16.

\(^{161}\) The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99.

\(^{162}\) The Bahamas, *Sexual offences and Domestic Violence Act (1991)*, (prior to the 2008 Amendment), Ch. 99.

\(^{163}\) “Sexual intercourse” is defined in section 4 of the Act and includes all forms of penetration of the vagina or anus, all stimulation of the vulva or anus, and all penile-oral penetration.


against a person, even killing, in different situations of “extreme necessity,” including “forcible unnatural crime,” among other very different crimes.166

The Commission notes that international human rights bodies have consistently recommended that OAS Member States repeal these types of laws where they still exist.167 Such bodies have also recommended that Member States revise their Constitution or adopt legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited.168

The IACHR also notes that a number of OAS Member States have rejected recommendations to decriminalize same-sex acts in the context of the UN Universal Periodic Review.169 The IACHR notes that some of the most common arguments raised by States against the repeal of these laws are linked to religious opposition, particularly from evangelical churches,170 as well as cultural and societal opposition.171 Other States have indicated that this is a sensitive issue that requires consultation at the national level.172

166 The Bahamas, Section 107 (4) of the Penal Code.
170 A number of countries make reference to religious considerations. For example, Barbados indicated that it is “a heavily religious society and has a tremendous lobby in terms of the church, including activist evangelists, who have their own views on this issue.” [Barbados], Report of the Working Group on the Universal Periodic Review: Barbados, A/HRC/10/73, January 9, 2009, para. 74. Other countries like Jamaica have also made reference to religious considerations for not decriminalizing. See, inter alia, [Jamaica] Report of the Working Group on the Universal Periodic Review: Jamaica, A/HRC/16/14, January 4, 2011, para. 32.
66. In this regard, the Inter-American Court has indicated that while it is true that certain societies might be intolerant with respect to a person's sexual orientation (or, for that matter, a person's race or nationality), States cannot use this as justification to perpetuate discriminatory treatments. On the contrary, States must confront intolerant and discriminatory expressions in order to prevent exclusion.\footnote{I/A Court H.R., \textit{Case of Atala Riffo and daughters v. Chile}. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 119.}

67. The Commission notes however that States’ viewpoints on this issue of discrimination vary widely among those countries in the region that criminalize consensual anal sex. The IACHR highlights that Dominica, for example, has acknowledged that legislation criminalizing intimacy between adult persons of the same sex is discriminatory,\footnote{Guyana indicated that its attempt to “include the phrase ‘sexual orientation’ in the anti-discrimination clause of the Constitution had been met with widespread consternation and protest.” \textit{Report of the Working Group on the Universal Periodic Review: Guyana}, A/HRC/15/14, June 21, 2010, para. 17.} yet Dominica maintains such legislation in place. With a somewhat different expression of viewpoint but the same result, Trinidad and Tobago, which maintains legislation criminalizing adult same-sex intimacy, has indicated that “the issue of discrimination based on sexual orientation” “remains a matter of concern.”\footnote{Belize mentioned that despite resistance from churches, especially evangelical churches, it was working on the implementation of a plan for gender policy, which included providing sexual and reproductive health services for men who have sex with men. Belize’s Prime Minister had affirmed his commitment to the policy. \textit{Report of the Working Group on the Universal Periodic Review: Belize}, A/HRC/25/13, December 11, 2013, para. 96.} St. Lucia has taken the positive step of condemning violence against persons of “different sexual orientation.”\footnote{See for example, [Dominica] Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/13/12, January 4, 2010, para. 33.} Other OAS Member States that still criminalize consensual same-sex intimacy between adult have indicated that they have either attempted to adopt\footnote{Guyana indicated that its attempt to “include the phrase ‘sexual orientation’ in the anti-discrimination clause of the Constitution had been met with widespread consternation and protest.” \textit{Report of the Working Group on the Universal Periodic Review: Guyana}, A/HRC/15/14, June 21, 2010, para. 17.} or have been successful in adopting measures to protect the rights of LGBT persons.\footnote{Report of the Working Group on the Universal Periodic Review: Saint Lucia, Addendum, A/HRC/17/6/Add.1, June 1, 2011, p. 7.} Other OAS Member States have noted the weight of cultural and societal attitudes towards LGBT persons. For example, Grenada has affirmed that “with the passage of time, growing tolerance on the part of the people would help in addressing this issue.”\footnote{Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines, Addendum, A/HRC/18/15/Add.1, September 22, 2011, para. 16.}

68. Some OAS Member States have noted the weight of cultural and societal attitudes towards LGBT persons. For example, Grenada has affirmed that “with the passage of time, growing tolerance on the part of the people would help in addressing this issue.”\footnote{I/A Court H.R., \textit{Case of Atala Riffo and daughters v. Chile}. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 119.}
personal attitudes and community values is no easy task." The State of St. Lucia has indicated that there is a “need for advocacy and changes in attitude of certain sectors of society;” and that the question is, according to the State, whether such “advocacy” needs to come from the government or from those who believe they are victims of discrimination.

Some Commonwealth Member States have indicated that although discriminatory laws remain in force, there is no discrimination against LGBT persons in practice. St. Kitts and Nevis even indicated that, despite the existence of discriminatory legislation, there was a “culture of tolerance” in society at large with respect to LGBT persons. Further, some States have indicated that they have not received complaints involving harassment or attacks against lesbians or gay men.

2. “Serious Indecency” and “Gross Indecency” Laws

There are a number of OAS Member States that have laws against acts of “gross indecency” or “serious indecency” that apply to or have a disproportionate impact on gay, lesbian and bisexual persons. As with the prohibitions against “buggery” and acts “against the order of nature,” laws against indecency vary in specificity and scope, and in many cases they discriminate against LGBT persons, whether by their intent or through their impact. Some countries outlaw “gross indecency” using colonial-era statutes that do not define it, though historically this crime applied to sexual conduct between males. Usage of “gross indecency” versus...
“serious indecency” is not consistent throughout the region, with the definition of the former in some countries resembling the definition of the latter in other countries.\textsuperscript{187} There is also vagueness as to what, in the eyes of the court, constitutes “gross” or “serious” indecency.\textsuperscript{188} In one example, “serious indecency” refers to “an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.”\textsuperscript{189} In many cases, the offence of “gross indecency,” a crime that applied to sexual activity between men, has been replaced with the crime of “serious indecency,” and no gender is specified. Since such laws in general create exceptions for consensual sex between males and females, the effect of the law is to extend criminalization beyond sex between males, to sex between females. Serious indecency in this scenario is neutral in terms as it applies both to same and different sex couples. This means that for the first time, sex between women is criminalized. Countries such as Trinidad and Tobago then created an exception for different sex couples, making gay, lesbian and bisexual persons the primary subject of the modern law.\textsuperscript{190} In some cases, countries have replaced “gross indecency” with “serious indecency” and have substantially increased the penalty.\textsuperscript{191}

3. Legislation criminalizing non-normative gender identities and expressions

In addition to legislation in various countries in the region that criminalizes consensual same sex intimacy, Guyana has legislation criminalizing cross-dressing, or dressing with the clothes socially attributed to another gender.\textsuperscript{192} This provision reinforces gender stereotypes and constitutes discrimination on the grounds of gender identity and expression. According to information received by

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\textsuperscript{187} The 1998 Sexual Offences Act of Dominica (section 14) and the 2005 Criminal Code (section 132) of St. Lucia define “gross indecency,” in the same way that other countries define “serious indecency” — see infra.

\textsuperscript{188} These countries include Guyana, Jamaica, and St. Vincent and the Grenadines.


\textsuperscript{190} Tambiah, Yasmin, “Creating (Im)moral Citizens: Gender, Sexuality and Lawmaking in Trinidad and Tobago, 1986,” Caribbean Review of Gender Studies, The University of West Indies Centre for Gender and Development Studies, 2009.

\textsuperscript{191} Tracy Robinson explains that “prior to 1986 in Trinidad and Tobago, the offence of gross indecency by a male with another male had a maximum sentence of two years. After 1986 it was replaced by the crime of serious indecency defined as an act other than sexual intercourse by a person involving the use of the genital organs to arouse or gratify sexual desire” and the punishment for “serious indecency for consenting adults increased to five years.” Further, “like Trinidad and Tobago, the 1992 Barbados Act replaced the misdemeanor of gross indecency, which was committed by a male in relation to another male and gave rise to imprisonment of up to two years, with the new one of serious indecency.” Robinson, Tracy, “A legal analysis of sex work in the Anglophone Caribbean,” paper prepared for the United Nations Development Fund for Women (UNIFEM), April 2007.

\textsuperscript{192} Under section 153 part (1) (xxvii) Chapter 8:02 Summary Jurisdiction Offences, an offense is committed when “a man, in any public way or public place, for any improper purpose, appears in female attire, or being a woman, in any public way or public place, for any improper purpose, appears in male attire.”
the Commission, police have arbitrarily applied this law in order to “further discrimination” against trans persons.\textsuperscript{193}

72. The Commission has received information that between February 6 and 7, 2009, seven persons were detained and charged under this offence in Georgetown, Guyana. They were reportedly not allowed to make a phone call or contact a lawyer, were mocked by police officers, and were not informed of the charges against them. On February 9, 2009, they were convicted and fined.\textsuperscript{194} The convictions were appealed and the Constitutional Court decided the case on September 6, 2013, finding that cross-dressing in public is not a crime unless it is done for an “improper purpose.”\textsuperscript{195} This interpretation of the provision by the Constitutional Court has been criticized, because of the ambiguity inherent in determining what would constitute a “proper” versus “improper” purpose for cross-dressing. The applicants indicated that this provision was unenforceable for reason of vagueness and uncertainty in the word “improper use” and the words “female attire” and “male attire.”\textsuperscript{196} The Constitutional Court in this case held that the fact that statutory terms are free standing does not \textit{per se} render them vague or uncertain, incapable of factual determination by a court. The appellants were seeking a finding that the statute violated human rights provisions in the Constitution, particularly the right to non-discrimination based on gender (because of the impact on the life of trans persons), and freedom of expression. To this, the Court stated that the provision did not discriminated against persons on the basis of their gender, “but rather treats both male and female persons in the same manner.”\textsuperscript{197} As one of the applicants stated: “the law really stifles us, because what could be an improper purpose? The trans community is very worried, and still fearful of arrests, in light of this decision.”\textsuperscript{198}

\textsuperscript{193} IACHR, Hearing on \textit{Discrimination on the basis of Gender, Race and Sexual Orientation in the Americas}, 133\textsuperscript{rd} Period of Sessions, October 23, 2008. Audio and video not available.

\textsuperscript{194} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by IACHR Executive Secretariat on November 25, 2013.

\textsuperscript{195} In this case, the Court held “it is instructive to note that it is not a criminal offence for a male to wear female attire and for a female to wear male attire in a public way or place (...) It is only if such act is done for an improper purpose that criminal liability attaches. Therefore, it is not criminally offensive for a person to wear the attire of the opposite sex as a matter of preference or to give expression to or to reflect his or her sexual orientation. It is the improper purpose for such conduct to which criminality is directed.” High Court of The Supreme Court of Judicare, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of November 6, 2013, p. 26.

\textsuperscript{196} High Court of The Supreme Court of Judicare, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of 6 November 2013, p. 24.

\textsuperscript{197} High Court of The Supreme Court of Judicare, Civil Jurisdiction,Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of 6 November 2013, p. 28.

\textsuperscript{198} Quincy McEwan (Director of Guyana Trans United - GTU), “Constitutional Court Rules Cross-Dressing is Not a Crime if Not for “Improper Purpose” - Rights Groups Plan Appeal on Dubious Decision,” February 27, 2013.
4. Impact of these Laws on Violence

73. Some OAS Member States have indicated that although laws against same-sex intimacy between consenting adults in private remain on the books, they have not been enforced in recent times in relation to consensual sex between adult men. While the Commission acknowledges the lack of recent enforcement in general, the IACHR has received reports on enforcements in Grenada. Civil society organizations have claimed that even when laws against same-sex acts are largely unenforced, “research in other national contexts has shown that ...unenforced laws can have pervasive effects in the society.” A recent study carried out by UNAIDS in the Caribbean region, found that nearly 23% of respondents experienced verbal insults or name-calling within one month, while 33% had been stared at or intimidated within the last month because people knew or presumed they were attracted to men. Moreover, about one in ten (11%) reported being physically assaulted in the last five years.

74. The UN High Commissioner on Human Rights has noted that, in general, such laws are used “to harass and prosecute individuals because of their actual or perceived sexuality or gender identity.” The IACHR has noted that this type of legislation “contribute[s] to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence” against LGBT persons. These laws reinforce “already existing societal prejudices” and severely increase “the negative effects of such prejudices on [their] lives” of LGBT persons. The


200 The Advocate, “Man arrested for Gay Sex in Grenada,” May 26, 2011. See also information presented by the organizations Groundation Grenada and GrenCHAP, during the public hearing “Reports of Criminalization of Same-Sex Relations in Grenada,” IACHR, 156th Period of Sessions, October 19, 2015. Video and audio available at: www.iachr.org. See also, the testimony given by Colin Robinson (from the organization CAISO, Trinidad and Tobago) before the IACHR during the hearing “Improper Use of Criminal Law to Criminalize Human Rights Defenders” 153rd Period of Sessions, October 31, 2014. Videos and audio available at www.iachr.org.

201 Carrico, Christopher “Collateral Damage: The Impact of Laws Affecting LGBT Persons in Guyana,” The University of The West Indies Cave Hill Campus Faculty of Law, March 2012, p. 3.

202 United Nations Programme on HIV/AIDS (UNAIDS), CARIMIS, “The Caribbean Men’s Internet Survey,” 2014, p. 50. In addition to men from non-independent territories in the Caribbean, men from the following OAS Member States participated in the study: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.


204 OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, 17 November 2011, para. 40.


criminalization of sexual intercourse between men also has a symbolic effect since in the eyes of the legal system where such criminalization is in force, “all gay men are criminals.”

75. For example, the existence of “buggery” laws is used as a mechanism for “social control and domination” that enables states to legitimize and contribute to the stigma of LGBT persons as “immoral” individuals. Moreover, such laws have been used to justify the arbitrary arrests, detention and even torture of LGBT people. In its 2014 Report on Jamaica, Human Rights Watch indicated that

prosecutions under these laws are rarely pursued. Nevertheless the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.

76. The IACHR has already indicated that, as a consequence of exclusion from the protection of the justice system, those who are vulnerable remain in dangerous situations. For instance, LGBT persons are far more likely to stay in abusive relationships without seeking police protection. They feel that they cannot come forward to report domestic violence that is occurring in their relationships, because the relationships themselves are considered criminal.

77. The IACHR has expressed its concern about a link between conduct that is punished by the State, on the one hand, and violence against LGBT persons committed by non-state actors, on the other. In 2010, the IACHR expressed its deep concern about the situation of systematic discrimination and violence against LGBT persons in the Caribbean region. In this regard, the Commission has indicated that the criminalization of same-sex consensual intimacy legitimizes and reinforces prejudices against lesbian, gay, bisexual and trans persons, or those

209 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by IACHR Executive Secretariat on November 25, 2013.
perceived as such, while sending "a social message to communities and societies that discrimination and violence is condoned or tolerated."214

78. The IACHR has also received information regarding the impact of criminalization on access to justice.215 In countries where same sex intimacy between consenting adults in private is criminalized, LGBT persons are reluctant to denounce human rights violations and other abuses that may or may not be related to their sexual orientation and gender identity. Even in countries where same-sex intimacy has been decriminalized, these obstacles persist over time.216 Further, many cases of harassment and violence are not reported to local authorities and there is a general lack of official data collection on this issue by States. As a result, this violence becomes invisible, which in turn furthers violence against LGBT persons. These obstacles and others regarding access to justice will be examined in more detail in chapter 6 of this Report.

79. The Commission was informed that in States that criminalize same-sex intimacy or non-normative gender identities, many victims do not report crimes out of fear of prosecution. 217 The Commission has indicated that these laws provide “a social sanction for abuse.” Since LGBT persons are “believed to be engaged in criminal activity, it is logical to infer that police are less likely to investigate crimes against them.”218 According to the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, “sanctioned punishment by States reinforces existing prejudices, and legitimates community violence and police brutality directed at affected individuals.”219 In January 2015, the U.N. Secretary-General Ban Ki Moon reaffirmed that he “staunchly oppose the criminalization of homosexuality,” because these laws “breed intolerance.”220

80. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that decriminalizing “matters of sexual orientation” would greatly contribute to overcome the social stigmatization of LGBT persons, thereby curbing impunity for human rights violations against them.221 Former UN Special

216 For example, the Nicaraguan Council for Human Rights (Procuraduría para la defensa de los Derechos Humanos) informed the IACHR that the fact that sexual relations between same-sex consenting adults were decriminalized only recently keeps many LGBT persons from reporting the violence they suffer. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on 20 November 2013, p. 8.
Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health declared that criminalization may not be the sole reason behind stigma, but that it perpetuates it, through the reinforcement of existing prejudices and stereotypes.222

81. The Commission has expressed that while criminalization of sexual orientation is discriminatory for anyone, it can involve a more severe violation of rights in the case of children and adolescents because of the particularly harmful psychological effects it has on children and young persons whose identity and orientation is still in the process of maturing and who are, as a result, extremely vulnerable.223 More specifically, the IACHR has found that “[i]n some States of the region, children face the juvenile justice system for engaging in certain sexual behavior, especially having sexual relations with members of the same sex. Then, too, in some States children become special targets of police brutality and violence by detention facility personnel because of their sexual orientation and gender identity.”224

82. The IACHR notes that legislation criminalizing same-sex intimacy between consenting adults has also been used by some courts in the Caribbean to justify instances of violence against persons based on the perception of their sexual orientation, which will be discussed in more detail in chapter six of this Report. In defense against a charge of assault or murder, accused persons have invoked, and courts have accepted, justifications such as self-defense or provocation due to “a state of violent temporary insanity” following a non-violent same-sex sexual advance.

83. Another aspect to take into account is that minor offenses can be used to harass LGBT or non-gender-conforming persons and draw them into the criminal justice system, thereby criminalizing LGBT persons and subjecting them to more violence. Once such persons are incarcerated or in the justice system, this situation can in turn give rise to further incidents of discrimination and violence. A study found that the law against cross-dressing is more frequently invoked than the buggery law, and people are sometimes prosecuted and convicted of this offense. Five trans persons who were interviewed for that study in April-May 2011 indicated that each of them had been charged with a crime at some point, and all but one had been charged with the crime of cross-dressing. Of the five, those whose charges had come to trial pleaded guilty and received fines. In another example, a 17-year old Indo-Guyanese trans woman sex worker was reportedly arrested and held for three months before she was informed of the charges against her. During that time she was reported to have been “beaten with rope, dragged through the drains, [and] taken to clean the station yard.”225

222 UN, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, April 27, 2010, para. 22.
225 Carrico, Christopher “Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana,” Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16.
84. The Commission takes the view that the historical discrimination against LGBT persons compels States to be particularly vigilant to adopt measures to ensure the interruption of cycles of violence, exclusion and stigma. States must protect lesbian, gay, bisexual, and trans persons from violence exerted against them, in view of the principle of non-discrimination. States have an obligation to adopt measures to protect against and respond to the forms of violence directed against LGBT persons, as a direct consequence of the principle of non-discrimination.

85. Finally, the Inter-American Commission is of the opinion that laws that criminalize same-sex intimacy between consenting persons of the same sex in private are incompatible with the principles of equality and non-discrimination according to international human rights law. Thus, and taking into account their impact on violence against LGBT persons, the IACHR urges the States of the region that have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws, and legislation criminalizing cross-dressing, to repeal those laws, and, in the meantime, to impose an explicit and formal moratorium on enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten or extort LGBT persons or those perceived as such.

B. Legislation to protect “public morals” and its impact on violence

86. The IACHR has received reports on the impact of other legislation, which while not directly criminalizing same-sex activity or trans persons, is generally construed and applied to criminalize LGBT persons. Examples include legislation against vagrancy and loitering, laws seeking to protect “public morals,” or “proper conduct,” and laws that criminalize conduct regarded as “indecent,” “lewd,” “provocative” or “affronts against public morals and good manners.” These laws exacerbate police abuse, extortion, ill treatment, and acts of violence against LGBT persons in various countries in the region. To use one example, vagrancy laws provide law enforcement with authority that is broad and poorly defined and that can be used to discriminate against trans persons, arbitrarily regulating the use of public spaces, and judge persons based on their physical appearance.226

87. The UN Human Rights Committee has expressed concern regarding certain legal provisions, such as misdemeanour codes (ordenanzas contravencionales) which are “used to discriminate against people on account of their sexual orientation.”227

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226 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated 29 November 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 20. See also, CEJIL and Hivos, Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua, San José. Costa Rica: CEJIL, 2013. [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua], (available only in Spanish).

The UN Committee against Torture has stated, speaking in regard to LGBT persons, that the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuses against them. Some of these provisions are explicit in national criminal legislation, but they can also be found in local and/or provincial laws, and in police regulations.

These laws are criticized for, among other things, their vague language. Vague definitions of outlawed conduct open the door to arbitrary application and enforcement with respect to persons who are seen as defying socially established gender norms, particularly trans persons. There is evidence that law enforcement authorities have repeatedly used such laws to harass and persecute LGBT persons, especially trans sex workers. In some jurisdictions, police officers and law enforcement agents have ample powers to limit or restrict the circulation of persons in public spaces. This power, coupled with discrimination and social prejudice toward LGBT persons, leads to abuse of police discretion in the application of laws relating to the use of public spaces. Moreover, the Commission is concerned over reports received from civil society groups in different countries regarding police forces that are specifically targeting lesbian, bisexual and trans women under the rubric of “public morals” (buenas costumbres).

The IACHR has indicated that a section of the 2001 Law on Police and Social Harmony of Honduras (Ley de Policía y de la Convivencia Social) produces in practice situations where human rights are violated, particularly those of trans persons. The Commission echoes concerns voiced by civil society organizations indicating that this law facilitates police abuse and arbitrary detentions of trans persons “regardless of whether they perform sex work or not.” According to civil society organizations, this law in Honduras is constantly used to arbitrarily detain many persons in unofficial detention centers, especially sex workers.
without any judicial control, and with highly subjective interpretations about the vague concepts of "social coexistence" or "moral."  

90. Further, these police laws stipulate that someone who is “wandering in a suspicious way” can be brought in to the police station for identification purposes in the name of "society's protection." The State of Honduras has acknowledged that in addition to criminalizing poverty, this legislation also discriminates on the basis of physical appearance, contributes to illegal detention, and disrespects basic human rights.

91. The State of Argentina has acknowledged that in some provinces, the police are using particular statutes (Código de Faltas and Código Contravencional) to penalize, harass and persecute LGBT persons. According to the Argentinean State, individual freedom should not be denied by this legislation, and these codes are “a tool for social and cultural control which violates constitutional principles and human rights.” Argentina is in the process of repealing these statutes in most provinces, and other countries like Venezuela have struck down these laws on constitutionality grounds, or, like Chile, have accepted recommendations by international bodies to review them.

92. The IACHR has received reports by civil society that the terms used in these laws are so vague that their application is mainly based on the prejudices, and subjective and personal views held by the authorities charged with their enforcement. Such laws could therefore be used to target public displays of

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235 Honduras, Law on Police and Social Harmony of Honduras (Ley de Policía y de la Convivencia Social), Article 100.

236 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6.

237 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12. The State of Argentina noted, however, that these codes had been or were in the process of being repealed in most provinces.

238 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12.

239 In 1997 the Supreme Court of Venezuela declared the unconstitutionality of its 1939 Law on Vagrants and Crooks (“Ley de Vagos y Maleantes”). Reportedly, this law was used to commit abuses against LGBT persons and trans women who were sex workers. Quiteria Franco, “Sobre la ley de vagos y maleantes y las personas LGBTI en Venezuela,“ 6 May 2014 (in Spanish only).

240 The Government of Chile accepted the recommendation, made in the context of the Universal Periodic Review process, to review Article 373 of the Criminal Code (referring to crimes against decency or morality) to ensure that article 373 is not used to criminalize LGBT persons. The government stressed that a new draft of the Penal Code would soon be presented to Congress, which would involve the derogation of Article 373 of the Code. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Chile, A/HRC/26/5, 2 April 2014, para. 105. See Movilh, “Por un Chile Diverso” Campaign, “Artículos 365 y 373 del Código Penal,” (No date; in Spanish only).
affection between couples of the same sex. Further, civil society organizations indicate that some local governments consider LGBT persons to be “persons of bad habits” and that these local governments promote the “eradication of homosexuals” as part of their citizen security policies. During a 2011 hearing, the IACHR learned about the case of three men who were arrested and spent the night in jail, and were released without charge the next morning. They were ostensibly arrested for ‘disturbing the peace’ and for being ‘suspicious,’ but in this case, their ‘suspicious’ behavior amounted to wearing tight clothing and being effeminate.”

93. Trans women are particularly affected by these laws. Civil society has pointed out that “the mere presence of a [trans person] in public may be interpreted as an ‘obscene exhibition’ by police.” Allegedly, trans women are treated like criminals and suffer psychological, physical and sexual harassment. There are also reports of cases in which, following an arrest under laws protecting “social coexistence and order,” law enforcement authorities have extorted, blackmailed or demanded sexual favors from trans persons so as to avoid being incarcerated or released from jail.

94. The IACHR has also received information that laws against soliciting, vagrancy, loitering and cross-dressing have been used to target trans women who are sex workers, disproportionately relative to other sex workers, and in ways that lead to more violence. Solicitation has generally been defined as “the act of inviting another to engage in an act of prostitution” and is criminalized in most Commonwealth Caribbean States. Old vagrancy laws still remain on the books as part of particular statutes in some countries. These statutes usually deal with “small charges, summary jurisdiction, and minor offences,” in other words,

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241 Article 373 of the Chilean Criminal Code. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by MOVILH, Chile, received by IACHR Executive Secretariat on November 20, 2013, pp. 9-10.
the types of statutes that typically grant wide discretion to local law enforcement and judicial authorities, although in some cases, these offenses “have been placed in penal and criminal codes.” Trans women who are sex workers are constantly targeted, and are susceptible to violence. The Commission has received information that many trans sex workers are arbitrarily arrested based on their gender identity and/or expression. Organizations claim that trans sex workers face much more discrimination and illegal arrests than cisgender sex workers. One 17-year old trans youth, who reports being a sex worker, described being arrested and held “for three months before being told what crime she was being charged with.” Finally, one study indicates that the average age of trans women in sex work is 22,7 years old; their youth exacerbates their vulnerability to violence.

The IACHR recommends that OAS Member States repeal legal provisions that penalize public conduct on vaguely defined grounds to protect “public morals,” and other similar legislation and norms, which have a disproportionate impact against LGBT persons, criminalizing and stigmatizing them.
CHAPTER 4
FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS
FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS

A. Introduction

96. The Inter-American Commission emphasizes that this Report focuses on physical violence against LGBTI persons, namely killings and serious non-lethal attacks such as rape and attacks by large groups of people (mob attacks). This chapter first identifies general trends with respect to violence faced by LGBTI persons. Next, it examines violations of the right to life and personal integrity, resulting from acts committed by both State and non-state actors, followed by an examination of some of the different contexts in which this violence occurs, including medical violence against intersex persons, and attempts to “modify” sexual orientation or gender identity. State actors who perpetrate violence include law enforcement agents such as police officers and members of the armed forces, prison personnel, custodial staff in migration detention centers, health care professionals working in public hospitals, teachers and non-teaching staff in public schools, and other State employees. Acts of violence based on prejudice perpetrated by State agents have been reported in almost every OAS Member State. Finally, the Commission analyzes hate speech and incitement to violence.

B. General trends in the findings of the IACHR

1. Underreporting and lack of official data

97. The IACHR notes that the available data do not reflect the full dimensions of the violence suffered by LGBTI persons in the Americas. The IACHR has noted that “[m]any cases of violence against LGBT persons are underreported; many persons are afraid of reprisals, reluctant to identify themselves as LGBT, or do not trust the police or the justice system.” 257 Further, internalized stigma and prejudiced views

held by LGBT persons themselves might also hinder recognition and acknowledgment of abuse.

98. In many OAS member States, victims, family members, and friends of victims are frequently deterred from reporting the killings of their lesbian, gay, bisexual or trans relatives or friends, due to the high levels of prejudice and hostility against non-normative sexual orientations and gender identities held by authorities and other members of their communities. Oftentimes when the crime is reported, the information regarding the sexual orientation or gender identity of the victim is either concealed or overlooked. The IACHR has indicated that underreporting of cases of violence against LGBT persons is particularly apparent in cases of non-lethal attacks, since few of these are reported to authorities, monitored by non-governmental organizations, or covered by the media.\textsuperscript{258} One organization in Mexico has estimated that the available data may reflect only one third of the crimes actually committed in that country.\textsuperscript{259}

99. The data collection mechanisms in OAS countries are very limited.\textsuperscript{260} The IACHR recently conducted a fifteen-month monitoring project concerning LGBT-related killings and acts of violence. In carrying out this project, the IACHR found that official statistics were insufficient, and it had to rely on other sources of information such as media coverage, reports from civil society organizations, and other monitoring sources.\textsuperscript{261} This monitoring effort produced a Registry of Violence that, although not exhaustive, revealed pervasive violence against LGBT persons throughout the region.\textsuperscript{262}

100. Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.”\textsuperscript{263} Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender


identity and thereby identify trans women as “gay men.” In some States, organizations have reported that authorities register gay, trans, lesbian or bisexual persons under umbrella terms like “LGBT” or “gay” —even if they are trans persons— without specifying their sexual orientation or gender identity.

101. Underreporting and a lack of official data mechanisms render violence against LGBT persons invisible, and hinder an effective State response. The UN Office of the High Commissioner on Human Rights indicated in its May 2015 Report to the Human Rights Council that:

In most countries, the absence of effective systems for recording and reporting hate-motivated violence, or “hate crimes,” against LGBT persons masks the true extent of violence. Where they exist, official statistics tend to understate the number of incidents. Victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality or reprisals. In addition, prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting. Failure to investigate, prosecute and punish violations when reported also contributes to incomplete assessments of the scale of violence.

2. **Pervasiveness of violence**

102. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the region. The IACHR closely monitored killings and other acts of violence during a fifteen-month period (between January 2013 and March 2014). The findings of the Registry of Violence indicate that there were at least 770 acts of violence committed against LGBT persons during this period, across 25 OAS Member States (Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela). However, when reporting this statistic the Commission noted that lack of information with respect to violence in other countries in the Americas during that time period was not an indication that violence did not occur in those countries. It is likely that killings and/or other acts of violence against LGBT persons did take place in those countries, but this

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265 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colectivo Entre Tránsitos et. al.” (Colombia), received by the IACHR Executive Secretariat on 25 November 2013, p. 16; Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*, June 2014, p. 7.
violence was not officially reported and was not covered in the media. The IACHR is of the view that violence based on prejudice, in the terms defined in chapter two of this Report, is prevalent in all countries in the Americas.

3. Invisibility of everyday violence

The IACHR notes that underreporting also renders everyday violence against LGBT persons invisible, particularly as it relates to non-lethal attacks. Non-lethal attacks are the most common type of violence suffered by LGBTI persons in all OAS Member States. Reports received by the IACHR from independent sources indicate that lesbian, gay, bisexual and trans persons suffer a wide variety of attacks on a regular basis, which may range from pushing and shoving to beatings or the throwing of bottles, stones, or other objects. These acts of violence are reported to be so commonplace in some parts of the region that they may not be reported, because they are part of ‘everyday life’ for LGBT persons. Further, instances of day-to-day violence are generally not monitored by organizations or covered by the media, both of which tend to focus on the most serious crimes and especially murder. When the Commission published the findings of its Registry of Violence, it noted that during the fifteen-month period referred to above, it had documented 176 cases of non-lethal violence. This was low relative to the 594 killings in the Registry of Violence, and suggests underreporting of non-lethal violence against LGBT persons. In publishing the Registry of Violence the Commission stated: “killings are most prone to be reported by the media, leaving out ordinary and persistent forms of everyday violence, which have to be, nonetheless, fully exposed, identified and addressed by States.” Further, available information regarding violence against LGBT persons in private settings is limited, which renders this type of violence invisible and reducing the possibilities that the State can effectively address it.

4. Invisibility of violence against certain groups: trans men, bisexual and intersex persons

There are certain groups of persons within the “LGBTI” acronym whose experiences of violence are more invisible than others, due to a variety of reasons. For example, the IACHR has been informed by civil society organizations that violence against trans men or trans persons who identify as male takes place mainly in the private sphere and is frequently not visible outside the spaces in


which it occurs. The IACHR has held that "trans men tend to be more invisible within the larger LGBT community, and in this regard –contrary to what happens with trans women– invisibility shields them from the types of societal violence usually affecting other gender non-conforming persons." According to the information received, severe violence in the family, in the health sector, and school bullying, are among the most common types of violence suffered by trans men. However, the Commission received information that Alex Peña, a trans man and police officer from the Metropolitan Police (Cuerpo de Agentes Metropolitanos - CAM) in San Salvador, was allegedly severely beaten by four police officers from the National Civil Police (PNC), following his participation in a LGBT pride parade in San Salvador. While he was been beaten he allegedly was told that he was been treated "like a man," making reference to his gender identity.

Further, the IACHR has found that violence against bisexual persons is the most difficult to track. During the fifteen-month period monitored (between January 2013 and March 2014), the IACHR was informed of three acts of violence against bisexual men, or those perceived as such. The IACHR notes the difficulty in documenting violence specifically targeting bisexual persons. Unless a source specifically indicates that someone is being targeted because of his or her bisexuality, violence against bisexual persons is often exerted because such persons are perceived as either gay or lesbian, or because such persons are witnessed expressing same-sex affection. This tendency in the data to categorize bisexual persons and bisexual expressions of affection as gay or lesbian, regardless of the true motivation, renders violence based on prejudice towards bisexuality invisible for data collection purposes. Notwithstanding, a study carried out in the United States suggests that bisexual persons “experience higher rates of sexual and intimate partner violence than gay, lesbian, and straight people.”

Regarding intersex persons, the IACHR notes that during the fifteen-month period (between January 2013 and March 2014) included within the Registry of Violence referred-to above, there was no data or reports recording instances of violence against intersex persons. The Commission also indicated that this lack of data is due to a variety of reasons, including the fact that these so-called “normalizing” surgeries conducted on intersex persons is generally carried out according to State-approved medical protocols, and is not reported in the media or denounced by victims, families or organizations. The IACHR also noted that intersex persons and their families often experience deep feelings of shame and fear; this

269 IACHR, Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133rd Period of Sessions, October 23, 2008.
274 Movement Advancement Project-BiNetUSA- Bisexual Resource Center, Understanding issues facing bisexual Americans, September 2014.
contributes to the invisibility of, and secrecy surrounding, this subject.275 These negative feelings, amplified by existing societal taboos about sexuality and genitalia, are the most commonly reported reactions of intersex persons to the lengthy procedures to which they are subject.276 A study by the Human Rights Commission of San Francisco found that the parents of intersex children have also reported feeling shame, fear, horror, humiliation, regrets, and ongoing doubt about the choices they may have made for their children.277 A study conducted in Uruguay found that most intersex persons who were subjected to “normalizing” surgeries were not informed that they were intersex until after their surgeries. In fact, due to the societal taboo surrounding intersex issues, those who were interviewed were unaware of any “out” intersex individuals, even within the LGBT community.278

5. High levels of cruelty

OAS Member States279 and civil society organizations280 have pointed out that crimes against LGBT persons stand out for their brutality and cruelty. The UN Special Rapporteur on Violence against Women has indicated that killings due to sexual orientation and gender identity are characterized by serious levels of physical violence that “in some cases exceed those present in other types of hate crimes.”281 The cruelty and brutality of acts of violence based on prejudice against persons with non-normative sexual orientations and gender identities has been...
noted by the IACHR, the UN High Commissioner for Human Rights, and civil society organizations.

108. In the Registry of Violence, referred-to above, there are numerous examples of killings that are particularly heinous, including cases of stoning, decapitation, burning, or impalement. Many victims are repeatedly stabbed or beaten to death with hammers or blunt objects. Others are punched or kicked to death, have acid thrown at them, or are suffocated. Some victims in the Registry were repeatedly run over by cars, mutilated or set afire. In many cases, victims were killed after being subject to gruesome acts of torture, inhumane or degrading treatment, and multiple forms of extreme humiliation, debasement, torture and/or rape.

109. In the last few years, several cases of brutal killings against LGBT persons were brought to the attention of the IACHR. For example, in 2009, the body of Jorge Lopez Mercado was found decapitated, partially burned and with his four limbs severed from his torso in Puerto Rico. In March 2012, Daniel Zamudio, a 24-year-old man, was brutally attacked and sadistically tortured for several hours by a group of four men at a park in Santiago, Chile. Although Daniel Zamudio was found still alive and was immediately hospitalized, the severity of the wounds inflicted lead to his death a few days later. The IACHR issued a press release strongly

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284 See e.g. [Canada] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Eagle, Canada Human Rights Trust,” received by the IACHR Executive Secretariat on 22 November 2013, p. 1; [Colombia] Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*, June 2014, p. 17. [Honduras] Cattrachas et. al., “*Audiencia de Homicidios de Personas LGTBTI e Impunidad en las Américas ante la CIDH*, November 1, 2012, p. 11.


286 Primera Hora, “*Espeluznante crimen de odio contra joven homosexual*,” November 16, 2009 (Available only in Spanish). Five months later, Ashley Santiago, a trans woman, was found stabbed to death in her home. The Advocate, “*Transgender Woman Murdered in Puerto Rico*,” April 26, 2010. The following month, Angie González, another trans woman, was strangled to death with an electrical cord in her home. Edge Media Network, “*Another transgender woman murdered in Puerto Rico*,” May 25, 2010. A recent case was also reported in Puerto Rico: the body of a young volleyball player was found floating in the water at a beach in Dorado. His body had no trousers and there were numerous bullets in his stomach, legs and arms. Primera Hora, “*Dos individuos confiesan haber asesinado a joven voleibolista por ser gay*,” March 20, 2014 (Available only in Spanish).

condemning his murder and urging an investigation. In October 2013, the four defendants were found guilty and sentenced to prison. The IACHR also learned of the case of a 17-year-old lesbian girl from Valdivia, Chile, who was attending a vigil for Daniel Zamudio shortly after his death, when she was attacked, beaten with objects and marked with a swastika using cigarettes. She did not file a complaint out of fear of revealing her sexual orientation to her mother.

110. “Ahumada and Angulo asked [Daniel Zamudio] if he was gay. [...] When he answers “yes,” Ahumada slapped him [...] Angulo said he was a shit because he was gay, Ahumada laughed. // Ahumada and Angulo started to beat him continuously; they jumped on his head and nose. [...] Then they sat down and they continued smoking. Then, Angulo rose and urinated on Zamudio’s mouth and chest; Ahumada did the same, he also urinated on him; then they kept beating him; Ahumada smashed a bottle [...] on Zamudio’s head and Angulo grabbed the bottle neck and carved three swastikas on him, two on his stomach and one on his chest, and he stabbed him twice on the left side of his body. [...] Ahumada and Angulo beat Daniel again, they grabbed his head [...] and it bounced against the floor. [...] Ahumada then smashed another bottle against Zamudio’s head and told Angulo that he should learn “the carvings” and carves two other swastikas on his back. After that, they jumped on his head, beat him on the nose, eyes, genitals and they urinated again over Zamudio. Raúl Lopez then grabbed a rock, and smashed it against his leg, trying to break it. He then [...] grabbed his leg, twisted it and broke it; they were all laughing and they said it sounded like a chicken bone.”

111. In February 2013, the body of a 20-year-old trans woman was found in a rural road in Puebla, Mexico. Her face had been disfigured with a club or bat, several of her teeth were found a few yards apart and one of her eyeballs was detached. In 2013, the IACHR was informed of the case of Joel Molero, a 19 year-old Peruvian man who was brutally attacked and beheaded, with his genitals, fingers and toes mutilated. His body was then put on a mattress and set on fire.

292 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México, received by IACHR Executive Secretariat on 20 December 2013, p. 135; Zocalo Saltillo, “Torturan y asesinan a homosexual en Puebla,” (available only in Spanish) February 6, 2013.
6. Violence in response to public displays of same-sex affection

The Inter-American Commission has received reports of same-sex couples who were attacked because they showed affection in public, such as holding hands, caressing, embracing or kissing. Private security guards in shopping centers have also been known to expel same-sex couples in response to public displays of affection. In São Paulo, a gay couple was allegedly attacked and violently thrown off a metro train by a group of more than fifteen men after the group of men told the couple to stop embracing each other. In Mexico, a gay couple who were watching a football game at a bar are reported to have been suddenly surrounded by twenty other male patrons who cursed at them, demanded they kiss each other, and then proceeded to push, spit, and throw beer at them. The couple declared to the press that they would not file a formal complaint because they were accustomed to these kinds of attacks. In Chile, lesbian women have also been attacked for displaying same-sex affection. In Colombia, organizations allege that same-sex couples continue to be persecuted and harassed, even after a decision by the Constitutional Court establishing that discrimination had occurred when a gay couple was expelled from a shopping mall by two guards for displaying affection in public. Same-sex couples showing public displays of affection are also a frequent target of police abuse and arbitrary detention by state agents – often with excessive use of force or verbal abuse – because of what is considered “immoral behavior” in public spaces.


See e.g. [Mexico], Milenio, “Retiran a pareja gay de centro comercial,” March 27, 2015.


See e.g. [Chile] The Clinic, “Movilh denuncia golpiza a lesbianas en pub y dos casos de discriminación en clínica,” July 25, 2012 (Available only in Spanish).

Colombian Constitutional Court, Decision T-909 of 2011, December 1, 2011 (Available only in Spanish).

IACHR, Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas, Washington DC, February 24-25, 2012; [Brazil] O Tempo, “Jovem gay afirma ter sido agredido por guardas em SP,” April 4, 2014 (Available only in Portuguese); [Chile] Movimiento de Integración y Liberación Homosexual (MOVILH), XI Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2012, 2013, p. 61 - 65. [Colombia] Colombia Diversa, Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011, 2013, p. 49-50. [Ecuador] Fundación Ecuatoriana Equidad, Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador), 2013, p. 30. One of the victims reported that police agents told them that “they should be grateful they were not raped;” [Mexico] Comisión Nacional de los Derechos Humanos (CNDH), Informe especial de la comisión nacional de los derechos humanos sobre violaciones a los derechos humanos y delitos cometidos por homofobia, 2010, p. 8; Telediario, “Pareja gay denuncia discriminación por parte de policías de Metepec,” May 3, 2013 (Available only in Spanish); Novedades Acapulco, “Surpreenden a pareja de hombres besándose; los trasladan a barandilla,” February 5, 2013 (Available only in Spanish); Diario Contra Poder en Chiaapas, “Pareja gay denuncia a policías por discriminación, extorsión y amenazas” (s.f.) (Available only in Spanish); Notiúe, “Pareja gay denuncia a tres policías bancarios por abuso de autoridad,” May 5, 2004 (Available only in...
C. Violations of the Right to Life

1. Extrajudicial Executions

113. For the purpose of this Report, *extrajudicial executions* are understood as deprivations of the right to life unlawfully perpetrated by State agents. The inter-American case law has already established that extrajudicial executions are, by definition, contrary to Article 4(1) of the American Convention, and that the deprivation of life by the authorities of the State is a matter of the utmost gravity. Although there is underreporting and lack of information regarding extrajudicial executions of LGBT persons at the hands of state officials, the IACHR is very concerned about reports received of extrajudicial executions of LGBT persons that are perpetrated by State agents. According to one regional organization, which obtained its information from witness testimony, police officers have been directly involved in a “good number” of killings of trans women. The motives included retribution against those who had reported an officer’s wrongdoing, and the result of arguments with the police over “sexual favors or money.”

114. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that lesbian, gay, bisexual and trans persons are “especially vulnerable” to extrajudicial killings. For example, it is reported that four military police officers, after having humiliated two trans sex workers in Salvador, Brazil, in August 1998, forced them to jump into the sea, where one of them drowned. The IACHR also received information about the 2006 killing in Guatemala of Paulina Méndez Cartagena, a trans woman who was allegedly killed by four police officers.


The term “extrajudicial executions” has been used to refer to executions carried out by the State, other than those executions that are carried out in conformity with the law, such as in the application of the death penalty. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, January 29, 2007, para. 1, fn. 1.


officials. Paulina Méndez Cartagena was with Sulma Alegría Robles, another trans woman, when they were attacked. Robles survived the attack and the IACHR granted her precautionary measures.

“On 16 December 2005, around 11.30 p.m., Paulina and Sulma – both transgender persons – were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements about the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well-intended advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission on Human Rights.”

The IACHR has also received information about attempted extrajudicial executions of trans persons by members of the police. In December 2008, Nohelia Flores Álvarez was stabbed seventeen times in the throat, back, stomach and arms by a male police officer in Honduras, after the officer held her at gunpoint demanding sex, which she refused. The police officer was sentenced to ten years in prison on September 2009. In January 2010, the IACHR requested the State of Honduras to adopt precautionary measures to protect her life and personal integrity, as well as that of three other persons who were being threatened in the context of the trial against the police officers, including two state agents, members of the Dirección Nacional de Investigación Criminal in Tegucigalpa, who were investigating the case.

307 HRW, “Guatemala: Transgender People Face Deadly Attacks: Victims concerned that police may have been responsible for these crimes,” February 21, 2006.

308 On February 3, 2006, the IACHR granted precautionary measures in favor of Sulma Alegría Robles, Jorge Luis López Sologaistoa, and 11 other members of OASIS (the Organization to Support Integrated Sexuality) in Guatemala. According to the information available, on the night of December 16, 2005 in Guatemala, two transsexual persons (Robles, a client of OASIS, and Paulina Méndez Cartagena, a communications assistant at OASIS), were shot and injured in an incident allegedly involving four uniformed policemen. Cartagena’s injury reportedly proved fatal and Robles, who survived the incident, is a key witness in the investigation of the shooting. Other sources confirm that the lesbian, gay, bisexual, and transgender community in Guatemala faces attacks and threats that often involve the police, which has given rise to the fear of a clandestine policy of “social cleansing.” In view of these incidents, the Commission requested that the Government of Guatemala adopt the measures necessary to protect the life and physical integrity of the beneficiaries of the precautionary measures, and report on action taken to investigate judicially the events that gave rise to the precautionary measures. IACHR, Summary of PM 3-06 – Sulma Alegría Robles and members of OASIS, Guatemala.


311 The IACHR continues monitoring the implementation of these precautionary measures. The latest meeting between the State and the beneficiaries was held in October 2015, in the context of the 156th Period of Sessions. IACHR, Summary of PM 18-10 – Indyra Mendoza Aguilar et al., Honduras, January 29, 2010.
In January 2013, two police officers were arrested in connection with the kidnapping, torture and execution of a young gay couple. The incident apparently originated with a quarrel between two young men, aged 17 and 22, in Mexico City. After they were both expelled from a nightclub, a police patrol car and other cars arrived and police agents violently pushed them into a white vehicle that was escorting the patrol car. The bodies of the two men were found the following day with numerous signs of beatings in various parts of the body (some of which were so brutal they left bones uncovered), their hands and feet strongly tied with wire, their ears amputated, and with three gunshot wounds in the head of each man. Surveillance cameras showed that the vehicles that were used to apprehend the men outside the nightclub drove to the vicinity of the place in which the bodies were found.312

The IACHR has noted that for the majority of cases of violence against LGBT persons recorded in the Registry of Violence covering the time period of January 2013 to March 2014, there is little or no data as to the perpetrators of the violence, particularly in the cases of killings. Notwithstanding this, during that fifteen-month period, the IACHR received information of alleged executions by state agents of a 15-year-old boy in Patu, Brazil,313 a 40-year-old trans woman in Mexico City,314 and the aforementioned two gay men aged 17 and 22 in Mexico City.315 The IACHR was also informed of the killing of Angelina Lucía Martínez Figueroa, a 19-year-trans woman in Cartagena, Colombia, from a shot in the head, allegedly from a stray bullet resulting from shots fired into the air by a police agent in an effort to break up a street fight.316

2. Killings

The Commission found that during a fifteen-month period (between January 2013 and March 2014), at least 594 persons who were LGBT or perceived as such were killed in attacks that were apparently related to the perception of their sexual orientation or their gender identity and expression.317 This included 283 killings of gay men, or those perceived as such, and 282 killings of trans women and trans

persons who identify as female.\textsuperscript{318} The IACHR was also able to identify trends in the data regarding the locations of killings and the weapons used. Gay men, or those perceived as such, were more likely to be killed by bladed weapons and in private spaces, such as the home of the victim.\textsuperscript{319} Whereas trans women and trans persons with female gender identities were more likely to be killed by firearms, and their bodies were more likely to be found in the streets or other public spaces, and sometimes in situations linked to sex work.\textsuperscript{320}

120. Some civil society organizations and State agencies in some countries in the Americas have registered an increase in the number of killings in recent years. However, it is not possible to categorically conclude whether in fact there has been an increase in killings, or, because of a more rigorous monitoring, there is greater visibility and documentation of the killings of LGBT persons. In this section, the IACHR summarizes some data on killings by different sources in several countries in the region, while signaling countries in which there seems to be an increase in the number of killings. For example, in 2014, the Mexican Executive Commission for Attention to Victims [“Comisión Ejecutiva de Atención a Víctimas” (CEAV)] —a federal autonomous governmental agency— expressed its concern with regard to the rising number and increasingly violent nature of crimes based on prejudice against LGBT persons.\textsuperscript{321} According to the Mexican civil society organization Letra S Sida, Cultura y Vida Cotidiana A.C., there have been 1,218 killings motivated by prejudice against LGBT persons. According to this report, more than 80\% of victims had received several types of attacks before being killed.\textsuperscript{322} Other organizations in Mexico documented at least 164 killings of trans women between 2007 and 2012, confirming a steady increase in the numbers in these years.\textsuperscript{323}

121. In 2013 an organization in Chile reported an increase in the number of killings of LGBT persons with respect to previous years,\textsuperscript{324} amounting to a total of 24 since 2002.\textsuperscript{325} Organizations from Guatemala report that killings of LGBT persons are not found in police records, and when exceptionally they are, they end in

\textsuperscript{318} IACHR, \textit{Registry of Violence against LGBT persons (January 2013- March 2014)}, (Available only in Spanish).
\textsuperscript{321} Comisión Ejecutiva de Atención a víctimas (CEAV), Boletín 32/2014: “Preocupa a la CEAV que en México sigan aumentado víctimas de homofobia con expresiones cada vez más violentas,” May 16, 2014 (available only in Spanish).
\textsuperscript{322} Report by Letra S, Sida, Cultura y Vida Cotidiana A.C., cited in Notiese, \textit{Registran 1218 homicidios por homofobia en México}, May 12, 2015 (available only in Spanish).
\textsuperscript{323} Centro de Apoyo a las Identidades Trans (CAIT), \textit{Informe Crímenes de Mujeres Trans en México: Invisibilidad = Impunidad}, 2013, p. 9.
\textsuperscript{324} Movimiento de Integración y Liberación Homosexual (MOVILH), \textit{XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013}, 2014, p. 37.
\textsuperscript{325} Movimiento de Integración y Liberación Homosexual (MOVILH), \textit{XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013}, 2014, p. 40.
impunity. They also point out that victims who are transgender tend to be young, with an average age of 25, and live in constant fear of being assaulted or attacked. According to an organization from civil society, at least 30 trans persons were killed between 2009 and 2010 in Guatemala. In Honduras, according to Red Lésbica Cattrachas, at least 189 killings of LGBT persons were registered between 2008 and 2014, and 10 killings had taken place during the first five months of 2015.

In Peru, local organizations reported that at least 38 LGBT persons were killed between 2001 and 2013, and 13 were killed between April 2014 and March 2015. In Venezuela, organizations reported that at least 46 killings have been documented between 2009 and 2013. In Argentina, an organization indicated that 25 killings of LGBT persons have been reported between 2011 and 2013. In 2014, it was reported that seven LGBT persons were killed, compared to five the year prior. The organization noted that while there were fewer killings of gay men in 2014, killings of trans persons more than doubled, in comparison with 2013. In October 2015, organizations reported that three trans women were killed in one
month in Argentina.\textsuperscript{337} In Uruguay, according to information provided by civil society organizations, the Ministry of Interior had reported that five trans women were killed in 2012,\textsuperscript{338} four of which were killed in the span of three months.\textsuperscript{339}

123. The State of Colombia informed the IACHR that between 2011 and 2013, at least 219 killings of LGBT persons had been registered nationwide.\textsuperscript{340} A civil society organization reported that between 2010 and 2011 at least 280 LGBT persons were killed.\textsuperscript{341} The UN Office of the High Commissioner for Human Rights indicated that 2013 had seen an increase in the number of reported killings of LGBT persons in Colombia in comparison to those reported in 2012.\textsuperscript{342} The Commission has also received information on the differential impact of the armed conflict in Colombia on LGBTI persons. The Colombian organization Caribe Afirmativo has documented 114 violent deaths of LGBT persons in the Caribbean Region of Colombia, 58 of which occurred in territories where the armed conflict persists. The victims were primarily gay men and trans women.\textsuperscript{343} Worrisome information has been brought to the attention of the Commission from other regions in Colombia. In Cauca, it was reported that a gay man had his penis cut off and he was left to bleed to death.\textsuperscript{344}

124. Further, the IACHR has received troubling information about the number of killings of LGBT persons taking place in Brazil. Reported figures from Brazil far surpass the number of killings reported in any other OAS Member State. It bears mentioning in this regard that, although high levels of violence and prejudice against persons with non normative sexual orientations and gender identities may exist in Brazil, several other factors may also contribute to these figures being so disproportionately high. First, Brazil is the second most populated OAS Member State after the United States of America, with more than 200 million inhabitants. Second, Brazilian civil society, and the State itself during the last few years, have built up robust reporting mechanisms through which cases are identified and recorded. In quantitative terms, the State of Brazil informed the IACHR that there were 278 killings of LGBT persons in 2011 and 310 reported cases in 2012, a year-

\textsuperscript{337} Office of the UN High Commissioner for Human Rights, “Oficina Regional repudia muertes de personas transgénero en Argentina” (“Regional Office repudiates deaths of trans persons in Argentina”), October 21, 2015.
\textsuperscript{338} El Correo, “Asesinadas cinco mujeres transexuales en Uruguay este año,” (“Five trans women killed in Uruguay this year”), September 27, 2012. (Available only in Spanish).
\textsuperscript{340} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Colombia, Note MPC/OEA No. 1673/2013 dated December 27, 2013, received by the IACHR Executive Secretariat on February 12, 2014, p. 16.
\textsuperscript{342} United Nations High Commissioner for Human Rights, Situation of Human Rights in Colombia, A/HRC/25/19/Add.3, January 24, 2014, para. 94.
\textsuperscript{343} Caribe Afirmativo - Global Rights, Violación de derechos a personas lesbianas, gays, bisexuales trans e intersex (LGBTI) en el Caribe Colombiano en el marco del conflicto armado interno, Octubre,2014, p. 14.
\textsuperscript{344} IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (and Cali and Tumaco). Information provided by a human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.

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over-year increase of 11.5%. In 2013, the local organization “Grupo Gay da Bahia” (GGB) documented at least 312 killings of gay men, lesbian women, and trans persons in its 2013 Annual Report. Gay men (59%) and trans women (35%) represent the majority of the victims.

125. The disturbing brutality of the killings reported in Brazil can be grasped through the following examples. In April 2014, a bisexual woman—who had a 6-year-old son and who had left her boyfriend to live with a woman—was viciously stabbed, disemboweled, and her body abandoned near a railroad track. The perpetrator cut out the victim’s vulva and inserted it in her mouth before leaving. Investigators stated that this action spoke to the motive of the crime and that a former boyfriend of the woman was among the suspects. In January 2014, a 40-year-old gay man was found near death near a sugar cane plantation in João Pessoa, his body showing signs of having been brutally beaten and raped. He was hospitalized but died shortly after. In May 2013, a 22-year-old gay man was verbally attacked with homophobic epithets on the street and then run down with a car three consecutive times in Rio de Janeiro. Although his friends took him to a hospital, he did not survive the wounds; his spinal cord was fractured in three places and his hip, ribs and lungs were also severely affected. During 2013, the IACHR was informed of numerous killings of trans women who were sex workers, most of the killings allegedly perpetrated by their clients. These included victims who were among many other violent acts — smashed in the head with rocks, stoned to death while offering their services, beaten to death with a broken bottle, stabbed while waiting in their regular spots, repeatedly shot when approaching a car, and shot following a disagreement over fees.

126. Entertainment and socialization spaces for gay persons, and their vicinities, are also common locations in which killings take place. Bars and dance clubs are

345 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 3.
351 Globo.com “Travesti é encontrado morto com a cabeça esmagada na Vila Irmã Dulce,” January 5, 2014 (available only in Portuguese); R7 Notícias, “Travesti é encontrada morta com marcas de pedrada na cabeça em Teófilo Otoni,” August 13, 2013. (Available only in Portuguese).
353 Folha PE, “Travesti assassinado na praia de Piedade,” January 24, 2013 (available only in Portuguese).
354 Terra Notícias, “RS: travesti é morto com sete facadas no centro de Gravataí,” March 6, 2013 (available only in Portuguese).
355 DOL Br, “Travesti é executada no bairro da Guanabara,” January 8, 2014 (available only in Portuguese).
356 Gazeta do Povo, “Travesti é morta a tiros no Boqueirão,” July 2013 (available only in Portuguese).
reported to be frequent locations where perpetrators target their victims, a *modus operandi* colloquially referred to as “pick-up crime.” In 2006, a serial killer was known to be targeting gay men in Mexico City by seducing them at gay bars, kidnapping them, and demanding ransom from their families. At least four gay men were killed. The gruesome details of the cold-blooded confessions of the serial killer included different ways in which he tormented his victims during their captivity, such as engraving marks on their foreheads with bladed instruments. The killer declared that “he had done society a favor, because gay men corrupt children.” Other examples in which killers reportedly lured victims at bars include the well-known case of Matthew Shepard in the United States, and a similar case reported in Chile. In recent years, online dating sites and location-based phone dating applications have also been reported as tools used by perpetrators to find their victims in the United States. In November 2014 in Colombia, there was reportedly a criminal gang that would lure gay men through social media in order to rob, attack, or kill them. In January 2013, a group of men in a car passed in front of a gay bar in Mexico City and started screaming slurs directed at two patrons who were hugging each other. When one of the gay men confronted the group, one of the men in the car pulled out a gun and shot him dead on the spot.

**D. Violations of the Right to Personal Integrity**

1. Violations in the context of law enforcement: Torture, cruel, inhuman and degrading treatment

Articles I and XXV of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration” or “Declaration”) and Articles 5 and 7 of the American Convention protect the right to security of the person, the right to...
personal integrity, and the right to be free from arbitrary and illegal detention. Further, the Inter-American Convention to Prevent and Punish Torture, adopted by the OAS General Assembly in 1985 and ratified by 18 OAS Member States, establishes States’ obligations to prevent, investigate, punish and provide redress regarding acts of torture. According to this treaty, State Parties shall take measures to prohibit torture in any form, including acts of torture in interrogation, detention or arrest in the training of police officers and other public officials who are responsible for the custody of persons who are deprived of liberty whether temporarily or long-term.\(^{363}\)

128. The IACHR has held that the lawful activity of security forces, directed toward the protection of the population, is fundamental for achieving the common good in democratic society. Human rights require that States prevent and respond to the arbitrary exercise of authority and constitute an essential safeguard of the security of the public. Respect for, and correct interpretation and application of, the guarantees established in the American Convention and American Declaration must serve as a guide to member states to ensure that the activities of their security forces respect human rights.\(^{364}\)

129. Regarding the prevention by the State of acts of torture and ill-treatment against LGBTI persons, the IACHR has highlighted that legislation and regulations concerning the police must set out “clearly that no law enforcement officer can inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment,” and that every law enforcement agent must immediately report any case of torture or cruel, inhuman or degrading treatment of which he or she has knowledge.\(^{365}\)

130. In the last few years, the IACHR has continuously received information on acts of violence against LGBT persons that are perpetrated by law enforcement agents,\(^{366}\) including acts of torture, degrading or inhumane treatment, excessive use of force, arbitrary detention, and other forms of abuse.\(^{367}\) Numerous cases of State-led


\(^{366}\) For the purposes of this Report, “law-enforcement agent” includes any state agent legally empowered to fulfill duties pertaining to public security, including regular police forces, military police, airport security agents, ‘gendarmerie’, constabulary forces, and migration police or other border control authorities.

\(^{367}\) IACHR, Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133\(^{rd}\) Period of Sessions, October 23, 2008 (audio and video not available); Hearing on Situation of Lesbians, Gays, Bisexuals and Transgender Persons in Colombia, 137\(^{th}\) Period of Sessions, November 5, 2009; Hearing on Hate Crimes against Members of the LGBT Community and Impunity in Central America, 140\(^{th}\) Period of Sessions, October 26, 2010; Hearing on Citizen Security, Prisons, Sexual Diversity, and Equality in Venezuela, 140\(^{th}\) Period of Sessions, October 29, 2010; Hearing on Situation of the Rights of LGBTI Persons in the Americas, 143\(^{rd}\) Period of Sessions, October 28, 2011; Hearing on Homicides of LGBTI Persons and Impunity in the Americas, 146\(^{th}\) Period of Sessions, November 1, 2012; Hearing on Information on Discrimination based on Sexual Orientation and Gender Identity in Guatemala, 146\(^{th}\) Period of Sessions, November 4, 2012; Hearing on Human Rights Situation of Trans Persons of African Descent in Brazil, 149\(^{th}\) Period of Sessions, October 29, 2013; Hearing on Reports of Violence against Trans People in El Salvador, 149\(^{th}\) Period of Sessions, October 29, 2013; Hearing on Human Rights Situation of LGBTI Persons in Belize, 150\(^{th}\) Period of
violence have been documented throughout the Americas. Indeed, several OAS Member States have expressed concern about these abuses. The Registry of


Violence of the IACHR, referred-to above, indicated that between January 2014 and March 2015, there were forty-three cases of police abuse; however, the Commission highlights the high levels of underreporting of acts of violence, particularly, those committed by state agents, as noted at the beginning of this chapter. Further, Human Rights Treaty Bodies within the United Nations Human Rights System, several Special Procedures and the Office of the High Commissioner for Human Rights, have all received similar information, and have documented their concern over reports of police abuse against LGBT persons in several OAS Member States. Several organizations have reported that police forces even feel that they are entitled to exert violence against LGBT persons.
131. The Commission has previously expressed concern about cases of police abuse against LGBT persons, and has indicated that police involvement in discrimination and violence against LGBT persons leads others to believe that they can harm persons of non-normative sexual orientations and gender identities with impunity. The IACHR notes that police and other State security agents – legally entitled to enforce public order – share the same attitudes and prejudices against LGBT persons that are prevalent in society at large. Arbitrary detention is another significant concern in the overall context of police abuse against LGBT persons. As indicated in the previous chapter, the IACHR found that police officers arbitrarily deprive LGBT persons of their liberty on the grounds of alleged “public scandal,” or because their sole presence is considered a threat to “public morals”. Numerous reports indicate that trans women and trans sex workers are particularly vulnerable to police abuse and are regularly subjected to inhumane treatment by law enforcement when detained. Many trans Latin American women in Queens, New York, have experienced being stopped and searched by the police on suspicion of prostitution while walking in their own neighborhoods. As was affirmed by a trans woman: “to the police, all transgenders are prostitutes.”

132. According to information received by the Commission, the violence occurs at all stages of police custody, including apprehension, transportation in police vehicles and, above all, in the premises of police stations and lock-up facilities. Among the most commonly reported forms of abuse are: extortion and the demand for sexual favors; the use of excessive force; vicious beatings; the use of firearms to hurt or incapacitate victims; instances in which trans women are forced to strip fully naked in public; and constant hostility and acts of humiliation such as forcible removal of wigs, misgendering, and constant verbal abuse. As noted by the UN Office of the High Commissioner for Human Rights, “States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”

133. According to information received, police agents have arrested LGBT persons based solely on their appearance, the way they are dressed, or their gender expression. For example, it is reported that in 2011 in Belize, two police officers arrived at a bar. One of the police officers asked two trans women: “why are you dressing like that if you are men?” The officers proceeded to arrest the women and, when asked for a reason, the officers answered: “because you look suspicious, you confuse me.” In transit, the two trans women were subjected to mistreatment. The
abuse continued at the lock up facility, with one police officer insinuating that they “should be murdered and dumped on a nearby highway.” The women suffered rape threats from other detainees and one of them was forced to strip naked. They were released the next morning, with no charges brought against them. They did not file charges out of fear of reprisals and further victimization.380

134. “All my arrests always came from just walking on the street, coming out of a club, or just because a cop identified me as transgender. They would always look for condoms. They don’t care about you, they take your purse, throw it on their car, your stuff they throw it on the floor, they pat frisk you, they ask if you have fake boobs, take them off right there, if you have a wig, take it off. It’s humiliating. Right there in the street, they take your identity right there. When they find condoms, they say ‘what are these for… how many dicks did you suck today? How much money did you make today?’”381

135. In 2013, a group of men were dancing during carnival in Port-au-Prince, Haiti, when police officers started beating them, uttering slurs and making comments that “they did not like it that they were effeminate.”382 In Mexico City, a young man was allegedly arrested by federal police officers while he was walking on the street late at night. When he asked why he was being arrested, the officers answered “because you are gay” and then asked him to perform oral sex on them.383 In Nicaragua, reports indicate that lesbian women have been repeatedly arrested by the police and kept for hours in detention facilities while being asked “why they dressed like that” and “why didn’t they look for men.”384 In 2013, two men were talking in a park in Santo Domingo, Dominican Republic, when a police car stopped beside them. Two police agents pushed the two men into the police car while referring to them as women, and drove them to a police station. When they demanded an explanation for their arrest, a police officer answered: “If you need a reason, we will say that you both were having oral sex at Parque Duarte.” Another officer then said that the men should be put in cells where men would rape them to “make them men.” Police agents told them that being a “faggot” was worse than being a criminal. The next day they were released without any further explanation.385
136. Police abuse is also reported to take place in or around places where LGBT persons socialize or its surroundings. For instance, a violent police raid is reported to have taken place at an LGBT beauty pageant in Monterrey, Mexico, in February 2013. Agents of the federal police force —under the command of an official of the Federal Public Ministry— stormed the night club where the contest was taking place, ordered everyone out, and arrested at least 70 people who were present at the event, who were fined, without criminal charges. According to the information presented to the Commission, police agents insulted them using homophobic and transphobic slurs: “faggots, we are taking you because dressing up as women is immoral.” The IACHR has also received reports of police cracking down on clubs and hangouts of LGBT persons in other countries.  

137. In Argentina, an official study conducted in 2012 showed that 83% of surveyed trans women had been victims of serious acts of violence and discrimination perpetrated by police officers. Another study prepared by civil society organizations two years following the passing of the gender identity law indicated that trans women feel safer in public spaces, and police abuses against trans persons had diminished. However, other reports indicate that grave instances of police abuse against LGBT persons, particularly trans women, are still frequent in various Argentinean provinces.

138. The IACHR has received reports from multiple organizations of cases in which police agents not only perpetrate violence, but also incite others to attack LGBT persons, or are indifferent toward violence perpetrated against LGBT persons by third parties. Reportedly, police officers were involved in the attack of a gay man in Jamaica which ultimately led to a mob killing. The incident began with the police officers beating the victim with batons, after which they urged others to beat him. The victim was dismembered, stabbed and stoned to death.


IACHR, Minutes of Meeting of Experts on Violence against LGBTI Persons in the Americas, Washington DC, February 24-25, 2012; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asociación por los Derechos Civiles (ADC), received December 20, 2013, p. 4; El Tribuno de Salta, “Una travesti denunció feroz acoso, abuso y golpiza policial,” November 10, 2012 (available only in Spanish); La Gaceta, “Cinco policías abusaron de una travesti en una comisaría,” December 3, 2013 (available only in Spanish); La Gaceta, “Aprehendieron a dos policías por agredir a una travesti en el parque 9 de Julio,” November 4, 2013 (available only in Spanish); Página/12, “Agresión a Diana Sacayán,” August 23, 2013; Kaosenlared, “Argentina. Cómo tortura la policía a las trans,” (caso de ataque a Michelle Mendoza en Rosario), July 3, 2015.

A trans woman in Honduras explained that when a drunk and aggressive client stabbed her in the arms, neck, and leg in September 2011, she sought help from the police. She recalls: “the police didn’t ask me to make a statement, they laughed at me and asked me for sexual services even after I had told them that I was injured and needed help. They told me that I got what I deserved for being out in the street.”

When Argentinean human rights defender and activist Diana Sacayán was insulted and attacked at a bar in 2013, she sought the assistance of two gendarmerie agents who were nearby. Allegedly, the agents spoke to her attacker, allowed him to leave and went back to her saying, “you’d better start running.” They then hit her with a baton. When she arrived at the local police station to file a report, it is alleged that the chief officer on duty refused to take her report and had her taken to a nearby hospital. She suffered a fractured nose and cheekbone. No record was made of her presence at the police station. The IACHR has also received information of police indifference in cases of violence against LGBT persons in Chile.

Since the coup d’état in Honduras in 2009, the Inter-American Commission and the UN Special Rapporteur on the situation of human rights defenders have found that LGBT persons were among the groups suffering severe violence in Honduras. In fact, the Special Rapporteur indicated that the persistence of such acts could indicate a pattern of hate crimes, primarily committed by the police and private security guards. In its latest visit to Honduras, the IACHR received more reports on arbitrary detention and acts of violence perpetrated by police agents against LGBT persons. Civil society alleges that mistreatment of trans women regularly takes place in public view and with no consequences for the perpetrators. For instance, in July 2014, a video emerged of a trans woman sex worker being attacked by a man, while others watched, in the city of San Pedro Sula, Honduras. According to the victim, the perpetrator was a doctor who had

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393 Página 12, “Ataque brutal a una activista trans,” August 27, 2013 (available only in Spanish); Infojus Noticias, “Líder trans pide que se cree un protocolo para las fuerzas de seguridad,” August 28, 2013 (available only in Spanish); El 1 Digital, “Sacayán denunció que gendarmes la atacaron a bastonazos,” September 3, 2013 (available only in Spanish); Diario NCO, “La Matanza: Diversas Organizaciones Sociales Repudiaron Hechos De Violencia Contra Diana Sacayán,” September 5, 2013 (available only in Spanish).


398 IACHR, Preliminary Observations concerning the Human Rights Situation in Honduras, December 5, 2014.

399 Cattrachas et. al., Audiencia de Homicidios de Personas LGTBI e Impunidad en las Américas ante la CIDH, November 1, 2012, p. 9.

400 La Prensa, “Video: Indignación por golpiza que le dan a un transexual en Honduras,” July 29, 2014 (available only in Spanish).
hired her for sex but refused to pay. The video reportedly shows how law enforcement officers not only fail to intervene or provide any assistance to the victim, but how they also take part in the beating.\textsuperscript{401} Similarly, a transgender activist in El Progreso, Honduras, recounted: “[in] 2012, three policemen forced me into a patrol car telling me they were going to take me to the station, but they took me to an isolated place and kicked me and punched me in the stomach for over 15 minutes. They left me lying there and threatened to kill me if I talked.”\textsuperscript{402}

142. In Colombia, civil society organizations claim that violence perpetrated by police officers is part of a larger, pervasive, systematic pattern of behavior based on prejudice that the State has not been able to prevent or eradicate,\textsuperscript{403} particularly in areas outside the capital. Numerous cases of alleged police abuse have been documented in Cartagena, Barranquilla, Cali and Medellin. For example, Corporación Caribe Afirmativo documented 18 cases of mistreatment carried out in 2014 by members of the security forces — which includes police and soldiers — in the departments of Atlántico (5), Bolívar (5), César (2), Córdoba (1), Guajira (2), Magdalena (2), and Sucre (3).\textsuperscript{404} There were also reports that members of security forces beat trans women, particularly those who are sex workers, in the places where they receive surgery, such as silicone implants, as if wishing to destroy those parts of their bodies.\textsuperscript{405} In 2011, the UN High Commissioner for Human Rights highlighted the case of a trans woman who was brutally attacked by eight police agents and left unconscious at a neighborhood police station in Medellin.\textsuperscript{406} With respect to police mistreatment in Cali, a defender of transgender rights told the IACHR that only in one very serious case of assault of a transgender woman, followed by threats to force the woman to drop her complaint, was a policeman suspended for three days without pay. The defender explained: “only some police are abusive, but the lack of response and impunity concerns the whole police force.”\textsuperscript{407} In September 2014, the IACHR requested information from the State of Colombia concerning reports by local organizations of a wave of violence perpetrated by police officers against trans women in Cali, Cartagena and Barranquilla.\textsuperscript{408} The State informed the Commission that official records showed

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\textsuperscript{401} El Heraldo, “Brutal golpiza a ‘gay’ en Honduras,” August 6, 2014 (available only in Spanish).
\textsuperscript{402} REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 15.
\textsuperscript{403} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos et al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 9; Colombia Diversa, Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011, 2013, pp. 48 a 49.
\textsuperscript{404} Corporación Caribe Afirmativo. Information received on January 1, 2015. On file with the Executive Secretariat of the IACHR.
\textsuperscript{405} Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014. Cited in IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, para. 308.
\textsuperscript{407} Testimony of a transgender woman human rights defender from Cali. Meeting of LGBTI persons with the President of the IACHR in Cali. September 30, 2014, cited in IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, para. 310.
\textsuperscript{408} IACHR, Letter of request of information pursuant Article 41 of the American Convention. September 24, 2014. On file with the IACHR Executive Secretariat. The formal letter sent to the government requested
\end{footnotesize}
that 22 cases had been registered by police forces in those three cities, 17 of which had occurred in Cali. The State also informed the Commission that out of these 17 cases of abuse, 7 had been closed with no finding of wrongdoing by the officer (archivados), 8 had been stayed, one was under investigation, and in only one case the defendant had received a written admonition. Further, three of the four cases in Cali had also been closed with no finding of wrongdoing by the officer (archivados), while one was still under investigation.409

143. In 2011, activists from the Mexican state of Durango demonstrated before the local council, denouncing at least 70 instances of rape and sexual abuse committed by the local police against gay and trans sex workers, all of which had ended in impunity.410 A survey carried out by civil society in the Dominican Republic found that 36% of trans women who were engaged in sex work reported having to agree to “sexual favors” demanded by police agents to avoid arrest.411 Civil society organizations also report instances of police abuse, extortion, and arbitrary detention targeting afro-descendant trans women in Brazil. 412 In November 2014 the IACHR declared admissible a petition against the State of Peru in which Luis Alberto Rojas Marín, a young gay man, was allegedly arrested by police agents and, as alleged, suffered severe physical violence while in detention, including torture. Petitioners allege that three police officers raped the alleged victim with a rubber baton, in a context in which he was sexually harassed and insulted because of his sexual orientation.413

144. Finally, the Inter-American Commission has received information indicating that local governments in the Peruvian districts of Lima Metropolitana, Pueblo Libre,414 Jesús María, San Isidro, and Comas, have enforced policies aimed at the “eradication” of gay persons.415 In 2012, civil society organizations reported the

information with regard to three specific issues: (1) the number of reports of police abuse against trans women and the current stage of investigations; (2) specific measures adopted by the State at a national level to enforce Police Directive 6/2010; and (3) specific measures adopted either by the State at the national level or by local governments to prevent and punish police abuse.


La Voz de Durango, “Denuncia comunidad Gay 70 casos de abusos sexuales por parte de policías,” February 18, 2011 (available only in Spanish).


Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX,” received by the IACHR Executive Secretariat on December 20, 2013, p. 5; Promsex, Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2012, May 2013, p. 57; La República, “Mas denuncias contra comunas que discriminan a homosexuales en Lima,” June 30, 2012 (available only in Spanish). Lamula.pe, “Política de ‘eradicación’ de homosexuales se practica en varios municipios de Lima,” July 11,
existence of official documents issued by a section of the government of the City of Lima (“Gerencia de Seguridad Ciudadana”), which allegedly specified that the “eradication” of gay persons would be included among the security operations carried out. Lamula.pe, “Política de ‘erradicación’ de homosexuales se practica en varios municipios de Lima,” July 11, 2012 (available only in Spanish); Audio recordings of telephone consultations with security officers: https://www.youtube.com/watch?v=hFTpcy_k3ls.

The Municipality of Lima and the mayor apologized through social media and indicated that the document had been revoked. Peru.com, “Municipio de Lima se disculpa por documento que dispone ‘erradicación’ de homosexuales,” June 29, 2012 (available only in Spanish).


Further, the IACHR had access to a copy of the statistical report issued by that district in August 2014, which indicated that since 2008, local agents had intervened in 1,257 cases of “eradication of prostitution and homosexualism.”

- Persons Deprived of Liberty

The Commission is concerned about recurring acts of violence faced by lesbian, gay, bisexual and trans persons, or those perceived as such, who are deprived of liberty in the Americas. The IACHR has received troubling reports from various States and State agencies, as well as experts and non-governmental organizations, of instances of violence, torture, and inhumane and degrading treatment.

The IACHR has yet to receive specific information regarding the human rights situation of intersex persons deprived of liberty in the Americas.


treatment against LGBT persons, or those perceived as such, in prisons, lock up facilities, police stations, immigration detention centers, and other places of detention. According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, LGBT persons are at the bottom of the informal hierarchy in detention facilities, which results in double or triple discrimination, and they are disproportionately subjected to torture and other forms of ill treatment. Although the IACHR has received information that LGBT persons live in deplorable conditions in detention centers, the focus of this Report is on violence. Thus, other aspects of deprivation of liberty of LGBT persons more related to discrimination, and not directly linked to violence, are out of the scope of this Report.

146. Every person deprived of liberty is to be treated humanely in strict accordance with international human rights instruments, with respect for his or her inherent dignity, and with the guarantee of fundamental rights. States are the guarantors of the rights of persons deprived of liberty, given the dependence of persons in custody on the State and on the decisions made by custodial staff. As such, States are called on to guarantee the life and physical and personal integrity of persons under their custody. States have the duty to ensure that the manner and method of the deprivation of liberty does not exceed the level of suffering inherent to being locked up. States have a duty to take necessary preventive measures to protect persons deprived of liberty from attacks by the State’s own agents or by third persons, including other persons deprived of liberty.

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427 The IACHR has received information regarding entrenched discrimination faced by LGBT persons, particularly trans persons, in places of detention, related to hormone treatment, clothing, length of hair, discrimination in accessing benefits and services, such as intimate visit, among others. The IACHR has addressed some of these issues regarding discrimination against LGBT persons deprived of liberty in previous reports. See for example, IACHR, *Truth, Justice and Reparation – Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013 (hereinafter “IACHR, *Truth, Justice and Reparation: Colombia, 2013*”).


147. Discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance.\textsuperscript{433} According to the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, persons deprived of liberty shall not be discriminated against for reasons of sex, gender, sexual orientation, or any social condition.\textsuperscript{434} According to the Yogyakarta Principles, “everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity.”\textsuperscript{435}

148. According to the information received by the IACHR, LGBT persons who are deprived of their liberty are at a heightened risk for sexual violence – including a higher risk for multiple sexual assaults – and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty.\textsuperscript{436} The Special Rapporteur on violence against women, its causes and consequences has expressed concern about lesbian women being placed in cells with men as punishment for the women refusing the sexual advances of prison staff. Allegedly, female prisoners whom guards viewed as “masculine” in appearance have reportedly been subjected to harassment, physical abuse, and “forced feminization.”\textsuperscript{437} Additionally, gay men or trans women deprived of their liberty may be forced into servitude by other inmates, required to do menial tasks on their behalf, and provide “sexual services” to them.\textsuperscript{438} Police agents have reportedly incited others to sexually abuse LGBT persons who are detained, even handing out condoms to facilitate the abuse.\textsuperscript{439} Further, there are reports of prison guards having LGBT prisoners beaten up or allowing other prisoners to rape them, and of prison staff placing LGBT prisoners in cells with known sexual predators. There are also reports of prison staff

\begin{footnotesize}
\textsuperscript{434} IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the IACHR by Resolution 1/08 at its 131\textsuperscript{st} Regular Period of Sessions, held March 3-14, 2008.
\textsuperscript{439} [Guyana] Carrico, Christopher, Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional, March 2012, p. 23.
\end{footnotesize}
running prostitution rings, in which all trans prisoners are forced to participate as sex workers.\textsuperscript{440} Several NGOs report that LGBT persons often decide to remain in their cells as much as possible in order to avoid being attacked by other inmates.\textsuperscript{441}

149. According to the Bureau of Justice Statistics of the United States Department of Justice, LGBT inmates in US detention facilities are among those with the highest rates of sexual victimization.\textsuperscript{442} Among LGBT prisoners, 12.2\% reported being sexually victimized by another inmate and 5.4\% reported being victimized by staff.\textsuperscript{443} In México, for instance, local organizations allege that at least 60\% of LGBT persons deprived of their liberty have been subject to different kinds of abuse.\textsuperscript{444} In Colombia, a case that was decided by the Constitutional Court is illustrative of the extent to which a gay man may be subjected to repeated sexual abuse.\textsuperscript{445} In Guatemala, organizations report that a young gay man was sexually assaulted by 17 men,\textsuperscript{446} and a trans woman was allegedly raped more than 80 times while in detention.\textsuperscript{447}

150. The Subcommittee on the Prevention of Torture indicated that one trans person deprived of liberty in Paraguay had been raped by a group of inmates after having been forced to walk around in a short skirt. Allegedly, trans persons deprived of liberty at the National Penitentiary of Tacumbú were routinely asked to perform sexual scenes in the common areas of the prison, watched by other inmates and paid for by guards. A trans person was allegedly killed in 2008 after a guard inserted a police baton into her anus.\textsuperscript{448} In the September 2014 visit to Paraguay...

\textsuperscript{441} [Mexico] \textit{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (México)}, received by the IACHR Executive Secretariat on November 1, 2013, p. 9; [Peru] \textit{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by El Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX (Perú)}, received by the IACHR Executive Secretariat on December 20, 2013, p. 1.
\textsuperscript{442} US Department of Justice - Bureau of Justice Statistics, \textit{PREA Data Collection Activities 2013}, June 2013, NCJ 242114, p. 2.
\textsuperscript{443} US Department of Justice - Bureau of Justice Statistics, \textit{PREA Data Collection Activities 2013}, June 2013, NCJ 242114, p. 2.
\textsuperscript{444} \textit{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (Mexico)}, received by the IACHR Executive Secretariat on November 1, 2013, p. 9.
\textsuperscript{445} Colombian Constitutional Tribunal, \textit{Decision T-1096/04}, case of Mauricio Gutiérrez, November 4, 2004; see also, Colombia Diversa, \textit{Situación de los derechos humanos de lesbianas, gays, bisexuales y transgeneristas en Colombia}, 2005, p. 35.
\textsuperscript{448} UN, Subcommittee on Prevention of Torture, \textit{Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay CAT/OP/PRY/1}, adopted on June 7, 2010, para. 241. 214. See also, UN, Special Rapporteur on torture and...
by the IACHR’s Rapporteur on Persons Deprived of Liberty he noted that trans persons were subject to different forms of violence and discrimination ranging from physical and verbal assaults to multiple instances of rape. During a March 2015 public hearing, the government of Paraguay informed the IACHR that it had adopted measures to guarantee improved conditions of detention for trans persons in the National Penitentiary of Tacumbú.

151. In 2014 and 2015, the Commission received troubling information regarding instances of rape and sexual violence against trans persons deprived of liberty in the United States, in prisons and immigration detention facilities. In July 2014, the IACHR was informed that Marichuy, a trans woman detained at the Eloy Detention Center in Arizona, had been raped after having been subjected to previous instances of abuse and threats of rape. According to a 2013 Report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sixteen gay and trans persons in the United States were subjected to solitary confinement, torture and ill treatment, including sexual assault, while in detention in immigration facilities.

152. In January 2015, it was reported that Leslieann Manning, a trans woman, sued the New York maximum security facility where she was being held, alleging that prison staff were deliberately indifferent to her heightened risk for the sexual assault which she suffered. In the case of Ashley Diamond, a trans Afro-descendant woman deprived of liberty in Georgia, United States, the Commission requested information from the government in April 2014, based on publicly available information that Diamond had been raped at least seven times since being detained in 2012, and that her access to hormone therapy had been withheld. According to a news report, she had been mocked by prison officials as a “he-she thing” and thrown into solitary confinement for “pretending to be a woman.” Allegedly, Diamond has undergone drastic physical changes after being denied access to hormones and, in desperation, has tried to castrate herself and kill herself several times. In an interview, Diamond said, “every day I struggle with...
trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this.”

The United States government responded to the request for information indicating that the US Department of Justice had joined in the federal lawsuit that Diamond had filed against Georgia corrections officials.

On November 26th 2013, Ayelén, a trans woman, was reportedly arrested by local police in the city of San Miguel de Tucumán in Argentina. She was allegedly taken to the police station where five police officers raped her. She was then taken to a cell shared with other prisoners, where she, as it is reported, was raped again by several of them. The following day she was forced to clean the police station. She managed to escape, and she went to a local hospital and filed a report. While the physical examinations were being performed at the hospital, police agents allegedly showed up and persuaded her to drop the charges. She alleges that was even forced to sign a document in which she declared that what she had previously stated was untrue.

In April 2015, the IACHR was informed of the situation of violence and discrimination faced by Veronica Bolina, an afro-Brazilian trans woman deprived of liberty in São Paulo, Brazil. According to the information received, Bolina had been severely beaten, tortured, and subjected to degrading treatment at the hands of police after she bit off half the ear of a prison warden. On April 27, 2015, the IACHR sent a letter requesting information on the measures taken to investigate the attacks perpetrated against her and the measures taken to guarantee her safety, as well as information on the situation of other trans persons deprived of liberty in São Paulo.

Trans women are at a heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case. The Commission has received reports that trans women are regularly housed in male pavilions in some OAS Member States. On the other hand,
According to the available information, various prison compounds in Argentina, Brazil, Colombia, El Salvador, Guatemala, Honduras, Jamaica, Paraguay, the United States, and Uruguay have separate pavilions or cells in male prisons to specifically house trans women and gay men.

Although this segregation of gay men and trans women from the general inmate population is done to better ensure their safety, the IACHR is concerned about reports of inferior living conditions in these cells or units when compared to other units in the facility, and further stigmatization due to these measures of segregation. Further, it is possible that this segregation limits their access to programs and benefits afforded to the general population, which are key to rehabilitation or participation in early release programs. Measures taken to protect persons deprived of liberty who are LGBT should involve no greater restrictions on their rights than is experienced by the general inmate population. The United Nations Office on Drugs and Crime has recommended that the principle for classification and allocation should be to house LGBT detainees “in whichever environment will best ensure their safety.” The violence committed against

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463 Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013, p. 5. Diario Uno (Mendoza), “En el pabellón gay conviven 15 presos,” May 5, 2009 (available only in Spanish).

464 Answer to the IACHR LGBTI Rapporteurship questionnaire, submitted by the organization Gajop, Gabinete de Assessoria Jurídica às Organizações Populares, Brazil, p. 4.

465 Colombia Diversa, “Del amor y otras condenas; personas LGBT en cárceles en Colombia”, 2013-2014, pp. 26-27, indicating that according to data produced by the State (INPEC), 14% of prisons in Colombia have a specific pavilion or cell for LGBT persons.


468 Verified by the IACHR delegation that visited the San Pedro Sula National Penitentiary, during the December 2014 onsite visit to Honduras. IACHR, Press Release No. 146/14, IACHR Wraps Onsite Visit to Honduras, December 5, 2014. The IACHR delegation was informed that gay and bisexual men and trans women were previously housed with the general male population, and that this made them more vulnerable to sexual violence. This situation had changed and they had their separate dorm, where they felt safer.

469 The Jamaica Gleaner, Gay colony in prisons, October 8, 2006.


471 Huffington Post, New York’s Largest Jail to Open Housing Unit For Transgender Women, November 18, 2014.


473 For example, the IACHR has also received information that sometimes LGBT persons are housed with persons living with HIV, furthering stereotyping and stigmatizing LGBT persons. Colombia Diversa, “Del amor y otras condenas: personas LGBT en cárceles en Colombia,” 2013-2014, p. 26.


475 United Nations Office on Drugs and Crime (UNODC), Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners, 2009, p. 115. In the United States, some prisons in certain states have adopted policies for trans persons deprived of liberty, which apply to housing, clothing, showering, grooming, searches, and other aspects of detention, with the result of trans women being placed in female prisons and being referred to treatment on the basis of their gender, as opposed to their sex assigned at
LGBT persons deprived of liberty, including torture and sexual abuse, is compounded by the impunity surrounding these acts. This is particularly true when state agents overseeing custody of the victims perpetrate violence against them, since the victims tend not to report these crimes out of fear of further victimization and violence.

157. During a public hearing held in October 2015, the IACHR received information about the allocation of trans women to penitentiaries depending solely on criteria related to their genitalia: “if she has a penis she will be assigned to a male detention facility, and if she has a vagina, she will be sent to a female detention facility.”\(^{476}\) The non-governmental organization \textit{Almas Cautivas A.C.} indicated that both in male detention facilities, and in female detention facilities, trans women are “isolated from the general population, in spaces called “annexes” or “módulos,” arguing that it is for their safety. There, they face physical, verbal, psychological and even sexual abuse. The threats and insults by the authorities of the detention centers (security, custody and technical staff) and by the penitentiary authorities is a constant.”\(^{477}\) The IACHR considers that the decision on where to house trans persons must be made on a case-by-case basis,\(^{478}\) and that OAS Member States must undertake the measures to ensure, whenever possible, that trans persons participate in the decision related to their allocation in detention centers.

158. “I was detained 18 times because I was a sex worker... they took me from the street and told me I was disrupting public order (\textit{escándalo en la vía pública}) so they would lock me up. At the beginning I was in Sector 10, which was only for gay and trans persons, but that (disappeared)... the last time I was housed in Sector 5 with men... I was also victim of abuse, several rapes... one has to have sex the “chiefs,” to those in charge, in order to survive. These acts are not denounced out of FEAR... when I entered a prison, I was treated as a man, they would use my male name, they would insult me, they would tell me “you are a man, stop with your bad habits ("mañas"). Having a trans identity is very challenging, and assuming oneself as trans comes with great responsibility... some [trans women] prefer to cut their hair short because they would rather pass as gay and not as trans women, because we are victimized the most.”\(^{479}\)
159. The Commission has also received troubling reports of the routine use of solitary confinement\textsuperscript{480} to segregate LGBT individuals for their purported “protection”. For example, in the United States, the American Civil Liberties Union (ACLU) found that “...for prisoners and detainees who are [...] (LGBT), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population.”\textsuperscript{481} The ACLU has also indicated that depression and suicidal behavior can be “made significantly worse by forced segregation and isolation.”\textsuperscript{482} The IACHR has also received reports of the use of solitary confinement in immigration detention centers in the United States, such as the case of Delfino Quiroz, a gay man from Mexico who was held in solitary for four months in 2010.\textsuperscript{483}

160. The Inter-American Commission reiterates that solitary confinement should only be used in exceptional circumstances, for the shortest possible period of time, and only as a measure of last resort.\textsuperscript{484} It must be subject to strict judicial oversight and take place in cells that meet the minimum conditions according to international standards. Persons deprived of liberty in solitary confinement must undergo strict medical supervision. Subjecting prisoners to prolonged periods of time in solitary confinement, or in similar situations of deprivation of human contact, may produce irreversible physical and mental damage, and amount to inhuman or degrading treatment.\textsuperscript{485} Sexual orientation and gender identity should not be used as criteria in subjecting persons to unduly prolonged solitary confinement.\textsuperscript{486} Persons deprived of liberty must not be penalized or punished due to prejudice and discrimination based on perceived or actual sexual orientation or gender identity.\textsuperscript{487} Even where the intent is to protect LGBT persons deprived of liberty from other inmates, the methods used must not subject LGBT persons deprived of liberty to harmful situations such as prolonged solitary confinement.

161. The IACHR has received information on good practices being employed in some countries in the region, such as Argentina, Brazil, Colombia, El Salvador,  

\textsuperscript{480} Generally, solitary confinement refers to any regime where an inmate is held in isolation from others (except guards) for at least twenty-two hours a day. UN Special Rapporteur against Torture, \textit{Solitary confinement should be banned in most cases, UN expert says}, October 18, 2011. UN, \textit{Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment}, A/66/268, August 5, 2011.


\textsuperscript{482} American Civil Liberties Union, \textit{Ending Solitary Confinement – The Dangers of Isolation for LGBTI Prisoners and Detainees}, June 27, 2012. See also, Lambda Legal, \textit{Transgender Incarcerated People in Crisis}, no date (updated 2015).


Guatemala, Honduras, Mexico, and the United States, among others. The IACHR was informed, for example, of certain measures that have been adopted by the Procuración Penitenciaria de la Nación of Argentina since 2008. In Colombia, a directive issued by the penitentiary authority in 2011, and several decisions of the Constitutional Court, have helped to protect the rights of LGBT persons deprived of liberty. The subject of these include trainings and sensitization programs aimed at guards and detainees regarding sexual orientation and gender identity in places of detention. In the United States, the Federal Prison Rape Elimination Act (PREA) requires prison authorities to make sexual abuse complaint procedures accessible to trans detainees, and to train guards on issues related to trans persons. The IACHR has received reports of positive developments in El Salvador, Guatemala and Mexico, in which governments and civil society organizations have jointly engaged in training prison guards and staff on treatment of LGBT persons deprived of liberty, and developing protocols for the handling of LGBT detainees. In Honduras, the bill that establishes the National Preventive Mechanism states that its personnel need to verify the existence of LGBT persons as “vulnerable groups” within the population of persons deprived of liberty. Finally, the IACHR notes that a trans person, Maria Clara de Sena, has been appointed as a member of the State Mechanism to Prevent and Combat Torture in the state of Pernambuco in Brazil. It has been reported that this appointment and the subsequent work of de Sena have further helped to protect the right to personal integrity of LGBT persons in that state.

States must refrain from committing acts of torture, inhuman or degrading treatment against persons deprived of liberty, including those that are motivated by prejudices related to sexual orientation or gender identity. Further, as guarantors of the rights of persons deprived of liberty, states must protect the life and personal integrity of LGBT persons, or those perceived as such, from other persons deprived of liberty. The IACHR urges OAS Member States to adopt urgent measures to address these issues.
and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region’s places of detention, including prisons and immigration detention centers. The IACHR urges OAS Member States to develop comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.497

163. The Commission calls on OAS Member States to restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons. The IACHR urges OAS Member States to ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not result in punishment of, deny access to benefits to, or place undue restrictions on, such LGBT persons.

164. Finally, the Inter-American Commission calls on OAS Member States to adopt measures to prevent violence against LGBT persons deprived of liberty. These measures include, among others, the following: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers.498 Caution must be exercised in collecting data on the prevalence of LGBT persons and of violence based on prejudice in places of detention, given the inherent risks of further victimization, stigmatization, and abuse.499 Finally, an important component of prevention is also the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons. This sends a clear message to the population deprived of liberty that violence against LGBT persons is not tolerated.

2. Rape and other acts of sexual violence

165. The Inter-American Court of Human Rights has defined sexual violence as any action “with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”500 The Court has established that “rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. …[R]ape must also be understood as an act of vaginal or anal penetration, without the victim’s consent, through the

499 The Association for the Prevention of Torture (APT) has developed a set of guidelines for conducting preventive monitoring of the situation of LGBT persons deprived of liberty around the world. In the guidelines, the APT draws special attention to the caution that is warranted when conducting interviews of, or collecting data regarding, LGBT persons deprived of liberty. APT and Penal Reform International, “LGBTI Persons Deprived of Liberty: a framework for preventive monitoring,” 2013.
use of other parts of the aggressor’s body or objects, as well as oral penetration with the virile member.”\textsuperscript{501} Following this same line of reasoning, the IACHR, too, has observed that sexual violence takes many forms. The Court’s jurisprudence regarding sexual violence creates comprehensive, multidimensional obligations for the State to prevent, investigate, prosecute, and redress this serious human rights violation.\textsuperscript{502}

166. Lesbian, gay, bisexual, trans, and intersex persons can be particularly vulnerable to sexual violence. One of the reasons for this vulnerability stems from the fact that non-normative sexual orientations and gender identities challenge the traditionally accepted notions of sex, sexuality, and gender. Therefore, in societies where such challenges are confronted with violence, discrimination, and prejudice, sexual violence may acquire a particular significance when perpetrated against LGBT persons, as it can be used as a way to punish and debase victims for being who they are. The IACHR has also received information on rape and acts of sexual violence committed against intersex persons, since in the “social imaginary” these types of sexual abuses are part of a way to “cure intersex bodies.”\textsuperscript{503}

167. The Commission has received worrying numbers of reports of rapes committed against gay men and trans persons. These acts regularly form part of attacks that combine physical, psychological, and sexual violence, and which may lead to the murder of the victim.\textsuperscript{504} The IACHR has also received information concerning the related stigma faced by gay men who are victims of sexual violence.\textsuperscript{505} Forcible introduction of objects into the anus appears to be a common way of inflicting excruciating pain on victims, and is usually a part of brutal acts of violence perpetrated against gay men and trans women.

168. In the United States in 2010, a gang kidnapped and brutally raped two 17-year-old gay adolescents and a 30-year-old gay man, using a baseball bat and the wooden handle of a plunger. The act was carried out as punishment for the victims being gay and having admitted to having sex with each other. The victims were also tied and burned with cigarettes on their nipples and penises.\textsuperscript{506} In 2007, several men in Trinidad and Tobago who were seeking sexual partners on a popular internet site fell victim to a pattern of crimes. In the worst instances they were kidnapped, tortured, robbed, gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) was able to document a number of these assaults by interviewing victims. Only one of these victims has pursued police action, and none of the rape victims who were interviewed had sought medical attention.\textsuperscript{507} In 2013, the IACHR received

\textsuperscript{503} IACHR, Public Hearing on the Human Rights of Intersex Persons, March 2013.
\textsuperscript{504} Ojo.pe, “Degüella y viola gay en plena calle,” November 13, 2011 (available only in Spanish).
\textsuperscript{505} The Advocate, Gay Male Sexual Assault Survivors Speak Out, January 27, 2015.
\textsuperscript{506} New York Times, Lured Into a Trap, Then Tortured for Being Gay, October 8, 2010.
\textsuperscript{507} IACHR, Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133\textsuperscript{rd} Period of Sessions, October 23, 2008. Video y audio no disponibles.
information about a case in Brazil in which a former alderman was viciously stabbed 106 times and was anally penetrated with the handle of a sickle.\textsuperscript{508}

169. During the October 2014 visit to Colombia of the Chair of the IACHR, the Rapporteurship on the Rights of LGBTI Persons was informed of the case of a trans woman in Barranquilla who, after suffering many years of attacks and discrimination, was brutally raped by a group of four men who introduced several ants into her anus. She committed suicide shortly after the episode.\textsuperscript{509}

170. The Commission has also received reports of acts of rape which appear to have a distinct and clear motivation: so-called “corrective rapes,” which are an extreme manifestation of prejudice against diverse sexual orientations and gender identities, and are perpetrated especially against lesbian or bisexual women. “Corrective rape” has been defined as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.”\textsuperscript{510} Behind this crime lies the perverse and erroneous belief that being penetrated by a male will render the woman “normal” again. Former UN High Commissioner for Human Rights, Navi Pillay, stated that “corrective” rape often combines “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.”\textsuperscript{511}

171. The IACHR recognizes that the very concepts of “corrective rape” and “corrective sexual violence” are incoherent and deplorable, since any attempt to “correct” a fundamental aspect of a human being’s identity by violence is repugnant to human dignity and decency. The essence of these crimes is punishment for non-normative sexualities and genders. As the Inter-American Court has noted, rape is an extremely traumatic experience.\textsuperscript{512} It causes great physical and psychological damage that is difficult to overcome even with time, and it leaves the victim “physically and emotionally humiliated.”\textsuperscript{513} The IACHR notes that this type of sexual violence ranks among the least reported types of violence against LGBT persons in the Americas. In addition to the reasons why victims are often deterred from reporting sexual violence generally, such as shame and re-victimization, the reporting of this type of sexual violence may additionally raise victims’ fears of revealing their sexual orientation.

\begin{footnotes}
\item [509] IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (Cali and Tumaco). Information provided by human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.
\item [510] Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities, June 27, 2013.
\item [511] Pillay, Navi “The shocking reality of homophobic rape” in The Asian Age, June 20, 2011.
\end{footnotes}
During the 2014 visit of the Chair of the IACHR to Colombia, the LGBTI Rapporteurship also received testimonies of several lesbian and bisexual women who had been raped as a punishment due to their sexual orientation.\textsuperscript{514} One of these testimonies stood out: "the [IACHR] delegation heard a story of a young Afro-descendant woman who, after telling her father she was a lesbian at the age of 11, was allegedly subjected to rape during a 14-year period by her father's friends, which resulted in five children. She alleges that she was not given information on health services or access to justice. After she managed to escape, she was then raped several times at the hands of illegal armed groups, often in front of her partners, as a punishment for her sexual orientation, and has been consequently internally displaced several times."\textsuperscript{515}

Further, several sources indicate that rape against lesbian women or those perceived as such is an issue of particular concern in Jamaica.\textsuperscript{516} To name a few of the reported incidents, in 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days. During this time, different religious men raped her repeatedly, day after day, in an attempt "to make her take men" and "live as God instructed."\textsuperscript{517} In 2008, four more cases with similar facts were reported to local organizations. In all of these cases the women refused to report the matter to the police out of fear of further victimization.\textsuperscript{518} At least another three episodes of rape were reported in 2009.\textsuperscript{519} In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her "butch" or "manly" attire. After she was raped, the rapists cut her with a knife "so she could better take men." A few days after that episode, a friend of the first woman was abducted in a car at knife-point, brutally raped, and then left on the side of the road half-naked. The women refused to go to the police because of the perceived ineffectual nature of any police response.\textsuperscript{520} In at least one case, a foreign court has made explicit reference to the risk of rape of lesbian women when granting asylum to a Jamaican lesbian due to the risk of violence to lesbians in Jamaica.\textsuperscript{521}

\textsuperscript{514} IACHR Chair meeting with the National Table of Victims affected by the Armed Conflict. Cartagena, Colombia. October 3, 2014.
\textsuperscript{515} IACHR, Press Release No. 118/14, "IACHR Chair concludes visit to Colombia," October 10, 2014.
\textsuperscript{519} Gay Lesbian Bisexual Transgender & Queer Jamaica (GLBTQJ), "'Corrective Rape' in Jamaica? ..... Yes," August 5, 2009.
\textsuperscript{520} Regional Meeting of LGBTI Activists from CARICOM, The Unnatural Connexion: Creating Social Conflict Through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact In Caribbean Countries, 2010, Report submitted to the IACHR in November 2010, p. 34.
\textsuperscript{521} United Kingdom Upper Tribunal Immigration and Asylum Chamber (UTIAC), SW (lesbians - HJ and HT applied), UKUT-251, decision of June 24, 2011, para. 107(2).
174. The IACHR has received several reports of this type of sexual violence in other OAS Member States.\textsuperscript{522} Organizations from Haiti have indicated that in 2012, five police officers gang-raped two lesbians and during the attack they told them: “You have never been with a man? You are not a real woman! We will make you one!”\textsuperscript{523} In another case in 2012, two women who were engaging in romantic behavior in a car were suddenly interrupted by four police officers on patrol. The police officers proceeded to rape the women.\textsuperscript{524} In Ecuador, this type of sexual violence has been reported to take place as one of the heinous methods employed in the “clinics of de-homosexualization,” which are described in more detail later in this chapter.\textsuperscript{525}

175. Sexual violence generates psychological and emotional suffering and scarring. Further, sexual violence may cause physical injury—including life-threatening wounds, as is the case when anal or vaginal rape is performed with large or sharp objects—and greater susceptibility to HIV infection. Taking into account that LGBT and gender non-conforming persons are at high risk of being denied medical treatment or being further victimized when seeking health care following a sexual assault, the impact of sexual assaults on LGBT and gender non-conforming persons may, in some cases, be even more serious than for other victims that do not identify as LGBT or are not perceived as such.

3. Mob attacks

176. In the past few years, the IACHR has also received information about alarming numbers of angry mob attacks, particularly in countries in the Caribbean. During the months of August and September 2013, the Commission received various accounts of attacks consisting of "large crowds barricading, throwing objects (such as stones and Molotov cocktails), or calling for lynching of gay men. At least seven of these attacks were reported in the past two months: 5 in Jamaica and 2 in Haiti."\textsuperscript{526} These attacks usually start with a person or a group of persons being "singled out" as gay or trans\textsuperscript{527} by passers-by in public places. Tension tends to escalate quickly and, within minutes, large numbers of people may gather around the victim or victims. Several reported cases include victims being chased while trying to escape or having bottles, stones, or other objects thrown at them. In cases


\textsuperscript{523} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre \textit{et. al}, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

\textsuperscript{524} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre \textit{et. al}, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

\textsuperscript{525} Fundación de Desarrollo Integral “Causana,” “\textit{Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural}?” February 20, 2014, p. 3.


\textsuperscript{527} The word used may not necessarily be “gay” but instead can be local expressions such as “battyman,” “sissy boy,” “shemale,” or other offensive epithets.
where a crowd surrounds the victim, physical violence may escalate to the point of leaving the victim severely wounded or even dead.

177. In particular, the Commission has received reports of mob attacks occurring with unsettling frequency in Jamaica.\textsuperscript{528} The information presented indicates that a number of mob attacks against gay men or those perceived as such took place in December 2005,\textsuperscript{529} February 2007,\textsuperscript{530} March 2007,\textsuperscript{531} and in 2008.\textsuperscript{532} In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Reportedly, villagers also confronted the police when they arrived at the scene and tried to protect the three men.\textsuperscript{533} Another alarming case took place in 2012 at the University of Technology, Jamaica, when a student was chased by a group of male and female students through the university campus. The victim was able to reach the security office, where the mob remained screaming outside. A video shows how at least two guards slapped, kicked and punched the student in front of the crowd, while members of the mob began entering through the security office windows.\textsuperscript{534} A few months later, the guards were released after the student decided to drop the case.\textsuperscript{535}

178. Further, in 2013 there were several reports of mob attacks in Jamaica. In July 2013, Dwayne Jones, a 16-year-old transgender teen, was stabbed to death by a mob at a party in Jamaica.\textsuperscript{536} According to available press reports, a group of men gathered around Jones after someone had told them that Jones was trans. Jones was viciously stabbed and shot to death and then thrown into nearby bushes. Jones was reported to have suffered relentless teasing in high school for being considered “an effeminate boy,” until dropping out for good. Jones had also been expelled from her house at the age of 14 and had resorted to living on the street.\textsuperscript{537} One year after the murder, a local organization indicated that no arrests had been made in the case.\textsuperscript{538} Upon a request for information made by the IACHR,\textsuperscript{539} the State responded...
that investigations were ongoing; forensic materials had been collected, thirteen statements had been recorded, and two suspects had been interrogated and later released due to insufficient evidence for prosecution.\textsuperscript{540}

179. According to a report received by the IACHR, on August 1, 2013, in Jamaica, a crowd quickly gathered around a police patrol car and started harassing two men inside who were perceived to be gay. Police officers had to disperse the crowd using warning shots and pepper spray.\textsuperscript{541} On the very same day, the police had to be called to rescue two gay men from another irate crowd that claimed the men “were engaging in an illegal activity in a house” in St. Catherine.\textsuperscript{542} Only ten days after these incidents, the IACHR received information that, on August 10, 2013, police personnel had to rescue a trans person in St. Catherine, after an angry mob that had seen her in the community threatened to flog her.\textsuperscript{543} On August 22, 2013, another irate mob barricaded five gay men in their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety.\textsuperscript{544} Additionally, on August 26, 2013, local media reported that two men had to seek refuge when, after the men had arrived at a police station following their involvement in a motor vehicle accident, angry local residents said that the men “appeared” to be gay. Police officers had to escort the men out of the police station and away from the angry mob that had gathered outside.\textsuperscript{545} Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.\textsuperscript{546}

180. On October 2, 2013, the IACHR sent a letter to the Jamaican State asking for specific information on measures taken in response to these mob attacks, particularly regarding policies adopted to prevent future acts of violence against LGBT persons, or those perceived as such.\textsuperscript{547} The government replied in part:

> It is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] there is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.\textsuperscript{548}

Press Release 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.

\textsuperscript{539} IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].

\textsuperscript{540} Permanent Mission of Jamaica to the OAS, ref. 6/80/1, received November 12, 2013.

\textsuperscript{541} On The Ground News, \textit{Residents and Police square off over Cops found in ‘compromising position’}, August 2, 2013.

\textsuperscript{542} The Daily Extra, \textit{Angry crowds surround gay men in two Jamaican incidents}, August 6, 2013. See also, CVM TV (Kingston, Jamaica), \textit{CVM Newswatch}, online video, August 1, 2013 [minute 25:27].

\textsuperscript{543} The Jamaica Star Online, \textit{Angry crowds surround gay men in two Jamaican incidents}, August 6, 2013. See also, CVM TV (Kingston, Jamaica), \textit{News at noon}, video, August 1, 2013 [minute 25:27].

\textsuperscript{544} The Jamaica Star Online, \textit{Cops Rescue Man In Girl Clothes, Save Him From Angry Mob}, August 14, 2013.

\textsuperscript{545} The Huffington Post Gay Voices, \textit{Jamaica Mob Traps And Barricades 5 Gay Men In House}, August 26, 2013.


\textsuperscript{547} IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].

\textsuperscript{548} Permanent Mission of Jamaica to the OAS, Ref. 6/80/1, received November 12, 2013.
The Inter-American Commission has received information on mob attacks in other OAS Member States, such as Belize, Haiti, and Saint Lucia. In Haiti, two men thought to be gay were beaten to death during an anti-gay march led by the Haitian Coalition of Religious and Moral Organizations (Coalition Haïtienne des organisations religieuses et morales). The march took place in July 2013, in Port-au-Prince, amidst a wave of violence against LGBT persons. Further reports indicate that, in 2011, a mob attacked two gay men living in a camp for internally displaced persons, allegedly because they were engaged in romantic activity in their tent. Attackers ripped into their tent and beat the two men while accusing them of causing the 2010 earthquake.

E. Medical Violence against Intersex Persons

As indicated in chapter two of this Report, the IACHR has received reports of generalized human rights violations carried out against intersex persons because their bodies do not physically conform to socially accepted standards for “female” and “male” bodies. Intersex advocacy groups and organizations have indicated that human rights violations suffered by intersex persons are different from the human rights violations which lesbians, gays, bisexuals and trans persons typically suffer. The IACHR has been informed that specific human rights violations commonly suffered by intersex persons include: irreversible sex assignment and genital “normalizing” surgeries; involuntary sterilization; being subjected to excessive genital exams, photography and display; human experimentation; lack of access to information and medical records or history; delayed birth registration, and denial of health care services or health insurance, among others.
183. In March 2013, an intersex trans man testified before the IACHR: “[t]he 41-year-old man sitting before you right now was once, a long time ago, a 14-year-old girl who, upon being told that she was born without a vagina or a uterus, was also told that it was necessary to cut part of her intestine in order to surgically ‘create a vagina’. The purpose of that surgery was to ensure that I would grow up to become a woman who could be penetrated by a man. The failure of this procedure is obvious and after two surgeries and six years of vaginal dilations with a piece of metal called a “bougie,” what I can attest to as a consequence of that intervention is the transformation of the healthy teenager that I used to be into the man that I am—someone who survives every day the experience of having been raped repeatedly, while asleep on an operating table.”

184. The IACHR has been increasingly receiving reports of sex assignment and genital surgeries practiced without informed consent on intersex children and adults, most of which are reported to be irreversible in nature and aimed at attempting to “normalize” the appearance of the person’s genitals. The IACHR has been informed of cases documented in Argentina, Brazil, Canada, Colombia, Costa Rica, Chile, El Salvador, Mexico, United States, and Uruguay, among others. Nevertheless, the IACHR has been informed that these interventions are standard practice in countries across the Americas. The Commission notes...
that documentation and data around this problem is scarce,\textsuperscript{570} which is addressed in more depth in Chapter 6 of this Report under the obligation of States to collect data.

185. Studies brought to the attention of the IACHR show that “genital-normalizing” surgeries –i.e., interventions with cosmetic purposes– have no medical benefits, because intersex presentations of the body, in the majority of cases, pose no danger to life or health.\textsuperscript{571} Intersex organizations and activists refer to these surgeries as “cosmetic” because their only purpose is making bodies look like the dominant standard of what constitutes a “male” or “female” body. The “medical urgency” behind these surgeries during infancy stems from the alleged impossibility of parents, the medical community, the civil registry and society in general to accept sexual “uncertainty” because the infant cannot be easily and promptly classified as a girl or boy.\textsuperscript{572} These interventions are carried out because variations in sex characteristics are generally considered obstacles to leading a “normal” life, not because they themselves pose a risk to the lives of intersex persons.\textsuperscript{573} Indeed, organizations have reported that these surgeries are part of an attempt to prevent suffering later in life that is caused by “lack of conformity with binary sexual standards.”\textsuperscript{574} Given these implications, some intersex organizations and human rights defenders characterize these surgeries as culturally accepted forms of infant genital mutilation.\textsuperscript{575}

186. These non-medically necessary surgeries and procedures have been reported to cause intersex children and adults great harm, including —but not limited to— chronic pain, life-long trauma, genital insensitivity, sterilization and diminished or lost capacity for sexual pleasure.\textsuperscript{576} Reports indicate that most procedures do not consist of a single intervention, but instead involve multiple invasive surgeries (which repeatedly expose children to the inherent risks of anesthesia and surgery in infancy), recurrent use of dilation contraptions, or administration of hormones.

\textsuperscript{570} This has been acknowledged by States. See, e.g. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 received by IACHR Executive Secretariat on December 2, 2013, p. 2.


\textsuperscript{572} Luciana Lavigne, “La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes” in “Interdicciones: Escrituras de la Intersexualidad en Castellano” (Mauro Cabral, editor), Córdoba, February 2009, at p. 55.

\textsuperscript{573} Luciana Lavigne, “La regulación biomédica de la intersexualidad. Un abordaje de las representaciones socioculturales dominantes” in “Interdicciones: Escrituras de la Intersexualidad en Castellano” (Mauro Cabral, editor), Córdoba, February 2009.

\textsuperscript{574} Mulabi & International Gay and Lesbian Human Rights Commission (IGLHRC), Situation of lesbian, bisexual, transgender and intersex women in Costa Rica in regards to discrimination: Shadow Report, July 2011, p. 9.

\textsuperscript{575} IACHR, Public Hearing on Situation of Human Rights of Intersex Persons in the Americas, 147\textsuperscript{th} Period of Sessions, March 15, 2013; IACHR, Annex to the Press Release Issued at the close of the 147\textsuperscript{th} Period of Sessions, April 5, 2013.
During these processes, intersex children are usually exposed to abusive display and repeatedly examined for training or scientific purposes, which in turn humiliates them and may cause deep psychological harm.\(^{577}\) For example, the Commission has been informed that regular vaginal dilation is often imposed on a child following vaginoplasty. This is achieved through the repeated forcing of an object into the vagina of a child, a practice which has been described as “extremely painful, highly traumatic, and comparable to sexual abuse in terms of the patient’s experience.”\(^{578}\) The UN Special Rapporteur on the right to health has described it as “a painful and high-risk procedure with no proven medical benefits.”\(^{579}\)

187. An intersex person testified before the IACHR: “twenty six years ago a team of medical professionals discovered that I had “XY” chromosomes and internal testes, more commonly referred to today as “partial androgen insensitivity syndrome.” Immediately after that, a surgery was scheduled to remove those internal testes, I was one then. When I was three, another surgery was performed. This time, it was to reduce the size of my clitoris, which was judged to be “half a centimeter too long.” Then, when I was eleven and entering puberty, I underwent a third surgery. This time was to construct a “more acceptable” vagina via the method called “vaginoplasty.” I was lied to and told that I had cancerous ovaries and that the doctors were saviors, and had saved me.”\(^{580}\)

188. Further, the IACHR was informed that these interventions are regularly carried out without the informed consent of intersex persons or that of their parents or legal guardians. In fact, the UN Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have expressed concern over the lack of informed consent for these surgeries.\(^{581}\) The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted the importance of informed consent for intersex persons. Further, he recommended that health-care providers strive to postpone non-emergency invasive and irreversible

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579 UN, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, August 10, 2009, para. 49.


interventions until the patient is sufficiently mature to provide informed consent.\textsuperscript{582}

189. The IACHR has been informed that medical protocols in force in several OAS Member States are still based on concepts that pathologize all intersex persons and all variations in sex characteristics and usually prescribe surgeries for “normalization” of the genitals. In some cases the consent of the patient may not even be legally required.\textsuperscript{583} For example, it is reported that legal provisions in force in some OAS Member States, which allow doctors to make urgent decisions justifying interventions in cases of medical emergency, and which override parental consent have been applied in cases of surgeries that aim at “standardizing” the genitals of intersex children.\textsuperscript{584} In other cases, doctors may consult parents but provide scarce or no information on the implications of procedures. A study conducted in the United States by the Human Rights Commission of San Francisco found that many parents choose “normalizing” medical interventions for their intersex children based on misinformation and/or coercion from doctors recommending such procedures.\textsuperscript{585} Testimony at IACHR hearings has included that of intersex persons whose parents had asked doctors to do "whatever it takes" to make the intersex persons “normal.”\textsuperscript{586}

190. Moreover, a report issued by the United Nations Development Programme (UNDP) and the Office of the Ombudsman (Procuraduría para la Defensa de los Derechos Humanos) in El Salvador noted that legal provisions in the Health Code of El Salvador do not prohibit "sex assignment surgeries" on intersex children and do not require free and informed patient consent, even in cases where the children are old enough to have the capacity to accept or reject such alterations to their bodies.\textsuperscript{587} Chilean organizations have reported that in 2003, a 20-year-old man discovered through a series of medical tests that just after his birth, the doctor who had been authorized by his parents to treat an inguinal hernia had in fact removed the child’s testicles and operated on his genitals. According to the report, the parents had neither given consent to gender reassignment nor were they informed after the surgery. Activists alleged that this is not an isolated case in the Chilean

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\textsuperscript{582} UN, Human Rights Council, \textit{Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health}, A/64/272, August 10, 2009, para. 46.

\textsuperscript{583} IACHR, \textit{Public Hearing on Discrimination against Trans Persons in the Americas}, 153\textsuperscript{rd} Period of Sessions, October 30, 2014; IACHR, Public Hearing on \textit{Human Rights Situation of Intersex Persons}, 147\textsuperscript{th} Period of Sessions, March 15, 2013.

\textsuperscript{584} IACHR, Public Hearing on \textit{Discrimination against Trans Persons in the Americas}, 153\textsuperscript{rd} Period of Sessions, October 30, 2014. Activists referred to the case of Article 46 of the Costa Rican Code of Children and Adolescents (Law No. 7.739): “Article 46: Denial of consent. If parents, legal representatives or guardians refused to consent, for any given reason, the urgent hospitalization, treatment or surgery of any of their children, the medical professional will be entitled to take the necessary steps to protect their life or their physical or emotional integrity, in accordance with Article 144 of the Family Code.”

\textsuperscript{585} Human Rights Commission of The City & County of San Francisco, \textit{A Human Rights Investigation into the Medical “Normalization” of Intersex People}, April 28, 2005, p. 19.

\textsuperscript{586} Human Rights Commission of The City & County of San Francisco, \textit{A Human Rights Investigation into the Medical “Normalization” of Intersex People}, April 28, 2005, p. 42.

\textsuperscript{587} United Nations Development Program (UNDP) & Procuraduría para la Defensa de los Derechos Humanos (El Salvador), \textit{Informe sobre la situación de los Derechos Humanos de las Mujeres Trans en El Salvador}, 2013, p. 23.
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According to a researcher of intersex issues in Brazil, it is extremely rare that doctors decide not to conduct surgeries on intersex children at birth.589

In an inter-agency statement, several international UN human rights bodies and agencies have noted that these surgeries and procedures may result in the termination of all or some of the reproductive capacity of intersex persons.590 Sex-assignment treatments often involve the removal of viable gonads or other internal and external reproductive organs, leaving intersex persons with permanent, irreversible infertility.591

The IACHR emphasizes that forced and involuntary sterilization of intersex persons represents a serious human rights violation. Involuntary sterilization has serious implications for the physical and psychological integrity, right to reproductive autonomy, and right to self-determination of intersex persons. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics should be reviewed and modified accordingly in order to ensure that intersex persons can effectively enjoy the highest attainable standard of health and other human rights.592

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.”593

The IACHR notes that the principle of free, prior and informed consent is of utmost importance and must be the guiding principle in every decision made in relation to surgeries, procedures, hormone treatments, or any other medical treatment of intersex persons. The Inter-American Commission on Human Rights recommends that OAS Member States make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person. Amendments must be


Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, February 1, 2013, para. 32; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, July 28, 2008, para. 47.
made to medical protocols to ensure the right to autonomy of intersex persons: intersex persons must decide for themselves whether they want to undergo surgeries, treatment or procedures.\textsuperscript{594} Considering that the majority of these medical interventions are not medically necessary and given that, in general, there is a high risk that they will cause irreversible damage to the physical and mental health of intersex persons, those interventions can only be undertaken when the intersex child can provide his or her prior, free and informed consent. Surgeries and other medical interventions that are not medically necessary must be postponed until intersex persons can decide for themselves.

195. Finally, according to information provided by human rights defenders, activists and intersex persons during the March 2013 public hearing, the Inter-American Commission on Human Rights recommends OAS Members States to (i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitization campaigns at the national level on the short-term and long-term effects of “normalizing” interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in order to bring down stereotypes, stigma and invisibility surrounding intersex persons.

F. Other Forms of Violence in the provision of health services

196. According to reports received by the IACHR, mistreatment, harassment, and even physical violence are part of the experience of LGBT persons seeking medical attention in many OAS Member States. Echoing these reports, UN human rights bodies have expressed concern over cases of mistreatment suffered by LGBT persons when trying to access health care services.\textsuperscript{595}

197. In a study carried out in the United States in 2009 by civil society organizations, almost 56% of lesbian, gay or bisexual respondents and 70% of transgender and gender-nonconforming respondents affirmed that they had experienced at least one of the following types of discrimination or aggression: being refused needed care; being blamed for their health status; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh

\textsuperscript{594} IACHR, Public Hearing on Human Rights Situation of Intersex Persons, 147\textsuperscript{th} Period of Sessions, March 15, 2013.

\textsuperscript{595} See e.g. [Chile] Human Rights Committee, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007, para. 16; [Costa Rica] Committee on the Elimination of Discrimination against Women, Concluding Observations: Costa Rica, CEDAW/CRI/CO/5-6, July 29, 2011, para. 40.
or abusive language; or health care professionals being physically rough or abusive.\textsuperscript{596}

198. The State of Honduras even brought to the attention of the IACHR a report showing that medical professionals who are religious have been reported to mistreat LGBT patients, expressing to them that their existence is a “sin before God.”\textsuperscript{597} For its part, the State of Paraguay acknowledged that prejudice and violence against LGBT persons in medical environments was one of the reasons why LGBT persons refrained from seeking medical assistance.\textsuperscript{598}

199. Besides mistreatment, civil society organizations have reported that LGBT persons are frequently refused care or treatment based on their sexual orientation, gender identity or appearance. This refusal may take the form of overt denial or of continuous referral of the patient to other professionals. There are reports of LGBT persons who have seen their health quickly deteriorate due to denial of health care and even cases of deaths that would have been preventable had appropriate treatment been afforded.\textsuperscript{599} One extreme example of denial of medical treatment was the case of Robert Eads, a trans man from the United States who was diagnosed with ovarian cancer. It was reported that at least twelve medical professionals refused to treat him because they feared that “treating this case of gender variance would hurt the reputation of their medical practices.”\textsuperscript{600}

G. Violence related to attempts to “change” sexual orientation and gender identity

200. The IACHR has received reports of violence against LGBT persons, or those perceived as such—especially children, adolescents and young adults—that aims at attempting to modify their sexual orientation or gender identity. The information received points to instances in which LGBT persons or those perceived as such are subjected to purported psychotherapeutic treatment, internment in “clinics” or camps, and physical abuse. Further, women are also subjected to rape and other acts of sexual violence, with the purpose to punish

\textsuperscript{596} Lambda Legal, \textit{When Health Care Isn’t Caring Lambda Legal’s: Survey on Discrimination against LGBT People and People Living with HIV}, 2010, p. 10.

\textsuperscript{597} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Paraguay, No. 1079/13/MPP/OEA dated December 26, 2013, p. 2.

\textsuperscript{598} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 17.


them because of their real or perceived sexual orientation and gender identity. In a joint statement with UN independent experts and the UN Committee on the Rights of the Child, the IACHR found that ‘young LGBT persons are subjected to harmful so-called ‘therapies’ intended to ‘modify’ their orientation or identity. Such therapies are unethical, unscientific and ineffective and may be tantamount to torture.’

201. The Pan-American Health Organization (PAHO) and UN human rights experts have questioned purported psychotherapeutic treatment aimed at changing a person’s sexual orientation or gender identity, asserting that such treatments have “no medical indication and represent a severe threat to the health and human rights of the affected persons.” In this regard, PAHO has affirmed that “[b]esides the lack of medical indication, there is no scientific evidence for the effectiveness of sexual re-orientation efforts. While some persons manage to limit the expression of their sexual orientation in terms of conduct, the orientation itself generally appears as an integral personal characteristic that cannot be changed. At the same time, testimonies abound about harms to mental and physical health resulting from the repression of a person’s sexual orientation.” Moreover, some OAS Member States as well as several professional health associations, have provisions either restricting or prohibiting these so-called “therapies.”

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601 In this regard, see previous section of this chapter which addresses rape and other forms of sexual violence against women.


202. The IACHR has received information on the existence of centers for “treating” LGBT persons in Ecuador, Peru, the Dominican Republic, and the United States. The person under “treatment” is confined to a center, a boarding school or “clinic,” most times against their will or through deception, and subject to very strict regimes. These regimes usually include inhumane or degrading treatment and even sexual abuse as part of the “procedure” to attempt to change their sexual orientation or gender identity.

203. Since 2008, Ecuadorian civil society organizations have informed the IACHR about the existence of “clínicas de deshomosexualización.” Local organizations have reported the existence of these clinics since at least 2002, and have alleged that the State has failed to take appropriate action to close them. According to the information received by the Commission, these “clinics” are privately run but remain under the control of either the National Council for Narcotics and Psychotropic Substances (“Consejo Nacional de Estupefacientes y Sustancias Psicotrópicas,” “CONSEP”) or the Ministry of Health, or under the control of both entities simultaneously. Reports indicate that authorities failed to control the appointment of professionals in these clinics, many of whom were not health professionals but religious extremists, failed to control housing conditions, and failed to supervise the legality of procedures through which “patients” were committed to residential clinics. When organizations tried to access information on the clinics, official data from different governmental agencies showed discordant information, incomplete or defective data, and lack of awareness of reports of mistreatment filed against several “clinics.”

204. Although there have been reports about young gay men or men perceived as gay being committed to these clinics, civil society reports indicate that young

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609 Advocate.com, Abuse in the Name of Christianity, October 10, 2013; Newsweek, Where American Teens were Abused in the Name of God, July 7, 2014. Information also presented in the context of a public hearing held on the human rights situation of LGBT persons in the Dominican Republic, 133rd Period of Sessions, October 23, 2015.


613 Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4; See also: Taller de Comunicación Mujer, “Análisis estadístico de clínicas de ‘rehabilitación’ en el Ecuador,” January 2012.

614 El Telégrafo, “El maltrato reina en centros de ‘deshomosexualismo’,” August 29, 2011 (available only in Spanish); El Universo, “Ignorancia, silencio y ceguera sociales que aún destrozan vidas,” June 27, 2011 (available only in Spanish); El Universo, “Me declararon incapacitada mental y me torturaron porque soy...
women have been the main targets.\textsuperscript{615} Family members try to have the victim institutionalized once becoming aware of his or her sexual orientation or gender identity. Family members often deceive or even kidnap the victim;\textsuperscript{616} there have been cases in which victims were allegedly handcuffed or drugged so that they would not resist.\textsuperscript{617} It has also been reported that family members have paid considerable amounts of money to these centers.\textsuperscript{618}

Accounts of survivors indicate that once interned, they were: exposed to systematic verbal abuse, yelling, humiliation, and rape threats;\textsuperscript{619} housed in overcrowded rooms;\textsuperscript{620} held in isolation for long periods of time;\textsuperscript{621} deprived of food for several days or forced to eat unsanitary food or drink water from wells infested with dead toads, cockroaches and other insects;\textsuperscript{622} forced to “dress and behave like prostitutes to learn feminine behavior” and have sexual relations with other male interns by order of their “therapists”;\textsuperscript{623} kept in handcuffs for more than three months or chained to toilets that were being used by other persons;\textsuperscript{624} awakened with cold water buckets or urine being thrown on them;\textsuperscript{625} subjected to
electroshock therapy;626 and touched, molested and even raped by custodial personnel.627 There have also been reports of “clinics” in which victims were forced to feed livestock and operate a slaughterhouse.628

206. The IACHR has received information on the existence of these centers in Ecuador over the years.629 In 2009 the UN Human Rights Committee urged the Ecuadorian State to take measures to prevent the detention of persons in these centers and to investigate and provide reparations.630 According to estimates by civil society organization, at least 361 of these “clinics” had been identified between 2005 and 2014.631

207. It is reported that Clara was waiting to go home with her parents when three men approached her, grabbed her by her hands and told her that “anything she said could be used against her.” Her mother was just behind them. Clara demanded to see an arrest warrant, but the men instead threw her into a car and tried to handcuff her. Clara’s mother approached the car and told the men not to handcuff her. During the ride, Clara realized she was being “arrested” by her own family. Her father followed the car in a taxi behind them. She was in the backseat held at gunpoint by two men, each holding one of her legs. Minutes later they arrived at the “Julio Endara” psychiatric hospital. Clara saw her father and one of the men talking to a hospital guard. She was taken to a room where a female doctor injected a sedative which made her feel numb and incapable of reacting. She was then taken to a “clinic” in Chone, in the Ecuadorian province of Manabí, where she was locked up.632

208. In 2013 the State of Ecuador informed the IACHR that its Health Ministry was addressing the closure of these “clinics” and that by 2011 approximately 30 of them had been shut down. It also indicated that electroshock therapy and administration of medication were among the procedures carried out in these


The State of Ecuador created a special commission ("Comisión Técnica Interinstitucional Nacional por la lucha de los Derechos Humanos," "CTIN") to investigate clandestine centers. The membership of this commission comprises staff from the Ministry of Health, the Office of the Ombudsman, and the Attorney General's Office. Additionally, according to the information received, the Ministry of Health issued Ministerial Agreement No. 767 prohibiting the administration of any treatment aimed at "curing" sexual orientation or gender identity. The IACHR recognized the State’s efforts in this regard, and encouraged it to adopt all measures necessary to prevent the existence of these clandestine centers and to investigate them, as well as to punish those responsible.

However, civil society organizations have alleged that once a few cases had gained notoriety through the media, these "clinics" no longer advertise their "services of modification" of sexual orientation, but instead began to run their programs under the façade of rehabilitation for alcohol or drug abuse. They have also alleged that due to lack of effective State control, some of the "clinics" that had been shut down quickly reopened under different names and continued to operate freely; others received the help of informants from the Ministry who leaked information about inspections and controls.

The Inter-American Commission has been informed that most victims are extremely reluctant to come forward and officially report these brutal acts to the authorities, for a variety of reasons. In many cases, this is either because family members were involved in the abductions, or because law enforcement officials were involved in the wrongdoing and victims feared reprisals. More generally, victims are deterred by lack of protections for those who report these crimes and a pervasive perception of impunity. In many cases the perpetrators were able to obtain written "consent" from the victims, and the victims believed that the existence of these documents precluded their possibilities of seeking justice. According to information received by the Commission, at least 20 formal reports...
were filed prior to November 2013, and several writs of habeas corpus have been successful in releasing victims from involuntary internment. However, there have also been reports of undue delays in releasing victims. Further, in a 2013 case the CITN investigated one of the centers and it was reported that the owner of the clinic was a public official working for the Ministry of Health. According to the information received by the IACHR, the investigation finally concluded in February 2014. Three of the defendants—one of whom is reported to have fled the country in violation of court orders—were found guilty of hate crimes. All three were sentenced to ten days in prison and ordered to pay a fine.

Since these “therapies” have no medical indication and represent a severe threat to the health and human rights of the affected persons, the IACHR recommends OAS Member States to adopt measures for the regulatory entity of the state health services to guarantee effective processes of regulation and oversight of doctors and health care professionals that offer these services. In general terms, practices that harm the physical, mental and social health should not be accepted as medical therapy. Further, the IACHR recommends that OAS Member States disseminate information based on scientific and objective evidence about the negative impact that these “therapies” have on health.

Finally, linked to the attempts to change sexual orientation and gender identity, the Commission has been informed that sometimes attacks against LGBT persons are religiously motivated, particularly attacks targeting young gay men. For example, in Brazil, three men attacked a 19-year-old gay man. Two of the men punched the victim repeatedly while the third prayed for the victim to be saved from his “sins.” Then, one of the attackers then wrapped the victim’s arm in a cloth and set it on fire. The attackers allegedly abandoned the victim with a note in his pocket that read: “the fire of purification was set upon he who declared his bestial lover.” In the United States, five members of an evangelical church were charged

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642 Fundación Regional de Asesoría en Derechos Humanos “INREDH,” “Análisis del Habeas Corpus: caso de privación de la libertad en clínicas o centros terapéuticos de “deshomosexualización,” p. 2; Fundación Ecuatoriana Equidad, “Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador),” 2013, p. 40.


with the kidnapping and assault of a young gay man. According to available information, the victim stated that the attack “was meant to rid him of homosexual demons.”

H. Hate Speech and Incitement to Violence

213. The Inter-American Commission has received information that indicates that violence against LGBTI persons in the region is fueled by the dissemination of “hate speech” targeted at this community in different contexts, including through public debate, manifestations against events organized by LGBTI persons, such as pride parades, the media and the internet. Although there is a need for further study this phenomenon, evidence shows that when crimes against LGBTI persons occur, they are frequently preceded by a context of heightened dehumanization and discrimination.

214. In a democratic society, States should protect freedom of expression while also guaranteeing equality and the safety of others. In this complex task, States are called to, on the one hand, identify and adequately respond to these incidents, with a view to effectively guaranteeing the rights to personal integrity and security of LGBTI persons. On the other hand, all measures must be respectful of the right to freedom of expression, according to Article 13 of the American Convention. Similar to Article 13.1 of the American Convention, Article IV of the American Declaration establishes that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Unlike the American Convention, this provision does not include the conditions to be met by any restriction to this right. However, the Commission has historically interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, since this instrument was first adopted, and with due regard to other rules of international law applicable to members states.

215. In recent years, several countries in the Americas have proposed legal initiatives to promote equality, sanction discrimination and prohibit “hate speech.” However, the IACHR has received information that in many cases these legislations do not meet the principle of legality. Some of the definitions are vague, which could

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649 The Office of the Special Rapporteur on Freedom of Expression drafted this section of the Report.


651 IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al. United States, July 21, 2011, para. 118.
compromise the effective enjoyment of the right to freedom of expression on issues of public interest. Hence, the growing need to ensure that measures adopted to discourage intolerance and respond to hate speech against LGBTI persons, are part of a policy aimed at promoting the right to freedom of expression of everyone, without discrimination.

216. In order to elaborate on these points, this section of the report provides an overview of the Inter-American legal framework concerning hate speech and incitement to violence. This section also identifies and analyses various non-legal measures and good practices that can contribute to prevent and counter hate speech. The overall goal of this section is to establish the basis for an understanding of the scope of hate speech and allow for the development and implementation of effective responses. This report primarily addresses the obligations of States, but additionally examines the significant role that media can play in the implementation of varied strategies to prevent and combat hate speech.

1. Freedom of expression and equality

217. Pursuant to the American Convention, all human beings are entitled to equal enjoyment and exercise of all rights, without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, birth, or any other social condition. As has been recognized by the Inter-American Court, the prohibition of discrimination due to sexual orientation should include, as protected rights, “the conduct associated with the expression of homosexuality.”652 The Commission and the Office of the Special Rapporteur for Freedom of Expression are of the opinion that this rationale also applies to the expression of one’s gender identity. The IACHR’s Office of the Special Rapporteur for Freedom of Expression has stated that Article 13 of the American Convention encompasses the right to express one’s own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.653

218. The rights to equality and freedom of expression are “mutually supportive”654 and have an “affirmative relationship,” as they make a “complementary and essential contribution to the securing and safeguarding of human dignity.”655 In this regard, the Inter-American Commission and the Inter-American Court have systematically

reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination.\textsuperscript{656} This importance stems from the role of freedom of expression both in its own right and as an essential tool for the defense of all other rights, and as a core element of democracy.\textsuperscript{657}

219. The right to freedom of expression is key in the redress by vulnerable groups of the balance of power among the components of society.\textsuperscript{658} Further, this right is useful in promoting intercultural understanding and tolerance, deconstructing stereotypes, facilitating the free exchange of ideas, and offering alternative views and counterpoints.\textsuperscript{659} Inequality results in the exclusion of certain voices from the democratic process, undermining values of pluralism and diversity of information. The individual members of the social groups that have been traditionally marginalized and discriminated against, or that are in a situation of helplessness, are systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions, or to be informed of the issues that affect them. This process of exclusion has simultaneously deprived the rest of society of knowledge of the interests, needs, and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.\textsuperscript{660} When members of vulnerable or marginalized groups are excluded from public debate, “their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalization.”\textsuperscript{661}


220. According to report examining the media in five countries in the Caribbean region, media outlets tend to completely ignore LGBTI persons and their specific issues in their coverage. When reported, matters related to LGBTI persons are frequently covered in a “sensationalized and demeaning” way. Further, according to the information received, in some of the countries included in that report, “the generalized ridicule of LGBTI persons,” in combination with threats and violence against LGBTI activists and supporters, leads to a limited pool of individuals willing to be publicly associated with promoting non-discrimination and an end to violence. According to this study, this results in the general public having a distorted view of LGBTI individuals and reinforces an erroneous belief that not many people are willing to publicly defend their rights. Moreover, the report concludes that this situation in turn “has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contributes directly to an environment that encourages discrimination and violence.”

221. In light of the above, the Commission and the Office of the Special Rapporteur for Freedom of Expression reiterate that the promotion and protection of the right to freedom of expression should coincide with efforts to combat intolerance, discrimination, hate speech, and incitement to violence. Particularly, with the promotion of proactive public policies to ensure social inclusion in the media, as a means to guarantee that LGBTI persons and communities can exercise their right to freedom of expression, without discrimination. All these efforts should be in strict conformity with international human rights law in general, and freedom of expression standards in particular.

2. Definition of Hate Speech

222. While the Inter-American System of Human Rights has developed certain specific standards, there is no universally accepted definition of “hate speech” under international law. According to a recent UNESCO report that surveyed different definitions of hate speech in international law, the concept of hate speech usually refers to “expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks.”


663 UNESCO, Countering Online Hate Speech, 2015, pp. 10-11.
In its report UNESCO states that, notwithstanding the aforementioned, the concept of hate speech does not consist of broad and abstract ideas, such as political views and ideologies, faiths, or personal beliefs. Nor is it correct to automatically label as hate speech any insult or derogatory or inflammatory expression regarding an individual. When the concept is defined vaguely, the prohibition of hate speech can be easily manipulated to encompass expressions that are deemed offensive to others, particularly those in power, leading to misapplication of the law in attempts to curb dissenting and critical speech. Further, hate speech needs to be differentiated from “hate crimes” based on expressive conducts, such as threats and sexual harassment, which are outside of the protection of the right to freedom of expression.

A lack of clear definition of hate speech is also evident in terms of national legislation. In this regard, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed concern about the “continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices.” These laws are characterized by vague and overbroad legal provisions prohibiting incitement to hatred, and are abused in order to censor discussions that are in the public interest.

As explained below, under the principles established under the inter-American human rights system, States are only mandated to prohibit hate speech in certain circumstances, this is, when the speech constitutes “incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin.” (Article 13(5) of the American Convention).

In other cases, even though the inter-American legal framework allows States to limit by legal measures the right to freedom of expression, under strict compliance with the requirements of legality, necessity and proportionality (Article 13(2) of the American Convention), the IACHR considers it necessary to highlight that censorship of the debate of controversial issues will not address structural inequalities and prejudice that affect LGBTI persons in the Americas. On the contrary, as a principle, instead of restricting, States must encourage more and richer debates as a means of exposing and addressing negative stereotypes.

3. Freedom of Expression and the prohibition of hate speech: Inter-American Law and Standards

In principle, all forms of speech are protected by the right to freedom of expression, independently of the content and the degree of government and social acceptance of the speech in question. The State has a primary duty of content-neutrality and, as a consequence, it must guarantee that there are no persons,
groups, ideas or means of expression that are excluded a priori from public debate.\textsuperscript{665} Particularly important is the rule according to which freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population. This is necessary to protect and foster the pluralism, tolerance and spirit of openness without which a truly democratic society cannot exist.\textsuperscript{666}

228. Notwithstanding this strong protection of free speech, the right to freedom of expression is not an absolute right and can be subject to limitations. Such limitations are specifically established in Articles 13(2) and 13(5) of the American Convention. First, the American Convention establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights of other persons. Article 13(2) of the American Convention prohibits prior censorship, but allows for the subsequent imposition of liability. The establishment of such limitations must be exceptional in nature, and in order to be permissible must be subject to three basic conditions, also set forth in Article 13(2) of the American Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

229. Further, Article 13(5) of the American Convention states that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the view that, according to general principles of treaty interpretation, “advocacy of hatred” that is directed against individuals on the basis of their sexual orientation, gender identity, or bodily diversity, and that constitutes incitement to lawless violence or “to any other similar action,” falls within the scope of this provision and is therefore a violation of Article 13 of the American Convention.\textsuperscript{667}


There is a distinction between Articles 13(2) and 13(5) of the American Convention. In interpreting Article 13(5) of the American Convention, the Commission has indicated that States are required to adopt legislation to punish advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action,” while also noting the limits to these sanctions, as explained below. In contrast, as per Article 13(2) of the American Convention other intolerant expressions or comments that do not strictly amount to “incitement to violence,” could be subject to the imposition of subsequent liability to ensure the rights to dignity and non-discrimination of a particular group in society, including LGBTI persons. The International Covenant on Civil and Political Rights (ICCPR) provides a similar approach.

The United Nations “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (“UN Rabat Plan of Action”), adds a third type of speech that while not punishable, raises a concern in terms of tolerance and civility. As such the UN Rabat Plan of Action establishes that it is important for States to make a clear distinction between: (i) expressions that constitute a criminal offence, (ii) expressions that are not criminally punishable but may justify a civil suit or administrative sanctions, and (iii) expressions that are not legally punishable “but still rais[e] a concern in terms of tolerance, civility and respect for the rights of others.”

In interpreting similar standards in the universal human rights system, the UN Special Rapporteur on minority issues, Rita Izsák, has expressed that “in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech. As experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate speech.” Indeed, several United Nations human rights bodies have highlighted that the application of criminal sanctions on hate

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669 In the universal human rights system, “expression labelled as ‘hate speech’ can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) on different grounds, including respect for the rights of others, public order, or even sometimes national security. States are also obliged to ‘prohibit’ expression that amounts to ‘incitement’ to discrimination, hostility or violence” under article 20.2 of the ICCPR. *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.* October 5, 2012, para 14.


672 In 2011 and 2012, the United Nations Office of the High Commissioner for Human Rights (OHCHR) held four regional expert workshops focused on the relationship between freedom of expression and hate speech. The goal was to “conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for
speech should be seen as a last resort measure to be applied only in “strictly justifiable situations,” in accordance with the requirements set out in Article 20.2 of the ICCPR.673

232. To combat hate speech, experts have suggested that “civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and other remedies should also be considered, including those identified and put in force by various professional and regulatory bodies.”674 The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the opinion that expressions that openly denigrate, stigmatize, or discriminate against a person or a group of persons on the grounds of perceived or actual sexual orientation or gender identity, but that do not reach the threshold of advocacy of hatred that incites lawless violence according to Article 13(5) of the American Convention (“hate speech”), may be subject to the imposition of subsequent sanctions of a civil or administrative nature, or to remedies such as the right of correction and reply. Notwithstanding this, the IACHR and its Office of the Special Rapporteur for Freedom of Expression highlight that such sanctions cannot be aimed at inhibiting or restricting the dissemination of information and ideas concerning issues of public interest. Further, as with any other restriction on freedom of expression, the imposition of subsequent sanctions must satisfy the requirements set forth in Article 13(2) of the American Convention and be applied by an independent state entity.

233. Negative or derogatory portrayal and other expressions that stigmatize LGBTI persons are certainly offensive and hurtful and they increase the marginalization, stigmatization, and general insecurity of LGBTI persons. However, the IACHR is of the opinion that the legal prohibition of this type of speech will not do away with the stigma, prejudice, and hatred against LGBTI persons that is deeply rooted in the societies of the Americas. In many contexts, given the structural social inequalities, discriminatory views and prejudice in public discourse cannot be eradicated through legal sanctions. As will be explained below, more should be done to promote a comprehensive approach that goes beyond legal measures and includes preventive and educational mechanisms and measures implemented by States, media, and society in general.


674 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, paras. 14 - 19.
234. The Commission and its Office of the Special Rapporteur for Freedom of Expression deem of particular importance that States take action to guarantee the exercise of the right to freedom of expression of LGBTI persons and to empower those affected and made invisible by hate speech. As observed by the Office of the Special Rapporteur for Freedom of Expression, “speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less.” However, in order to enable a vigorous debate it is necessary to guarantee that members of groups affected by hate speech can fully exercise their freedom of expression, which includes fostering greater diversity and pluralism in access to the media.

235. In light of the foregoing, the Commission has stated that the imposition of sanctions under the charge of advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action” – as defined and prohibited by Article 13(5) of the American Convention – requires a high threshold. Such sanctions must be backed by truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had: (a) the clear intention of promoting lawless violence or any other similar action against LGBTI persons; and (b) the capacity to achieve this objective and create an actual risk of harm to LGBTI persons.

236. Complementary requirements or “threshold tests” have been proposed by different international bodies and civil society organizations in order to clearly differentiate between speech that constitutes “incitement to lawless violence or to any other similar action,” allowing for the separation of speech warranting the imposition of criminal sanctions from speech that is intolerant or offensive. For instance, the UN Rabat Plan of Action sets forth the following criteria that should be taken into account by legislators, prosecutors and judges when assessing expressions which are criminally prohibited: (i) the social and political context


It is important to recognize that any limit on freedom of expression, especially limits that could bring serious sanctions such as prison sentences, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch and that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must be accompanied by sanctions that are proportional. In any case, as has been repeatedly held by the Inter-American Commission and the Inter-American Court, any restriction imposed on the right to freedom of expression should be established in advance, expressly, restrictively, unambiguously and clearly in law—in the formal and material sense. The restriction must also serve compelling
objectives as set out in the American Convention, be necessary to serve the compelling objectives pursued in a democratic society, be strictly proportionate to the objective pursued, and be appropriate to serve said compelling objective.  

238. When limits on freedom of expression are established by criminal law, the Court has established that they must further satisfy the principle of strict legality. The Court has held that should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the principle of legality. The Court has indicated that this principle is understood as the requirement to use strict and unequivocal terms, clearly restricting any punishable behavior, which in turn requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”

239. With regard to implementation of Article 20.2 of the ICCPR, the “Rabat Plan of Action” recommends that definitions of hate speech, especially of a criminal nature, incorporate robust definitions of key terms used, for example: hatred, incitement, and advocacy. Similarly, the Camden Principles on Freedom of Expression and Equality, developed by a civil society organization on the basis of discussions involving a group of high-level UN and other officials, as well as civil society actors and academic experts, recommend that “[n]ational legal systems should make it clear, either explicitly or through authoritative interpretation, that: (i) The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; (ii) The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group; (iii) The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.”

240. The IACHR and its Office of the Special Rapporteur for Freedom of Expression believe that independent “watchdog” bodies can serve an important role in identifying and reporting hateful content and promoting the application of the
highest ethical standards. While doing so, however, they must adhere to international human rights standards. Examples of non-punitive administrative remedies employed by independent “watchdog” bodies can be found in measures recently adopted by the Ombudsperson of the Audience of Broadcasting Services in Argentina [Defensoría del Público de Servicios de Comunicación Audiovisual] to promote the right to equality and non-discrimination on broadcasting services programming.\(^{688}\) For instance, in December 2014 the Ombudsperson of the Audience recommended that a certain radio station adopt a code of ethics or style manual incorporating guidelines on the principle of non-discrimination that reflect progress made by national legislation in this regard. The Ombudsperson also mandated that its own legal department “process, prepare and distribute a guide on responsible press coverage of sexual diversity in the audiovisual media services.”\(^{689}\)

241. Finally, the IACHR recognizes that other international and regional human rights instruments and treaties prohibit “promotion or incitement of hatred” with different implications for conceptualizing and defining the varied forms of hate speech. The IACHR notes the adoption in June 2013 of the Inter-American Convention against All Forms of Discrimination and Intolerance, which as of the date of release of the instant report is yet not in force\(^{690}\). Once this Convention enters into force, the Inter-American Commission and Court are called to, in accordance to international law principles, interpret the relationship between this Convention and the American Convention.

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\(^{688}\) According to Article 3(m) of the Act 26.522 of Audiovisual Communication Services, broadcasting media should “promote the protection and safeguarding of equality between men and women, and a plural, equal and non-stereotypical coverage, avoiding discrimination by gender or sexual orientation.” Congreso de la Nación Argentina. Act 26.522. Servicios de Comunicación Audiovisual. October 10, 2009.


\(^{690}\) For example, Article 4 of the Inter-American Convention against All Forms of Discrimination and Intolerance establishes that “[t]he states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including: i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that: a. advocate, promote, or incite hatred, discrimination, and intolerance; b. condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts; [...] Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions, based on any of the criteria set forth in Article 1.1 of this Convention.” OAS General Assembly, *Inter-American Convention against all Forms of Discrimination and Intolerance*, adopted on June 5, 2013 at the 43\(^{rd}\) Regular Session. Further, The International Convention on the Elimination of All Forms of Racial Discrimination obligates States to condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination” (art. 4). Further, three situations constitute offences punishable by law: (a) all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) organizations, organized and all other propaganda activities which promote and incite discrimination—which must be declared illegal and prohibited—, and participation in such organizations or activities; (c) promotion or incitement of racial discrimination by public authorities or public institutions, national or local. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly on December 21, 1965 (entered into force January 4, 1969).
4. **Hate Speech and Public Officials**

242. The Inter-American Court has established that even when official speech might not have authorized, instructed, or directly incited violence, it may often put potential victims of violence in a situation of greater vulnerability before the State and some sectors of society. The Inter-American Commission and the Court have reiterated that given the State’s obligations to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored.

243. In this regard, the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding LGBTI persons. For example, the IACHR received information regarding the use of expressions of stigmatization and intolerance by the President of the Human Rights Commission of the House of Representatives in Brazil in 2013. According to the information received, he has publicly indicated that LGBT people “want to impose a gay dictatorship in the country, in order to expel God out of Brazil” and that “the putrefaction of gay feelings leads to hate, crime and rejection.” Similarly, in 2013 the President of the Human Rights Commission of Congress, in Costa Rica, made a series of intolerant and discriminatory remarks regarding the congressional debate of a bill to protect LGBTI people from discrimination. He reportedly said to the press “[b]ut who is bothering them? Who is bothering them? We cannot tell who they are. If they are not ‘fruity’ and they do not declare themselves ‘as such’, in reality one does not know who they are.”

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694 FELGTB. “La FELGTB denuncia la homofobia del presidente de la Comisión de Derechos Humanos de Brasil”. April 15, 2013 (Available in Spanish only); Tribuna da Bahia. “Marco Feliciano põe o projeto sobre a “cura gay” para ser votado na Câmara.” May 2, 2013 (Available in Portuguese only).

695 The original quote in Spanish: “si a ellos no se les ve el plumero y no se declaran así, en realidad uno no sabe quiénes son.” Dos Manzanas. “Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas”. March 4, 2013 (Available in Spanish only); El
244. In similar terms, a Councilman in La Candelaria, Bogotá, Colombia, indicated in 2013 that LGBT people “are involved with the judges and they are perverse or perverted ... [they] sleep with 5, 20 or 30 people. They sleep with children. They sleep with girls ... because the ones who are buying children are judges of the Republic, senators and magistrates. And we have a big problem. People run for office and they do not say whether or not they are LGBTI. Gay and bisexual men are being elected, but if the voters knew what kind of people [they are], they would not vote for them. But here, people are being lied to.”

246. Colombian civil society organizations have claimed that the Inspector General has also publicly expressed negative and demeaning views of LGBTI people. For example, the Inspector General considers same-sex relationships or couples to be "aberrations," and equates them to bestiality. Along these lines, on August 13, 2013, a Member of the House of Representatives for the Partido Socialista Unido de Venezuela (PSUV), used homophobic slurs while in a parliamentary session, when he referred to a State governor as “maricón” [Spanish equivalent to “faggot”] and a “homosexual.”

245. Further, the Commission calls on authorities to not only refrain from disseminating hateful messages against LGBTI people but also to contribute decisively to the building of a climate of tolerance and respect in which all people, including LGBTI persons and those who defend their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.

247. Likewise, the UN Special Rapporteur on Freedom of Expression has noted that public officials have a special responsibility to clearly and formally denounce hate speech. Similarly, the UN Rabat Plan of Action affirms the crucial role of political
and religious leaders in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.\textsuperscript{702} For its part, the UN Committee against Racial Discrimination has found that the formal rejection of hate speech by high-level public officials and the condemnation of hateful ideas expressed can work as a preventive measure to combat incitement to violence and discrimination.\textsuperscript{703}

5. Non-legal measures to counter hate speech

248. The Commission and its Office of the Special Rapporteur for Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.\textsuperscript{704} As previously stated by the Office of the Special Rapporteur on Freedom of Expression, these types of measures strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism and tolerance.\textsuperscript{705}

249. In this context, preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice on the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

250. Education and awareness-raising measures should include the promotion of digital and media “literacy”. The IACHR and its Office of the Special Rapporteur on Freedom of Expression have stated that in order to ensure access to the internet, educational measures intended to promote the training of all users in the autonomous, independent, and responsible use of the internet and digital technologies is needed. This is because “full access to information and communications technologies, particularly the Internet, is closely related to the

\textsuperscript{702} Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, para. 24.


capacity to make effective use of these tools.” The IACHR views as positive that in Argentina, the National Institute against Discrimination, Xenophobia and Racism (INADI, in Spanish) established the “Platform for an Internet Free of Discrimination.” The initiative aims to promote digital literacy among children, teenagers, and parents in order to guarantee that the Internet remains a space free from discriminatory violence that affects the rights of groups, communities, and individuals. The Platform provides information to enable users to identify and report discriminatory language on the web. Civil society also plays a role in addressing hate speech against LGBTI persons, through education and awareness-raising efforts. In Canada, for example, the non-profit organization Media Smarts is dedicated to the promotion of media and digital “literacy”. It launched an initiative on diversity, non-discrimination, and hate online that provides practical tools for a diverse audience of Internet users, including parents, teachers, and children, for identifying and facing hate speech.

251. A preventive policy should include the collection and analysis of data and information on hate speech. In most countries in the region, such data is not collected and analyzed. The goals of data collection and analysis could include the assessment of the various forms of hate speech; the perpetrators involved; the circumstances under which hate speech emerges; and the audiences reached or targeted. Other areas of assessment should include the impact of existing hate speech laws and the extent to which they comply with international norms, as well as the effects of counter-speech/counter-narrative techniques.

252. Another important measure is the promotion of proactive public policies for social inclusion in the media to ensure that LGBTI individuals and communities can realize their right to freedom of expression without discrimination. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to “address and redress the indirect censorship, powerlessness and/or alienation felt by many groups and individuals,” especially those that have been frequent targets of severe harassment and intimidation by both State and non-State actors, since “explicitly or implicitly, through such actions an illusion is created that only those with the requisite authority can speak on particular issues,” resulting in a culture of fear that

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707 National Institute against Discrimination, Xenophobia and Racism (INADI), “Plataforma por una Internet Libre de Discriminación.”

708 For more information visit: www.mediasmarts.com.


hampers public debate and violates the right to freedom of expression.\textsuperscript{711} Therefore, States should “proactively facilitate counter-speech of individuals belonging to groups that are systematically targeted by hate speech.”\textsuperscript{712}

253. One example of good practice is the strengthening of the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community and promote awareness of LGBTI issues. Another example is the reservation of parts of the radio spectrum for community media outlets operated by LGBTI groups, together with the establishment of special procedures to assist those sectors in obtaining radio licenses. Efforts should also be made to provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and voice needs of LGBTI groups. These are examples of measures that are aimed toward generating equal opportunities and real equality in the exercise of the right to freedom of expression.\textsuperscript{713}

254. It is important to emphasize the role of media as channels of information, ideas, and opinions. This role is fundamental to the development of narratives that value diversity and condemn arbitrary discrimination.\textsuperscript{714} In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons.\textsuperscript{715} The Office of the Special Rapporteur for Freedom of Expression has expressed concern over the promotion by media outlets of openly discriminatory content that could incite violence against LGBTI persons, especially when those messages come from shapers of public opinion.\textsuperscript{716}

255. The IACHR welcomes a recent joint study by several civil society organizations monitoring media in five countries in the region (Belize, Grenada, Guyana, Jamaica


and St. Lucia). According to this study, many media outlets reinforce negative stereotypes that can lead to violence against LGBTI persons, and overall, they create an “unbalanced, inaccurate and largely unflattering picture” of LGBTI persons. The study also found that stories depicting LGBTI persons engaged in positive activities, or important stories regarding policy issues or concerns about discrimination and exclusion, were largely ignored by the media.\(^ {717}\) Further, the study indicated that because much of the coverage consisted of depictions of LGBTI persons purportedly engaged in criminal activity, or negative depictions of LGBTI persons more generally, the coverage contributed to a heightened risk of violence against these persons.\(^ {718}\)

256. Coincidently, the IACHR has expressed concern over the “systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community” in 2013 and 2014 in Jamaica.\(^ {719}\) For example, the IACHR noted\(^ {720}\) that on March 23, 2014, the Jamaica Observer newspaper reportedly published a cartoon indicating “the invasion of Jamaica by homosexuals” [hemos over run jamaica], which was alleged to be comparable to the increase in crime and government corruption.\(^ {721}\) On July 1, 2014, an article was published under the headline “Local churches vow to prevent homosexuality from dominating society,” which contained phrases such as “The local church community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society.”\(^ {722}\) On July 13, 2014, it published the article “Police hunt gay murder suspect,” which contained statements like “The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment,” and “Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community.”\(^ {723}\) On July 16, 2014, the same newspaper published an editorial entitled “Homosexuality: the long, painful search for workable rules of engagement,” apparently justifying that “[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination,” but also calling for tolerance and non-violence.\(^ {724}\)


\(^{721}\) Maurice Tomlinson. March 23, 2014. More Anti-gay material from the Jamaica Observer. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

\(^{722}\) Jamaica Observer. Local churches vow to prevent homosexuality from dominating society. July 1, 2014.


257. In its 2014 Report to follow-up to the 2012 Report on the human rights situation in Jamaica, the IACHR indicated that in the framework of the hearing “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica” held on October, 28, 2014, the Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression received information on the constant stigmatizing and hate speech reproduced by the media regarding LGBTI persons. According to civil society organizations, State authorities have omitted promoting positive views to reduce the discrimination and stigma against LGBTI persons. The State reported that the government is aware of the debate in Jamaica on the rights of LGBTI persons and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State indicated that takes the position that these are issues covered by the right to freedom of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government’s control. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has warned that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.

258. The Commission recalls that principle 6 of the Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, inter alia, that journalistic activities must be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State. The IACHR notes that the adoption of voluntary professional codes of conduct for the media and journalists can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of media outlets furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner. Similarly, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that “media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism”. Further, that media outlets and journalists should establish “independent and self-regulatory bodies to elevate standards of journalism and to ensure the accountability of all media professionals.”

727 In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. Cross-dressing teenager murdered in Jamaica; Huffington Post/AP. August 11, 2013. Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report. IACHR, Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report, para. 237.
259. Indeed, media should play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have suffer from historical discrimination (including LGBTI persons), and by giving members of these groups an opportunity to speak and to be heard.\footnote{The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. \textit{Joint Declaration on Universality and the Right to Freedom of Expression}, May 6, 2014.} This is consistent with the \textit{Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity}, which recommend that “mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues.”\footnote{\textit{Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity}, p. 36. March 2007.}

260. In sum, in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, stigmatizing, or offensive speech. Further, States should adopt legislation prohibiting any advocacy of hatred that constitutes incitement to violence or other similar action. The imposition of sanctions under the charge of advocacy of hatred – as defined in and prohibited by Article 13(5) of the American Convention – requires a high threshold. This is because, as a matter of fundamental principle, prohibition of speech must remain an exception. Restrictions on speech must be backed by actual, truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had the clear \textit{intention} of promoting lawless violence or any other similar action against LGBTI persons, along with the \textit{capacity} of achieving this objective and creating an \textit{actual} risk of harm being committed against persons who are part of these groups. These elements should be made clear by national legal systems, either explicitly in the law or through authoritative interpretation by the judiciary. In other words, criminal sanctions should be seen as last resort measures, only to be applied in strictly justifiable situations, according to Article 13(5) of the American Convention. Civil and administrative sanctions and remedies should also be considered, along with the right of correction and the right of reply.

261. Further, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy. Consequently, States should adopt appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials. The media also plays an important role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by adopting voluntary professional codes of conduct.
CHAPTER 5

VIOLENCE AND INTERSECTION WITH OTHER GROUPS
VIOLENCE AND INTERSECTION WITH OTHER GROUPS

262. The experiences of lesbian, gay, bisexual, trans and intersex persons of violence are very diverse. This diversity is a result of differing personal circumstances and characteristics, and in particular, the existence of certain factors that make LGBTI persons especially vulnerable to violence, or which worsen the consequences of such violence. For example, an afrodescendant trans woman who is internally displaced in a rural area and who lives in poverty would experience violence or its consequences differently from a wealthy Caucasian gay man who lives in a major city. In this chapter the IACHR summarizes some of the issues faced by persons at the intersectionality of their sexual orientation and gender identity and their ethnicity; sex; gender; migration status; age; status as a human rights defender; race; and socio-economic status. Since the focus of this Report is violence, it does not address discrimination at the intersections of these factors in general. However, it is important to note the interrelation between violence and discrimination, and how the acts of violence described in this section reflect a manifestation of underlying structural and historical forms of discrimination. These groups can suffer from a continuous cycle of violence and discrimination caused by impunity and a lack of access to justice. The IACHR acknowledges that there are other factors not addressed in this chapter that might make LGBTI persons more susceptible to violence and discrimination, such as disability, age (being elderly), being a parent, living in rural areas, and living with HIV.

A. Indigenous peoples

263. The IACHR has received limited information on the human rights situation of indigenous persons with diverse sexualities. The IACHR notes that such persons might not self-identify as LGBT, and instead might self-identify with another expression of diverse sexuality, for example Two-Spirit, or might not discuss their gender or sexual orientation in terms that easily translate to the concept of LGBT

as used in this Report. During a public hearing held in March 2013, a group of experts presented information on the negative impact of colonization on the ancestral sexualities and spiritualities of indigenous peoples. Indigenous organizations explain that when Europeans landed in America, they imposed their conceptions of the world and religion onto the native and indigenous peoples who lived there. Among those conceptions were European views on nudity, virginity, polygamy, and, above all, same-gender relationships and trans identities. According to the information provided, colonization resulted in the suppression of non-heteronormative sexualities among indigenous peoples. This had devastating consequences, including loss of acceptance of people of non-heteronormative sexualities within their own societies, self-harm, and suicide.

264. Canadian civil society organizations have informed the Commission of the many challenges faced by Two-Spirit Canadians. In Canada, First Nations and Aboriginal Canadians who identify as Two-Spirit or LGBT face unacceptably high levels of violence and discrimination. A report recently produced by the National Aboriginal Health Organization (NAHO) indicated that LGBT and Two-Spirit Aboriginal youth are two times more likely to face assault than heterosexual Aboriginal youth. Facing homophobia, transphobia and violence in their communities, LGBT and two-spirited Aboriginal youth often have no supports or safeguards. This can lead to alcoholism, drug abuse, sex work and in some cases, suicide.

265. The Commission underscores that indigenous persons with non-conforming sexual identities suffer from multiple and intersecting forms of violence and discrimination due to their indigenous identity and sexuality, sexual orientation and/or gender identity. The Commission notes how both the American Convention and the American Declaration protect the right of every person to be free from all forms of discrimination, and that indigenous peoples in particular are protected from discrimination based on their ethnic background, race, national origin, traditions and customs. The right of indigenous peoples to live free from all forms of discrimination is further protected under the universal system of human rights.

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738 National Aboriginal Health Organization, Suicide Prevention and Two Spirited People, [n.d.]
739 American Convention on Human Rights, November 11, 1969, Articles 1(1) and 24; American Declaration on the Rights and Duties of Man, 1948, Article II.
741 International Covenant on Civil and Political Rights, December 16, 1966, Articles 2(1) and 3; Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Articles 1, 2, and 3; Convention on the
266. In this respect, the Commission considers it important to note the unique way in which indigenous persons with non-normative sexual orientations and gender identities experience the violence described above. Each indigenous community views themselves as a collective unit in which each individual views their independent spiritual and cultural survival as dependent on their continued connection with the collective identity of the community and its ancestral lands. The loss of that connection—whether it be through rejection by the collective community or exile from their ancestral lands—can constitute a form of spiritual and cultural violence for those indigenous persons with non-normative sexual orientations and gender identities, with the loss of identity and support leading in some cases to the incidents of suicide and self-harm described above.

267. Bearing this in mind, the Commission emphasizes the need for a holistic approach to address both the acts of violence as well as the underlying historical and structural causes of the violence within and outside of the indigenous communities. As part of this holistic approach, the Commission considers it important for States to conduct full, timely and impartial investigations of complaints of violence with an intercultural perspective to take into account the specific needs of indigenous persons with non-conforming gender identities. The IACHR calls on OAS Member States to include in their legislation and public policies the specific needs of indigenous peoples with diverse sexualities, and to adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexualities or gender identities. In order to evaluate the effectiveness of the measures implemented in this respect and to formulate any needed policy changes, States should collect and disseminate disaggregated statistics and information on cases of violence against these people.

Elimination of All Forms of Racial Discrimination, January 4, 1965, Articles 1 and 2; ILO Convention 169 on Indigenous and Tribal Peoples, January 1, 1989, Articles 3, 4 and 20; and the UN Declaration on the Rights of Indigenous Peoples, June 20, 2006, Article 2.

IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II., Doc. 30/14, December 21, 2014, para. 117; IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II., Doc. 56/09, December 30, 2009, paras. 24-31, 37. I/A Court, Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, series C, No. 79, para. 148: “(...) The indigenous by virtue of their existence have the right to live freely in their own land; the close relationship that the indigenous maintain with the land must be recognized and understood as a fundamental basis for their culture, spiritual life, their integrity and their economic survival. For indigenous communities the relationship with the land is not merely a question of possession and production but also a material and spiritual element for which they must fully enjoy, including to preserve their cultural heritage and to transmit it to future generations.”

B. Women

268. Under several international human rights instruments, including UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence against Women, and the Convention of Belém do Pará, States have a duty to respond to all forms of violence against women and girls with due diligence. This duty extends to protection, prevention, investigation, prosecution, punishment and provision of effective remedies, including reparations. In carrying out this duty, States must consider the varying needs of different groups of women, taking into account age, race, ethnicity, disability, sexual orientation, gender identity, and socio-economic position, among other factors.  

269. The IACHR has stated that in the case of crimes involving violence against women, States have obligations under the Convention of Belém do Pará that are in addition to, and that reinforce, the obligations contained in the American Convention and the American Declaration. Given the lack of visibility, the Commission has called for states to give attention to the principles and obligations contained in the Convention of Belém do Pará when addressing violence against lesbian women. The IACHR has also included reference to trans and lesbian women in press releases commemorating dates that have traditionally been conceptualized in terms of cisgender and heterosexual women, such as International Women’s Day (March 8, 2015) and the International Day for the Elimination of Violence against Women (November 25, 2014). In a 2015 joint visit to four countries in the Caribbean by the UN Special Rapporteur on Violence against Women and Tracy Robinson in her capacity as Rapporteur on the Rights of Women of the IACHR, the rapporteurs noted that “human rights issues affecting lesbian, bisexual and trans women were referred to continuously in meetings, including practices described as “corrective” violence.” Further, in interpreting the concept of violence “that occurs in the community,” which appears in Article 2(b) of the Convention of Belém do Pará, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), has established that “one expression of violence at the level of the  

744 IACHR, Joint Press Release by UN and IACHR Rapporteurs, April 28, 2015. See also CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, October 2010, CEDAW/C/2010/47/GC.2, para. 18. See also, Article 9 of the Convention of Belém do Pará. The IACHR has stated that in the case of crimes involving violence against women, in addition to the obligations contained in the American Convention, the States have an obligation under the Convention of Belém do Pará.


746 In connection to this, see IACHR, Press Release No. 23A/13, “Annex to the Press Release issued at the close of the 147th Session,” April 5, 2013.


community is the generalized discrimination and violence directed against women as a result of their sexual orientation or gender identity.\textsuperscript{750}

270. The Commission considers it important to highlight the multidimensional nature of the acts of violence described in this section. Acts of violence against women, including lesbian, bisexual and trans women, are experienced by women as manifestations of the structural and historical sexism and inequality between men and women. As a result, the Commission notes how acts of violence against women can often take gender-specific forms, such as sexual violence or intrafamily violence. When examining the intersection of gender with sexuality, sexual orientation and/or gender identity, the Commission has found that such acts of violence are manifestations of the combined structural and historical sexism and prejudice towards non-normative sexual orientations and gender identities and, therefore, can take specific forms, such as rape aimed at punishing those orientations or identities, the puncturing of silicone implants, and genital mutilation, among others.

271. The Commission also finds that the context in which such acts of violence occur can also impact the way in which women experience certain acts of violence. In particular, the Commission has found that acts of rape perpetrated by agents of the State, while the women were under the control of those agents, constitute torture under the American Convention and the Inter-American Convention to Prevent and Punish Torture.\textsuperscript{751} Such a finding is based, in part, on the shared objective of rape and torture to intimidate, degrade, humiliate, punish and control the victim, as well as the power imbalance between agents of the State and the women victims of violence.

272. Lesbian women are at particular risk for violence because of misogyny and gender inequality in society,\textsuperscript{752} but there is significant underreporting of violence against lesbian women.\textsuperscript{753} This may be because many forms of violence experienced by lesbian women occur in private and are intersectional forms of violence. Of the 770 acts of violence against LGBT persons registered by the IACHR between January 2013 and March 2014 (lethal and non-lethal), 55 of those acts targeted lesbian women, or women perceived to be lesbians.\textsuperscript{754} In this regard, the Commission highlights that this low number is due to the invisibility and under-reporting

\textsuperscript{750} Follow-up Mechanism to the Belém do Pará Convention (MESECVI), \textit{Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women}, 2014, p. 22.
\textsuperscript{751} See, e.g. IACHR, Application before the I/A Court, Case of Ines Fernandez Ortega, Case 12,580 v. Mexico, May 7, 2009; and IACHR, Application before the I/A Court, Case of Valentina Rosendo Cantu et al., Case No. 12,579 v. Mexico, August 2, 2009.
\textsuperscript{752} OHCHR, \textit{Discrimination and violence against individuals based on their sexual orientation and gender identity}, A/HRC/29/23, May 4, 2015, para. 22.
regarding acts of violence against women, as well as the fact that most of these acts of violence occur in private settings. The IACHR has noted that lesbian women are a group largely absent from the legislation and policies adopted by States.\(^{755}\) As was examined in the previous chapter, according to data collected by the IACHR, lesbian women are victims of rape or sexual violence targeted to punish them because of their sexual orientation; collective beatings for public display of affection; attacks with acid; and forcible commitment to centers that offer to “modify” their sexual orientation.\(^{756}\)

273. According to information gathered by the IACHR, lesbian women are “disproportionately affected by violence exerted by their family members.”\(^{757}\) For example, in Ecuador a man shot his wife in her back and neck, saying that he did this because he thought she was a lesbian. The woman survived but was left permanently disabled and in charge of her five children.\(^{758}\) In Chile, a young lesbian woman was repeatedly physically attacked and stabbed by the male relatives of her ex-girlfriend.\(^{759}\) In Peru, a woman tried to defend her girlfriend from an attack by her brother that was prompted by their same-sex relationship. As a result she suffered machete wounds on her face, head and neck.\(^{760}\) According to the organization that provided her legal representation, she received discriminatory treatment at the hands of a state forensics officer (medicina legal), including repeated abusive questioning about her sex life and the statement that because she was “butch,” her son would be a “faggot.”\(^{761}\) Lesbian women are also punished for rejecting men’s sexual advances.\(^{762}\)

274. The IACHR has received troubling information on the high levels of violence experienced by bisexual women, when compared to both lesbian and heterosexual women. According to data from the 2010 U.S. National Intimate Partner and Sexual Violence Survey (NISVS) that concerns rape and other sexual violence committed by any perpetrator (which can be an intimate partner, acquaintance, family member, stranger, or person of authority), bisexual women suffer a significantly


\(^{758}\) El Diario, “*Morido le disparó tras acusarla de ser lesbiana,*” February 28, 2013 (Available only in Spanish).

\(^{759}\) OTD Organización de Transsexuales por la Dignidad de la Diversidad (OTD) & International Gay and Lesbian Human Rights Commission (IGLHRC), “*Violaciones de derechos humanos de las personas lesbianas, bisexuales y transexuales (LBT): Un informe sombra*,” September 2012, p. 8; EMOL, “*PDI detiene a supuestos implicados en brutal golpiza a joven lesbiana,*” July 20, 2012 (Available only in Spanish); Biobio Chile, “*Joven de 16 años sufrió brutal agresión en Santa Juana: Acusan discriminación por ser lesbiana,*” July 19, 2012 (Available only in Spanish).

\(^{760}\) Promsex, “*Mujer lesbiana, agredida brutalmente por hermano de su pareja por homofobia, requiere solidaridad por parte de todos los peruanos,*” April 1, 2014 (Available only in Spanish).

\(^{761}\) Sinetiquetas, “*Pilar tenía que vivir y la voz de su hijo fue lo último que escuchó,*” May 5, 2015 (Available only in Spanish).

\(^{762}\) Cba24n, “*Activistas lesbianas fueron atacadas por una patota en beep,*” March, 3, 2014 (Available only in Spanish).
higher lifetime prevalence of such violence when compared to both lesbian and heterosexual women.\textsuperscript{763} It was reported that 61.1% of bisexual women had, at least one time in their lives, been victims of rape, physical violence and/or stalking by an intimate partner, compared to 43.8% for lesbians and 35% for heterosexual women.\textsuperscript{764}

275. Since the beginning of the establishment of the LGBTI Unit at the IACHR, the Inter-American Commission has monitored and expressed concern about violence against trans persons in the Americas.\textsuperscript{765} Numerous studies and reports by international agencies,\textsuperscript{766} civil society organizations,\textsuperscript{767} state authorities,\textsuperscript{768} activists,\textsuperscript{769} and academia\textsuperscript{770} have focused on how pervasive violence, prejudice and discrimination in society at large and within the family hinder trans women’s possibilities to access education, health care services, shelter, and the formal labor market. In turn, homelessness and exclusion from education and the formal labor market makes trans women more susceptible to be subjected to diverse forms of violence. Violence against trans persons, particularly trans women, is the result of a combination of factors: exclusion, discrimination and violence within the family, schools, and society at large; lack of recognition of their gender identity;

\textsuperscript{763} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.

\textsuperscript{764} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.

\textsuperscript{765} To access the IACHR’s press releases and chapters of annual, country and thematic reports on the subject, visit www.iachr.org


\textsuperscript{768} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated 29 November 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 6. See also, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo, INADI (Argentina), “Hacia una Ley de Identidad de Género,” 2012, pp. 7, 21.


involvement in occupations that puts them at a higher risk for violence; and high criminalization.\textsuperscript{771}

276. Some Latin American organizations report that the average life expectancy of trans women in the region is as low as 35 years of age, or even less.\textsuperscript{772} In this regard, the IACHR has noted that while it seems that gay men of all ages are targeted, in the case of trans women, it is mostly younger trans women who are victims of violence. The IACHR has expressed concern about the young age of trans victims of killings and other acts of violence. According to the data collected, 80\% of trans persons killed were 35 years of age or younger.\textsuperscript{773}

277. The IACHR has received reports of certain specific acts of violence that are present in many cases of attacks against trans women. These include: beatings targeted at the breasts; the puncturing of silicone breast implants; and genital mutilation, including even post-mortem castration.\textsuperscript{774} There have also been reports of trans women being killed after the perpetrator found out they were trans.\textsuperscript{775}

\begin{itemize}
\item \textsuperscript{774} See e.g., IACHR, Public Hearing on \textit{Human Rights Situation of Trans Persons of African Descent in Brazil}, 149\textsuperscript{th} Period of Sessions, October 29, 2013; IACHR, Public Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133\textsuperscript{rd} Period of Sessions, October 23, 2008; Global Rights, \textit{Report on the Human Rights Situation of Afro-Brazilian Trans Women}, 2013, p. 13; Grupo Gay da Bahia (GGB), “\textit{Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014},” p. 3; Transgender Europe (TGEU) & Transrespeto versus Transfobia en el Mundo (TvT), “\textit{Transrespeto versus Transfobia en el Mundo: un estudio comparativo de la situación de los derechos humanos de las personas trans},” 2012, p. 47; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, July 3, 2001, para. 18.
\item \textsuperscript{775} For example, Diamond Williams, an African American transgender woman, was killed in July 2013 in Philadelphia, United States, allegedly after her attacker found out that she was trans. Her body was dismembered and found scattered across the city. NBC, \textit{Loved ones celebrate life of Slain transgender woman}, July 23, 2013. Further, the IACHR received information about the death of Cristóforo F., a trans person who was allegedly asphyxiated in Mexico City on September 6, 2013 (IACHR, \textit{Registry of Violence, of murders and other acts of severe violence against LGBT persons (January 2013 to March 2014)}, in Spanish only). See also Regional Meeting of LGBTI Activists from CARICOM, \textit{The Unnatural Connexion: Creating Social Conflict through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact in Caribbean Countries}, 2010, Report submitted to the IACHR in November 2010, p. 30.
\end{itemize}
278. Trans women are often attacked or killed by armed groups, including armed groups performing neighborhood security duties, as well as illegal groups such as gangs. For example, in 2009, in Peru, a trans woman sex worker named Techi Paredes was shaved bald and told to jump like a frog while being beaten with clubs by members of neighborhood councils. It was reported that one of the neighbors leading the attack declared: “[w]e are giving them exemplary punishment and we are determined to eradicate them.” In 2009, a group of residents in a neighborhood of the City of Buenos Aires, Argentina, is reported to have distributed flyers advocating the “elimination” of trans women from the neighborhood. This group referred to themselves as “an anonymous group who decided to go to war with these men dressed as women.” Trans women in the area reported suffering attacks with eggs, stones and bottles. In Guatemala there are local security groups known as Juntas Locales de Seguridad, who are believed to have been involved in the killings of three trans women in July 2011.

279. The IACHR has also received information that LGBT persons, particularly trans women, are more vulnerable to violence by illegal armed groups and organized crime in Central America. A regional organization reports that violence inflicted on trans women by maras and gangs in Guatemala, Honduras and El Salvador is particularly serious. Regarding El Salvador, the IACHR indicated in June 2015 that “[i]n the context of countries with high levels of insecurity and organized crime, it is particularly important for States to adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI persons and defenders of human rights of LGBTI persons, who, as informed, are particularly vulnerable to violence by armed groups.” The IACHR has also extensively documented violence by armed groups against trans women in Colombia, particularly those living outside of Bogota, in areas affected by the armed conflict.

280. The IACHR has received consistent reports showing that trans women who are sex workers are particularly vulnerable to community violence, including killings by

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782 IACHR, Truth, Justice and Reparation: Colombia, 2013. See also, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1999/39, January 6, 1999, para. 76 (making reference to information received also concerning Mexico and Brazil).
groups, or even their own clients. Due to discrimination in the labor market and other adverse impacts, sex work is for many trans women a means for survival, with some even engaging in sex work in their early teens. One estimate indicates that 90% of trans women in the Americas engage in sex work,783 while estimates for some individual countries are even higher: between 94% and 95% in Peru and Chile, respectively.784

281. Among sex workers, trans women are the group most frequently targeted for persecution and violence both by law enforcement agents and by community members.785 They often work in unsafe areas at night. Further, they may face the additional risk of being attacked by a client who is initially unaware of their trans identity and who harbors strong prejudice against trans women. In a public hearing held in 2013, the IACHR was informed by civil society organizations that three trans women who were sex workers were kidnapped and killed in El Salvador, amidst a worrying rise in the murder rate of LGBT persons in that country.786

282. The IACHR emphasizes that States have the obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans, and intersex women, as per the Belém do Pará Convention. The Commission highlights that the right of every woman to be free from violence, including lesbian, bisexual trans and intersex women, includes the right to be free from discrimination. This includes the right to be valued and to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination.787 In this sense, OAS Member States have the obligation to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such

784 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 25, fn. 82.
787 Article 6, Convention of Belém do Pará.
patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.\textsuperscript{788}

283. The Commission highlights the importance of transformative reparations in this respect, whereby the decisions issued by the IACHR and the Inter-American Court go beyond mere restitution in cases of violence against women in order to address the underlying context of structural and historical discrimination and inequality.

284. Finally, the IACHR urges all OAS Member States to specifically include lesbian, bisexual, trans, and intersex women in their legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence. Further, the IACHR urges OAS Member States to disaggregate data related to violence against women, by sexual orientation, gender identity, and bodily diversity (as it relates to intersex persons). In this regard, the IACHR recalls that access to information is closely tied to the attainment of other human rights and is a pre-requisite for demanding and exercising those rights.\textsuperscript{789} Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against women and formulating any needed public policy changes.\textsuperscript{790}

\section*{C. Persons in the Context of Human Mobility}

285. The IACHR has affirmed that persons in the context of human mobility, such as migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, and internally displaced persons, among others, are vulnerable to human rights violations.\textsuperscript{791} The IACHR has confirmed how the structural vulnerability of migrants is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or other social condition.\textsuperscript{792} Within this group, LGBT persons are extremely vulnerable to violence and discrimination. In many cases, the discrimination and violence faced by LGBT persons due to their sexual orientation and gender identity is what forces them to migrate. This may then lead to forms of discrimination against these persons in countries of transit and destination.

\textsuperscript{788} Art 8.b, Convention of Belém do Pará.
\textsuperscript{790} IACHR, \textit{Access to Justice for Women Victims of Violence in the Americas}, January 20, 2007, para. 42.
286. In many parts of the world, including in countries in the Americas, LGBT persons experience serious human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity. For example, during the March 2015 period of sessions, the IACHR received reports of threats and various forms of persecution that result in the forced migration of lesbian, gay, bisexual, and trans persons from Honduras, Guatemala, El Salvador, and Nicaragua. Reportedly, Costa Rica is one of the destination countries. The petitioners indicated that international frameworks on asylum do not take into account the specific circumstances of LGBT persons, and that the requirements and level of evidence required for refugee or asylum seekers are often unachievable for LGBT persons. This results in LGBT persons being unable to receive effective international protection. Further, LGBT persons are more vulnerable to extortion and violence on the part of organized crime. The petitioners in that hearing informed the IACHR that many LGBT persons arrive to countries in perilous circumstances and, as a result of their irregular migration status, are forced to live in hiding. The petitioners also indicated that policies related to LGBT asylum seekers and refugees in destination countries are often inadequate and inaccessible.

287. The IACHR has also received information regarding trans persons who engage in sex work outside their countries of origin, and the violence to which they are subjected at the intersection of gender identity and migration. For example, according to information that was documented by a civil society organization, on the night of December 23, 2014, in Suriname, six trans women sex workers who were nationals of Guyana and Trinidad and Tobago were approached by police for the purposes of a “passport check.” Further, they were reportedly forced to sign documents that they could not understand, because the documents were not available in English. During their detention they were allegedly subjected to inhuman and degrading treatment, including physical and verbal abuse related to their gender identity and gender expression. It was also reported that the prosecutor refused to speak at a reasonable pace in order for the interpreter to be able to adequately translate for them. Finally, it is also alleged that prison officials encouraged other inmates to assault the trans women during their detention, and

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793 UNCHR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 1. The Commission notes that there is a high number of persons applying for refugee status, originating from countries in the Americas, in particular from the Caribbean. See, e.g., Washington Post, Jamaica’s gays finding refuge by applying for U.S. asylum, article by Shankar Vedantam, February 11, 2011.

794 The IACHR will use the expression “migrant in an irregular situation” to refer to those migrants who have entered the territory of a State of which they are not nationals without the necessary documentation or have stayed past the time that they were authorized to stay in any of the OAS Member States. The Commission recommends that OAS Member States avoid the use of expressions “illegal” and “illegal migrant” to refer to migrants whose immigration status is irregular. The use of the expressions “illegal” and “illegal migrant” reinforces the criminalization of migrants and the false and negative stereotype that migrants are criminals for the simple fact of being in an irregular situation.

that they were forced to perform sex work in prison in order to access food, water, and toilet facilities.\textsuperscript{796}

\textbf{288.} Refugee claims based on sexual orientation and/or gender identity are most commonly analyzed under the grounds of “membership of a particular social group” under the five grounds for persecution established in the 1951 Refugee Convention.\textsuperscript{797} Amongst the barriers to legal protection for LGBT refugees is the difficulty of successfully undergoing an interview with an adjudicator. This is due to the reality that most LGBT refugees or asylum seekers “do not feel safe to narrate their experiences truthfully or fully during their refugee status determination.”\textsuperscript{798} LGBT refugees’ experiences “have taught them that they need to hide to survive. Speaking openly with strangers about their lives can feel shameful and dangerous.”\textsuperscript{799}

\textbf{289.} In the context of migration, in the last decade the persecution of people because of their sexual orientation and gender identity has led to an increasing number of asylum applications submitted by LGBTI persons.\textsuperscript{800} In response to this situation, UNHCR published a Guidance Note in 2008 and a Guideline in 2012, which serve as guides in addressing this issue. In the Guidance Note, UNHCR noted that:

LGBT individuals may be subjected by State authorities, their families or communities to physical, sexual and verbal abuse and discrimination, because of who they are or who they are perceived to be. This might be because of prevailing cultural and social norms, which result in intolerance and prejudice, or because of national laws, which reflect these attitudes. Where such acts of abuse and discrimination go unpunished and/or where LGBT orientation is criminalized, such individuals may, if they seek asylum on these grounds, fall within the refugee definition of the 1951 Convention relating to the Status of Refugees.\textsuperscript{801}

\textbf{290.} Further, the 2012 Guidelines include recommendations for adjudicating the refugee status of LGBT applicants, which include the recommendation that adjudicators not rely on stereotypical assumptions of LGBT persons. Some examples of these stereotypical assumptions include: that all gay men are effeminate; that if a lesbian woman or gay man has previously been in different sex

\textsuperscript{796} SASOD (Guyana), Documention on Transgender Sex Workers detained in Suriname, received by the IACHR Executive Secretariat on July 14, 2015.

\textsuperscript{797} UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 40.

\textsuperscript{798} ORAM, Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders, February 2013, p. 12.

\textsuperscript{799} ORAM, Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders, February 2013, p. 11.

\textsuperscript{800} IACHR, Press release No. 68/14, World Refugee Day: IACHR Emphasizes the Importance of the Right to Seek and Receive Asylum, June 20, 2014.

\textsuperscript{801} UN High Commissioner for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, November 21, 2008, para. 3.
relationship, including marriage and having children, that he or she is not truly gay or lesbian; that bisexual persons must be attracted to both sexes at the same time or an equal attraction to both men and women, among others. 802 Further, it is important to note that not all trans persons choose medical treatment or other steps to modify their physical appearance, and as such, it is important for decision-makers to avoid overemphasis on gender affirming surgeries. 803 Past persecution is not a prerequisite to refugee status; instead, a well-founded fear of persecution, based on the assessment of the predicament that the applicant would face if returned to the country of origin, could be sufficient. 804

291. Articles 22(7) and 22(8) of the American Convention establish the right to seek and receive asylum 805 and the non-refoulement principle, 806 respectively. As noted elsewhere in this Report, the IACHR has held that the American Convention is a living instrument which must be interpreted according to current times and evolving conditions. The Inter-American Court has also established that Article 1(1) of the American Convention, concerning States' obligations to respect and guarantee human rights without discrimination, includes sexual orientation and gender identity in "any other social condition." 807 In this regard, the IACHR hereby establishes that States have an obligation not to return refugees to places where their life or personal freedom would be in danger on account of their actual or perceived sexual orientation and/or gender identity. 808 The Commission highlights

802 UNCHR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 10.
804 UNCHR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, paras. 18, 32 and ff, citing a 2008 case from the United States and a 2012 case from Australia.
805 Article 22.7 of the American Convention establishes “[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”
806 Article 22.8 of the American Convention establishes “[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his [/her] country of origin, if in that country his [/her] right to life or personal freedom is in danger of being violated because of his [/her] race, nationality, religion, social status, or political opinions.”
808 See related, OHCHR, Report: Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 2015, para. 12. The IACHR notes in this regard the Yogyakarta Principles, particularly Principle 23 on the right to seek asylum (“Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.” In this regard, “States shall: a) Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum; b) Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or
that OAS Member States have granted refugee status to persons facing persecution due to sexual orientation and gender identity, including Argentina, Canada, Costa Rica, and the United States, among others.

292. Additionally, the IACHR has received troubling information on the human rights violations faced by LGBT asylum seekers in some countries in the region, including high rates of sexual violence and abuse experienced by trans persons in immigration detention centers. According to the information received regarding immigration detention centers in the United States, for example, although only one of every 500 detainees held in an Immigration and Customs Enforcement (ICE) facility is transgender, one of every five victims of confirmed sexual abuse in detention is transgender.

293. The Commission has expressed its concern over the repeated acts of violence and discrimination that LGBTI people, or those perceived as such, may face when deprived of freedom in the region, whether in prisons, detention cells, or police lock-ups and immigration detention centers. According to the information received, in several countries trans women are automatically housed with the general male population in immigration detention centers. The IACHR has held that the decision on where to house trans persons should be done on a case-by-case basis, with due respect to their personal dignity, and whenever possible, with prior consultation of the person concerned.

294. The IACHR heard the story of Nicoll Hernandez Polanco, a 24-year-old trans woman from Guatemala who sought asylum in the United States and who was repeatedly sexually abused and placed in solitary confinement in an all-male detention facility in Florence, Arizona. The IACHR has also heard of abuses faced by LGBT migrants in Mexico. According to the reports received, on October 22, 2013, Mexican immigration officials near the Guatemalan border in Tapachula, Chiapas, took an LGBT rights advocate from El Salvador into custody when he tried...
to apply for asylum. According to his testimony he was not allowed to bathe, and
he was forced to sleep on damp floors. Custodial staff demanded sexual favors
from him in exchange for better food. Organizations working with LGBT migrants
in Mexico indicate that trans persons who are seeking asylum are also vulnerable
to this type of abuse and violence during detention.\footnote{816} In this regard, the IACHR
has held that States need to adopt urgent and effective measures to guarantee the
life, personal security and integrity, and human dignity of LGBT persons, or those
perceived as such, in the region’s places of detention, including in immigration
detention centers.\footnote{817}

\begin{quote}
295. A letter addressed to U.S. President Barack Obama, signed by more than 100
organizations in the United States in December 2014 refered to the case of
Johanna, a transgender woman from El Salvador. The petitioners said that she
left for the United States after she was gang-raped. “After living in the U.S. for
twelve years, Johanna was appréhended by ICE and placed in an all-male
detention facility. While in the facility, Johanna was beaten and sexually
assaulted by another detained immigrant. Unable to bear the conditions of her
detention, she elected to self-deport. Life in El Salvador quickly became too
dangerous for her and she attempted to return to the U.S. She crossed the
border illegally and was appréhended by the Border Patrol. After being
sentenced for illegal reentry, Johanna was sent to an all-male federal prison and
was held in solitary confinement for seven months before being deported back
to El Salvador for a second time. Upon her arrival at the airport in San Salvador,
she was kidnapped and gang-raped. When Johanna reported the crime to the
police, they refused to help her and suggested that the men should have killed
her. Soon after this, she fled to the U.S. for a third time and was once again
arrested by Border Patrol for illegal reentry. She was sentenced and imprisoned
for four and a half months in federal prison. Afterward, she was transferred to
an all-male ICE detention center where she was held for six months. Johanna
was ultimately granted withholding from removal due to the severe violence
and persecution she experienced in El Salvador.”\footnote{818}
\end{quote}

\begin{quote}
296. The IACHR has also received troubling information concerning LGBT persons who
are internally displaced. During a visit by Rapporteur Tracy Robinson, and then
Chair of the IACHR to Colombia in October 2014, the delegation received reports
on the situation of forced displacement of LGBT persons, particularly in areas of
the country most affected by the presence of armed groups. These included
accounts of acts by paramilitaries and armed illegal groups who specifically target
LGBT persons due to their sexual orientation, gender identity, and gender
expression.\footnote{819} In fact, in its Country Report on Colombia, the IACHR indicated that
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\footnote{816} Washington Blade, LGBT Migrants face abuse, discrimination in Mexico, October 30, 2014.
\footnote{817} IACHR, Press Release No. 053/15, IACHR Expresses Concern about Violence and Discrimination against LGBT
\footnote{818} Letter signed by more than 100 civil society and community based organizations in the United States and the
region addressed to President Barack Obama, signed December 16, 2014. See also, Upworthy, “They put her
in solitary confinement for 7 months. Before that, she was in a prison full of men,” November 19, 2014.
\footnote{819} IACHR, Press Release No. 118/14, IACHR Chair concludes visit to Colombia, October 10, 2014.
since 2007 there have been reports from various sources about specific methods of intimidation and death threats —usually targeting LGBT persons explicitly—which take place in the context of the armed conflict. These methods primarily involve the distribution of pamphlets. Pamphlets are posted in public spaces or distributed among the residents of a certain city or village, announcing that the persons listed in the pamphlet will be killed if they fail to abandon their place of residence within a certain —usually very short— period of time. It is reported that criminal bands (bacrim) or armed groups are responsible for distributing the pamphlets. These groups claim that they are implementing measures of “social cleansing.” The pamphlets refer to LGBT persons as “faggots” or “homosexuals and lesbians who degenerate morals and give a bad example to children.” In this regard, at least 49 pamphlet campaigns targeting LGBT persons were reported between 2007 and 2014.

The IACHR also notes with concern the difficulties and obstacles trans persons face in travelling and exercising their right to freedom of movement. Several trans women who are human rights defenders and activists, and who were scheduled to participate in public hearings before the IACHR in October 2013, and the OAS General Assembly in June 2015, had difficulties obtaining, or were unable to obtain, a timely visa for travel to the United States. The IACHR notes that although there are legitimate reasons for a State to deny granting a visa, there is a risk of indirect discrimination in policies and procedures which might disproportionately disadvantage trans persons, given, for example, the high criminalization of trans persons and trans women. In November 2013, the IACHR pointed out that these violations of the human right to freedom of movement have the effect of hampering access to places, such as the Commission, where victims can denounce the very human rights violations they have suffered. The discriminatory treatment that many trans women and trans persons receive when they attempt to cross national borders plays a central role in limiting their movement. These restrictions on movement heighten the socially entrenched association between gender non-conformity and danger. In exercising their power to regulate their borders, the IACHR calls on OAS Member States to have very close regard to the key importance of travel to the work of trans human rights defenders and broadening the respect for the human rights of trans persons. Secondly, since past discrimination may make many trans persons, on the face of it, seem to be less

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823 IACHR, Hearing on Reports of Violence against LGBTI persons in the Colombian Caribbean, 153rd Period of Sessions, October 27, 2014.
worthy or qualified for visas, the IACHR calls on OAS Member States to carefully review those applications to avoid the risk of indirect discrimination.

298. Finally, the IACHR has received limited but troubling information on the vulnerability of LGBT persons to become victims of human trafficking. Trans women who lack social and political protections may want to flee their home countries, and if they do not have the means to move on their own, they become easy targets for traffickers who seek to profit from and prey on their desperation.  

299. There is limited information on the extent of this problem for LGBT persons, but cases have been identified in the United States and Argentina. In 2013, civil society organizations in Argentina identified traffickers who promised transgender women job opportunities in Western Europe, but instead confiscated their passports and forced them into prostitution. Another report indicates that LGBT youth are particularly vulnerable to sex trafficking in Bolivia. The Commission recognizes the efforts conducted by countries such as the United States in gathering data on LGBT persons who are victims of trafficking.  

300. Bias and prejudice towards LGBT persons also severely hinder proper identification and access to justice for LGBT persons who are victims of human trafficking. The IACHR recommends that OAS Member States conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims of human trafficking. This training should be developed in consultation with LGBT organizations and support groups.


829 US Department of State, Office to monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014*.

830 For example, it has been reported that as part of the 2013-2017 Federal Strategic Action Plan on Services for Victims of Trafficking in the United States, agencies in this country have made a commitment to gathering information on the needs of LGBT victims of human trafficking. US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014, The Vulnerability of LGBT individuals to Human Trafficking*.


832 In this regard, see US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2014, The Vulnerability of LGBT individuals to Human Trafficking*.


307
D. *Children and Adolescents*

301. Children[^304] and adolescents who are lesbian, gay, bisexual, transgender, or intersex[^305], or who are seen as such, face stigmatization, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of female or male.[^306] According to UNICEF, the range of this discrimination and violence includes: isolation from peers at school, at home, or in the community; marginalization and exclusion from essential services like education and health care; abandonment by family and community; bullying and intimidation; and physical and sexual violence, including “corrective” rape.[^307] In the previous chapter, the Commission also made reference to the situation of violence against children and adolescents in centers that attempt to “modify” their sexual orientation and/or gender identity. In this regard, the IACHR has affirmed that children and adolescents constitute a group in society who are often defenseless in the face of the injustices committed against them[^308] and the Inter-American Court has indicated that human rights violations in which children and adolescents are the victims are particularly serious[^309].

302. Article 19 of the American Convention establishes that every child has the right to protection by virtue of being a minor, and this creates duties on the part of the child’s family, society, and State. States have the obligation to respect and guarantee this right (Article 19) with respect to children, and to do so without discrimination, including on the basis of sexual orientation and gender identity, per Article 1(1).[^310] Similarly, Article VII of the American Declaration affirms that every child has the right to special care and protection.


[^305]: Violence against intersex children is addressed in the specific section of the Report concerning intersex persons.


[^310]: As indicated in this Report, in the case of Karen Atala v. Chile, the I/A Court of Human Rights has indicated that sexual orientation and gender identity are prohibited grounds of discrimination to be interpreted under the non-discrimination obligation established in Article 1(1) of the American Convention. I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24,2012. Series C No. 239.
Respect for the rights of the child entails offering care and protection to children, as well as recognizing, respecting and guaranteeing the individual personality of the child as a holder of rights and obligations.\textsuperscript{841} Because of their emotional and physical development, children require special measures of protection.\textsuperscript{842} According to the Inter-American Commission, that sphere of special protection is dictated by the special conditions of the child as rights bearer, which include the child’s vulnerability, dependence on adults in order to exercise certain rights, maturity, growth and development, and general lack of awareness of his or her human rights and of the means by which to demand observance of those rights.\textsuperscript{843}

The Commission has affirmed that in order to determine States’ obligations with respect to children, the American Convention is to be interpreted in light of the provisions of the UN Convention on the Rights of the Child and other UN declarations on the subject,\textsuperscript{844} as well as decisions by the UN Committee on the Rights of the Child.\textsuperscript{845} The UN Committee on the Rights of the Child has stated that any interpretation of the principle of the “best interests of the child” must be compatible with the Convention on the Rights of the Child, including the obligation to protect children from all forms of violence.\textsuperscript{846} The principle of the best of interests of the child implies that “children’s development and full enjoyment of their rights must be considered the guiding principles to establish and apply provisions pertaining to all aspects of children’s lives.”\textsuperscript{847}

The UN Committee on the Rights of the Child has indicated that LGBT children are among those who are most vulnerable to violence,\textsuperscript{848} and the Special Representative to the UN Secretary-General on violence against children has stated that all children should be protected from all forms of violence regardless of their sexual orientation or other status.\textsuperscript{849} Further, the UN Committee on the Rights of the Child has affirmed that sexual orientation and gender identity are prohibited
grounds of discrimination under Article 2 of the UN Convention on the Rights of the Child.\textsuperscript{850}

306. According to the information received by the Inter-American Commission, violence against LGBT children most commonly manifests itself within the family and in schools (both public and private). Thus, this chapter will focus on violence against children and adolescents who are LGBT, or who are perceived as such, in those two environments.

307. States are obliged to protect all people under their jurisdiction. This obligation is with regard not only to the State’s own exercise of power, but also to the actions of private parties insofar as the State is obliged to take measures to prevent and respond to these acts.\textsuperscript{851} According to the Inter-American Court, there is no room for deference to individuals acting in the private sphere, particularly regarding the full respect for the human rights of children and adolescents.\textsuperscript{852}

308. Under international human rights law, States must oversee the provision of services that are in the public interest, such as health or education, when those services are rendered by private entities.\textsuperscript{853} As such, States have the special duty to protect the life and personal integrity of persons through regulating and supervising these services, regardless of whether the entity giving them is public or private, since “under the American Convention international liability comprises the acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them.”\textsuperscript{854} The IACHR has further established that this obligation of supervision is “of fundamental importance when the services being supervised are those provided by public or private institutions charged with the protection, safekeeping, care and education of children.”\textsuperscript{855}

309. Accepting, articulating and expressing one’s sexual orientation and/or gender identity is a highly personal process, which can arise at different points in life depending on the person. Further, this process may differ from the outward and

\textsuperscript{850} UN Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, April 17, 2013, para. 8.


open manifestation of the person’s sexual orientation or gender identity within the family or community.

310. As in the case of adults, LGBT children may be targeted either because they have publicly assumed their sexual orientation or their gender identity, or simply because they are perceived to defy traditional standards of masculinity or femininity. In other words, children suffer from discrimination and marginalization based on their gender expression, even before they have become fully aware of their sexuality or identity. In this regard, a study conducted with the cooperation of UNESCO and UNDP in three OAS Member States indicated that, for example, often harassment occurs when a boy is perceived to be feminine or does not outwardly conform to masculine stereotypes.856

311. The IACHR has received troubling reports of violent attacks perpetrated by parents, siblings, or other relatives against LGBT children, or those perceived as such, in countries across the Americas. Familial violence against LGBT persons is a constant issue. This includes persons being denied schooling opportunities, subjected to sexual violence, expelled from the home, and/or physically and psychologically abused.857

312. Children are often expelled from their homes after disclosing their sexual orientation to their parents.858 As was explained in a joint statement by the IACHR, the UN Committee on the Rights of the Child, and other international experts, LGBT children (and young people) too often face rejection by their families and communities who disapprove of their sexual orientation or gender identity, which can result in high rates of homelessness, social exclusion, and poverty.859

313. Extreme examples of this include: a mother torturing and killing her 4-year-old son because she perceived him to be gay;860 a father brutally attacking and humiliating his 16-year-old son, tying the child’s feet to a pickup truck and threatening to drag

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857 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the organization Colectivo Entre Tránsitos et. al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 14. See also Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 6.


860 [United States] OregonLive, Jessica Dutro murder trial: Jury sees Facebook message with gay slur referring to 4-year-old, March 28, 2014; Jessica Dutro murder trial: Motive for Tigard killing was 4-year-old’s perceived homosexuality, prosecutors say, March 27, 2014.
him down the street because of his sexual orientation; a sister continuously humiliating and attacking her 15 year old brother, including throwing urine on him, because he was gay (aggressions which eventually lead to the boy’s suicide); a father setting his son on fire because he discovered he was gay and was living with HIV; and a brother brutally attacking his brother and threatening to kill him because he was gay.

314. In Haiti, for example, the IACHR was informed of the case of a young man who, when he came out to his family, was attacked with a machete and beaten by his brother. When he went to the police, they told him that his brother was right to beat him if he was gay. Allegedly the police then declined to record his complaint and investigate. In Guyana a civil society organization was contacted when a father threw his gay 13-year old boy out of his home and threatened to kill him. The Child Care and Protection Agency (CCPA) intervened and placed the child with his grandmother. The father was able to continue the abuse and harassment; there was no effective legal intervention in this case.

315. The Commission has also received reports of cases in which parents or other family members exert physical violence against children because they perceive them as, lesbian, gay, bisexual, or gender non-conforming, with the intent of “correcting” the children, a brutal method referred to as “beating the gay out/away.” As examined in the previous chapter, brutal methods to “eradicate” same-sex attraction may also include sexual violence. For example, in 2014, a U.S.-based organization announced that it was providing legal aid to a “conversion therapy” survivor who alleges that “shortly after coming out in 1996, his parents turned to the local church, which ran a school it promised could “cure” him and “stop him from being gay.” According to the victim, a teacher began subjecting him to weekly “counseling” sessions in which he regularly raped the teenager to convince him that being gay was more painful than suppressing his sexual orientation.

861 [Brazil] UOL Notícias, “Pai é indiciado por torturar filho gay e ameaçar arrastá-lo pela rua em Três Lagoas (MS),” August 2, 2013 (Available only in Portuguese); Correio do Estado, “Pai é indiciado depois de ameaçar matar filho gay,” August 1, 2013 (Available only in Portuguese).
865 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, Cuny School of Law, SEROVié and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.
867 Huffington Post, Mary Gowans, North Carolina Mother, Allegedly Instructed Son To ‘Beat The Gay’ Out Of Older Brother, August 28, 2013; Gay Star News, Ohio man sentenced to 2 ½ years for trying to beat the gay out of disabled brother, April 15, 2014.
868 National Center for Lesbian Rights (NCLR), NCLR Representing Conversion Therapy Survivor who Alleges Sexual Abuse by School Leader After Coming Out, August 27, 2014.
316. With respect to family violence against children who are lesbian, gay, bisexual and trans or perceived as such, the IACHR wishes to highlight that the adoption of special measures to protect children is a responsibility of the State and of the family, community, and society to which the children belong.\(^{869}\) As such, the State, society, and family “must prevent and avoid, by every means possible, any form of violence against children, in every realm and by any method.”\(^ {870}\) Further, according to the Inter-American Court, there must be a fair balance between the interests of the individual and those of the community, as well as between the interests of children and those of their parents.\(^ {871}\) Further, the authority of the family does not entitle it to exercise arbitrary control over a child where such exercise of control could pose a threat to the child’s health or development.\(^ {872}\)

317. School bullying is a specific type of violence that takes place in educational environments. A review issued by UNESCO in 2012 indicated that bullying is characterized by a set of key features, namely: the intention of the perpetrator to cause harm or fear; the systematic nature of the violence; its repetition over time; power imbalance between the victim and the bully; and resulting harm.\(^ {873}\) The UN Human Rights Committee has expressed concern about reports of discrimination against LGBT persons in the education system,\(^ {874}\) and the UN Secretary General in 2011 affirmed that bullying based on sexual orientation or gender identity is a grave violation of human rights.\(^ {875}\)

318. Children who are LGBT or are perceived as such suffer higher levels of victimization as a group and are exposed to greater risk of being bullied than other children at school.\(^ {876}\) In fact, various studies from the Americas indicate that school bullying based on sexual orientation or gender identity or expression is a cause for grave concern in the hemisphere.\(^ {877}\) States such as Honduras and the United States have acknowledged this problem.\(^ {878}\)

\(^{869}\) I/A Court H.R., Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02, August 28, 2002, Series A No. 17, para.62.


\(^{872}\) IACHR, Report on Corporal Punishment and Human Rights of Children and Adolescents, 2009, para. 76, citing jurisprudence from the European Court.


\(^{875}\) UN News Centre, Homophobic bullying represents grave violation of human rights – Ban, December 8, 2011


319. In Canada, a report showed that almost 40% of trans students and 20% of lesbian, gay or bisexual students reported having being physically harassed or assaulted because of their real or perceived sexual orientation or gender identity.\footnote{Eagle Canada Human Rights Trust, Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia and Transphobia in Canadian Schools, 2011.} One gruesome case involved teens on a school bus trying to stuff batteries down the throat of a young boy because he was a figure skater; who had committed suicide due to the bullying he faced.\footnote{CBC News, “Gay Ottawa teen who killed himself was bullied,” 18 October 2011.} In Chile, a survey showed that educational environments rank among the most common places where discrimination and violence against LGBT persons are found are present.\footnote{Centro Latinoamericano en Sexualidad y Derechos Humanos (CLAM) & Instituto de Medicina Social Universidad del Estado de Rio de Janeiro (IMS), “Derechos, Política, Violencia y Diversidad Sexual, Segunda Encuesta Marcha de la Diversidad Sexual Santiago de Chile 2011,” 2012, p. 45.}

320. In the United States, a 2011 report indicated that nearly half of trans students (44%) said that they had been punched, kicked, or injured with a weapon on at least one occasion in the previous year.\footnote{Montgomery v. Independent School District No. 709, 109 F.Supp. 2d 1081 (2000).} Also in the United States, there have been several lawsuits in which acts of bullying based on sexual orientation escalated to acts of brutal violence against the victims, mainly because milder manifestations of violence or discrimination were either ignored or not taken seriously by school and district authorities. These cases involved relentless teasing, name-calling, and verbal abuse which escalated to more severe attacks, including: repeated molestation or touching of the victim’s genitals while the perpetrators hurled derogatory epithets;\footnote{Schroeder v. Maumee Board of Education, 296 F. Supp. 2d 869 (2003).} dragging the victim behind a pickup truck with a lasso around the victim’s neck;\footnote{Martin v. Swartz Creek Community Schools, 419 F.Supp. 2d 967 (2006).} punching, kicking, and throwing the victim into a urinal;\footnote{Henkle v. Gregory, 150 F. Supp. 2d 1067 (D. Nev. 2001); Lambda Legal, “Groundbreaking Legal Settlement is First to Recognize Constitutional Right of Gay and Lesbian Students to be Out at School & Protected From Harassment,” 28 August 2002.} spraying water and dumping hot melted cheese on the victim’s head;\footnote{Montgomery v. Independent School District No. 709, 109 F.Supp. 2d 1081 (2000).} urination and mock rape;\footnote{Montgomery v. Independent School District No. 709, 109 F.Supp. 2d 1081 (2000).} throwing bottles and pushing the
victim down the stairs; continuously shoving the victim into lockers and spitting on the victim; and continuous harassment culminating in a sexual assault in the school locker-room; among others.

321. In a joint statement issued by the IACHR, the UN Committee on the Rights of the Child, and independent human rights experts, these agencies affirmed, "LGBT children are often bullied by classmates and teachers, resulting in some students dropping out. They may even be refused school admission or expelled on the basis of their actual or perceived sexual orientation or gender identity.”

322. The Inter-American Commission was informed that in many OAS Member States, school bullying based on sexual orientation or gender identity or expression can be so severe that it is one of the main reasons behind school absenteeism and dropout rates of lesbian, gay, bisexual, and trans students. This problem has been acknowledged by state agencies and has been extensively documented by organizations across the Americas. For instance, the State of Argentina informed the IACHR that a local survey estimated that 64% of trans women had been unable to finish their primary studies. The survey reported that 84% had been unable to attain a high school diploma. These worrying levels of school non-completion were consistent with the same survey indicating that 91% of trans women had been victims of violence.

323. Several organizations have highlighted that teachers and school authorities are often either indifferent toward or unable to effectively address school bullying based on sexual orientation or gender identity. Civil society organizations even report the existence of school bylaws that expressly discriminate against students

889 Donovan and Ramelli v. Poway Unified School District Decision; Lambda Legal, California Court of Appeals Upholds $300,000 Award to Bullied Pair of Gay and Lesbian High School Students, October 10, 2008.
890 Patterson v. Hudson Area Schools, 551 F.3d 438, 448–49 (6th Cir. 2009).
893 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.
894 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.
based on their sexual orientation and gender identity, as well as cases of students being expelled from schools for being gay, lesbian, bisexual, or trans. For instance, in a case reported in Peru, the headmaster of the school publicly announced that she would “initiate an investigation” to find out if two male students were in a relationship, in order to have them expelled from the institution to “preserve the school’s prestige and reputation.” Other sources indicate that teachers and school authorities themselves may be perpetrators of bullying against LGBT children. These serious human rights violations stigmatize LGBT persons, justify the violence in the minds of potential perpetrators, and foster further acts of bullying and violence towards LGBT children or those perceived as such.

The Inter-American Commission notes that bullying may severely hinder numerous rights, such as the right to education, the right to freedom of expression, and the right to equality and non-discrimination. Above all, bullying may cripple the psychological wellbeing and mental health of the victim. Severe and persistent bullying has led LGBT children to commit suicide. UNICEF notes, “there is robust
evidence to suggest that LGBT children and youth who are exposed to discrimination are more likely to consider or attempt suicide than their peers.”

325. The IACHR has condemned acts of intimidation or harassment in education environments based on a person’s sexual orientation, gender identity or gender expression. If bullying is tolerated, a strong social message is sent to LGBT persons that the open expression of their orientations or identities is not accepted. The corollary of this message is the promotion of anti-LGBT feelings among children and teachers, the fostering of bullying and discrimination, and the reinforcement of stigma and feelings of shame and inferiority among LGBT persons. The UN Committee on the Rights of the Child has affirmed that it is crucial to react appropriately and prevent bullying, and to ensure that the measures chosen against bullying do not exacerbate violence by taking a punitive approach that uses violence against violence.

326. The Commission has also noted that prejudice and social stigma can be particularly harmful to LGBT children. According to UNICEF, States must address “social norms and practices that discriminate and marginalize children and adults based on real or perceived sexual orientation and gender identity.” States must ensure that their education policies are specially designed to modify social and cultural patterns of conduct, to counteract prejudices and customs, and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence based on prejudice.

327. The IACHR has held that in meeting their international obligations vis-à-vis the protection of children, States must ensure that the exercise of rights by parents, guardians, and other persons responsible for the care and education of children and adolescents does not mean that the rights of those children and adolescents are not given the protection required. As such, States are obliged to adopt all positive measures required to ensure the protection of children against mistreatment, whether in their relationships with public authorities or in relationships among individuals or with non-governmental entities.

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901 UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 3.
904 Committee on the Rights of the Child, General comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC/13, para. 27.
909 I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights, citing: I/A Court H.R., Juridical Status and Human
328. Sexual and gender-based violence against students is facilitated by the State’s failure to enact and implement laws and policies that provide students with explicit protection from discrimination and violence. In the developments of these laws (and public policies), States must ensure that children “have their voices and viewpoints heard and are able to participate fully and meaningfully.” In a 2014 position paper, UNICEF stated that non-discriminatory legislation, a change in social norms, and greater awareness and access to knowledge on the issue of sexual orientation and gender identity are essential components of an enabling environment to protect LGBT children from discrimination and support the realization of their rights.

329. Finally, the IACHR has affirmed that “States are obliged to create effective mechanisms for preventing and punishing acts of violence against children and adolescents, both at home and in the educational system, as well as in other areas of social life where such threats may arise. Consequently, it is clear that the Member States are under the obligation of adopting strict oversight programs to monitor the situation of children and of taking the steps necessary to uphold the rights of children, particularly those that are victims of violence.” Further, the Inter-American Court has highlighted that the obligation enshrined in Article 2 of the American Convention demands that States eliminate any norms and practices that in any way violate the guarantees provided under the Convention, and enact legislation and develop practices that are conducive to effective observance of those guarantees.

330. The IACHR calls on OAS Member States to fulfill their obligations to respect, guarantee, and adopt measures at the domestic level to fully guarantee the rights of LGBT children, or those perceived as such, to a life that is free from discrimination and violence, both within the family and school. These measures include: eradication from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities; oversight and control of school regulations which discriminate against LGBT students; comprehensive policies to prevent, investigate and sanction violence against LGBT children, regardless of where it takes place; special measures aimed at documenting and producing data related to violence against children based on perceived or actual sexual orientation and gender identity; the establishment of effective complaint mechanisms regarding, and the investigation with due diligence of, instances of violence against LGBT children whether in the

home or school; the training of state institutions that are charged with overseeing the well-being of children so that they are able to identify abuse and violence related to sexual orientation and gender identity against children in the home and provide appropriate measures to protect them for such violence; and adoption of public awareness campaigns featuring LGBT children and diversity in families so as to promote respect and acceptance of this diversity; among other measures.

E. Human Rights Defenders

331. The IACHR reiterates that the work of human rights defenders\textsuperscript{915} is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracy. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.\textsuperscript{916} The IACHR understands that the exercise of the right to defend human rights implies the possibility of freely and effectively promoting and defending any right the acceptance of which is unquestioned,\textsuperscript{917} as well as any new rights or components of rights which is still a matter of debate.\textsuperscript{918}

332. In this regard, the Commission recalls that States should continue or initiate dialogue processes with LGBTI human rights defenders, with the aim of learning about the problems they face and facilitate their active participation in the adoption of public policies.\textsuperscript{919} These spaces for dialogue should be established in accordance with the rights of freedom of assembly and freedom of association as guaranteed in Article XXI of the American Declaration and Article 15 of the American Convention, as well as other international instruments.\textsuperscript{920} It is through the rights of freedom of assembly and freedom of association that LGBTI human rights defenders can fully participate in the political and social life of their respective countries.\textsuperscript{921}

\textsuperscript{915} The IACHR understands that a human rights defender is any person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally. The sole criterion used to identify whether a person should be considered a human rights defender is the activity undertaken by that person, and not any other factors such as whether or not they are paid for their work or whether or not they belong to a civil society organization. IACHR, \textit{Second Report on the Situation of Human Rights Defenders in the Americas}, OEA/Ser.L/V/II. Doc.66, December 31, 2011 (hereinafter “IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011”), para. 12.


\textsuperscript{920} IACHR, \textit{Second Report on the Situation of Human Rights Defenders in the Americas}, 2011, para. 128. This right is recognized also in Article 20.1 of the Universal Declaration of Human Rights; Article 21 of the International Covenant on Civil and Political Rights and Article 5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

The IACHR has stated that members of organizations that promote and defend the rights of LGBTI persons play a fundamental role in the region. This role manifests itself both in terms of public oversight — to ensure compliance with the States’ obligations — and, in general, in the process of furthering equality for LGBTI persons. Since 2009, OAS Member States have committed, through six General Assembly Resolutions, to ensuring adequate protection for LGBTI human rights defenders. In this section of the Report, the IACHR highlights some of the main obstacles that LGBTI defenders face in the Americas, discusses cases of killings and attacks on human rights defenders in various countries in the region, and examines the impact of these factors on the defense and promotion of the rights of LGBTI persons.

Human rights defenders who are advocating for the rights of LGBTI individuals face serious challenges in carrying out their work, including threats, attacks, and criminalization of their activities. Special Procedures of the UN Human Rights Council have noted that LGBTI human rights defenders face great risks because their work “challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups.” The UN Special Rapporteur on Torture has indicated that human rights groups and individuals who are active on issues of sexuality, sexual orientation, and gender identity, are often very vulnerable to prejudice, marginalization, and public repudiation, not only by State forces but also by other social actors. The UN Special Rapporteur on Human Rights Defenders has expressed concern over continuing smear campaigns and violent threats against LGBTI human rights defenders. The IACHR has received reports of acts of violence and hateful graffiti.

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that target LGBT organizations,\textsuperscript{928} as well as death threats sent via text messages to these human rights leaders.\textsuperscript{929}

335. In this respect, the Commission observes that LGBT human rights defenders are more vulnerable to violence due to three factors. As this Report indicates, in the case of defenders who identify as LGBT, they are already vulnerable because of their sexuality, sexual orientation and/or gender identity. In addition, the IACHR underscores that human rights defenders who work to protect and promote the human rights of LGBT persons experience additional forms of vulnerability to violence because of their role as human rights defenders and because of the specific causes that they champion.\textsuperscript{930} Human rights defenders who both identify as LGBT and who work to protect and promote the human rights of LGBT persons, experience alarming levels of vulnerability created by the intersection of their sexual orientation and gender identity, role as defenders and issues on which they work.\textsuperscript{931}

336. Among the most vulnerable to violence are trans women who are human rights defenders and who also engage in sex work.\textsuperscript{932} A regional report on the situation of trans women human rights defenders carried out by the Network of Trans Persons from Latin America (REDLACTRANS) pointed to a link between sex work, on the one hand, and activism regarding HIV and human rights, on the other hand.\textsuperscript{933} Trans women in Latin America, especially those who engage in sex work, usually feel particularly concerned about HIV. This concern about HIV is often how trans women first come into contact with trans human rights organizations, because of the work such organizations do in the areas of HIV prevention and access to HIV programs.\textsuperscript{934} One trans human rights defender in San Pedro Sula, Honduras, said that the police knew her because of her activism, and when she was spotted at night, she was arrested and subject to police abuse for “no reason.” Another trans human rights defender in Cali, Colombia, stated that the police “constantly ask us for identification when we’re working on the street, despite the fact that they know about our defense work or participate in cross-agency meetings with us. For them it’s as if we stop being defenders when we are on the streets.”\textsuperscript{935} According to REDLACTRANS, combining both activities clearly puts trans human rights defenders in a more vulnerable position because, although violence against them can happen anywhere and at any time of the day, the fact that they engage in sex

\textsuperscript{928}See e.g., Emol, “Movilh denuncia atentado homofóbico contra sede: Fortis fue rayado con fuertes epítetos,” May 19, 2014 (Available only in Spanish).

\textsuperscript{929}For example, since March 2014, an organization called Grupo Matizes in Piauí, Brazil, started received death threats through text messages. Further, the IACHR Rapporteur on the Rights of LGBTI Persons was informed in October 2014 by several LGBT and lesbian human rights leaders in Colombia that they received death threats via text messages.


\textsuperscript{932}REDLACTRANS et al., \textit{The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 27.

\textsuperscript{933}REDLACTRANS et al., \textit{The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 27.

\textsuperscript{934}REDLACTRANS et al., \textit{The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 27.

\textsuperscript{935}REDLACTRANS et al., \textit{The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 28.
work at night and on the street gives the police greater opportunities “to take action against them with impunity.”

337. In 2011, the IACHR noted with concern an increase in the number of acts of aggression, harassment, threats, and campaigns to discredit waged by State and non-State actors alike against persons who defend the rights of LGBTI persons, compared to 2006, when the IACHR issued its first regional report on the situation of human rights defenders in the Americas. Among the problems faced by LGBTI human rights defenders in particular, is that their work is not necessarily recognized as legitimate. This heightens the atmosphere of hostility toward, and condemnation of, the activities of these organizations.

338. The IACHR has also received troubling information about acts of verbal and physical violence committed against LGBT human rights defenders by other groups in the context of the 45th OAS General Assembly in 2015. Further, on June 2, 2014, various social commentators and activists for the rights of LGBTI persons alleged that they were attacked by security agents during a demonstration in front of the building where the 44th General Assembly of the OAS was taking place in Asuncion, Paraguay.

339. The IACHR has affirmed that attacks on the lives of human rights defenders have a multiplier effect, which goes beyond the victim in question. When an assault is committed in reprisal for a defender’s actions, it produces a chilling effect on those connected to the defense and promotion of human rights, which directly diminishes the possibilities of carrying out this activity. The IACHR has reiterated that the killing of a LGBTI human rights defender, as for any human rights defender, instills fear both among those who defend and promote rights and those whose rights are promoted and defended, which serves to perpetuate the violations committed against vulnerable groups and their advocates. The Inter-American Court has indicated that the fear caused by such violence “can directly reduce the possibility of human rights defenders exercising their right to perform their work.” Organizations have stressed that killings of LGBT leaders have proved to be powerful deterrents of the activities of defenders in the region. This fear is exacerbated by the impunity which such attacks usually enjoy; an

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939 Information sent by the Coalition of LGBTTTI Organizations working within the framework of the OAS, June 2015 (on file with the IACHR Executive Secretariat).
impunity that only serves to perpetuate such human rights violations. The IACHR has observed that when human rights defenders bring cases to court, especially ones related to attacks or killings of LGBT persons, the threats against them intensify.

Moreover, the attacks on the lives of human rights defenders also have society-wide consequences. The Commission notes that the same fear that discourages other human rights defenders also sends “an intimidating message to society as a whole, putting it in a defenseless situation.” The chilling effect reaches the individual people and discourages victims from filing denunciations, claims and grievances for human rights violations, reinforcing the impunity that perpetuates the violence.

Regarding killings of LGBT human rights defenders, the IACHR has identified that there are serious problems with their investigation, mainly because many attacks against LGBT human rights defenders take place within a generalized context of violence against persons with non-normative sexual orientations and gender identities. This makes it difficult to ascertain whether the killing was committed because of his or her work defending human rights, or because of his or her sexual orientation or gender identity. The failure on the part of the authorities to conduct a diligent and exhaustive investigation, which considers all relevant theories of the crime and thus establishes whether or not the motive for the crime was the victim’s promotion and defense of human rights, or his or her sexual orientation and gender identity, remains a serious problem.

During the last years, the Commission has granted eleven precautionary measures to protect defenders of LGBTI persons in Belize, Honduras, Jamaica, Mexico, and Guatemala. In February 2014, the Commission issued a press release expressing its concern about the worrying number of attacks against LGBTI organizations and their members that took place between October 2013 and

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945 IACHR, Press Release No. 23/14, IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas, February 27, 2014.
950 IACHR, Precautionary Measure 155/13: Caleb Orozco, Belize, granted on May 29, 2013.
951 IACHR, Precautionary Measure 457/13: Members of “Asociación para una Vida Mejor de Honduras” (APUVIMEH), Honduras, granted on February 22, 2014; IACHR, Precautionary Measure 18/10: Indira Mendoza Aguilar et al., Honduras, granted on January 29, 2010; Precautionary Measure 196/09 Amplification of Precautionary Measures, Honduras; Precautionary Measure 210/08 Marlon Cardoza and other members of the CEPRES Association; IACHR, Precautionary Measure 621/03: Elkyn Johalby Suárez Mejía and Members of the Comunidad Gay Sampedrana, Honduras, granted on September 4, 2003. See summaries of these precautionary measures at www.iachr.org.
952 IACHR, Precautionary Measure 153/11: X. & Z., Jamaica, granted on September 21, 2011; IACHR, Precautionary Measure 80/11: Maurice Tomlinson, Jamaica, granted on March 21, 2011.
953 IACHR, Precautionary Measure 222/09: Agustín Humberto Estrada Negrete y otras, Mexico, granted on April 7, 2010.
954 IACHR, Precautionary Measure 3/06: Kevin Josué Alegria Robles and members of OASIS, Guatemala.
January 2014 in the Americas, making reference to serious incidents in Haiti, Honduras, Nicaragua, Chile, and Peru.955

343. With respect to Brazil, the IACHR was informed of the June 21, 2009 killing of Gabriel Henrique Furquim,956 a member of the Dignity Group for the Defense of the Rights of Gay Persons and of the Brazilian Association of Gays, Lesbians, Bisexuals and Trans Persons,957 and the November 23, 2010 murder in Jacaré of Iainilson Nunes Da Silva, a member of the organization *Revida*.958 In June 2014, the IACHR was informed that a group called "Irmandade Homofóbica" had issued serious threats against LGBT human rights defenders in the state of Piauí, Brazil, through pamphlets, text messages, and messages through social media sites. The IACHR sent a letter to the State of Brazil on July 9, 2014 requesting information on the measures adopted to investigate threats against Marinalva de Santana Ribeiro, a lesbian human rights defender and founder of the LGBT organization *Grupo Matizes* in Teresina, Piauí. The State of Brazil responded to the request and noted the measures adopted to investigate the threats, as well as the State’s inclusion of de Santana Ribeiro in the national program for the protection of human rights defenders, in order to protect her from the attempted violence and provide her with psychological treatment.959

344. Regarding Colombia, the IACHR has regularly received information regarding killings of LGBT human rights defenders in various parts of the country. In 2009, a trans woman960 and a gay man961 were killed. Both had been LGBT human rights defenders who had publicly denounced instances of violence, including police abuse. In 2010, four lesbian leaders were killed within days of each other in the region of Antioquia962 and Medellín,963 as was a gay political leader in Córdoba.964


957 Grupo Gay Da Bahia, “*Militante de grupo gay é assassinado em Curitiba*”, Redação Bem Paraná, June 22, 2009 (Available only in Portuguese).

958 Infoglobo Extra, “*Jacareí: homem morto com 12 tiros recebia ameaça*,” November 25, 2010 (Available only in Portuguese); Acapa, “*Homossexual morre com 12 tiros em Jacareí; polícia suspeita de homofobia*,” November 25, 2010 (Available only in Portuguese).


960 Wanda Fox, a Colombian trans woman leader, was killed in 2009 after she publicly denounced the harassment trans women suffered from local police officers. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos et. al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 44.

961 The UN Special Rapporteur reported the emblematic case of Alvaro Miguel Rivera Linares, an LGBT and HIV/AIDS activist who was found dead in his flat on March 6, 2009. “His body bore marks of torture. (…) Mr. Rivera Linares had denounced the general violence against the LGBT population in Cali, including alleged abuses and arbitrary detention by police officers. In 2001, he received threats because he denounced the practice of guerilla members of testing the population for HIV/AIDS and ostracizing people who tested positive.” *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Colombia*, A/HRC/13/22/Add.3, March 4, 2010, para. 50.

In 2011, a trans leader was killed in Pasto after receiving numerous death threats. Further, the IACHR received information about the killing on July 23, 2013 of Wizy Romero, a 21-year-old trans woman known because of her leadership of the LGBTI movement in Barranquilla. Additionally, Guillermo Garzón Andrade, founder of Somos Opción LGBT, was murdered in November 2014. His body was found gagged and with signs of brutal wounds inflicted with a bladed weapon.

At the conclusion of her visit to Colombia in October 2014, Commissioner Tracy Robinson noted having received information regarding threats by armed groups against LGBT persons, defenders, and activists, including through text messages and pamphlets. Further, she expressed concern about claims that the domestic mechanisms of protection are not effective in safeguarding the lives and personal integrity of LGBT community leaders and activists who do not fall under the established definition of “defenders.” According to civil society organizations, armed groups specifically target LGBT persons and LGBT human rights defenders. The IACHR was also troubled by information regarding the impact of violence perpetrated by armed actors against LGBT rights defenders and leaders, in particular trans women leaders, in the Caribbean region of Colombia. For example, the IACHR received information that between 2011 and 2014, six trans women were murdered in La Guajira and Sucre. It is thought that the killers were members of criminal groups that exercise territorial control in the area. Four of the victims were leaders of the Global Fund to Fight AIDS. On January 9, 2015, Corporación Caribe Afirmativo reported the murder of 35-year-old trans activist Camila Flores, who had been a leader of the organization Mecanismo Coordinador as well as of the Global Fund to Fight AIDS and had already been attacked with a firearm on March 9, 2014. LGBT organizations in the region affirm that “the higher the visibility, the greater the risk.” They say that LGBTI persons are showing increasing leadership in the Caribbean region of Colombia and that this
visibility in defense of the human rights of LGBTI persons has prompted a backlash of even more violence on the part of actors in the armed conflict.972

346. In the last few years, the IACHR has received troubling information regarding killings of trans human rights defenders and alleged acts of police abuse against trans human rights organizations and leaders in El Salvador. Francela Méndez, a 29-year-old trans woman and defender who was a member of the Salvadorian Human Rights Defenders Network, was killed on May 30, 2015.973 Following her death, the IACHR affirmed that in the context of countries with high levels of insecurity and organized crime, it is particularly important for States to adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI persons, and defenders of the human rights of LGBTI persons, who are particularly vulnerable to violence by armed groups. 974

347. In May 2013, Tania Vazquez, a trans woman leader of a trans organization in El Salvador, was killed.975 According to information received by the IACHR in May 2015, there is an ongoing investigation, which has not yielded any results.976 Following Vazquez’s death, a local trans human rights organization called COMCAVIS denounced the police for entering their premises with a search warrant that made reference to COMCAVIS as a place where “illegal activities” and prostitution were conducted. Further, they denounced the aggressive way in which the police officers acted against members of the organization. The IACHR was also informed that on February 20, 2015, members of the police attempted to enter the premises of Asociación Solidaria para Impulsar el Desarrollo Humano (ASPIDH-Arcoiris Trans), another trans human rights organization in El Salvador, without a warrant. Allegedly, members of the police insulted members of the organization using epithets related to their gender identity and expression. The IACHR sent a letter to the State requesting information on the measures being taken to investigate these acts of alleged abuse and to prevent further instances of police abuse against trans human rights defenders and organizations.977 The State responded to this request informing the IACHR of different measures adopted by the State to prevent and address violence against trans persons, such as the Sexual

972 Corporación Caribe Afirmativo says that acts of violence against LGBTI persons in the Caribbean region of Colombia are mainly committed by criminal groups such as Las Águilas Negras, Los Palés, Los Urabeños, Los Nevados, Los Tayronas, and Los Rastrojos, which chose not to apply for the benefits of the Justice and Peace Law, as well as by Fronts 19, 37 and 59 of the FARC, a number of holdouts of the National Liberation Army (ELN), and many demobilized members of the AUC. Corporación Caribe Afirmativo and Global Rights, written information submitted during the public hearing Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia, held by the IACHR on October 27, 2014.


977 IACHR, Letter requesting information sent to the State of El Salvador, on the basis of Article 41 of the American Convention, concerning the situation of ASPIDH-Arcoiris Trans, sent on April 27, 2015 (on file with the IACHR Executive Secretariat).
Diversity Unit within the Ministry of Social Inclusion, and the establishment of a Permanent Roundtable for the Human Rights of LGBTI persons within the Office of the Attorney General for the Defense of Human Rights. The State also indicated that the police department did not have any record of the complaint, but that given the information sent to the IACHR, an investigation of the police action was initiated.\textsuperscript{978}

348. According to information received by the Commission, LGBTI human rights defenders in Haiti “are targets of serious assaults, harassment and threats.”\textsuperscript{979} For example, a group of teenage peer counselors were attacked in July 2011 at a festival in central Haiti while conducting outreach on HIV prevention for gay men and men who have sex with men. A mob burned down their tent, chased them, and threatened to kill them.\textsuperscript{980} In 2012, it was reported that members of an LGBTI organization were leaving a party when police officers on patrol got out of their car and proceeded to beat and harass them. The victims were heavily bruised and some sustained swollen and black eyes. Due to fear of reprisals, no one reported the assault.\textsuperscript{981}

349. In 2013, the IACHR was informed of a spike in threats against Kouraj—a Haitian LGBTI organization—\textsuperscript{982} following the announcement of a “March against Homosexuality” that was scheduled for July 26, 2013. Charlot Jeudy, Chair of Kouraj, has been targeted in some of the threats; he has also received anonymous calls accusing gay persons of causing the 2010 earthquake that killed 200,000 people in Haiti.\textsuperscript{983} According to Amnesty International, on November 21, 2013, three men armed with machetes and handguns forced their way into the offices of Kouraj and threatened, beat, and tied up two of the organization’s members. Computers with sensitive information were stolen. It was reported that a justice of peace went to Kouraj to make a report, and that the organization’s members reported the incident to the police.\textsuperscript{984}


\textsuperscript{979} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 9.

\textsuperscript{980} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

\textsuperscript{981} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, CUNY School of Law, SEROVié and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

\textsuperscript{982} Kouraj works to raise awareness regarding the rights of LGBTI persons and to create public debate about the stigma surrounding homosexuality in Haiti. Other Worlds, \textit{Amnesty International Alert: Support LGBTI Activists at Risk in Haiti}, July 19, 2013.

\textsuperscript{983} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.

\textsuperscript{984} Institute for Justice and Democracy in Haiti, \textit{Urgent Action: LGBTI Organization in Haiti Attacked}, November 26, 2013.
Regarding Honduras, the IACHR was informed that at least 12 LGBT human rights defenders have been killed in Honduras between 2006 and 2013. The IACHR has condemned killings of LGBT human rights defenders in Honduras, in 2009, 2011, and 2012. In July 2013, the body of Herwin Chamorro Alexis Ramirez, 24-year-old trans woman and Afro-Honduran, was found with multiple gunshot and stab wounds. Herwin was a young leader, active in her community, who volunteered with organizations focused on HIV prevention and the rights of Afro-Honduran communities. In its December 2014 visit to Honduras, the IACHR was informed that LGBT human rights defenders are constantly attacked and harassed by groups seeking to discriminate against them through violence. Reportedly, defenders of LGBT rights have been subject to arbitrary detentions by the police for posing a threat to “morals and good customs.” One trans woman human rights defender told the IACHR; “in Honduras, you’re criminalized for the simple fact of being trans, for being a human rights defender, for being part of this society.” Another organization reported that out of the seven trans women who founded the organization Colectivo Unidad Color de Rosa in 2001, six have been killed, and out the 27 trans women who were killed in Honduras between 2009 and 2012, 15 were activists from that organization.

Amongst the most notorious cases in Honduras is the killing of 27-year-old Walter Trochez in December 2009. Trochez was a human rights defender who had given testimony to the IACHR three months prior to his death, during the Commission’s 2009 onsite visit, and who had, following the coup d’état, begun compiling information on the killings of LGBT persons in Honduras. A few days prior to his killing, he had allegedly been kidnapped by four masked men in civilian clothes who beat him, ordered him to divulge the names and addresses of other

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985 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Cattrachas, (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 26.
987 IACHR, Press Release No. 4/11, “IACHR deeply concerned about murders of members of transgender community in Honduras,” January 10, 2011 [condemning the killings of seven trans persons in Honduras which occurred between November 2010 and January 2011, and also making reference to the killings of LGBT human rights defenders: Neraldys Perdomo, Imperia Gaminel Parson and Walter Trochez, among others].
988 IACHR, Press Release No. 46/12, Office of the Special Rapporteur of Freedom of Expression, the Rapporteurship on Human Rights Defenders and the Unit for the Rights of LGBTI Persons Condemn Murder of Journalist and LGBTI Activist in Honduras, May 11, 2012 [condemning the killing of Eric Alex Martínez Ávila].
989 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
activists,994 and told him “we have orders to kill you.”995 In March 2015, a criminal court in Tegucigalpa handed down a sentence acquitting a friend of Trochez who had been accused of killing him, and who had been in pretrial detention for two years, during the course of which, he was allegedly raped several times due to his sexual orientation.996 The civil society organization Red Lésbica Cattrachas alleged that Trochez’s friend (who was later acquitted) was in Mexico with his mother when Trochez was killed, and that he was a scapegoat, intended to cover-up the alleged involvement of the police in Trochez’s murder. The State, in turn, has denied any police involvement.997 The organization Red Lésbica Cattrachas has indicated that this case is emblematic of the impunity surrounding cases of killings of LGBT persons, and that the investigation conducted was deficient since it did not take into account Trochez’s activities as a human rights defender, and instead depicted Trochez’s killing as a “crime of passion,” because of his sexual orientation.998

352. Mexican organizations have informed the IACHR about several assassinations of LGBT human rights defenders.999 Amongst the most notorious are the 2011 killing in the city of Chilpancingo, Guerrero, of Quetzalcóatl Leija Herrera, president of the Center for Studies and Projects for Integral Human Development (CEPRODEHI),1000 and the killing of Agnes Torres Sulca, a trans woman human rights defender, whose burnt body was found on March 10, 2012 in Puebla.1001 According to media reports, four men confessed to having killed Torres Sulca.1002 In 2014, Edgar Sosa Meyemberg, a gay teacher and reproductive rights activist, was found dead with clear signs of torture and his skull destroyed by a blunt object.1003

353. In 2004, Brian Williamson, co-founder of the organization Jamaican Forum for Lesbians, All-sexuals and Gays (J-Flag), was found murdered in his home. He was

996 Red Lésbica Cattrachas, Comunicado: “Sentencia Absolutoria del acusa por homicidio de Walter Trochez” March 24, 2015 (Available only in Spanish).
1002 El Sol de Puebla, “Presentan a los presuntos asesinos de la activista Agnes Torres Hernández: hay un prófugo”, March 18, 2012 (Available only in Spanish).
stabbed 70 times and his body was mutilated.\textsuperscript{1004} Within an hour after the discovery of his body, a Human Rights Watch researcher witnessed a crowd gather outside his home, some of the members of which were reportedly chanting, “that’s what you get for sin,” and “let’s kill all of them.”\textsuperscript{1005} Williamson’s killer confessed and received 25 years in prison, with the possibility of parole after 15 years.\textsuperscript{1006} On February 14, 2007, in Kingston, a group of gay men including gay-rights activist Gareth Williams were stoned by a mob of over 2,000 people when they were shopping in a mall. The IACHR received information that the police failed to arrest anyone for the attack and instead took the gay men into custody and subsequently abused them even as they sought to secure them from the mob.\textsuperscript{1007}

354. The IACHR has received reports that LGBT organizations in The Bahamas\textsuperscript{1008} and Dominica\textsuperscript{1009} are afraid to conduct human rights defense work because of generalized violence against LGBT persons in these countries. In Saint Lucia, one of the leaders of the organization \textit{United & Strong} informed the IACHR about several death threats that she has received, including one instance in which two men threatened to kill her if she did not stop her work. The offices of \textit{United & Strong} have also been burned down. The case is reportedly still under investigation.\textsuperscript{1010} According to the information received, participation in strategic litigation before national courts in the Anglophone Caribbean region against laws and regulations which discriminate against, or have negative effects on, LGBT persons, has exposed human rights defenders to worrying levels of violence, including death threats, intimidation, and violent attacks. In Belize, gay activist Caleb Orozco has received numerous death threats after he brought a challenge against the buggery law in the Supreme Court.\textsuperscript{1011}

355. States have specific obligations to protect human rights defenders and the defense of human rights, including the duty to: provide the necessary means for human rights defenders to conduct their activities freely; protect them when they are subject to threats in order to ward off any attempt on their life or safety; refrain from placing restrictions that would hinder the performance of their work; and conduct serious and effective investigations of any violations against them, thus

\textsuperscript{1004} The Jamaica Gleaner, \textit{Remembering Brian Williamson"}, June 9, 2011.
\textsuperscript{1006} Jamaica Cleaner, \textit{Gay Rights activist’s killer gets life}, May 21, 2006.
\textsuperscript{1009} Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative, \textit{Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Dominica for the 19th Session of the Universal Periodic Review}, May 2014, para. 17.
\textsuperscript{1010} The Star Newspaper, \textit{Gays Say ‘We Are Here to Stay’}, March 8, 2012.
\textsuperscript{1011} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
preventing impunity.1012 States should also undertake measures to support recognition of the important role that these defenders play in the protection and defense of human rights.1013

356. The IACHR has also affirmed that States must not tolerate any attempt by public officials to question the legitimacy of the work of human rights defenders and their organizations.1014 Public officers must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations are acting illegally or improperly, simply due to the fact that they work in the promotion and protection of human rights.1015 Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.1016 Finally, States are called on to guarantee the security of human rights defenders who are especially vulnerable by adopting specific measures of protection based on the activities of those defenders and the risks they routinely encounter.1017

**F. Afro-descendant Persons and other Persons Who are Affected by Racial Discrimination**

357. The IACHR has received troubling information concerning the high levels of discrimination and violence against lesbian, gay, bisexual, and trans (LGBT) persons of African descent in the Americas.1018 To date, such information has been limited to specific countries, such as Brazil, Colombia, Nicaragua, and the United States, as explained below. The Commission has received information regarding violence against LGBT persons in Commonwealth Caribbean countries, where a large percentage of the population is Afro-descendant. However, as explained by the IACHR Rapporteur on Afro-descendants and against Racial Discrimination, “in Caribbean countries where populations tend to have majority Afro-descendant populations, the problem of race is more complex and more subtle.” In this regard, Commissioner Antoine noted that “while there is less overt racism in the

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Caribbean countries, indirect discrimination remains a problem, in addition to strong structural paradigms that exacerbate inequality between the races.”

358. In the context of geographic areas where the afro-descendant population is not a minority, like the Caribbean, the IACHR also considers how persons of African descent can face discrimination depending on the darkness of the person’s skin—a concept referred to as “colorism.” The Commission notes how the darker the person’s skin is, the fewer opportunities of personal and economic development they may have, reflecting the impact of the colonial past. Thus, in areas like the Caribbean, racial discrimination towards afro-descendant people is linked to the darkness of the skin, poverty, and the control of economic resources. Bearing this in mind, persons of African descent with non-normative sexual orientations and gender identities can face violence and discrimination based on their race, ethnicity, gender, sex, sexual orientation, darkness of skin and/or situation of poverty, which can be exerted by persons not of African descent and persons of African descent.

359. The IACHR has noted how, given the close link between race, socio-economic class, and poverty, the Afro-descendant population is adversely affected by multiple levels of discrimination. Additionally, the Commission has expressed concern about the special vulnerability of Afro-descendant women, who have suffered triple historical discrimination based on their sex, gender, extreme poverty, and race. In this respect, the IACHR points out how afro-descendant women face discrimination within their own communities based on their sex. The Commission received information referencing the phenomena of “hypermasculinity” or “reinforced male chauvinism” by some Afro-descendant men. Such attitudes can result in the limitation of Afro-descendant women’s access to education and work and perpetuate the subordination of women, which is exacerbated in the case of Afro-descendant women with non-normative sexual orientations and gender identities. As a writer and activist in the United States explained, “trans women are targeted because we exist at vulnerable intersections of race, gender, and class.”

360. In a public hearing held in October 2014, the IACHR received information regarding the particular vulnerability to violence, in the context of armed conflict in Colombia, of LGBT persons who are Afro-descendants (in this case, the information concerned Afro-descendant populations known locally as palenqueros.)

The civil society organization Caribe Afirmativo reported that since 2007 there have been 114 violent deaths of LGBT persons in the Caribbean region of Colombia, of which 58 have occurred in areas of armed conflict (Serranía del Perijá, Montes de María, Golfo de Morrosquillo, La Mojana Sucreña, Bolívar, south of Cesar and Momposina). The victims were mainly trans women and gay men, and were mostly persons who identified as, or were recognized as living in areas mostly populated by, people of African descent (otherwise known as negras, palenqueras, or raizales). In particular, the Commission was informed of the case of “Alias el Oso,” a member of a Colombian paramilitary group, who ordered the torture of gay men, especially those who were “effeminate,” and of Afro-descendants. The torture was to be carried out in the homes of the victims, and was intended to terrorize the population. The victims were subsequently forced to leave their communities. The information provided to the IACHR indicates that, in the context of the civil conflict in Colombia, LGBT Afro-descendants are victims not only of guerrilla groups, but also of criminal groups (BACRIM).

With respect to Afro-Colombian lesbian women, for example, in addition to the triple discrimination they face on the grounds of sex, ethnicity, and poverty, the IACHR was informed that lesbian Afro-descendant women also face violence because of their sexual orientation, including so called “corrective rape.” During her visit to Colombia in October 2014, Rapporteur Tracy Robinson received the testimony from three lesbian Afro-descendant women who were raped by different armed groups as a form of punishment due to their sexual orientation, and who were, as a consequence, internally displaced. These testimonies indicated that the rapes were committed with high levels of brutality, cruelty and physical violence, in addition to the reiterated and prolonged verbal humiliation about their sexual orientation.

According to the National Human Rights Institution of Nicaragua (Procuraduría para la Defensa de los Derechos Humanos), LGBT persons from Creole communities face greater risk of discrimination and violence both on the basis of ethnic origin and on the basis of sexual orientation and/or gender identity. Debasement, humiliation, and instances of stoning of LGBT persons from Creole communities have been reported in the city of Bilwi on the Atlantic coast of Nicaragua.

In the United States, several organizations have reported that Afro-descendant LGBT persons suffer high levels of violence, particularly Afro-descendant trans
women, as do trans women of color more generally. For example, according to the National Coalition of Anti-Violence Programs (NCAVP), a non-profit organization, 55% of the killings of lesbian, gay, bisexual, trans and queer (hereinafter “LGBTQ”) persons in 2014 targeted trans women, and 50% of the killings of LGBTQ persons in 2014 targeted trans women of color. Further, 80% of all LGBTQ homicide victims in 2014 were persons of color. According to the NCAVP, this trend of disproportionate impact of deadly violence on LGBTQ persons of color, and particularly trans women of color, has persisted every year since 2009. For example, in 2013, the NCAVP reported that almost 90% of all LGBTQ homicide victims were people of color, 72% of all LGBTQ homicide victims were trans women, and 67% of all LGBTQ homicide victims were trans women of color. Regarding intimate partner violence, the IACHR has been informed that LGBTQ persons of color are more likely to experience violence perpetrated by their intimate partners, and are more likely to experience intimate partner violence that occurs in public. Further, persons of color living with HIV, and lesbian, gay, and bisexual persons of color, are at least twice as likely as white persons to report experiencing abusive treatment by medical specialists.

363. With respect to alleged instances of abuse by law enforcement agents in the United States, the IACHR has received information indicating that LGBT persons of color are at higher risk of being subjected to police abuse, due to both violence motivated by race and violence motivated by sexual orientation and/or gender identity. For example, one study in the United States found that compared to white cisgender persons, trans persons of color are six times more likely to experience physical violence at the hands of the police. Further, the Commission has received troubling information regarding neighborhoods in certain U.S. cities with a large presence of persons of color (and, by implication, LGBTQ persons of color) that are disproportionately impacted by racial profiling, harassment, and violence.

1042 Lambda Legal, When Health Care Isn’t Caring: Lambda Legal’s Survey on Discrimination against LGBT People and People Living with HIV, 2010, p. 12.
perpetrated by the police. Trans persons of color have also reported being wrongfully profiled as sex workers, with the police using such persons’ possession of condoms as evidence of involvement in sex work.

364. In Brazil, a country with a large Afro-descendant population (often referred to locally as pretos and pardos), Afro-descendants are especially vulnerable to violence based on prejudice against non-normative sexual orientations and gender identities. At a 2013 thematic hearing on the rights of Afro-descendant trans women in Brazil, the Commission received troubling information regarding the high level of violence and excessive use of force against, and numerous cases of arbitrary detention and torture of, Brazilian trans people of African descent. According to the State, in 2011, 41% of LGBT victims of violence self-identified as Afro-descendants (pretos and pardos), in comparison with 27% of LGBT victims of violence who self-identified as white persons. That being said, one civil society organization indicated that, even though the State does gather data on violence against LGBT persons, and such data-gathering includes important demographic indicators such as sexual orientation, gender identity, age, and geographical region, there is minimal information collected regarding the racial identity of LGBT victims of violence. In particular, there is no racial breakdown within the separate categories of lesbian, gay, bisexual, or trans, within the overall category of “LGBT persons”.

365. The IACHR has also received information concerning the significant social and economic inequalities faced by Afro-Brazilian trans women, including limited access to health services, little or no access to state benefits and to government programs at the local and federal level, and high levels of illiteracy. It is reported that an estimated 90% of trans women in Brazil are functionally illiterate due to social exclusion. During a public hearing before the IACHR, the State of Brazil described different measures that it had been using to address violence against LGBT persons, including the 2012 National Report on “Homophobic Violence.” This report, which gathered data regarding the race of LGBT victims, demonstrated that most LGBT victims of violence in Brazil are young Afro-descendants. The State emphasized the coordinated work to address violence against LGBT persons that

1046 The 2010 Census in Brazil, was the first census in which the majority of the Brazilian population self-identified as other than Caucasian or white. See Oglobo “Censo 2010: população do Brasil deixa de ser predominantemente branca” November 3, 2011.
1048 Global Rights and Rede Negra LGBT de Brazil. Human rights situation of trans people of African descent in Brazil, presented at a public hearing during the 149th Period of Sessions of the IACHR, October 29, 2013.
1050 Global Rights Partners for Justice. Report on the Human Rights Situation of Afro-Brazilian Transgender Women: “I Don’t Want to Die Like This! Why Do People Have to Die Like This? Why Do We Have to Be Beaten and Stabbed to death?,” 2013, p. 16.
was being carried out jointly by the Presidency’s Commission of Human Rights and the National Council against LGBT Discrimination. The State also highlighted the recommendations that had been issued by the Third National Program for Human Rights to various Brazilian states and municipalities. These recommendations concerned the establishment of services for the receipt of complaints of violence perpetrated against LGBT Afro-descendants, and the creation of specialized police units to address violence against vulnerable groups. The State also highlighted public education campaigns that were being undertaken to prevent violence against LGBT persons.\textsuperscript{1052}

366. The IACHR reiterates the need for OAS Member States to adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and non-normative sexual orientation, gender identity and expression, as well as bodily diversity, affects LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.

367. The Commission considers it essential for States in the region to adopt effective measures to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons and those affected by racial discrimination. To that end, the States must collect disaggregated information, and allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Prevention efforts must be part of a comprehensive strategy to provide reparations regarding acts of violence and discrimination, as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.

368. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and other LGBTI persons affected by racial discrimination.

\section*{G. Persons Living in Poverty}

369. The IACHR notes that there is a strong link between poverty, exclusion, and violence. The UN Special Rapporteur on extreme poverty and human rights has indicated that "persons living in poverty are more likely to fall victim to criminal or illegal acts, including sexual or economic exploitation, violence, torture and murder."\textsuperscript{1053} The Rapporteur has further stated that, for persons living in poverty,


crime and illegality are also likely to have a great impact on their lives as it is hard for them to obtain redress and as a result they may fall further into poverty."\textsuperscript{1054} Further, the UN Office on Drugs and Crime has pointed out that there is "a consensus, both among scholars and the international community, that lethal violence is often rooted in contexts of paucity and deprivation, inequality and injustice, social marginalization, low levels of education and a weak rule of law."\textsuperscript{1055}

370. Structural discrimination against LGBTI persons may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination. The UN Special Rapporteur on extreme poverty and human rights has indicated: "patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination."\textsuperscript{1056} Moreover, the United Nations High Commissioner for Human Rights\textsuperscript{1057} has stated that discrimination against LGBT persons is often exacerbated by other factors, such as poverty.\textsuperscript{1058} Further, the OHCHR also cites studies undertaken in the Americas region that suggest that rates of poverty, homelessness, and food insecurity are higher among LGBT individuals.\textsuperscript{1059} In addition, the World Bank has documented the negative impact of violence and discrimination based on prejudice (referred to as "homophobia") on economic growth and development of countries.\textsuperscript{1060}

371. LGBTI persons, especially trans persons and trans persons from racial minority groups,\textsuperscript{1061} are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence. In Latin America, discrimination and structural exclusion in the labor market, based on sexual orientation, gender identity, and gender expression, is one of the triggers that "sets into motion an endless cycle of

\textsuperscript{1061} Open Society Foundations, Transforming Health: International Rights-Based Advocacy for Trans Health, 2013, p. 11.
continued poverty.” Further, as addressed earlier in this Report, persons at the intersection of having diverse sexual orientations and gender identities and being migrants face an increased risk of discrimination and violence, particularly persons who are forced to leave their countries, or who are internally displaced in their own countries, and who, as a consequence of their displacement, live in situations of poverty in their cities and countries of destination.

372. The IACHR has stated that discrimination and violence against children and young persons with non-normative sexualities and identities starts at home and in schools, where families, community members, teachers, and school administrators disapprove of their sexual orientation and/or gender identity. LGBT persons are expelled from their families and schools and in some instances cannot even obtain jobs paying minimum wage. As a result, LGBT persons often face poverty, social exclusion, and high rates of homelessness. This pushes them into the informal economy or into criminal activity. Some LGBT persons in such situations engage in sex work, or in survival sex, which is the exchange of sex for money, food, shelter, or other material goods needed for survival. As a result, LGBT persons living in poverty are vulnerable to police profiling and harassment, and consequently to higher rates of criminalization and imprisonment. One Colombian activist and academic indicates that some trans persons have even “budgeted” for time spent in jail, that is, have assumed that they will be incarcerated at some point in their lives.

373. Exclusion of trans persons from income-generating opportunities and social welfare programs results in high rates of poverty and unemployment, which


1065 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJigIBlbU.


1067 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJigIBlbU. See also Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex, 2015.


1069 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJigIBlbU.

1070 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJigIBlbU.

frequently causes trans persons to turn to sex work.\textsuperscript{1073} According to information received by the IACHR, 90\% of trans women in Latin America and the Caribbean are engaged in sex work as their only means of subsistence\textsuperscript{1074} and thereby face direct or indirect criminalization.\textsuperscript{1075} Further, “regardless of socio-economic origins, a large number of trans women who are thrown out of their family homes at an early age end up among the high number of trans women who are severely impoverished most of their lives.”\textsuperscript{1076} Trans women are often expelled from the family at early ages, engage in sex work when they are young, and face “a chronic lack of access to educational and health services, work opportunities and adequate housing.”\textsuperscript{1077} Trans women who are involved in sex work often work, and even live, in the streets, where they face constant harassment, persecution, and threat of detention.\textsuperscript{1078}

374. Several studies have shown that LGBT persons are more vulnerable to homelessness. In one Canadian study, 1 in 5 respondents to a survey of youth shelter occupants self-identified as LGBTQ (lesbian, gay, bisexual, trans or queer).\textsuperscript{1079} In the United States, NGOs estimate that 20-40\% of the homeless youth population is LGBT. These persons are at particularly high risk of being forced into prostitution.\textsuperscript{1080} Similarly, the IACHR received information that approximately 40-50\% of homeless youth living on the streets in New York City identify as LGBT. Reports indicate that most of them were expelled from their homes because of their sexual orientation or gender identity, or ran away to escape violence within their families.\textsuperscript{1081}

375. The Commission identifies a close relationship between homelessness, sex work or survival sex, and violence. Youth in New York with diverse sexual orientations, gender identities, and gender expressions identified homelessness as one of the most common reasons for engaging in commercial sex. These youth also indicated that they would rather engage in survival sex than experience potential violence in


\textsuperscript{1074} Redlactrans, Report on the Economic, Social and Cultural Rights if Transgender Population of Latin America and the Caribbean, presented at a public hearing during the 154\textsuperscript{th} Period of Sessions of the IACHR, March 16, 2015. Hearing requested by Redlactrans.

\textsuperscript{1075} Redlactrans, Report on the Economic, Social and Cultural Rights if Transgender Population of Latin America and the Caribbean, presented at a public hearing during the 154\textsuperscript{th} Period of Sessions of the IACHR, March 16, 2015. Hearing requested by Redlactrans.


\textsuperscript{1079} Toronto City Council, Street Needs Assessment 2013: Results, 2014, p. 24.

\textsuperscript{1080} US Department of State, Office to monitor and combat Trafficking in Persons, Trafficking in Persons Report 2014: The Vulnerability of LGBT individuals to Human Trafficking, 2014.

youth shelters or foster care.1082 According to one study, trans youth in New York City are eight times more likely to trade sex for a safe place to stay than are non-trans youth.1083 The IACHR also notes that according to this same study, 48% of trans persons involved in sex work reported being homeless.1084

The IACHR has received troubling reports of persecution by police officers in Jamaica of homeless gay men and men who have sex with men.1085 According to a civil society report, LGBT-identified youth in Jamaica comprise up to 40% of the country’s homeless youth population.1086 Another report indicates that a significant number of LGBT persons affected by violence in Jamaica “were from families in the [lower] socio-economic strata.”1087 It is reported that homelessness among LGBT persons “is almost always the result of discrimination or violence.”1088 LGBT persons are displaced from their homes, families, communities, and sometimes their country, by their families, landlords, and neighbors.1089 The IACHR welcomes statements made by the Youth Minister of Jamaica, indicating that the government is developing programs focused on LGBT youth.1090 At the Panos Caribbean Stakeholder Conference, the Minister acknowledged that stakeholder consultation was necessary and was being pursued in order to gain a better understanding of the issues facing LGBT youth, given the lack of data in this area.1091 The Youth Minister acknowledged the State’s duty not only to provide shelter and protection for abandoned and abused children, but also to provide therapeutic intervention to address the physical and psychological harm these children have suffered.1092 The IACHR has praised a government-led response to

1082 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 5. Citing New York City Association of Homeless and Street-Involved Youth Organizations (NYCAHSIYO), State of the City’s Homeless Youth Report 2009, New York, 2010.

1083 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 5. Citing Freeman, Lance, and Darrick Hamilton. A Count of Homeless Youth in New York City: 2007, New York: Empire State Coalition of Youth and Family Services, 2008.

1084 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 7. Citing Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

1085 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by International Human Rights Clinic at Santa Clara University School of Law (Study on Jamaica), November 25, 2013, received by IACHR on November 15, 2013, p. 1; Jamaican LGBT News, Police Raid Homeless Gay Men, YouTube (Oct. 18, 2013), http://www.youtube.com/watch?v=4d2fCywpq5K.


1090 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.

1091 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.

1092 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.
assist LGBT youth, and stresses the paramount importance of the State referring the issue of homelessness to the National Committee on Homelessness, and including reference to the specific issues faced by homeless LGBT persons in that response.

377. Homelessness heightens the risk of LGBT persons being subjected to violence, including sexual violence. According to one source, homeless LGBTQ youth experience higher rates of physical and sexual assault and higher incidence of mental health problems, as well as unsafe sexual behaviors than heterosexual homeless youth. For example, it is reported that lesbian, gay, and bisexual homeless youth are twice as likely to attempt suicide as their heterosexual homeless peers.

378. The IACHR notes that LGBT persons experience discrimination and violence in homeless shelters and foster care group homes. The high rates of homelessness among LGBT persons are due in large part to the shelter systems being generally unsafe for LGBT persons. Further, the IACHR notes with concern that these institutions are usually segregated by gender (male or female), which increases violence and discrimination against trans persons and other gender non-conforming persons.

379. Poverty and exclusion also make LGBTI persons more vulnerable to violence in health care settings. As the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pointed out: “[s]tructural inequalities, such as the power imbalance between doctors and patients, exacerbated by stigma and discrimination, result in individuals from certain groups being disproportionately vulnerable to having informed consent compromised.” This has a specific and concrete impact on the lives of intersex persons and their families. For example, when intersex persons are born into impoverished families or to parents lacking access to formal education, the power imbalance that is normally present in the doctor-patient relationship tends to be exacerbated, with a consequent negative impact on intersex persons’ right to informed consent.

380. For example, the IACHR has received troubling information regarding how the socioeconomic status of parents in Mexico may influence whether or not doctors tell a family that their child is intersex. According to one study in Mexico, when doctors perceive a more “equal” relationship between themselves and patients and

1095 National Alliance to End Homelessness, LGBTQ Youth.
1096 Spade, Dean. Interview by Laura Flanders, The Laura Flanders Show, GRITTV, 2015. Available at: See also Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahnner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex, 2015.
1097 Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/22/53, February 1, 2013, para. 29.
their families, the doctors strive to translate medical terminology into layperson’s terms and fully explain the child’s intersex or possible intersex status. However, in other hospitals or with respect to other patients where this perception of an equal relationship is not present, doctors tend not to communicate an intersex diagnosis to parents because the parents lack an “advanced school education.” According to this study, there is a pervasive belief amongst medical staff that lower socioeconomic status or limited education of parents or relatives are unsurmountable barriers to understanding an intersex diagnosis. Further, in public hospitals where high demand for medical care must be met with scarce human resources, doctors cannot spend more than ten or twenty minutes with each patient. This hinders an effective and open dialogue with families about children who are born intersex, which in turn affects informed consent regarding genital surgeries and medical interventions. This study also shows, however, that families and fellow community members of intersex persons sometimes demonstrate a more open attitude toward the anatomical diversity of intersex children and adults than do medical specialists.

381. The Pan American Health Organization has addressed the problem of discrimination against, and exclusion of, LGBT persons in the health care sector. Research points to the fact that LGBT persons face barriers to accessing appropriate patient-centered health care and fail to make early and opportune use of health care services, or use them at all. Further, the World Health Organization has stated that there is widespread stigma “against homosexuality and ignorance about gender identity, both within mainstream society and within health systems.”

382. Further, the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirmation surgeries and other related body modifications. The prevalence in Latin America of informal and risky body transformations procedures, which are deemed necessary for the construction of the gender identity and expression of some trans persons, causes a high number of (preventable) deaths of trans women. In one study conducted in Bogotá, Colombia, 96% of trans women interviewed had resorted to informal providers to transform their bodies. Specifically, 55% of these medical interventions were done in the house of a friend and 14% in garages or unlicensed private “clinics.” Further, 62% of trans women interviewed reported that they had obtained informal body transformation procedures in the process of construction of their gender identity and expression, on more than one occasion, and as many as four times. Regarding breast augmentation procedures carried out by unlicensed providers.

1102 WHO, Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people, Department of HIV/AIDS, June 2011.
providers, the survey responses indicated that the most common substances used
to fabricate breast implants were cooking oil, Johnson’s baby oil, industrial oil used
for aircraft, paraffin, animal fat, and, the most popular, liquid silicone.\textsuperscript{1104} There are
increasingly frequent reports of trans women dying as a result of these unlicensed,
informal interventions. For example, the IACHR has received troubling information
regarding a 20 year old trans woman in Valencia, Venezuela, who died in 2015 due
to complications arising from silicone injections in her buttocks that were carried
out in a hotel room,\textsuperscript{1105} and a trans woman in Cartagena, Colombia, who died in
2014 following a procedure in a “spa” that involved the injection of seven liters of
liquid silicone into her buttocks.\textsuperscript{1106}

383. The IACHR urges Member States to adopt comprehensive measures to effectively
address the discrimination and violence faced by LGBTI persons living in poverty
and extreme poverty, and to continue to devote efforts and resources to eradicate
poverty. OAS Member States must address discrimination based on sexual
orientation, gender identity, sex characteristics and bodily diversity when
designing and implementing actions and programs to tackle poverty. Further,
States must act to protect all children and young adults from violence – including
LGBT youth who are homeless – and ensure that effective child protection and
support systems are in place, including shelters and other safety mechanisms for
those in need of protection.\textsuperscript{1107}

\textsuperscript{1104} Pachón, N. E. and Cruz, K. J. “Uso De Modelantes Estéticos, Como Proceso de la Trasformación Corporal De
\textsuperscript{1105} Venezuela Diversa, “Muere mujer trans en Valencia luego de inyectarse silicona en glúteos,” May 2015
(Available only in Spanish).
\textsuperscript{1106} Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex para América Latina y el Caribe,
“Muere mujer trans en Cartagena, luego de practicarse una cirugía artesanal,” 2014 (Available only in
Spanish).
\textsuperscript{1107} See, related, IACHR, Press Release No. 049/15, Discriminated and Made Vulnerable: Young LGBT and Intersex
CHAPTER 6

STATES’ RESPONSE TO VIOLENCE, AND ACCESS TO JUSTICE
STATES’ RESPONSE TO VIOLENCE, AND ACCESS TO JUSTICE

384. In the instant Report, the Inter-American Commission addresses states’ obligations to prevent, investigate, punish, and provide reparations for acts of violence committed against persons based on their sexual orientation, gender identity, or bodily diversity. The Inter-American Human Rights System has yet to develop significant case law and jurisprudence interpreting States’ obligations, through the petition and case system. Thus, the IACHR takes into account the international and regional developments in this regard, as well as its own decisions on violence in other contexts, as guidance to examine the States’ obligations regarding cases involving violence based on prejudice against persons with non-normative sexual orientations and gender identities and diverse bodies.

385. States have a duty to apply due diligence in order to prevent, investigate, punish, and redress human rights violations, including killings and other acts of violence. According to the UN High Commissioner for Human Rights, this obligation includes: taking legislative and other measures to prohibit, investigate, and prosecute all acts of violence, and incitement to violence, motivated by prejudice and directed at LGBTI persons; providing remedies to victims and protection against reprisals; publically condemning such acts of violence; and recording statistics of such crimes and the outcomes of investigations, prosecutions, and remedial measures. The European Court of Human Rights has also affirmed that the obligation to prevent “hatred-motivated violence” by third parties, as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence, can fall under the obligation to put processes in place to prohibit torture (Article 3), and may also be seen to form part of the authorities’ positive responsibilities under the prohibition of discrimination (Article 14).

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1108 In November 2015, the IACHR deemed admissible a petition on alleged acts of torture that were committed against a gay man in Peru based on his sexual orientation. IACHR, Report No. 90/14, Petition 406-99. Admissibility. Luis Alberto Rojas Marín. Peru. November 6, 2014.
In cases of violence against women, the Inter-American Human Rights System has established that the failure of a State to exercise due diligence to prevent and investigate violence against women is a violation of the State’s international obligations, based on article 7(b) of the Convention of Belém do Pará, which establishes that States must by all appropriate means and without delay apply due diligence to prevent, investigate and impose penalties for violence against women. This is closely related to the State’s obligation to prevent and respond to violence based on gender.

This chapter addresses the main human rights obligations of States with respect to violence against LGBTI persons. First, the Commission examines the obligation to prevent human rights violations against LGBTI persons and those perceived as such, and to investigate, prosecute, and guarantee victims’ access to justice when such violence does occur. Next, the IACHR addresses the issue of reparations for LGBTI persons and their next-of-kin who are victims of violence based on prejudice.

In complying with its obligation of due diligence, States must take into account the different and intersecting forms of violence experienced by LGBTI persons, which are based on multiple forms of discrimination. As examined in the previous chapter, LGBTI persons are more likely to experience violence, and are more vulnerable to certain types of violence, when their non-normative sexual orientation and/or gender identity is combined with other factors such as ethnicity, sex, gender, migration status, age, work as human rights defenders, race, socioeconomic status and deprivation of liberty. States are urged to be aware of these multiple factors, and are called on to include these perspectives in all State measures aimed at preventing, investigating, prosecuting, and providing reparations regarding acts of violence against LGBTI persons.

### A. States’ obligation to Prevent Violence

States have a fundamental duty to prevent the violation of human rights of persons subject to their jurisdiction, an obligation that derives from the duty to guarantee human rights under Article 1(1) of the American Convention on Human Rights, as well as the rights and freedoms set forth in the American Declaration. The

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1113 OAS, General Assembly, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted at Belém do Pará, Brazil, on September 6, 1994, article 7(b).


1115 The Inter-American Commission has stated that developments in the corpus iuris of international human rights law are relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, and which may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See e.g., I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the
obligation to prevent human rights violations implies the adoption of all legal, political, administrative measures, and those regarding cultural changes, which ensure that a potential violation of human rights will be effectively addressed as a punishable offence. In cases of violence against women, the IACHR and the Inter-American Court of Human Rights have indicated that, in order to effectively prevent such violence, States' strategies should be comprehensive, should be aimed at addressing known risk factors for the violence, and should strengthen institutions that can provide an effective response.

390. States are not immediately responsible for every human rights violation committed by private individuals under their jurisdiction. The obligation to adopt measures to prevent human rights violations committed by private individuals, where it exists, arises when a state knows or should know of current or imminent risk to an individual or group in a situation in which the State has a reasonable opportunity to prevent or avoid that risk. The obligation of due diligence requires that States ensure the protection of persons who are at particular risk of violence, including those targeted because of their sexual orientation or gender identity. As discussed in this Report, LGBTI persons are particularly vulnerable to violence because they do not conform to socially-constructed gender expectations and norms, because they are outside the male/female binary, or because their bodies do not fit the standard definition for male and female bodies.

391. The IACHR notes that, in order to fully comply with the duty to prevent violence against LGBTI persons, States must develop cross-cutting strategies which include, but are not limited to: establishing data collection mechanisms to study and assess the extent and tendencies of these types of violence; enacting legal provisions criminalizing violence based on prejudice against non-normative sexual orientations and gender identities, as well as against bodily diversity; pursuing community-based prevention; and designing and implementing comprehensive public education policies and programs to eradicate stereotyping and stigmatization of LGBTI persons. All of these measures should involve State institutions at both the national, state and local level and in various sectors, ranging from the police and justice system to the education, health, and labor sectors.


1. Data Collection

392. On multiple occasions, the IACHR has urged OAS Member States to implement data collection policies in order to better document particular categories of violence, especially violence and discrimination against women and Afro-descendants.\textsuperscript{1121} Since 2013, the OAS General Assembly has encouraged States to produce data on violence that is based on sexual orientation and gender identity, with a view to fostering public policies that protect the human rights of LGBTI persons.\textsuperscript{1122} The IACHR has highlighted the crucial importance of adequate data collection mechanisms to the design of effective public policies aimed at combatting these forms of violence and discrimination,\textsuperscript{1123} and has urged OAS Member States to ensure that such data “is disaggregated by factors such as race and ethnicity.”\textsuperscript{1124}

393. The UN High Commissioner for Human Rights has expressed concern about deficient or non-existent mechanisms for collecting data regarding violence against LGBTI persons, and has recommended that States put in place such mechanisms.\textsuperscript{1125} At the Council of Europe, the Committee of Ministers recommended to European States that they gather and analyze relevant data on the prevalence and nature of discrimination and intolerance on the grounds of sexual orientation or gender identity.\textsuperscript{1126}

394. In the context of the State’s obligation to prevent and respond to human rights violations, data collection procedures are required in order to uniformly and accurately measure the prevalence, trends, and other aspects of violence in a given State or region. Detailed analysis of this data provides authorities with the information and insights that are needed in designing public policies to prevent further acts of violence. Additionally, dissemination of data begins to make visible


\textsuperscript{1122} AG/RES. 2863 (XLIV-O/14) Human Rights, Sexual Orientation and Gender Identity and Expression, approved at the fourth plenary session, held on June 5, 2014; AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation and Gender Identity and Expression, adopted at the fourth plenary session, held on June 6, 2013.


\textsuperscript{1125} OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, paras. 23, 84(a). OHCHR, Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, paras. 27; 78 (c).

\textsuperscript{1126} Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity: Appendix, March 31, 2010, para. 5.
the prevalence of violence against LGBTI persons. The data may also reveal patterns of violence and determine whether specific communities face higher risks of victimization. This information in turn is useful in assessing the need for stronger preventative action, enhancing and targeting public outreach by law-enforcement agencies, and improving training efforts and services for victims and witnesses.

395. Various OAS Member States1127 and numerous civil society organizations1128 from across the Americas report that either no information is collected or, where information is collected, it is not properly disaggregated according to the victim’s sexual orientation or gender identity. On the other hand, the IACHR has also been informed that various OAS Member States have put in place data collection mechanisms in order to address such deficiencies.

396. For example, the Hate Crime Statistics Act in the United States1129 — as amended in 2009 by the “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act” (hereinafter “Matthew Shepard and James Byrd, Jr. Act”)1130 — requires that the Attorney General collect data on crimes committed due to the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In this regard, the Commission recognizes that the United States has established a comprehensive data collection mechanism, administered by the U.S. Department of Justice, in which two different but complementary

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1127 [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 13; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013, received by IACHR Executive Secretariat on December 2, 2013, p. 5; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 dated December 20, 2013, received by IACHR Executive Secretariat on December 20, 2013, p. 1; [Paraguay], Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay, March 17, 2015, 154th Period of Sessions.


1130 This act is named after Matthew Wayne Shepard and James Byrd Jr., both of whom were victims of hate crimes. Matthew Shepard was a 22-year-old gay student who was beaten, tortured, and murdered in the State of Wyoming in 1998. James Byrd was an American afro-descendant man who was brutally killed by white supremacists in the State of Texas, also in 1998. His killers tied him to a truck, dragged him for three miles along an asphalt road, and decapitated him. Full text of the law is available at: Public Law 111–84 - Oct. 28, 2009, p. 647.
statistical programs measure the prevalence and impact of crime: \(^{1131}\) the National Crime Victimization Survey (NCVS) of the Bureau of Justice Statistics; \(^{1132}\) and the Uniform Crime Reporting Program (UCR) of the Federal Bureau of Investigation (FBI). \(^{1133}\) There are other departments, including the Department of Education and the Department of Health, that have further mechanisms in place to collect data from specific environments. From 2010 to 2012 the Department of Justice collected information, via the NCVS, on 126,040 violent crimes against persons aged 12 or older that were motivated by the sexual orientation of the victim. These crimes included rape and other sexual assault, robbery, simple assault, and aggravated assault. \(^{1134}\) According to the information provided to the IACHR, the FBI’s UCR Program has modified the way in which data is collected, following the passage of the Matthew Shepard and James Byrd, Jr. Act of 2009, by using new and revised definitions and by issuing new Hate Crime Data Collection Guidelines and a Training Manual for police forces and other agencies that collect data on these crimes. \(^{1135}\)

397. Since 2011, the State of Brazil has developed the “Report on Homophobic Violence in Brazil,” an annual report that compiles information on acts of violence against lesbians, gays, bisexuals, and trans persons. \(^{1136}\) The United Nations Development Program (UNDP) has also contributed to that report. \(^{1137}\) This report is divided into two parts: the first features data collected by the Federal Government, through the "Dial 100" and "Dial 180" hotlines and through the Complaint Mechanism of the Health System (“Ouvidoria do Sistema Único de Saúde”). The second part presents information collected from newspapers and other media sources. \(^{1138}\) The Federal Government has sought to improve its system for collecting information related to homicides. To this end, in 2014 the Ministry of Health began to request

\(^{1131}\) For detailed information about these two mechanisms, visit: US Dept. of Justice, *The Nation’s Two Crime Measures*, September 2014 | NCJ 246832.

\(^{1132}\) The National Crime Victimization Survey (NCVS) is a survey that collects data from a nationally representative sample of persons in US households who are aged 12 or older. The NCVS includes questions about crime based on sexual orientation, whether or not it has been reported to the police. However — as explained by the United States in its response to the IACHR — the NCVS does not collect information about violent crimes that are committed by state agents. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.

\(^{1133}\) Through the Uniform Crime Reporting Program (UCR), the FBI collects data from police reports regarding criminal offences that were motivated, in whole or in part, by the offenders’ biases against the victims’ race, religion, sexual orientation, ethnicity/national origin, or disability. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.

\(^{1134}\) Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.


\(^{1136}\) The methodology was designed by a working group composed of members of the National Council against LGBTI Discrimination (“Conselho Nacional de Combate à Discriminação contra Pessoas LGBT”), scholars from various universities, experts from the Brazilian Health Ministry, and experts from the Secretariat for Women Policies.

\(^{1137}\) Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.

\(^{1138}\) Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.
information about sexual orientation and gender identity as part of the mandatory notifications of violent deaths that it receives.\footnote{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.}

398. In response to the IACHR questionnaire on violence against LGBTI persons in the Americas, the State of Guatemala indicated that the Ombudsman for Human Rights (“Procurador de los Derechos Humanos”) had been able to generate statistics on violence against LGBT persons.\footnote{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262 -2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013.} However, it also informed the IACHR that in the database used by the prosecution service (“Ministerio Público”) there were no data fields in which information on sexual orientation or gender identity could be entered.\footnote{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note SAIC 1388 -2013, received by the IACHR Executive Secretariat on December 2, 2013.} Moreover, a Guatemalan organization reported in 2010 that officials had expressly stated that they did not record the victim’s sexual orientation, except in “well-known cases.”\footnote{Organización de Apoyo a una Sexualidad Integral Frente al SIDA (OASIS), “Crímenes de Odio en Guatemala: una Aproximación a los Retos y Desafíos para el Desarrollo de una Investigación sobre Crímenes en el País en contra de Gay, Bisexuales y Trans,” April 2010, p. 38 (Available only in Spanish).} Nevertheless, Guatemalan civil society organizations informed the Commission that, as of December 2014, the form used to report crimes to the police included a field marked “LGBTI population,” next to the field in which “male” or “female” can be selected.\footnote{Sin Etiquetas, “Guatemala: Formulario Policial de Denuncias incluye a población LGBTI,” December 29, 2014.}

399. The IACHR has made a recommendation to the State of Colombia that it design and put in place information and registration systems, to gather official data at a national level which allow to give visibility and to effectively address human rights violations committed against LGBTI persons.\footnote{IACHR, Truth, Justice and Reparation: Colombia, 2013.} In December 2014, the State informed the IACHR that its plan was to include the design and implementation of such systems within a broader overhaul of public policy.\footnote{Republic of Colombia. Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation. Note S-GAIID-14-094783, received December 29, 2014, p. 355.} A local NGO indicates, however, that although both the Office of the Inspector General (Procuraduría General de la Nación) and the Ombudsman’s Office have the possibility of recording data on sexual orientation and gender identity in case files and forms, officials in those agencies have not been properly trained on the subject, and thus there is significant underreporting.\footnote{Colombia Diversa, Información sobre situación de derechos humanos de personas LGBTI en Colombia, received on December 11, 2014.} That said, the IACHR recognizes the State’s efforts since 2012 to collect and provide disaggregated data on the sexual orientation and gender identity of victims via two of the main data collection tools used by the “Victim’s Unit” (SNARIIV).\footnote{Republic of Colombia. Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation. Note S-GAIID-14-094783, received December 29, 2014, p. 350. Cited in IACHR, Annual Report}
The Commission stresses that, in order to be able to generate data on violence based on prejudice, States must take steps to create IT systems and reporting mechanisms that expressly incorporate variables of sexual orientation and gender identity. If systems in place do not allow for this information to be included when crime data is recorded, States should make the necessary adaptations to include them. In this regard, the IACHR welcomes the information submitted by the Venezuelan Office of the Ombudsman, which indicated that, in 2007, forms used to file complaints were revised to incorporate the fields of “sexual orientation” and “gender identity” of the victim, and in 2009 the corresponding database was updated to display this information.1148

The Inter-American Commission also received reports of challenges in collecting data relating to acts of violence against LGBT persons in Chile and Peru. In Chile, for example, besides from having legislation against discrimination which will be addressed below, there is no legislation establishing hate crimes regarding sexual orientation, gender identity and expression. Consequently, as the State informed the IACHR at the end of 2013, statistics in this regard are not collected.1149 Local organizations have reported that the Office of the Ombudsman in Peru has explained that its database does not contain any reference to the sexual orientation or gender identity of victims “because that information is private to the victim.”1150 Regarding this concern, the Commission is of the view that this question of privacy should not be allowed to interfere with States’ duty to collect this information for statistical, policy development, and crime fighting purposes. That said, the IACHR acknowledges that there are inherent risks in identifying oneself as lesbian, gay, bisexual, or trans, particularly to the police. Therefore in collecting this information, States need to put in place systems that respect the privacy of LGBT persons as much as possible, and need to give assurances that privacy will be respected, so that the collection of such data does not result in further victimization or stigmatization.

The IACHR urges OAS Member States to create national mechanisms, which may take the form of working groups, coordinating offices, or specific protocols among offices of statistics, so that the situation of violence against LGBT persons can be measured at the national level. It is crucial that data is gathered in a standardized manner, so that information from different regions can be compared and aggregated in order to reveal trends at the national level. In this regard, the State of Mexico indicated that, although some information had been collected at the federal level, data collection at the state level was not systematic.1151 The IACHR

1148 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20, 2013, received by IACHR Executive Secretariat on December 26, 2013, p. 3.

1149 Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 3.


1151 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 8.
acknowledges that federated States may face additional challenges when setting up a national coordinated mechanism of data collection. In these cases, the Commission urges federal States to strengthen efforts to generate tools or enter into agreements with local governments to collect data in a cooperative and coordinated manner.

403. In many other OAS Member States, numerous civil society organizations collect data on human rights violations, which would otherwise go undocumented. Data collected by civil society organizations and other non-state actors, while useful, are often times not comprehensive, because of limited access to information. The State not only has the duty to collect this data, but is in a better position to do so, through its different government agencies.

404. Most of the aforementioned mechanisms for collecting data are contingent on reporting by victims. Consequently, the IACHR highlights that States must make special efforts to collect data from sources which do not depend on formal reports being brought to the attention of authorities. To this end, national statistics agencies or other relevant agencies such as National Human Rights Institutions should carry out surveys to collect data on acts of violence suffered by lesbian, gay, bisexual, trans, or intersex persons, or those perceived as such. These complementary mechanisms are especially useful to collect information on certain types of violence not typically reported to the authorities, such as domestic violence and police abuse. States should also consider entering into agreements with civil society organizations that collect data through their own means.

405. Data collection efforts need to be matched with training of state officials in adequately documenting and recording the violence. According to the UN High Commissioner on Human Rights, “prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting.”1152 State agents must receive adequate training in order to be able to enter accurate information in recording mechanisms, to pay due attention to specific variables regarding LGBT people when receiving reports, and to have a proficient command of the mechanisms in place. Insufficient training of police agents, prosecutors, and forensics authorities is another factor that can lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.”1153 Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender identity and thereby identify trans women as “gay men.”1154 In some States, organizations have reported that authorities register gay, trans, lesbian, or bisexual persons under umbrella terms

1152 OHCHR, Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, para. 25 [original footnotes omitted].
like “LGBT” or “gay” — even if they are trans persons — without specifying their orientation or identity.  

Further, the IACHR stresses that data must be disaggregated as much as possible, so as to reflect the particularities and tendencies of this violence. Disaggregation of data becomes a key factor when violence against LGBTI persons is the result of the intersection of discrimination based on sexual orientation, gender identity and bodily diversity with discrimination based on other grounds, such as race, ethnicity, disability, age, nationality, and socio-economic status of victims, among many other aspects. In 2013, the IACHR welcomed Brazil’s efforts to produce disaggregated data regarding crimes motivated by the victim’s actual or perceived sexual orientation or gender identity. On that occasion the Commission also urged the State to include “race” as a criterion for data collection, in addition to sexual orientation and gender identity. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, has welcomed efforts by States to set up data-collection systems on hate crimes, including hate crimes committed against individuals on the grounds of race, color, ethnicity, origin, citizenship, language, religion, disability, sexual orientation, gender, or gender identity.

The IACHR notes with concern that there is almost no data collected with respect to intersex persons. According to the Council of Europe “[t]o date there is little information about the legal and social situation of intersex people in many European countries and around the world.” For these reasons, on March 15, 2013, the IACHR convened of its own accord a hearing to learn from intersex persons and human rights defenders about the main human rights violations faced by intersex persons. For example, as explained in this report, medical and other types of violence against intersex persons remains highly invisible. During the fifteen-month review period discussed at various points above in this Report, the IACHR did not receive any reports of cases of violence against intersex persons. This not because such violence did not occur, but because violence against intersex persons is often carried out under State-approved medical protocols, and is seldom reported in the media or denounced by victims, their families, or civil society organizations. One intersex activist from Costa Rica explained to the IACHR that the situation of intersex persons is not talked about in public or private

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1155 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colectivo Entre Tránsitos et. al.” (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 16; Colombia Diversa, “Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012”, June 2014, p. 7.


hospitals or medical associations, and also that the families of intersex persons do not talk about these issues because discussions related to the genitals or to sexuality are considered taboo. The IACHR urges OAS Member States to conduct data collection efforts to assess the prevalence of non-medically necessary interventions on intersex children. This is the first step in identifying a practice that is widely accepted among the medical communities of some Member States, but which is in clear violation of international human rights law, as explained in the previous chapter.

408. In sum, the IACHR urges all States to make serious efforts to systematically collect data on violence against LGBTI persons. These efforts must be carried out in coordination with all branches of government. Additionally, in States where Offices of the Ombudsperson, Public Prosecution, or Public Defense are autonomous or independent, special cooperation mechanisms should be put in place to ensure that their data is also considered as input for statistics at a national level. States also need to collect data on access to justice. Data comparing how violence is addressed at different stages in the proceedings, from reporting through trials and sentencing (and whether hate crime legislation was applied), will allow States to better identify the challenges to access to justice, and the reasons why the rate of impunity is so alarmingly high, as examined later in this chapter. OAS Member States should make serious efforts to establish data collection systems capable of gathering information from a wide variety of sources, including but not limited to: information contained in records kept by police forces, forensic agencies, tribunals and courts, prosecution and public defense offices, all other relevant agencies of the justice system, offices of ombudspersons, agencies providing assistance to victims, public hospitals, public schools, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans, and intersex persons.

2. Legislative Measures to Prevent Violence

409. As examined in chapter four, violence and discrimination against LGBTI persons, committed by both state and non-state actors, are ubiquitous across the Americas. Societal discrimination combined with impunity, lack of effective investigations, and the absence of a differentiated approach to the investigation and prosecution of crimes committed against LGBTI persons, have the effect of condoning the violence, and results in failure to curtail it. The absence of legal recognition of sexual orientation, gender identity, and bodily diversity as grounds on which violence is committed renders this violence invisible in the eyes of the law, erasing the enhanced risk of violence faced by LGBTI persons. Even beyond this, there are countries in which violence is fueled by legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

a. Enhanced legal protection from violence based on prejudice

410. The IACHR notes that there is a growing consensus about the legal recognition of crimes motivated by the perception of the victim’s sexual orientation or gender identity as an aggravating factor in the sentencing of crimes, when there is evidence that these factors played a role in the crimes. This consensus includes international and regional human rights experts, international and regional human rights bodies, and an increasing number of OAS Member States. The UN Human Rights Committee has urged States to specifically criminalize acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity).\footnote{1162}{1162} The Committee of Ministers of the Council of Europe has recommended that States “ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.”\footnote{1163}{1163} Civil society organizations have vocally advocated for the enactment of such legal provisions.\footnote{1164}{1164} For the Office of the High Commissioner for Human Rights, these “laws can play an important role in facilitating the prosecution and punishment of perpetrators of hate-motivated violence and in establishing homophobia and transphobia as aggravating factors for the purposes of sentencing.”\footnote{1165}{1165} As such, in its 2015 Report, the High Commissioner recommended that States address violence by “[e]nacting hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing.”\footnote{1166}{1166}

411. Analogously, in 2011, the IACHR highlighted the positive step taken by States to eradicate violence against women by the enactment of laws that send a social message that violence against women will not be tolerated and will be punished.\footnote{1167}{1167} The UN General Assembly stressed the need to treat all forms of violence against women and girls as a criminal offence, punishable by law.\footnote{1168}{1168}
Along these same lines, in 2011, the IACHR recommended that OAS Member States adopt legislation that punishes acts of racial discrimination.\footnote{IACHR, The Situation of People of African Descent in The Americas, 2011, para. 260 (6).}

The IACHR acknowledges legal measures adopted by various OAS Member States, including: establishing aggravating circumstances in sentencing for crimes committed on the basis of sexual orientation and/or gender identity; incorporating hate or bias-motivated crimes into their legal systems; adopting new anti-discrimination laws that explicitly include sexual orientation and gender identity; and extending the protection of existing non-discrimination legislation to include sexual orientation and gender identity. For example, countries including Argentina,\footnote{Argentina has incorporated motive based on the sexual orientation, gender identity, or gender expression of the victim as an aggravating circumstance, which, according to the information received, applies only to the crime of homicide. Argentine Criminal Code, §80(4), as amended by Law 26.791, §1. Published in Official Gazette December 14, 2012.} Bolivia,\footnote{Bolivian Criminal Code, Art. 40bis; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13 dated May 19 2013, received by IACHR Executive Secretariat on December 23, 2013, p. 7.} Chile,\footnote{Chilean Criminal Code, Article 12(21); Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 2.} Canada,\footnote{Canadian Criminal Code (R.S.C., 1985, c. C-46), article 718.2(a)(i).} Colombia,\footnote{See Article 58 of the Colombian Criminal Code (Ley 599 of 2000), published on July 24, 2000.} Ecuador,\footnote{The Ecuadorian Criminal Code contemplates hate crimes based on, among other grounds, sexual orientation or gender identity, including incitement or perpetration of any kind of physical or moral violence. Código Orgánico Integral Penal (COIP), Art. 177 (2014); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013, received by IACHR Executive Secretariat on December 2, 2013, p. 7.} United States,\footnote{United States Code, Title 18, Chapter 13, §249 - “Hate Crimes Acts;” Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), p. 24.} El Salvador,\footnote{The Washington Blade, El Salvador lawmakers approve enhanced hate crime penalties, September 9, 2015.} Honduras,\footnote{The IACHR was informed that the President of El Salvador signed these reforms into law on October 5, 2015.} Mexico,\footnote{Honduran Criminal Code, Article 27; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 4.} Nicaragua,\footnote{Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.} Suriname,\footnote{Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4.} and Uruguay,\footnote{According to information received by the IACHR in August 2015, Suriname modified Article 175 of the Criminal Code to include an increase in penalties for crimes committed on the basis of sexual orientation.} have either enacted hate crime legislation or included sexual orientation and/or gender identity as aggravating factors in sentencing. Brazil does not have federal legislation in this regard, but several Brazilian states criminalize acts of violence based on sexual orientation, gender identity, and/or gender expression.\footnote{These states include Mato Grosso, Sergipe, Pará, São Paulo, and Rio de Janeiro. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Casarão do Brasil, Brazil, received on November 25, 2013. The Commission was informed by civil society organizations that the main obstacle to approving federal legislation criminalizing violence against LBGT persons is the presence and
413. The IACHR takes note that some countries have included sexual orientation — sometimes referred to as sexual preference — but have failed to include gender identity in these legal protections. The Inter-American Commission stresses that States should expressly include gender identity as a ground for protection in legislation and public policy. The Commission is cognizant of the arguments by some States that protection for trans persons can be subsumed in the terms sex or gender in the wording of laws or legal provisions. Although progressive interpretation by analogy and the use of open-ended clauses may be a useful tool for the construction of laws and regulations, the IACHR recommends the specific inclusion of the term gender identity, for the purposes of legal certainty and visibility. The IACHR is not aware of any legislation in OAS Member States that has specifically outlawed violence against intersex persons, or which includes bodily diversity or the fact of being intersex as a prohibited category regarding discrimination, or aggravating factors in the sentencing of a crime.

414. Even in countries that have passed hate crime laws and enhanced penalties for crimes based on prejudice, the poor implementation of such legal measures has been criticized by members of academia and civil society organizations, for a variety of reasons. Once these laws are passed, States sometimes fail to adopt further, complementary measures to address violence based on prejudice. Further, implementation of these laws is often weak, because of inefficiencies and obstacles in accessing justice for these crimes, including the prevalence of biased investigations, and the lack of training of police, forensics specialists, prosecutors, and judges. Despite these shortcomings in implementation, there seems to be consensus that the enactment of these provisions has a symbolic impact in recognizing these types of violence and in sending a strong message to society as a whole that the State takes these crimes seriously.

415. For instance, the Commission has noted that, notwithstanding that Article 58 of the Colombian Criminal Code recognizes the sexual orientation of the victim as an influence of radical religious groups and politicians in Congress. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.

The IACHR is of the view that the correct terminology is sexual orientation and not sexual preference. See I/A Court H.R., Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

1184 [Canada] Canadian Criminal Code (R.S.C., 1985, c. C-46), article 718.2(a)(i); [Colombia] Colombian Criminal Code, Article 58(3) (Ley 599 of 2000), published on July 24, 2000; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colombia Diversa,” received by IACHR Executive Secretariat on November 26, 2013, p. 72; [Nicaragua] Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4; [Mexico] Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.

1185 In this regard, see e.g., the recognition and criticism made from the academy to legislation against hate crimes in the United States, in Gómez, María M. Chapter 2: Prejudice-based Violence, in Motta, Cristina and Sáez, Macarena (eds.), Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, pp. 108 and ff. [Free translation by the IACHR].

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aggravating factor, a civil society organization reported that this criminal provision is not being enforced due to prevailing prejudices in the administration of justice system. The IACHR recommended that the State of Colombia adopt measures to ensure that prosecutors and judges properly implement the existing legal provisions in cases of violence against LGBT persons. In December 2014, the IACHR was informed by one organization that out of the 730 murders of LGBT persons documented between 2006 and 2014, "so far, not a single conviction has recognized sexual orientation or gender identity as a motive or aggravating circumstance." The IACHR reiterated its concern over lack of implementation of this provision, in its 2014 Annual Report.

416. Regarding intersex persons, the Commission has recommended that States take steps to prohibit medical or surgical treatment or interventions of intersex people when these are medically unnecessary and are conducted without the prior, free and informed consent of intersex persons themselves. These interventions can result in severe, long-term physical and psychological suffering, affecting intersex children’s rights to physical integrity, health, privacy, and autonomy, and in some cases may constitute torture or ill treatment. The UN High Commissioner for Human Rights, the Committee on the Rights of the Child, the UN Committee against Torture, the special procedures mandate holders on the right to health, and the special procedures mandate holders on torture, have all called for an end to this practice. In this regard, the Commissioner for Human Rights of the Council of Europe recommended in a 2015 report that “[s]ex characteristics should be included as a specific ground in equal treatment and hate crime legislation or, at least, the ground of sex/gender, should be authoritatively interpreted to include sex characteristics as prohibited grounds of discrimination.”

1188 Colombia Diversa, “Información sobre situación de derechos humanos de personas LGBTI en Colombia,” received on December 11, 2014.
1189 IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, para. 292.
1190 Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples’ Rights, and the Commissioner for Human Rights of the Council of Europe. Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights, May 17, 2015.
1191 Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples’ Rights, and the Commissioner for Human Rights of the Council of Europe. Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights, May 17, 2015.
The IACHR takes into account the symbolic impact, positive social message, and improved prevention that arise from legislation that specifically protects LGBTI persons from violence. The IACHR calls on OAS Member States to extend legal protection from violence so that such protection explicitly recognizes and punishes crimes based on the victim's sexual orientation, gender identity, bodily diversity or sex characteristics.

b. **Enactment of legislation protecting and recognizing the rights of LGBTI persons**

The UN Human Rights Committee has urged the adoption of “comprehensive legislation to combat discrimination, including provisions that provide protection against discrimination on grounds of sexual orientation and gender identity.” 1194 States must recognize in their legislative framework the human rights of all persons, without discrimination on the basis of sexual orientation, gender identity, or bodily diversity. The IACHR is of the opinion that in order to prevent and address violence against LGBTI persons, States must adopt a legal framework to specifically protect persons from discrimination based on sexual orientation, gender identity, or bodily diversity (due to being intersex), given the inherent link between violence and discrimination that was examined in the second chapter of this report.

In the context of this report, the IACHR notes that this obligation includes the adoption of gender identity laws. In recent years, the IACHR has consistently called on OAS Member States to adopt gender identity laws, which recognize the right to identity of trans persons in a way that does not pathologize trans persons. The best practice in the region is the Gender Identity Law in Argentina, which does not require any type of medical intervention or procedure, judicial proceeding, or psychiatric or medical certification, in order for persons to have their gender recognized. One study indicates that the prevalence of violence and discrimination against trans persons in Argentina has diminished since the passing of the gender identity law in 2012. 1195 However, the IACHR continues to receive information on killings and other acts of violence against trans women in different provinces in Argentina. 1196 The IACHR takes note that Uruguay has also passed a gender

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1196 See, e.g., Cáscara Amarga, “*La Federación Argentina LGBT pide justicia para una mujer transexual asesinada*,” January 12, 2015 (making reference to the killing of Pamela Moreno, trans woman in Santiago del Estero) (Available only in Spanish); Clarín, “*Con odio y saña, castran y asesinan a una chica trans en Córdoba*,” July 27, 2015 (making reference to the killing of Laura Moyano in Córdoba) (Available only in Spanish); BBC, *Argentina transgender killing sparks outcry*, October 15, 2015 (making reference to the killing of Diana Sacayán in Buenos Aires, whose body was found on October 13, 2015); Office of the High Commissioner for Human Rights, Regional Office for South America, “*Oficina Regional repudia muertes de personas transgénero en Argentina*,” October 21, 2015 (making reference to the killing of Marcela Chocobar in Santa Cruz on September 26, 2015, and that of Fernanda “Coty” Olmos in Santa Fe, whose body was found on September 14, 2015) (Available only in Spanish).
identity law, which became the first country to do so in 2009\textsuperscript{1197} and that there is a gender identity bill pending in Congress in Chile.\textsuperscript{1198}

420. Furthermore, in July 2015, the IACHR congratulated Mexico and Colombia for the adoption of decrees that allow for the sex component or gender marker on identity documents to be changed through simple administrative procedures. These procedures are available in Mexico City and throughout Colombia. The Commission noted that prior to these measures, changing the sex component on official forms could only be achieved through lengthy and onerous judicial procedures. These procedures called for psychiatric diagnoses and/or medical tests that pathologized trans persons. At the same time that the IACHR recognized these positive steps regarding administrative decrees, the IACHR urged both Mexico and Colombia to enact gender identity legislation.\textsuperscript{1199}

421. The IACHR notes that there are certain countries in the region, such as Bolivia\textsuperscript{1200} and Honduras,\textsuperscript{1201} among others, that have specifically outlawed discrimination on the basis of sexual orientation and gender identity. In Chile, an anti-discrimination law was passed following the brutal and prejudice-motivated killing of Daniel Zamudio, referred to in chapter four of this Report.\textsuperscript{1202} These legal initiatives have failed in other countries, either because they have not been proposed,\textsuperscript{1203} or because once bills have been introduced, they have not been successful after years of debate.\textsuperscript{1204} The IACHR does not have any information as to the specific impact

\textsuperscript{1197} Redlactrans, “Informe sobre el Acceso a los Derechos Económicos, Sociales y Culturales, de la Población Trans en Latinoamérica y el Caribe.” December, 2014 (p. 14), making reference to Uruguay’s Gender Identity Law “N° 18.620 Derecho a la Identidad de Género y al Cambio de Nombre y Sexo en Documentos Identificatorios,” Uruguay, Published on November 17, 2009 - Nº 27858.

\textsuperscript{1198} IGLHRC, Chile’s Gender Identity Bill: two years later, May 8, 2015. See also, Frente de la Diversidad Sexual (Chile), Declaración Pública del Frente de la Diversidad Sexual, principal red de organizaciones LGBTI del Chile, sobre el anuncio del Ministro Secretario General de Gobierno Marcelo Díaz sobre darle suma urgencia al proyecto de Ley de Identidad de Género, September 19, 2015 (Available only in Spanish).


\textsuperscript{1200} In 2012, the Criminal Code of Bolivia was revised to criminalize acts of discrimination based on, among other grounds, sexual orientation and gender identity. Additionally, it constitutes an aggravated offense when such discrimination is committed with violence or when the discrimination is perpetrated by a State agent. Bolivian Criminal Code, Art. 281ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13, received by IACHR Executive Secretariat on December 23, 2013, p. 7.

\textsuperscript{1201} In 2013, Honduras amended its criminal code to criminalize acts of discrimination based on sexual orientation and gender identity. Honduran Criminal Code, Art. 321 (as amended by Decreto Legislativo 23-2013, February 21, 2013); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6. According to information received by the IACHR, however, the proposed reform of the criminal code of 2015 would include amendments to this provision. Information presented by Red Lésbica Cattrachas, August 2015.

\textsuperscript{1202} Chilean National Congress, \textit{Law No. 20.609} that establishes measures against discrimination. Published on July 24, 2012.

\textsuperscript{1203} For example, according to information received by the IACHR, there are no laws that prohibit discrimination on the basis of sexual orientation or gender identity in the Dominican Republic. IACHR, Public Hearing \textit{Human Rights Situation of LGBT Persons in the Dominican Republic}, 156\textsuperscript{th} Period of Sessions, October 23, 2015.

\textsuperscript{1204} For example, according to information received by the IACHR, a bill against discrimination that was presented before the Paraguayan Congress was rejected in November 2014, after seven years pending
that the passing of these laws has had on preventing and curtailing violence. However, these laws also have a symbolic impact, since they explicitly recognize the particular risks of discrimination that people face due to their sexual orientation, gender identity or bodily diversity.

c. Ensuring that laws do not discriminate or fuel violence based on prejudice

422. The Commission has reiterated that the right to equality and non-discrimination in Article II of the American Declaration and Article 24 of the American Convention is a fundamental principle of the inter-American system of human rights. States are not only obligated to provide equal protection under the law for persons subject to the State’s actions, but they must also adopt the legislative, public policy, and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration, and under the American Convention. The Inter-American Court has indicated that the general obligation set forth in Article 2 of the American Convention implies the adoption of measures to eliminate norms and practices that entail the violation of the guarantees set forth in the Convention, and the issuance of norms and the development of practices leading to the effective observance of those guarantees.

423. The Commission and the Inter-American Court have repeatedly established that the right to equal protection under the law and the principle of non-discrimination together imply that States are obliged to: (i) abstain from introducing into their

approval. See Abc Color, “Proyecto de Ley contra toda forma de discriminación” January 26, 2015. Information also received in the context of a public hearing held before the IACHR in March 2015. IACHR, Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay, 154th Period of Sessions. March 17, 2015.


1209 IACHR, Report No. 4/01, Case 11.625 Maria Eugenia Morales de Sierra, Guatemala, January 19, 2001.

1210 Inter-American Court of Human Rights, Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants, Mexico, September 17, 2003 para. 167. The Inter-American Commission has stated that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See e.g., I/A Court H. R., Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, July 14, 1989, para. 37; I/A Court H. R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, October 1, 1999, para. 115; IACHR, Report No. 12/14, Case 12.231, Merits (Publication). Peter Cash, Commonwealth of The Bahamas, April 2, 2014, paras. 58, 60.
legal frameworks regulations that are discriminatory or that have discriminatory effects on certain groups of the population; (ii) eliminate discriminatory regulations; (iii) combat discriminatory practices; and (iv) establish norms and adopt the necessary measures to acknowledge and guarantee the effective equality of all people under the law. These obligations apply to both States that have ratified the American Convention and States that have yet to ratify the American Convention.

424. As explained in Chapter 3 of this Report, there is a link between criminalization of certain types of sexual relations between consenting adults, and violence against LGBT persons, or those perceived as such. Further, in this Report, the IACHR has also examined the link between laws aimed at safeguarding “public morals,” or laws against soliciting, vagrancy, and loitering, and violence against LGBT persons or those perceived as such, which is mostly perpetrated by State agents, particularly violence in response to public displays of affection between same-sex couples and trans women, and against trans sex workers. As has been established by the IACHR, the right to equality before the law requires that the law be applied equally to all and without discrimination. This means that States must assess the potential discriminatory impact of laws and policies, even when their formulation or wording appears neutral.

425. The IACHR urges the States of the region that still have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws –aimed at criminalizing same-sex intimacy- and legislation criminalizing cross-dressing, to repeal those laws, or, in the interim, to impose an explicit and formal moratorium on enforcement of those laws. The IACHR also urges OAS Member States to revise any domestic legislation that includes vague language on “public morals” (buenas costumbres), which can be used to justify discriminatory targeting of LGBT persons, particularly trans persons. The IACHR also urges all States to issue specific directives to all law enforcement agents,

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reaffirming that violence, abuse, and discrimination based on sexual orientation, gender identity, or gender expression, will be punished.

3. Eradication of stigma and negative stereotypes

426. As explained in chapter two of this Report, violence perpetrated against LGBT persons is rooted in pervasive social prejudice present in societies across the Americas. An important component of a State's response to violence against LGBT persons is addressing the underlying social discrimination against such persons. Further, as examined in the previous chapter, violence against intersex persons stems from the lack of acceptance towards bodily diversity. Achieving increased understanding and respect toward diverse sexual orientations, gender identities and bodies will consequently reduce and eventually eradicate acts of violence against LGBTI persons. States need to implement measures to address and eradicate prejudice at all levels and through various mechanisms. The UN Human Rights Committee has indicated that States should prioritize the implementation of programs to eliminate stereotyping and discrimination and guarantee respect for diversity.\textsuperscript{1216}

427. The Inter-American Commission notes that there is a prevailing culture of tolerance where acts of violence and attacks against LGBT persons are deemed normal. It has even been alleged that many people feel “entitled” to attack LGBT persons.\textsuperscript{1217} One state informed the Commission that violence against LGBT persons tends to be “accepted” by society, and is sometimes even treated in a humorous way by the mass media.\textsuperscript{1218}

428. The IACHR has indicated that standards and principles of human rights are both a guide and a roadmap for designing, implementing, and evaluating public policies.\textsuperscript{1219} State policies directed at educating the public about human rights with a gender and diversity perspective should not be restricted to educational environments. Rather, they should be crosscutting in every field in which the State operates. The principles of equality and non-discrimination, with a special focus on sexual, gender and bodily diversity, should be a key element of such policies.

429. The Commission takes note of an increasing number of public policies and other measures, such as those taken by National Human Rights Institutions, that have been adopted in the past ten years by OAS Member States in favor of LGBTI persons. Since 2004, the State of Brazil has implemented initiatives to combat violence at the national level, such as “Brazil without Homophobia” (\textit{Brasil sem Homofobia}), “General Secretariat for the Promotion of Rights of Lesbian, Gay, Bisexual, and Trans Persons” (\textit{Coordenação-Geral de Promoção dos Direitos de...})

\textsuperscript{1218} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268, received by IACHR Executive Secretariat on October 9, 2014, p. 3.
Lésbicas, Gays, Bissexuais, Travestis e Transexuais), and the "National System to Face Violence against LGBT persons and to Promote Rights" (Sistema Nacional de Enfrentamento à Violência contra LGBT e Promoção dos Direitos). Further, civil society has highlighted the National Campaign for “a country free from homophobia” (“Campanha Faça do Brasil um País Livre da Homofobia”), which aims at promoting the rights of LGBT persons and raising the awareness of NGOs and State agents regarding the situation of violence against LGBT persons.

430. The IACHR also acknowledges the creation of a specialized Office of the Ombudsman on Sexual Diversity in Nicaragua and an Office of the Ombudsman on the Rights of LGBTI Persons in Guatemala. Further, the Commission values that the State of Guatemala included the development and promotion of public policies focused on “sexual diversity” issues in its Human Rights Action Plan (2007-2017). Guatemalan civil society organizations and the Guatemalan State have indicated that, following a public hearing that took place before the IACHR in November 2012, the State began a process of dialogue with civil society organizations through an “Inter-Institutional Technical Group” (“mesa técnica interinstitucional”), with the objective of designing and adopting public policies that are respectful of the rights of LGBTI persons, in consultation with civil society. Further, the Commission was informed that in 2010 the State of El Salvador created a Sexual Diversity Division at the Secretary of Social Inclusion, within the Executive Branch. Its objectives include awareness-raising campaigns to eliminate stereotypes and prejudices. Further, former First Lady of El Salvador, together with the Secretary for Social Inclusion, has launched a 24-hour hotline that provides legal assistance and counseling to the LGBTI people.

431. The IACHR notes as well that numerous National Human Rights Institutions in the Americas have carried out actions in favor of LGBTI persons, whether in the form of public statements in support of LGBTI persons, or specific actions to raise

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1220 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 1.
1221 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.
1227 Information presented to the IACHR at the hearing regarding Guatemala, during the extraordinary period of sessions held in Mexico City in August 2014.
1228 Sexual Diversity Section, Social Inclusion Secretariat of the Office of the President of El Salvador.
awareness about their human rights violations. For example, the Commission has received information regarding actions by these institutions in Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Peru, and Venezuela.

The IACHR has acknowledged that in recent years Colombia has adopted positive and meaningful measures in support of LGBTI persons, and is close to adopting a comprehensive national public policy in this regard. The IACHR notes also the activities of the National Human Rights Commission of Mexico (CNDH), which in 2008 and 2010 published reports regarding crimes based on sexual orientation and gender identity, and organized a series of conferences beginning in 2012 to promote awareness of the issues affecting LGBTI persons. The IACHR has also recognized the efforts made by the National Center for Sex Education (CENESEX), a Cuban state entity under the Ministry of Health that addresses issues of sexual diversity with a view to promoting and protecting the rights of LGBTI persons. According to Mariela Castro, the director of CENESEX, there is political will in Cuba to address the issues facing LGBTI persons. This has facilitated the implementation of a national sex education program that is helping to change the "patriarchic, homophobic mindset." The Argentinean National Institution against Discrimination, Racism and Xenophobia (INADI) has also been very active in promoting the rights of LGBTI persons.

The UN Human Rights Committee has recommended to several OAS Member States that they publicly state that they will not tolerate social stigmatization,

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1232 The Ombudsperson Office of Costa Rica declared May 17, 2014, as a day free from discrimination based on sexual orientation and gender identity, and called on other State agencies to do the same. Further, in 2015, the Ombudsperson Office launched a campaign under the phrase “count on me” (http://www.contaconmigocr.org/), which features a series of clips of relatives of gay and lesbian persons in Costa Rica expressing their full support and calling for other persons to sign on (Link available only in Spanish).
1233 In 2013, the Ombudsman of Ecuador issued a series of public statements in favor of LGBT persons, available only in Spanish in the Ombudsman’s web site: http://www.dpe.gob.ec/.
1234 In 2015, the Ombudsperson condemned the murder of Francela Méndez, activist and defender of the human rights of trans persons in El Salvador. La Prensa Gráfica, “Procurador condena asesinato de activista transgénero en Sonsonate”, June 4, 2015. In addition, the Ombudsperson—and civil society organizations—is part of a Permanent Group on to examine the human rights of LGBTI persons (“Mesa Permanente”).
1235 See the different initiatives by the Office of the Ombudsperson of Sexual Diversity, within the Office of the Ombudsperson of Guatemala (“Defensoría de la Diversidad Sexual adscrita a la Procuraduría de los Derechos Humanos”), available at www.pdh.org.gt (in Spanish only).
1236 In July 2014, the Ombudsperson sent a letter to the Minister of Justice and Human Rights to express his concern over the exclusion of LGBT persons from the 2014-2016 National Human Rights Plan. On September 2014, the IACHR sent a letter to the government requesting information on this same issue.
1239 CNDH, “Informe Especial sobre Violaciones a los derechos humanos y delitos cometidos por Homofobia,” 2010 (Available only in Spanish).
1239 CNDH, “Informe Especial sobre Violaciones a los derechos humanos y delitos cometidos por Homofobia,” 2010 (Available only in Spanish).
1241 IACHR, Annual Report 2013, Chapter IV: Cuba, para. 222.
1242 Information about the National Institute against Discrimination, Xenophobia and Racism available only in Spanish at: http://inadi.gob.ar/tag/derechos-lgbt/.
discrimination, or violence based on a person’s sexual orientation or gender identity.\textsuperscript{1243} Indeed, the IACHR stresses that this message should permeate every State action and should be reflected in how State agents respond to such violence, including also violence directed at intersex persons. The IACHR has affirmed that positive public statements by State authorities are key in combating stigmatization of LGBTI persons, since States play a crucial role in leading social change to combat discrimination and social prejudices.\textsuperscript{1244}

434. In November 2013 and May 2014, the IACHR highlighted a series of positive statements issued by high level authorities— including Heads of State and Ministers— in various Commonwealth Caribbean countries where same-sex intimacy between consenting adults is criminalized. These included statements made by heads of state, in countries such as Belize,\textsuperscript{1245} Barbados,\textsuperscript{1246} Jamaica,\textsuperscript{1247} The Bahamas,\textsuperscript{1248} and St. Kitts and Nevis.\textsuperscript{1249} The IACHR greatly values the commitment of State officials who take a public stance in favor of equality in


\textsuperscript{1244} IACHR, Press Release No. 60/14, \textit{The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)}, May 20, 2014.

\textsuperscript{1245} The IACHR noted that the IACHR was pleased to receive information regarding a statement delivered by the Prime Minister of Belize, Dean Oliver Barrow, indicating that although the Government of Belize would respect religious positions regarding homosexuality, “what [the] Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law.” IACHR, Press Release No. 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.

\textsuperscript{1246} The IACHR noted that the Prime Minister of Barbados, the Honorable Mr. Freundel Stuart, recalled the importance of the Universal Declaration on Human Rights and supported “the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation.” IACHR, Press Release No. 60/14, \textit{The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)}, May 20, 2014.

\textsuperscript{1247} The IACHR noted that the Honorable Youth Minister in Jamaica, Lisa Hanna, announced at the beginning of 2014 that the government was developing programs focused on LGBTI youth. IACHR, Press Release No. 60/14, \textit{The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)}, May 20, 2014. Further, the IACHR highlighted that the Minister of Justice in Jamaica condemned the 2013 killing of a trans teenager, Dwayne Jones, and called upon Jamaicans to “embrace the principle of respect for the basic human rights of all persons.” IACHR, Press Release No. 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.

\textsuperscript{1248} The IACHR noted that the Honorable Mr. Frederick Mitchell, Minister of Foreign Affairs and Immigration of The Bahamas, said that the sexual orientation of a person seeking elected office should not be relevant. He added that “there must be tolerance at a minimum and we must uphold the principle that the general rights for which we fought [are] rights for all people... [and] cannot be derogated from because of someone’s sexual orientation.” IACHR, Press Release No. 60/14, \textit{The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)}, May 20, 2014.

\textsuperscript{1249} The IACHR welcomed the statement delivered by the Prime Minister of St. Kitts and Nevis, Denzil Douglas, speaking against discrimination and stigmatization of LGBTI persons. IACHR, Press Release No. 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.
contexts in which prejudice, discrimination, and violence against LGBT persons are widespread.1250

435. The IACHR has launched two social media campaigns to raise awareness of the rights of LGBTI persons and the human rights violations that are committed against them. On December 17, 2014, the IACHR launched a ten-day campaign on various social media platforms concerning violence against LGBTI persons. This included graphics1251 and three videos,1252 featuring a compilation of clips of IACHR hearing testimony by victims and human rights defenders regarding the human rights situation of LGBTI persons. The second weeklong social media campaign was launched to coincide with the 2015 International Day against Homophobia, Biphobia and Transphobia, celebrated each year on May 17.1253 The two campaigns together reached approximately 1,760,000 users of Spanish-language Facebook and Twitter in the Americas. International human rights mechanisms have also carried out awareness-raising campaigns. For example, in July 2013, the UN High Commissioner on Human Rights launched a global education campaign to combat violence and discrimination against LGBT persons,1254 which, according to the UN, has reached more than a billion people around the world.1255

436. Finally, the Commission has underscored the importance of involving civil society in the development of public policies to address the human rights of LGBTI persons.1256 As the UN High Commissioner on Human Rights has pointed out, LGBTI organizations, groups, and individuals should be systematically consulted and made part of decision-making processes in the drafting of policies and legal provisions that affect their rights.1257

1250 IACHR, Press Release No. 89/13 IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons, November 21, 2013.
1251 IACHR, Social Media Campaign, to raise awareness of the human rights situation of LGBTI persons (December 2014) (only available in Spanish).
1252 These videos (with Spanish, English and Portuguese subtitles) are available at: https://www.youtube.com/user/ComisionIDH.
1253 IACHR, Second Social Media Campaign, launched in May 2015, in commemoration of the International Day against Homophobia, Biphobia and Transphobia.
4. Prevention of violence in specific contexts

a. Prevention of violence in the context of law enforcement

437. Under international law a State is responsible for the acts and omissions of its agents, even when those agents act illegally or otherwise outside the permitted sphere of their authority.\(^\text{1258}\) Thus, any violation of the rights that are recognized by the American Convention (or the American Declaration) that is carried out by an act of public authority or by persons who use their position of authority is imputable to the State.\(^\text{1259}\)

438. In order to prevent violence, States need to ensure that their justice systems are able to fully and effectively investigate all instances of police abuse and all instances of torture, and cruel, inhuman, or degrading treatment. States must exercise due diligence in investigating violence that is based on prejudice, since impunity for human rights violations fosters their repetition. The IACHR has repeatedly highlighted the need for States to train their police and law enforcement agents regarding human rights.\(^\text{1260}\) Such training must take into account the rights of persons with non-normative sexual orientations and gender identities.\(^\text{1261}\) Further, States must ensure that all ranks of police officers and law enforcement agents participate in the training.\(^\text{1262}\) The lack of sensitivity training for police and law enforcement agents on the topics of gender and sexuality is one of the most serious challenges in the efforts to eradicate prejudice-based violence by State actors in the Americas.

439. According to the information received by the IACHR, training sessions for security and police agents on sexual and gender diversity have been carried out in various

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\(^{1261}\) See, for example, IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc.12, 10 August 2012, para. 305(d).

\(^{1262}\) IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc.12, OEA/Ser.L/V/II.144 Doc. 12, August 10, 2012, para. 305(d). Further, the IACHR has received information concerning the challenges of implementing Directive 006/2010, which is aimed at preventing police abuse in Colombia. According to the information provided by civil society organizations, officers who were designated as the link between the police forces and members of the LGBTI community, pursuant to the Directive, were often low-ranking agents. Further, reportedly, training was provided to “desk agents” but not to those agents who conduct street patrols. Meetings between then-IACHR President, Tracy Robinson and LGBT organizations from the Caribbean region of Colombia (and from Cali and Tumaco). Meetings held on Cartagena, Colombia. October 3, 2014. See also, IACHR, Annual Report 2014: Chapter V: Follow-up Report to Truth, Justice and Reparations: Fourth Report on Human Rights Situation in Colombia, May 7, 2015.
This includes a series of police trainings that have taken place in Caribbean countries in recent years, namely Barbados, Jamaica, St. Kitts and Nevis, St. Lucia, and Suriname.

The Inter-American Commission urges OAS Member States to enhance their efforts in training law enforcement personnel to refrain from abuses and violence based on prejudice. This training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing. Trainees should become familiar with local trends of violence that are based on prejudice, and should be made aware of the existence of groups, where they are present, that may specifically target people with non-normative sexual orientations or gender identities. Further, the IACHR urges OAS Member States to conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBTI persons who are deprived of liberty. Further, States must ensure that there are independent mechanisms to receive complaints in cases of torture, cruel, inhuman and degrading treatment, police abuse and other acts of violence by law enforcement agents and to ensure that they are effectively investigated.

b. Prevention of violence in the health sector

As highlighted in the previous chapter, the IACHR has received information on violence in the context of health care settings. The IACHR stresses that the reality of violence perpetrated by medical and non-medical personnel in public hospitals is a matter of serious concern. These are places in which persons in need of medical care should be able to obtain assistance, and should not to be the setting of further violence. The UN Human Rights Committee has expressly recommended that States guarantee equal rights to access health care to all individuals regardless of their


1264 Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.

1265 Jamaica Observer, Police sharpen to work with vulnerable groups, June 22, 2015. See also, response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Jamaica, Note 6/80/1 dated December 3, 2013, received by IACHR Executive Secretariat on December 16, 2013, p. 3.

1266 SKNVibes, Security personnel participate in LGBT sensitivity training, June 14, 2015.


1268 Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.
sexual orientation; and has called for awareness-raising programs to be launched to combat social prejudice.\footnote{1269}

442. The Pan American Health Organization has developed important blueprints to guide clinicians and health administrators in Latin America and the Caribbean, in both the general health sector as well as within specialized health clinics, in order to strengthen the ability of health care providers to address the distinct health needs of gay men (and other men who have sex with men),\footnote{1270} as well as trans persons,\footnote{1271} within the context of health promotion and health care delivery. These guidelines also address prevention, detection, and general measures to address violence against gay men, men who have sex with men, and trans persons.

443. Health care professionals should receive continuous training on matters of sexual, gender and bodily diversity. States should ensure that principles of medical ethics are respected and that health services are provided without discrimination, including on the basis of sexual orientation, gender identity, or gender expression. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.

444. With respect to “therapies” which attempt to change the sexual orientation or gender identity of persons with non-normative sexualities or gender identities or expression, often in the absence of their informed consent, the IACHR recommends that OAS Member States undertake measures to ensure that the regulatory entity of the health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer these services. Further, States shall adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject. In general terms, practices that cause harm to the physical, mental and social health should not be accepted as medical therapy.

445. Regarding the rights of intersex people, the IACHR welcomes the position adopted in 2013 by the National Institute Against Discrimination, Xenophobia and Racism of the Ministry of Justice, Security and Human Rights of Argentina, which has affirmed that intersex persons have the right to physical integrity and to self-determination of their own bodies, and that all medical protocols must ensure the right to free, prior, and informed consent.\footnote{1272} The Commission also welcomes a set of guidelines issued by the Ministry of Health of the Province of Buenos Aires (Argentina, which specifically address the issue of surgeries on intersex children and expressly incorporates conclusions from the First International Intersex
Forum as recommendations.\textsuperscript{1273} According to information received by the Commission, the Ministry of Health has conducted trainings in hospitals based on these guidelines.\textsuperscript{1274}

446. The IACHR takes note of positive developments in jurisprudence in several countries in the Americas. For example, in its most recent consideration of issues relating to intersex persons, the Constitutional Court of Colombia held that intersex children should decide themselves, via their free and informed consent, whether or not they want to undergo surgery, given the right “to free development of one’s personality, sexual identity and personal autonomy.”\textsuperscript{1275} Among other recommendations, the Court urged the Ministry of Health to “develop guidelines and official medical protocols” to effectively address the birth of intersex persons, including the mandatory establishment of a multidisciplinary team including a social worker and a psychologist to provide assistance to intersex persons and their families.\textsuperscript{1276} In the United States, a local intersex organization filed lawsuits in state and federal courts in South Carolina on behalf of “M.C.,” a 16-month-old intersex boy who had been subjected to irreversible genital surgery while in state custody in an effort to make his body appear female. The organization alleges that, following the state’s actions, “M.C. has since grown into a healthy 8-year-old boy, although he will never get back the phallicus and testicle that were removed.”\textsuperscript{1277}

447. Since 2013, the OAS General Assembly has urged OAS Member States to afford appropriate protection to intersex people and to implement policies and procedures, as appropriate, to ensure that medical practices are consistent with applicable human rights standards.\textsuperscript{1278} The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also called upon all States to repeal any law allowing intrusive and irreversible treatments, including forced “genital-normalizing” surgery, when enforced or administered without the free and informed consent of the person concerned.\textsuperscript{1279}

448. The IACHR notes that the principle of autonomy, expressed through full, free, and informed decision-making, is embodied in human rights law.\textsuperscript{1280} The UN Special Rapporteur on the right to health referred to the importance of informed consent

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for intersex persons and recommended that health-care providers strive to postpone non-emergency invasive and irreversible interventions until the child has sufficient maturity to provide informed consent. 1281 Further, in a 2015 Report the Commissioner for Human Rights of the Council of Europe stated that “sex assignment treatment should be available to intersex individuals at an age when they can express their free and fully informed consent.” 1282

449. The Commission notes that specific safeguards for intersex children must be incorporated into legal instruments and medical protocols to protect and ensure the right of intersex children to informed consent. Further, training must be conducted with relevant stakeholders. A 2014 statement by several UN agencies affirmed that health-care professionals should be “educated and trained about bodily diversity as well as sexual and related biological and physical diversity, and that professionals should properly inform patients and their parents of the consequences of surgical and other medical interventions.” 1283

450. The IACHR recommends that OAS Member States and protocols that call for non-medically necessary interventions on intersex children without their full, prior and informed consent. These surgeries should be postponed until the concerned person is able to provide full, prior, and informed consent, and a decision to not undergo such procedure should be respected. Non-intervention should not hinder or delay registration of birth with relevant State authorities. Further, given the need to eradicate stigma around intersex persons, OAS Member States should strive to raise awareness around human rights violations faced by intersex persons, through policies and programs that sensitize the general public and the medical community. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics be revised and modified with the purpose of ensuring that intersex persons effectively enjoy the highest attainable standard of health and other human rights.

451. Further, OAS Member States must respect the right to privacy of intersex persons. As such, intersex persons should not be a constant target of medical photography and unnecessary genital exams for non-consensual research. Additionally, OAS Member States must provide support to intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood. The IACHR strongly recommends that OAS Member States consult with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.

452. Therefore, the IACHR urges all OAS Member States to take steps to design and implement public policies that ensure the right of lesbian, gay, bisexual, trans and

1281 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, August 10, 2009, para. 46.
intersex persons to access health care services without being subject to discrimination, violence, or ill-treatment.

c. **Prevention of violence in the education sector**

453. The Commission has condemned acts of intimidation and harassment in educational environments, and has urged OAS Member States to adopt and enforce effective measures to prevent violence and discrimination against LGBTI persons in both public and private educational institutions. The UN Committee on the Rights of the Child has expressed concern about discrimination against children on the basis of sexual orientation and gender identity and has urged States to ensure that educational programs address the situation of discrimination against children based on sexual orientation and gender identity.

454. States must ensure that their education policies are designed to change social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them. Indeed, the IACHR has reaffirmed the key role that education plays in the promotion and protection of human rights, by encouraging cultural change that fully embraces diversity and promotes acceptance of diverse sexual orientations and gender identities.

455. One of the key measures that States should implement is comprehensive sexuality education in school curricula, which includes a perspective on bodily, sexual and gender diversity. The UN High Commissioner on Human Rights has affirmed that limiting or obstructing information related to sexuality, or using materials that contain stereotypes and prejudices concerning LGBTI persons, can contribute to violence. Conversely, comprehensive sexuality education can be a tool to combat discrimination. The UN Special Rapporteur on the Right to Education has stressed that comprehensive sexuality education is a basic tool for ending discrimination against LGBTI persons and that it “must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity.” In this regard, UNESCO has added that “information should cover non-discrimination, equality and gender roles, and sexual diversity.”

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1290 UNESCO, Education Sector Responses to Homophobic Bullying, 2012, p. 42.
As is the case with violence prevention in general, data collection is a key element in the design of policies to prevent violence in educational environments. Consequently, UNESCO has urged States to strengthen their evidence base by collecting data on the nature and scale of the problem of bullying in educational institutions that is based on sexual orientation and gender identity, and its impact on educational goals. The IACHR has been informed of some initiatives in this regard that have been undertaken by the ministries of education in countries such as Brazil and the United States. Further, in 2008, several ministries of education in the region signed a declaration on “Preventing through education.” This declaration expressly contemplates the implementation of multi-sectoral strategies of comprehensive sexuality education with a broad human rights perspective, including gender aspects as well as topics related to the diversity of sexual orientations and gender identities.

The Commission notes that UNESCO has recommended a crosscutting strategy to prevent bullying of this nature, including using evidence to raise the awareness of key stakeholders (education officials, teachers’ associations, community leaders, and parents) about the nature, scale, and impact of bullying against LGBTI persons. UNESCO has identified a number of key skills in which teachers and school authorities should be specifically trained, which include teaching skills to address bullying, and the facilitation of age-appropriate classroom discussion of sexuality, among others. The IACHR emphasizes that sensitization and training play a key role in the prevention of violence against LGBTI persons in educational environments.

B. The State’s Obligation to Investigate, Prosecute and Punish Crimes committed against LGBTI Persons

1. The obligation to Ensure Access to Justice

The IACHR has defined access to justice as a de jure and de facto access to judicial bodies and remedies for protection. The Commission has stated that the right to an effective judicial remedy must be understood as the right of every person to

1291 UNESCO, Education Sector Responses to Homophobic Bullying, 2012, p. 27.
1292 In Brazil, the implementation plan of the Ministry of Education includes the “Schools without Homophobia” program, which involves transforming curricula to include sexual and gender diversity perspectives, training, and maintaining safe spaces for students in classrooms. UNESCO, Education Sector Responses to Homophobic Bullying, 2012, p. 32.
1293 The IACHR has been informed that the US Department of Education’s National Center for Education Statistics (NCES) compiles data on violence in schools. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), pp. 3, 5, 12, 28.
1294 First Meeting of Ministers of Education and Health to Stop HIV and STIs in Latin America and the Caribbean, Ministerial Declaration: Preventing through education, August 1, 2008, para 3.2.
1296 UNESCO, Education Sector Responses to Homophobic Bullying, 2012, p. 42.
access a tribunal when any of his or her rights “have been violated (whether a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.”

459. Access to justice is essential to the eradication of violence against LGBTI persons. It is a necessary component of States’ compliance with their international obligation to apply due diligence in responding to human rights violations. In this regard, the IACHR acknowledges certain initiatives aimed at ensuring access to justice that have been undertaken by OAS Member States. For example, the City of Buenos Aires created a specific office within the Observatory of Gender Issues with a mandate to propose initiatives to remove obstacles to access to justice for LGBTI persons. In Colombia, the “Group for Urgent Cases” was created in 2012 to identify and follow up on cases of violence against LGBTI persons. In Chile, the Office for the Prevention of Crime (“Subsecretaría de Prevención del Delito”) within the Ministry of the Interior expressly included a section on sexual diversity in the plan of action for its Program for the Support of Victims (“Programa de Apoyo a Víctimas”), as a result of an agreement with civil society.

460. However, in general terms, the IACHR has found that LGBT persons encounter numerous specific barriers — in addition to difficulties that they face in common with the general population — when they seek justice. These include: lack of adequate attention and treatment when they attempt to report crimes; negligent and biased attitudes of law enforcement personnel; stereotyped assumptions about the motives for crimes, based on the victim’s sexual orientation, gender identity, or gender expression; increased fear of further victimization or retaliation, which acts as a serious deterrent against reporting crimes; lack of specialized legal aid programs; existence of legislation criminalizing same-sex intimacy between consenting adults; existence of legislation or judicial precedent which condones or justifies violence against LGBT persons; discriminatory attitudes of judges and other officials within the justice system; and high risk of victims having their credibility questioned or their allegations disbelieved; among others.

461. With respect to intersex persons, the IACHR takes notes of an statement by the UN High Commissioner for Human Rights indicating that “violations [of the rights of intersex persons] are rarely discussed and even more rarely investigated or prosecuted. The result is impunity for the perpetrators; lack of remedy for victims;
and a perpetuating cycle of ignorance and abuse.”

Also in 2015 the Commissioner for Human Rights of the Council of Europe made reference to the International Intersex Forum’s Public Statement, which called for “adequate redress, reparation, access to justice and the right to truth.” To this end, the Commissioner for Human Rights has recommended that “national human rights structures such as ombudspersons, equality bodies, human rights commissions and children’s ombudspersons should be active in their outreach towards intersex people, including children. They should be clearly mandated to work on issues related to intersex people and to provide victim-support services to them. There is a need to facilitate intersex persons’ access to justice.” Further, the statutes of limitations in many countries prevent intersex persons to access justice as they grow up and gain awareness of the harmful practices they were subjected to as children. Additionally, intersex persons in the Americas often experience difficulties in accessing their own medical records. This unavailability of medical records is another factor that hinders intersex persons’ access to judicial remedies.

a. Inadequate treatment when reporting crimes

Various civil society organizations and States from across the region indicate that LGBT persons avoid reporting crimes out of fear of further
victimization. According to many of these sources, this is especially the case with persons who have not revealed their sexual orientation or their gender identity to their family or community members. Further, trans persons whose documentation does not reflect their gender might be reluctant to report crimes committed against them. In fact, several sources indicate that when LGBT victims do decide to come forward and report acts of violence committed against them, their claims are frequently dismissed at the outset, without their being able to effectively report the crime, and they are often mistreated, verbally abused, harassed, or even physically attacked by police agents or other authorities.\textsuperscript{1309} Further reports show that the reliability of testimony that is provided by lesbian, gay, bisexual, trans, and intersex persons is often questioned, and their reports are not taken seriously.\textsuperscript{1310} Fear of retaliation or victimization may also affect witnesses, who are thereby deterred from providing valuable information that would assist the investigation of crimes against LGBT persons.\textsuperscript{1311}

463. According to the UN High Commissioner for Human Rights, victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality, or reprisals.\textsuperscript{1312} The UN Special Rapporteur on Torture has stated that discriminatory attitudes toward LGBT persons “can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal

\footnotesize{submitted by Colectivo Ovejas Negras, received by the IACHR Executive Secretariat on December 20, 2013, p. 4.}

\footnotesize{[Bolivia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, received by the IACHR Executive Secretariat on December 23, 2013; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Mexico, received by the IACHR Executive Secretariat on December 4, 2013, p. 8; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013 dated December 2, 2013, received by the IACHR Executive Secretariat on December 2, 2013, p. 4; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, “Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional,” March 2012, p. 7.}

\footnotesize{[Chile] Movimiento de Integración y Liberación Homosexual (MOVILH). “XI Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2012,” 2013, pp. 61-65; [Colombia] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos et. al., received by the IACHR Executive Secretariat on November 25, 2013, p. 14; Colombia Diversa, “Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011,” 2013, p. 50; [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, received by the IACHR Executive Secretariat on December 2, 2013, p. 13; Fundación Ecuatoriana Equidad, “Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador),” 2013, p. 68; [Guyana] Carrico, Christopher, Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 17.}


\footnotesize{OHCHR, Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, para. 25.}
standard of protection, including protection against violence carried out by non-State agents.”

464. States must put in place the safeguards needed to ensure that LGBT persons will not be deterred from reporting crimes because of obstacles attributed to State agents, such as ill or discriminatory treatment. LGBT victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBT victims, because they may fear further victimization following the disclosure of their sexual orientation or gender identity in public. In fact, such disclosure may even put them at great risk of violence in places where prejudice against persons with diverse sexual orientations and gender identities is pervasive.

465. State programs should ensure that victims and witnesses are not subjected to attacks by non-State parties and that the State institutions that investigate and prosecute crimes do not victimize them. Victims, witnesses, and those accompanying them, should always be treated with respect. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints. In the case of trans persons, agents should respect the gender identity of such persons and use their preferred pronouns. If uncertain about how to address a particular victim, State agents should respectfully ask which name, pronouns, and other language the person would prefer. The IACHR has received information on best practices in this regard. In sum, special efforts must be made to eradicate deeply rooted practices of mistreatment and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime.

b. Protection of victims and witnesses in criminal proceedings

466. The IACHR has previously stated that victims’ participation in the various procedural stages of criminal cases, where applicable under domestic legislation, guarantees the right to truth and justice, is part of the complex structure of checks and balances in criminal proceedings, and encourages public oversight of government actions. During the investigation stage and the judicial proceedings that follow, the victims of human rights violations, or their next of kin, should have meaningful opportunities to participate and be heard, in the clarification of the facts, the setting of punishment for those responsible, and the seeking of fair compensation.

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1314 For example, in Argentina, the Ministry of Security issued a resolution instructing federal security forces to refer to trans persons according to their gender identity, Ministerio de Seguridad, Resolución 1181/2011, 24 November 2011.
The IACHR has received reports that fear deters many witnesses and survivors of prejudice-based violence from reporting or coming forward with information that is key to securing arrests. This is particularly alarming in places where LGBT persons are specifically targeted by gangs or illegal armed groups. A 2012 civil society report on the situation of trans women in the Americas affirmed that even if such cases do reach the trial stage, witnesses are often threatened, and consequently the cases do not advance. Further, the IACHR has been informed that LGBT persons who have suffered violence at the hands of police or law enforcement, particularly trans women who engage in sex work, are often intimidated and threatened into not reporting abuses. The IACHR calls on OAS Member States to adopt measures to guarantee the life and personal integrity of those who report killings and other instances of prejudice-based violence, whether against State or non-State agents.

c. **Legal Aid Programs**

The IACHR views effective legal counsel and representation as being essential to ensure victims’ access to justice, especially in the case of persons who are members of groups that have been subjected to historic discrimination and exclusion, including lesbian, gay, bisexual, trans, and intersex persons. The Commission has received reports that lack of access to legal assistance is another obstacle that may dissuade LGBT persons from filing complaints. For example, the IACHR has been informed that in Haiti, lawyers are reluctant to represent LGBT persons “due to their strong religious affiliations or unwillingness to be associated with, or be perceived as allies of, the LGBT community.” Further, it is reported that lawyers who are willing to represent LGBT individuals or those perceived as being LGBT may substantially increase their rates, which acts as a significant additional barrier to legal representation.

The IACHR refers to the discussion in the previous chapter of the link between structural discrimination faced by LGBTI persons, particularly trans women, and poverty. The organization REDLACTRANS found that trans activists who file complaints generally do so without the assistance of a lawyer, in part because the trans organizations that support them do not have the financial means to provide them with legal assistance. Even in instances in which lawyers are available, such assistance can be ineffective due to lack of sensitivity to, or awareness of,
issues faced by trans persons. Taking this into account, the IACHR is of the view that legal aid programs are crucial to ensure the right of LGBTI persons to have access to justice and due process of law. The IACHR recommends State efforts to establish public legal aid programs that specifically serve LGBTI victims. The IACHR urges all OAS Member States to strengthen their public legal aid services — including legal advice, assistance, and representation — and ensure that LGBTI victims of crime are afforded access to justice.

d. Training for Justice Operators

470. The IACHR has used the concept of “justice operators” to refer to State officials and employees who play a role in the administration of justice system, and who perform functions that are essential to respecting and ensuring the rights to due process and access to justice. The term “justice operators” include judges, prosecutors, and public defenders. In its Report on Guarantees for the Independence of Justice Operators, the Commission stressed that proper training ensures that justice operators’ decisions effectively and properly satisfy legal requirements. The Commission also determined that such training should place special emphasis on human rights, so that all public officials involved in prosecuting cases can properly apply the relevant national and international norms, thereby avoiding acts or omissions that may result in a State’s failure to discharge its international human rights responsibilities.

471. In that Report, the Commission also urged States to prioritize the implementation of specialized training for judges, prosecutors, and public defenders regarding the rights of groups that, due to their characteristics, require specialized treatment. This is especially important with respect to lesbian, gay, bisexual, trans, and intersex persons. In this regard, the Commission specified that justice operators should receive specialized training to enable them to respect the dignity of members of such groups when they have been victims of human rights violations, give them adequate participation in processes that may involve them, and ensure their full access to justice, so that the acts of violence against them are prevented, investigated, and punished according to the requirements of international law.

472. The IACHR was informed that in various OAS Member States, training courses on sexual orientation, gender identity, and issues related to sexual diversity, have

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1324 The IACHR notes developments in Argentina, where the General Defender’s Office agreed in 2013 to provide legal aid and legal representation to LGBTI persons, in particular trans women victims of police abuse. Information submitted by the Office of the General Defender of the Nation (Commission on Gender Issues) - Ministry of Public Defense (Argentina), received by the IACHR Executive Secretariat on 30 June 2014, p. 4; Resolution DGN 276/2013.


been provided to judges and other justice operators, including public prosecutors, public defenders, and other public officials. The State of Colombia, for example, informed the IACHR that the National Directorate of Prosecution Offices ("Dirección Nacional de Fiscalías") has implemented the Comprehensive Plan of Action for the Defense of People’s Rights ("Plan integral de acción para la defensa de los derechos de la población"), which includes certain measures with regard to LGBTI people. These measures include the identification and prioritization of LGBTI cases under investigation by the Office of the Procurator General ("Fiscalía General de la Nación"), as has been done in the cases of trans women who were killed in Sincelejo and Maicao. However, the IACHR has received information demonstrating that in other Mexican states, despite the progress being made in terms of legislation that ensures a certain degree of equality for LGBTI persons, justice operators lack training in sexual diversity matters, thereby hindering governmental efforts to eradicate violence and discrimination.

473. As stated by the UN Special Rapporteur on the independence of judges and lawyers, prosecutors play an essential role in ensuring full equality with regard to access to justice, and thereby in preventing the recurrence of violence. In this regard, the IACHR notes that training on sexual and gender diversity should also be conducted for public prosecutors — and members of their teams — given that most of the time the effectiveness of an investigation will depend heavily on the ability and willingness of these particular officials to effectively identify elements which may reveal that a crime was based on prejudice.

474. This training should include a clear explanation of concepts central to sexual orientation, gender identity, and bodily diversity. It should acknowledge and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities. The IACHR has also recommended that States “give those within the criminal justice system information and training on issues around sexuality,
gender identity, and HIV/AIDS.”\textsuperscript{1334} The IACHR stresses that judges should receive continuous training on sexual and gender diversity issues. Special courses should not only aim to keep judges apprised of new legislative developments, but should also focus on the eradication of prejudice in the justice system against LGBTI persons. It is vital that this training not be limited to judges and that judicial employees at all levels receive appropriate training.

2. \textbf{The Obligation to Investigate, Prosecute and Punish with Due Dilligence}

\textbf{a. Impunity for Violence}

\textsuperscript{475} OAS Member States have the duty to prevent and combat impunity, which has been defined as “an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights”\textsuperscript{1335} that are protected by the inter-American human rights instruments. The Inter-American Court has established that if the State apparatus “acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the rights of those subject to its jurisdiction.”\textsuperscript{1336} The IACHR has indicated that impunity signals that violence and discrimination are acceptable, which in turn, fosters repetition.\textsuperscript{1337}

\textsuperscript{476} Accordingly, when States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which in turn fuels further violence and leads to mistrust of the victims in the justice system. During the past ten years the IACHR has been consistently receiving information concerning serious deficiencies in the investigation of cases of violence based on prejudice toward non-normative sexual orientations and gender identities. This hinders the possibility of bringing perpetrators to justice. For example, the UN Human Rights Committee has expressed concern over the lack of investigation and the high levels of impunity for acts of violence perpetrated

against LGBT persons in various OAS Member States, and has urged States to ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim be duly investigated, prosecuted, and punished.

477. The Commission notes that accurate statistics on conviction rates in cases of violence against LGBT persons in countries in the region range from limited to non-existent. In many States, as examined earlier in this Report, there is no data collection on violence against LGBTI persons, while in others there is some collection but no centralized unit or division at the national level for aggregating statistical data from the different agencies in the country. Further, in States in which such data collection mechanisms do exist, data produced by different state agencies may be contradictory and incongruent. Lack of judicial statistics further complicates the analysis of situations of impunity in cases of violence against LGBTI persons. Nevertheless, several States and civil society organizations have compiled enough information to contrast the number of killings with the number of cases in which investigations were opened and sentences have been handed down. For example, the State of Honduras informed the IACHR that the Office of the Attorney General registered at least 122 killings of LGBT persons between 2009 and 2013, out of which only 24% had reached the judicial stage, and in only 4% of which a final decision had been rendered by the courts. The State of Nicaragua informed the IACHR of a civil society report that indicated that, out of 17 killings registered between 1999 and 2013, only three convictions had been handed down. Figures reported in the 2013 Annual Report of the Bolivian Office of the Ombudsman show that in a ten-year period, at least 55 killings had been reported, but in only 12 had an investigation been opened, and in none of them had the courts issued a judicial decision. The State of Uruguay informed the IACHR that as of the close of 2013, civil society had reported at least 5 killings of trans women in 2012, without any of the investigations resulting in the identification of any of the perpetrators.

478. Civil society organizations also report high levels of impunity. Brazilian organizations affirm that the perpetrators had not been arrested in 67% of cases of violence against LGBT persons in various OAS Member States, and has urged States to ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim be duly investigated, prosecuted, and punished.

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1340 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 4.

1341 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Nicaragua, received by the IACHR Executive Secretariat on November 20, 2013, p. 10.


1343 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 dated December 20, 2013, received by the IACHR Executive Secretariat on December 20, 2013, p. 1; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013, p. 8. See also, Committee against Torture, Concluding observations: Uruguay, CAT/C/URY/CO/3, June 10, 2014, para. 21.
homicides committed against LGBT persons in 2013. In 2011 a local organization in Guatemala — which analyzed its own records as well as information gathered from official governmental agencies and media reports — indicated that perpetrators had not been identified in 66% of reported cases of violence against trans women. Organizations from Peru point out that, in 2011, the Peruvian National Police and the Public Ministry decided to open investigations in only 15% of the cases of killings of gay men and trans women registered that year. In Guyana, civil society organizations report that no charges had been brought in any of the three killings of LGBT persons registered in 2013. In December 2014, a Colombian organization informed the IACHR that the investigations in the cases of the 2008 and 2009 killings of human rights defenders Fredys Darío Pineda, Álvaro Miguel Rivera, and Wanda Fox, had stalled.

The IACHR notes that there is a tremendous difference between the number of cases in which investigations were opened with the number of those in which a final decision was handed down. The results that have been brought to the attention of the Commission speak of alarming levels of impunity. The IACHR will next examine more closely what are some of the factors that are related to these high levels of impunity.

b. Deficiencies in Investigation and Prosecution

i. Prejudice in the conduct of investigations, and lack of a differentiated approach

In 2000, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that “acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims. Measures should include policies and programs geared towards overcoming hatred and prejudice against [gay persons] and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.”

The IACHR welcomes measures adopted in recent years by countries in the Americas to effectively investigate crimes committed against LGBT persons. For example, the IACHR notes that some OAS Member States have either established specialized prosecutorial units or appointed a dedicated prosecutor to investigate...
crimes committed against LGBT persons. These countries include Brazil (states of Paraná, Espírito Santo, and Pernambuco), Colombia, Mexico (for example, Mexico City and Oaxaca), Honduras, and Nicaragua. Some of these specialized units are also responsible for guaranteeing the rights of LGBT persons in their jurisdictions, fostering educational programs, and promoting the formulation of public policies. Other administrative entities focused on issues of interest for LGBT persons may also contribute to the work of the judiciary or prosecution offices. For example in Honduras, the National Commissioner for Human Rights has a network of offices throughout the country that receive reports of crimes against LGBT persons, and has the competence to refer such cases to the Public Ministry for prosecution.

482. In 2014, the IACHR welcomed the launching of a protocol by the Supreme Court of Mexico that aids judges in deciding cases involving the rights of LGBTI persons. Although not binding, this instrument offers key principles to guide the adjudication of cases involving sexual orientation, gender identity, and bodily diversity. The Protocol identifies common stereotypes and misconceptions about LGBTI persons that hinder their right to access to justice without discrimination, especially in relation to their right to the recognition of gender identity, family life and relationships, work and employment, health and education, freedom of expression and association, the right to liberty, and to be free from violence. In this

1350 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.

1351 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.


1353 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014. According to the information provided by the State of Honduras, the “Special Unit for Killings with Social Impact” also deals with cases regarding aliens and journalists. See: Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Red Lésbica Cattrachas” (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 2.


1355 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11.

1356 IACHR, Press Release 95/14, IACHR Congratulates Mexican Supreme Court for Adoption of Protocol Involving Sexual Orientation and Gender Identity, August 29, 2014; See also, Supreme Court of Justice of Mexico, “Protocolo de actuación para quienes imparten justicia en casos que involucren la orientación sexual o la identidad de género,” August, 2014 (Available only in Spanish).
regard, the Protocol calls on judges to question the neutrality of the law when it is applied to cases involving persons who are disadvantaged on account of their sexual orientation or gender identity, and to evaluate evidence without using stereotypes regarding sexual orientation or gender identity.

The IACHR has received copious information regarding prejudice and bias in investigations of crimes against LGBT persons, both from States and civil society organizations. The IACHR has expressed concern over the tendency of state agents in the justice systems of countries in the Americas to make biased assumptions, from the very beginning of an investigation, with regard to the motives, possible suspects, and circumstances of crimes, based on the victims’ perceived or actual sexual orientation or gender identity. The usual consequence of these biased assumptions is that — instead of thoroughly collecting evidence and conducting serious and impartial investigations — police officers and other justice system agents direct their actions toward finding evidence that confirms their prejudiced theory of events, which in turn frustrates the purpose of the investigation and may lead to the invalidation of the proceedings.

Problems with the investigations of crimes against LGBT persons involve, in part, failure to investigate whether or not the crime was committed by reason of the victim’s gender identity or sexual orientation. Hence, in most cases, the victim’s sexual orientation or gender identity is completely disregarded in the investigation, despite its potential usefulness in identifying possible motives or suspects. In other instances, such discriminatory assumptions or prejudice may

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1358 See, for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by the IACHR Executive Secretariat on December 4, 2013, p. 8. See also, Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres (CONAVIM) (Mexico), “Estudio nacional sobre las fuentes, orígenes y factores que producen y reproducen la violencia contra las mujeres,” 2012, p. 434.


1361 See, for example, Cattrachas et. al., written submission presented in the context of a public hearing before the Commission. IACHR, Public Hearing *Homicides of [LGBT] Persons and Impunity in the Americas* 146th Period of Sessions, November 1, 2012.
also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all. 1362

485. The IACHR has received information establishing that, due to prejudice in the justice systems in countries in the region, killings of lesbian, gay, and bisexual persons are not categorized as often as they should be as hate crimes or crimes motivated by prejudice. Instead they are characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. When crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim (i.e., the prejudice may result in the crime being excused or less grave on the basis of the actions or conduct of the victim). This shift renders invisible the power structures that reproduce the homophobic stereotypes that underpin the prejudice. 1363

486. According to the trans activist organization Redlactrans, authorities in the countries of the region do not have a comprehensive framework for conducting investigations into killings of trans women. Rather, their collective approach seems to be limited to reproducing prejudices. For example, it is reported that a police representative in Central America affirmed that “there are three motives why [trans women] are killed: one, for standing on the corner [implying sex work]; two because they steal from a client; and three, because they belong to criminal groups. Oh! And they also kill each other.” 1364

487. These biases and prejudices that are present in the handling of these cases render the investigations ineffective. This ineffectiveness of the justice system fosters high rates of impunity, which in turn lead to the chronic repetition of such crimes, leaving the victims and their families in a state of absolute defenselessness. 1365 All of these circumstances play a major role in the obstruction of justice, and perpetuate barriers to adequate prosecution of, and reparations for, crimes against persons with non-normative sexual orientations and gender identities.

488. Violence that takes place in the context of an intimate relationship can also be based on prejudice, whether the relationship is same-sex or different-sex. When someone who is lesbian, gay, bisexual, or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims, regardless of whether there is indicia to indicate that the victim had an intimate relationship with the alleged perpetrator.

489. As examined in the second chapter of this Report, not all acts of violence against LGBT persons can be characterized as violence based on prejudice. The IACHR

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1364 Redlactrans, The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 21. Translation by the IACHR.
1365 IACHR, Press Release No. 51/12, IACHR urges States to End Homophobia and Transphobia, May 17, 2012.
notes the difficulties in determining whether or not such violence is based on prejudice. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out with due diligence. Notwithstanding the fact that not all acts of violence against LGBT persons are motivated by prejudice, remedying existing levels of impunity and the prevalence of crimes of violence against LGBT persons requires that such crimes receive full and unbiased investigation.

ii. Acquittal or mitigated sentencing due to the sexual orientation or gender identity of the victim

The IACHR is highly concerned about information it has received regarding judicial decisions that accept legal defenses justifying murder or other acts of violence. The Commission has been informed that courts in the region have partially or fully excused crimes such as murder or assault against LGBT persons, because the attacks in question were supposedly committed in response to same-sex sexual advances, or because of the gender identity of the victim. In these cases, the courts effectively blame the sexual orientation or gender identity of the victim for the accused’s acts of violence.

In the United States, for example, defendants accused of murdering LGBT persons have attempted to justify the killing by arguing that the violence was prompted by alleged sexual advances made by the victim (commonly referred to as “gay panic defense”), or by the realization that the person with whom the perpetrator was having or had had a sexual encounter or relationship was trans (commonly referred to as “trans panic defense”); which have in some cases resulted in a mitigated sentence. According to the American Bar Association (ABA), the “gay panic” and “trans panic” defenses have been used by defendants facing trial in U.S. courts as a reason to “claim insanity or diminished capacity,” “to bolster a defense of provocation,” or “to strengthen their case for self-defense.”

In August 2013, the ABA House of Delegates passed a resolution urging “federal, state, local and territorial governments to take legislative action to curtail the availability and effectiveness of the ‘gay panic’ and ‘trans panic’ defenses.” According to the ABA, this legislative action should include: (a) requiring courts, upon request of a party, to instruct the jury not to let bias or prejudice influence its decision about the victims or defendants based upon sexual orientation or gender identity; and (b) specifying that neither a non-violent sexual advance nor the

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discovery or someone’s sex or gender identity constitutes legally adequate provocations to mitigate the crime.\textsuperscript{1370} In this regard, the Inter-American Commission welcomes the State of California’s groundbreaking bill passed in September 2014, reported to be the first bill to ban the use of "gay panic" and "trans panic" defenses in U.S. courts.\textsuperscript{1371}

493. The IACHR has received a report about the mitigation of a sentence in the case of a killing of a gay man in Colombia, based on a defense of sudden "rage and intense pain" (\textit{atenuante de ira e intenso dolor}).\textsuperscript{1372} On a different but related topic, the Commission was informed of a ruling issued by an appellate court in Argentina in 2015, which considered the purported sexual orientation of a 6-year-old male sexual abuse victim, to be extenuating circumstances that justified a lesser sentence for his abuser than would otherwise be proportionate to the crime. On that occasion, the IACHR emphasized that "a person's sexual orientation or gender identity or expression should not be considered relevant to extenuate or justify the seriousness of criminal conduct committed against that person."\textsuperscript{1373}

494. Further, the IACHR has been informed that several courts in the Commonwealth countries of the Caribbean have accepted a "same-sex sexual advance defense" either as a partial defense resulting in a conviction for a lesser offense, for example, reducing a crime from murder to manslaughter, or as a full defense leading to acquittal, for example, cases in which homicide was deemed "justified."\textsuperscript{1374} The IACHR has received reports of cases of violence against LGBT persons in which such defenses led to mitigation or acquittal in Barbados,\textsuperscript{1375} Dominica,\textsuperscript{1376} Jamaica,\textsuperscript{1377} The Bahamas,\textsuperscript{1378} and Trinidad and Tobago.\textsuperscript{1379} In one of the cases in The Bahamas, the judge affirmed, "one is entitled to use whatever force is


\textsuperscript{1375} Harewood v The Queen BB 2009 CA 22 (December 21, 2009) (CA, Barbados).


\textsuperscript{1377} See also, R v Bartley (1969) 14 WIR 407 (CA, Jamaica) 411.

\textsuperscript{1378} Penal Code of The Bahamas, Art. 107(4)(j)). For the prevention of, or for the defense of himself or any other person against any of the following crimes, a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing, namely: [...] forcible unnatural crime. Pink News, \textit{Nassau man freed after using gay panic defence at murder trial}, February 2, 2009.

\textsuperscript{1379} Marcano v The State Cr. App. No. 2 of 2002 (July 26, 2002) (CA, Trinidad and Tobago).
necessary to prevent one’s self being the victim of a homosexual act,” making reference to a non-violent sexual advance and not to a sexual assault.

In these countries, a finding of justifiable homicide is a full defense to murder that leads to acquittal, and justifiable homicide includes a homicide committed to prevent “a forcible and atrocious crime,” which includes a non-violent same-sex sexual advance. Mitigation of a crime is the result of the judge or jury accepting a partial defense to murder, finding that the defendant lost his or her self-control as a result of provocation by the victim’s actions or words. According to a recent study of these cases in the Commonwealth Caribbean, the defense of provocation has been raised in homicide cases “where (1) the defendant killed his female partner after discovering that she was involved in a sexual relationship with another woman [Trinidad and Tobago, 2008], (2) the defendant killed the deceased and argued that the killing was a response to a ‘homosexual advance’ by the deceased [Trinidad and Tobago, 2002], and (3) the defendant and the deceased were in a same-sex relationship which ended in the defendant’s killing of his partner [Barbados, 2009].”

The aforementioned study calls for the “abolition of the defence of justifiable homicide and for reform of the defence of provocation to exclude the availability of the defence of provocation where the homicide occurred in response to a non-violent sexual advance.” The study recommends the inclusion of sexual orientation as a prohibited ground of discrimination in judicial codes and in guidelines for judicial conduct, given that such codes derive from a judicial responsibility to observe standards of equality and fairness.

The Commission notes that the acceptance of these defenses that are based on the sexual orientation or gender of the victim contributes to the reinforcing of harmful stereotypes against LGBT persons. These defenses also serve to shift the blame from the perpetrator to the victim. The IACHR urges OAS Member States to undertake the necessary legal and public policy changes to expressly establish that the sexual orientation, gender identity or gender expression of victims can never be used to establish a partial or full justification of crimes committed against them.

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1381 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 18.
1383 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 20 (footnotes omitted).
1384 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013.
1385 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013.
c. The Due Diligence Standard

498. The Commission urges States to take all necessary measures to apply due diligence in preventing, investigating, and sanctioning violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, which includes education and health facilities.\textsuperscript{1386} Regarding the investigation of crimes against LGBT persons or those perceived as such, the Commission has also urged States to investigate the possibility that the violent acts were committed because of the victim’s sexual orientation, gender identity, and/or gender expression.\textsuperscript{1387}

499. The Commission and the Inter-American Court have affirmed that States have the obligation to investigate human rights violations in order to ensure the enjoyment of the rights established in the American Declaration and the American Convention.\textsuperscript{1388} The obligation to investigate is an obligation of \textit{means} rather than \textit{results}. Nevertheless, States must take seriously the obligation to investigate and “must not treat it as a mere formality, preordained to be ineffectual.”\textsuperscript{1389} In this regard, in pursuing or considering whether to pursue investigative procedures, the State must not rely solely on the initiative of the victims or their next of kin, or on their offer of proof.\textsuperscript{1390} In light of this obligation, once State authorities are aware of a killing, for example, they should initiate \textit{ex officio} (on their own accord) and without delay, a serious, impartial, thorough, and effective investigation, in accordance with international standards in this field.\textsuperscript{1391} This investigation must be carried out using all available legal means, with the aim of discovering the truth\textsuperscript{1392} and prosecuting, bringing to trial, and punishing all the perpetrators of

\textsuperscript{1386} IACHR, Press Release No. 60/13, \textit{IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas}, August 15, 2013.

\textsuperscript{1387} IACHR, \textit{Annual Report 2012} (Chapter IV, Cuba, LGBTI), para. 136.


the acts. The obligation to carry out an effective, independent investigation is especially important when State agents are, or could be, involved, given the potential for the State’s direct culpability in such cases and the risk that State agents may protect other State agents from facing justice.\textsuperscript{1393} That said, the Court has noted that States are equally under this obligation when third parties commit human rights violations, "because, if their acts are not investigated genuinely, they would, to some extent, be assisted by the public authorities, and this would entail the State's international responsibility."\textsuperscript{1394}

500. The Court has also affirmed that if the State fails to comply with its obligation of due diligence in a criminal investigation, this “may lead to the absence of sufficient evidence to clarify the events that are being investigated, to identify the possible perpetrators and participants, and to determine the eventual criminal responsibilities [under national law].”\textsuperscript{1395} In developing the concept of due diligence, the Inter-American Court has defined the guiding principles that must be observed in criminal investigations of human rights violations, and these include, \textit{inter alia}: recovering and preserving probative material; identifying possible witnesses; obtaining witness statements; and determining the nature, cause, place, and time of the act that is under investigation. In addition, competent professionals, using the most appropriate procedures, should thoroughly examine the scene of the crime and perform rigorous forensic tests.\textsuperscript{1396} Further, the Inter-American Court has clearly outlined the State’s obligation to investigate with due diligence killings of, and acts of sexual violence against women,\textsuperscript{1397} taking into account the causes and consequences of gender-based violence.

501. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity are investigated, and that the
perpetrators are brought to justice.\textsuperscript{1398} To this end, States should strengthen their national institutions with a view to: preventing and investigating acts of violence and human rights violations against LGBT persons; ensuring judicial protection for victims; and bringing perpetrators to justice.\textsuperscript{1399}

502. The IACHR has been informed that in many countries in the region where there is legislation that increases penalties for crimes committed on the basis of the sexual orientation or gender identity of the victim, the legislation is hardly ever applied to specific cases, and hate crimes are more often addressed as common crimes, disregarding the prejudice with which they were committed.\textsuperscript{1400} In this regard, the IACHR has been informed of the difficulties in prosecuting hate crimes in the United States.\textsuperscript{1401} Concerning Colombia, an NGO informed the IACHR that in all of the 730 cases of killings of LGBT persons documented between 2006 and 2014, no court had ever made a finding of aggravating circumstances, that would lead to an increased penalty, based on the crime having been motivated by prejudice.\textsuperscript{1402} In Chile, organizations have indicated to the Commission that the wording of the “motive” provisions in hate crimes legislation, which require that the crime be motivated by hate or prejudice, create an element of the crime that is too subjective and very difficult to prove. It has been argued that in these jurisdictions, the wording of these provisions makes it extremely challenging for hate crimes legislation to be effectively applied.\textsuperscript{1403}

503. The IACHR recognizes that the subjective element of motivation may be difficult to establish in many cases. It may not be easy to establish with certainty whether a crime was the result of prejudice on the part of the perpetrator, particularly in the

\textsuperscript{1398}OAS, AG/RES. 2863 (XLIV-O/14), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 5, 2014, res. para. 3; OAS, AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 6, 2013, res. para. 3; OAS, AG/RES. 2721 (XLII-O/12), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the second plenary session, held on June 4, 2012, res. para. 3; OAS, AG/RES. 2653 (XLI-O/11), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 7, 2011, res. para. 2; OAS, AG/RES. 2600 (XL-O/10), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 8, 2010, res. para. 2; OAS, AG/RES. 2504 (XXXIX-O/09), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 4, 2009, res. para. 2. All the resolutions are available in the section “links” of the LGBTI Rapporteurship’s web, accessible through the IACHR page: www.iachr.org.

\textsuperscript{1399}OAS, AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression, adopted at the fourth plenary session, held on June 6, 2013.


\textsuperscript{1402}Response to the IACHR questionnaire provided by ‘Movimiento de Liberación e Integración Homosexual – ‘MOVILH’ (Chile) dated November 20, 2013, p. 15; Response to the IACHR questionnaire provided by ‘Fundación Iguales’ (Chile), received on January 29, 2014, p. 6.
absence of a confession of a prejudice-based motive. However, certain other evidence or the presence of certain circumstances may be valuable indicia of the existence of such motivation. In the United States, for example, the FBI has issued a set of guidelines for the investigation of bias-based crimes. The FBI indicates that while no single fact is likely to be conclusive, certain elements, particularly when found in combination, are supportive of a finding of bias.\textsuperscript{1404} The FBI warns that these elements “are not all-inclusive of the types of objective facts which evidence bias motivation,” and emphasizes the need to conduct case-by-case assessment of the facts to determine bias motivation.\textsuperscript{1405} Civil society organizations, such as Colombia Diversa, have attempted to establish criteria for distinguishing crimes committed based on the perceived or actual sexual orientation or gender identity of the victim, from crimes committed with other motivations.\textsuperscript{1406} These criteria include factors relevant to the alleged perpetrator (if known), the alleged motive, the level of brutality exerted, and the place where the violence occurred.\textsuperscript{1407} The

\begin{enumerate}
\item The following elements were included, which make reference not only to sexual orientation and gender identity, but also to race and ethnicity, among other factors: (1) the offender and victim being of a different sexual orientation and/or gender identity; (2) bias-related comments aimed at the victim; (3) bias-related drawings, markings of symbols left at the scene or objects used by the perpetrators; (4) elements related to the neighborhood where the crime took place (either because the victim is a member of a group overwhelmingly outnumbered by other residents; the crime took place in a neighborhood where previous hate crimes took place; several incidents occurred in the same locality at our about the same time and all the victims were of the same sexual orientation or gender identity); (5) a substantial portion of the community where the crime occurred perceive it as motivated by bias; (6) the victim was an activist or defender or participated in activism to defend or promote the rights of LGBT persons, even if the victim was not a member of the targeted group; (7) the incident coincided with a day of significance to the LGBT community; (8) the perpetrator was previously involved in a similar bias motivated crime or there is indication that a hate group was involved; and (9) a historically-established animosity based on bias existed between the victim and the offender. CJIS Division, UCR Program, \textit{Hate Crime Data Collection Guidelines and Training Manual}, February 27, 2015, pp. 6-7.
\item However, as one civil society organization indicated, given the historical discrimination to which this group has been subjected, prejudice is likely to be the motive for the majority of such crimes. Lleras, Catalina, \textit{Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa}, “Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011,” Bogotá, 2013, p. 17.
\item In the case of lesbian women, the criteria included: (i) the acts occurred in places where [gay and lesbian persons] socialize; (ii) they were killed with their partner; (iii) the victims were human rights defenders; (iv) they had received discriminatory threats from, or statements by, the perpetrator; and, (v) the alleged perpetrators were members of illegal organizations. In the case of gay men, the criteria included: (i) they were assassinated as a couple; (ii) the incidents occurred in places where gay men socialize; (iii) the incidents took place at the victims’ residence; (iv) the excessive nature of the violence used to kill them; (v) the purported participation of homophobic groups; (vi) the purported participation of paramilitary groups; and (vii) the type of weapon used. In the case of trans women, the factors that determined the classification of these as homicides due to prejudice were: (i) the occurrence of the incidents in places where [gay and lesbian persons] socialize or in places where sex workers are known to meet clients; (ii) the excessive violence with which the homicides were committed; (iii) the existence of reports on risk in the Early Warning System (Sistema de Alertas Tempranas) of the Office of the Human Rights Ombudsman that warned of the risk to these persons in light of earlier threats; (iv) the alleged responsibility of trans-phobic groups; (v) the alleged responsibility of illegal armed groups; and (vi) the status of the victims as human rights defenders or LGBTI activists. Lleras, Catalina, \textit{Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa}, “Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011,” Bogotá, 2013, p. 19, cited in IACHR, \textit{Truth, Justice and Reparation: Colombia}, 2013, paras. 995-996.
\end{enumerate}
failure to apply due diligence in the investigation is often the reason these factors are not investigated.

504. The IACHR calls on OAS Member States to effectively and impartially investigate all crimes committed against LGBTI persons, and to develop guidelines or protocols that include indicia or elements that would assist police officers, prosecutors, and other investigators in determining whether a particular crime was committed based on prejudice against the victim’s actual or perceived sexual orientation and/or gender identity. In this regard, the IACHR considers that the following elements, among others, may be indicative of a crime based on prejudice, particularly when found in combination: (i) statements or declarations by the victim or alleged perpetrator that the crime was motivated by prejudice; (ii) the brutality of the crime and signs of animosity (including cases of homicide in which the nature and level of violence appeared to go beyond a mere intent to kill and were directed at punishing or “erasing” the identity of the victim); (iii) insults or comments made by the alleged perpetrator(s) that made reference to the sexual orientation and/or gender identity of the victim(s); (iv) the victim’s status as an activist in LGBT issues or a defender of LGBT persons and their rights, or the victim’s participation in events to recognize the diversity of LGBT people; (v) the presence of a known bias against LGBT persons on the part of the perpetrator, or situations in which the perpetrator is part of a group which is considered to be biased against LGBT persons; (vi) the nature or significance of the place where the violence or incident took place, or from where the victims were lured (for example, a place known to be frequented by LGBT persons, or an area where sex work involving trans persons is known to take place); and (vii) the victim or victims having been part of a pair or group of LGBT persons at the time the violence occurred.

505. The IACHR wishes to stress that the list of elements in the preceding paragraph is not exhaustive, and a crime can be prejudice-motivated in the absence of any of these elements. In other words, not all crimes against LGBT persons or those perceived as such will have all or even some of these characteristics. When a crime is committed against LGBT persons, States must ensure from the very beginning of the investigation that there is an examination into the motives of the attack, and that this examination includes consideration of the relevance of the victim's sexual orientation or gender identity, real or perceived. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.

506. The IACHR urges OAS Member States to take into account the specific circumstances of how violence based on prejudice is manifested in their countries, and to consult civil society organizations and LGBT activists in order to adequately craft protocols that set out the indicators of potential prejudice-motivated crimes that are relevant to investigations in the given country. The IACHR highlights that this recommendation is not limited to OAS Member States that already have in place hate crime legislation or aggravated penalties for crimes committed based on prejudice against the sexual orientation and/or gender identity of the victims. Rather, this recommendation is directed to all OAS Member States, because the right to truth, in this case, the right to know whether or not an act of violence was motivated by prejudice against LGBT persons, is a key component of the right to
access justice and reparations. As the IACHR has established, “the right of a society to have full knowledge of its past is not only a form of reparation and clarification into what has happened, but is also aimed at preventing future violations.”

507. The European Court of Human Rights affirmed in a recent decision that “[w]hen investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives.” The European Court further indicated that this obligation implies that the State make its best efforts to do “whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by gender-based discrimination.”

508. The European Court affirmed that “[t]reating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights... and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes.” The European Court further stated that the absence of a meaningful investigation, which includes diligent efforts to unmask motives of prejudice, undermines public confidence in a State’s anti-discrimination policy.

509. The IACHR recalls that both the Commission and the Court have issued guidelines on how to conduct effective and thorough investigations into violent deaths, including the need to identify victims and witnesses, recover probative material, exhaustively search the crime scene, and adequately preserve evidence throughout the chain of custody. The Commission highlights that, in addition to opening lines of investigation from the very outset that take into account the possibility of prejudice-based motives, and conducting investigations that are free from stereotypes related to sexual orientation and gender identity of the victim, OAS Member States must take into account the general context of bias, prejudice, and violence against LGBTI persons in their countries, which may be more profound in places outside of the major cities. Further, in conducting these investigations, State authorities should rely on expert witnesses who are able to identify the often-


1409 This case concerns the ill-treatment of a group of people detained following a LGBT-Pride March, which was disrupted by counter-protesters, held in Tbilisi, Georgia on May 17, 2002.

1410 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, para. 67.

1411 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, paras. 67, 77.

1412 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, para. 80.

nuanced discrimination and prejudice against diverse sexual orientations and
gender identities, which is pervasive and embedded in the societies of the region.
The investigation into killings and other acts of violence against LGBTI persons
must begin promptly and without undue delay, and must constitute an effort by
the State to take all necessary measures in the search for the truth, in order to
clarify what happened and unmask possible discriminatory motives.

C. States’ obligation to provide reparations for human
rights violations

510. Every violation of an international obligation to respect and protect human rights
which results in harm creates a duty of the State to make adequate reparations.1414
The word *reparation* is an umbrella term that covers the various ways in which a
State may make amends for its failure to comply with its international human
rights responsibilities.1415 The obligation to investigate, as examined in the
previous section, also constitutes a form of reparation, given its link to a victim’s
right to know the truth of what occurred, including the right to know the accused’s
motives regarding the crime committed. This extends beyond the victim, or the
victim’s next of kin, to society as a whole. This is because one purpose of
recognizing a right to know the truth is the prevention of the repetition of the
wrongdoing that occurred.1416 The IACHR has also affirmed that the State can
adopt means of reparation that are both judicial and non-judicial.1417

511. The Inter-American Court has further established a link between victims’ access to
justice and the right to truth, affirming that States must ensure that “victims or
their next of kin have full access and legal standing at all the stages of the
investigation and prosecution of those responsible.”1418 In this regard the IACHR
has been informed that trans women who are killed often do not have relatives
who will come forward and claim the body or seek justice on behalf of the
deceased. Due to the loss of ties with immediate family and other relatives that
trans persons often experience, it may fall to the deceased’s “social family,” which
often comprises other trans women, to seek justice. However, such persons may be
barred from acting on behalf of the deceased, in the absence of a blood
relationship, and may themselves face discrimination in their attempts to seek
justice in the name of the deceased. It is very likely that this situation hinders
access to justice in cases involving victims who are trans women.

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1414 See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs (Art. 63.1

1415 See, *inter alia*, I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations (Art. 63.1 American

1416 IACHR, Report No. 37/00, *Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador*, April 13,

1417 IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19,

1418 IACHR, The Right to Truth in the Americas, 2014, para. 126, citing several Inter-American Court decisions.
The Commission wishes to highlight that adequate reparation for human rights violations resulting in harm includes measures that are tailored to the individual victim or next of kin and are calculated to provide adequate restitution, compensation, and rehabilitation for the victim, and also includes general measures of satisfaction (medidas de satisfacción) and guarantees of non-repetition.\textsuperscript{1419} The Inter-American Court has further stated that in the context of structural discrimination, “the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”\textsuperscript{1420}

Specifically with respect to reparations regarding intersex persons, the IACHR notes that the International Intersex Forum’s Public Statement has called for the provision of “adequate redress, reparation, access to justice and the right to truth.”\textsuperscript{1421} Additionally, the Council of Europe has acknowledged the position of the German ethics council, indicating that there should be “at least symbolic compensation especially to those who, on account of what would now be seen as incorrect medical treatment, are afflicted with physical or psychological suffering and often also incur expense that would not have arisen without this treatment.”\textsuperscript{1422} The UN Committee on the Rights of the Child has also affirmed that intersex persons and their relatives who are victims of these medical interventions should receive reparation and compensation.\textsuperscript{1423}

The IACHR has received reports of measures adopted by various OAS Member States seeking to provide reparations for harm caused by violations of human rights. In Argentina, for example, a Buenos Aires court ordered the local government to pay the minimum wage to five elderly trans women—not in exchange for work performed, but as a government compensation to those individuals— as “extraordinary and reparative subsidies,” given the historical situation of marginalization and discrimination they had suffered.\textsuperscript{1424} These reparations were also granted to compensate for the women having suffered under the situation of generalized institutional violence and police abuse against the trans women community in Buenos Aires, Argentina.\textsuperscript{1425} Accordingly, the Argentinean Agency against Discrimination, Xenophobia and Racism (“INADI,” in


\textsuperscript{1423} ONU, Comité de Derechos del Niño, Observaciones Finales del cuarto informe periódico de Chile, CRC/C/CHL/CO/4-5, 15 de octubre de 2015, paras. 48-49.


Spanish) stated that the State had a duty to correct decades of invisibility and exclusion affecting trans persons. The Commission has also been informed that there is a bill pending in the Argentinean Congress, presented by several trans civil society organizations, which would mandate the provision of reparations to trans persons, due to institutional violence experienced in the past by many trans persons in Argentina because of the enforcement of legal provisions against cross-dressing and sex work, among others. The IACHR encourages the Argentinean State to pass this law.

LGBTI persons in Colombia have been prioritized to receive comprehensive reparations as victims of human rights violations, through Resolution 0223, which came into force in 2013. As of September 2014, at least 1,152 LGBTI persons had been registered as victims under this Resolution. Further, the State has informed the IACHR that its reparations program for victims of the armed conflict has benefited 880 internally displaced persons who are LGBT. The Commission was also informed that the Center for Historical Memory project now includes special attention to the historical memory of LGBT persons. Regarding Ecuador, the IACHR was informed by a civil society organization that the national law on truth, justice, and reparation for persons who have suffered serious crimes applies to LGBT persons.

The Commission calls OAS Member States to adopt measures to guarantee that LGBTI victims of human rights violations and their next of kin have effective access to reparations, in accordance with international legal standards. States must design and implement reparations programs that take into account the specific needs of lesbian, gay, bisexual, trans, and intersex persons, and which are the result of consultative processes with civil society organizations.

1431 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by ‘Fundación Manos que Construyen Paz’ (Colombia), received by IACHR Executive Secretariat on December 20, 2013 p. 14.
CHAPTER 7
CONCLUSIONS AND RECOMMENDATIONS
CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

517. In this Report the Inter-American Commission has highlighted pervasive violence in the Americas against lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, in all spheres of public and private life, and even in countries where there have been significant advances in law and policy regarding the rights of LGBTI persons. The Commission has described multiple forms of violence – often involving high levels of cruelty – that are aimed at punishing non-normative sexual orientations and gender identities, or persons whose bodies are different from standard female and male bodies. The IACHR has also examined the diversity of this violence and the specific and differentiated impact it has on groups or sectors of the population that have traditionally been subject to discrimination. At the root of this violence is widespread discrimination and intolerance regarding diverse sexual orientations, gender identities, gender expressions and persons whose bodies defy socially body presentations. States, through their action and inaction, enable this discrimination and intolerance, and in some instances even fuel it.

518. Societies in the Americas are dominated by principles of heteronormativity, cisnormativity, and the sex and gender binaries. Further, there is widespread intolerance toward LGBTI persons or those perceived as such, as well as the failure of States to effectively and adequately investigate and punish violence based on prejudice. In this Report, the IACHR concludes that the generalized context of social discrimination and intolerance regarding this diversity, combined with lack of effective investigations, and the absence of a differentiated approach to investigate, prosecute, punish, and provide reparations to crimes committed against LGBTI persons, are elements that have the effect of condoning and tolerating the violence, resulting in impunity and repetition.

519. The IACHR recognizes certain positive steps taken by States in the region in the areas of law and policy, but highlights that, by and large, States in the region have not integrated a differentiated approach that takes the rights of LGBTI persons into account in the domestic legal framework, public policies, and Executive-led initiatives and programs. The Commission notes that impunity regarding extrajudicial executions, killings, torture and other acts of cruel, inhuman, and degrading treatment, and other serious acts of violence against LGBTI persons is widespread. Even beyond this, there are countries in which violence is fueled by
legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

520. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals motivated by the prejudice against their sexual orientation and gender identity are investigated, and that the perpetrators are brought to justice. To this end, States are urged to strengthen their national institutions with a view to preventing and effectively investigating acts of violence and human rights violations against LGBTI persons, ensuring judicial protection for victims, bringing perpetrators to justice, and providing adequate reparations to victims.

521. Based on the findings of this Report, the Inter-American Commission on Human Rights issues the following recommendations to OAS Member States in order to protect and guarantee the rights of lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, to a life free from violence in the countries of the Americas.

GENERAL RECOMMENDATIONS

1. Undertake efforts and allocate sufficient resources to systematically collect and analyze data on the prevalence and nature of violence and discrimination based on prejudice against LGBTI persons, or those perceived as such. Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against LGBTI persons, and for formulating any needed policy changes. In collecting this data, States must take into account the following:

   a. Data collection efforts must be carried out in coordination with all branches of government, and, where applicable, with Offices of the Ombudsperson, Offices of Public Prosecution, and Public Defender’s Offices. Data collection systems must be capable of gathering information from a wide variety of sources including, but not limited to, police, forensic agencies, tribunals and courts, prosecution and public defender offices, all other relevant agencies of the justice system, ombudspersons’ offices, agencies providing assistance to victims, hospitals, schools, shelters, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans and intersex persons.

   b. Data collected must include information on the impact of legislation criminalizing same-sex intimacy between consenting adults in private, legislation against cross-dressing, legislation against loitering, and legislation aimed at protecting “public morality” (moral pública), and “buenas costumbres”. Data collection in this regard must include
disaggregated information on complaints and prosecutions related to the targeted application of these laws to LGBT persons, or those perceived to be LGBT.

c. States must collect data on human rights violations against intersex persons, including the prevalence of medical treatment of and surgeries performed on intersex persons, particularly surgical interventions aimed at altering the appearance of the genitals to make them more "female" or "male". Data in this regard must include the review of medical protocols and practices in public and private hospitals.

d. States must undertake efforts to collect data on violence against LGBTI persons that is disaggregated as much as possible according to multiple factors, such as: ethnicity; race; sex; gender; migration status and situation of displacement; age; status as a human rights defender; situation of deprivation of liberty; socio-economic status; among others.

e. Data collection systems must collect information in order for States to be able to understand the underlying causes of violence against LGBTI persons, as well as which groups within the overall LGBTI population are more vulnerable to certain types of violence. The collected information must include data on any patterns among LGBTI victims, such as: lack of access to education; lack of access to the formal labor market; lack of access to adequate housing; barriers to access other rights; the places where the acts of violence or discrimination took place; and the occupation of the victim. Regarding the occupation of the victim, the data must also record whether the act of violence or discrimination took place while the person was working, including carrying out sex work or survival sex. The characterization of the perpetrators must include, among other information, their relationship with the victim, if any. Other elements –such as the place where the violence took place- are also important to understanding violence based on prejudice.

2. Adopt the necessary measures to prevent torture, cruel, inhuman and degrading treatment or any form of police abuse against LGBTI persons, including protocols and guidelines directed toward law enforcement agents, and sensitization and training in: human rights; non-normative sexual orientations and gender identities and diverse bodies; and the rights of LGBTI persons.

3. Design and implement policies and programs to eliminate stigmatization, stereotyping and discrimination against LGBTI persons, or those perceived as such. Adopt comprehensive measures to encourage respect for the rights of LGBTI persons and social acceptance of diversity in sexual orientations, gender identities and persons who view themselves outside of the man/woman binary or whose bodies do not coincide with the socially accepted standard for male and female bodies.
4. Adopt measures to eradicate social stigma regarding intersex persons, which includes urgent measures to raise awareness, through policies and programs that sensitize the general public and the medical community, of human rights violations faced by intersex persons.

5. National Human Rights Institutions (NHRIs) are urged to strengthen their work on the promotion and protection of the human rights of LGBTI persons, including specific measures to counteract prejudices and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence against them. NHRIs are also urged to conduct outreach to intersex children and their families, to provide victim support services, facilitating contact with other intersex persons and with peer support groups.

6. Establish or strengthen specialized departments or units within Offices of the Ombudspersons, as well as other State institutions, to address the situation of violence and discrimination faced by LGBTI persons.

7. Adopt measures, including legislation, public policies, and State-run programs, to address the underlying causes of violence against trans and gender non-conforming persons. These measures must ensure, among other things, that trans persons have access, without discrimination, to formal employment, education, health care, and housing.

8. Review legislative frameworks that criminalize and stigmatize sex workers.

9. Make necessary amendments to law and public policy to prohibit medically unnecessary procedures on intersex persons, when such procedures are administered without the free informed consent of the person concerned.

10. Undertake all necessary measures to ensure compliance with the obligation to adequately redress human rights violations and provide reparations to LGBTI persons and their relatives who are victims of human rights violations.

11. Ensure that non-governmental organizations, civil society actors, and LGBTI persons and support groups, have direct participation in, and are systematically consulted and made part of decision-making processes regarding the development of legislation, public policies, and programs to address the human rights of LGBTI persons.

12. Undertake measures to follow-up on the commitments made by OAS Member States via resolutions passed at the OAS General Assembly, concerning human rights, sexual orientation, gender identity, and gender expression.

13. Undertake efforts to sign and ratify the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted by the OAS General Assembly on June 5, 2013.
RECOMMENDATIONS AIMED AT THE EXECUTIVE BRANCH

14. Take immediate steps to impose an explicit and formal moratorium on the enforcement of legislation that criminalizes consensual sex between persons of the same sex, laws against "gross indecency" and "serious indecency" - in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse- and legislation criminalizing cross-dressing.

15. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that protect “public morality” and “good conduct” (“buenas costumbres”) on vaguely defined grounds, are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.

16. Adopt comprehensive and countrywide public policies that guarantee the rights of LGBTI persons to be free from violence and discrimination with the participation of LGBTI persons.

17. Condemn and take a public stand against acts of violence and discrimination based on sexual orientation, gender identity and expression, and bodily diversity. Publicly call for effective and impartial investigations, sending a strong social message from the highest political level, that violence based on prejudice is not tolerated. Issue, whenever possible, positive public statements regarding the importance of defending, protecting, and promoting the human rights of LGBTI persons.

18. Undertake Executive-led approaches and responses to violence and discrimination against LGBTI persons, such as measures to initiate and maintain public debate around the underlying causes of violence against LGBTI persons and measures to prevent and combat it.

19. Adopt measures to ensure that public officials respect the rights of persons with diverse sexual orientations and gender identities and expressions. Public officials must respect human rights defenders and the spaces where their claims are debated, considered, and decided. Where these spaces do not exist, States must promote their existence as a means of ensuring democratic and pluralistic societies across the Americas.

20. Design and conduct educational campaigns, in coordination with ministries of education, in order to eliminate stereotypes, stigma, and invisibility surrounding intersex persons in school curricula. Ensure that education policies are specifically designed to modify harmful social and cultural patterns of conduct. The principles of equality and non-discrimination, with a special focus on sexual, gender, and bodily diversity, should be key elements of such policies.

21. Conduct awareness-raising and sensitization campaigns at the national level concerning the short-term and long-term effects of so-called “normalizing” interventions on intersex children.
22. Ensure that programs and policies designed to protect and promote the rights of LGBTI persons are sufficiently funded and staffed with personnel trained in the specific fields of non-normative sexual orientations, gender identities and expressions, and human rights.

RECOMMENDATIONS AIMED AT THE LEGISLATIVE BRANCH

23. Take measures to repeal laws that criminalize consensual same-sex intimacy, laws prohibiting "gross indecency" and "serious indecency," in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse, and legislation criminalizing cross-dressing. In the meantime, take immediate steps to support an explicit and formal moratorium on the enforcement of these laws.

24. Adopt measures to modify or repeal legal provisions that penalize public conduct on vaguely defined grounds related to the protection of "public morals." Such provisions have a disproportionate impact on LGBT persons, or those perceived as such.

25. Enact anti-discrimination legislation or amend existing legislation in order to prohibit all forms of discrimination, that include sexual orientation, gender identity and gender expression, sex characteristics or intersex status.

26. Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates.

27. Enact hate crimes legislation – either through amendments to existing legislation or through the adoption of new laws – to identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity.

28. Adopt laws and national regulations expressly prohibiting non-medically necessary surgery and related medical intervention for intersex children and intersex persons, when administered without their full and informed consent.

29. Adopt legislation to punish hate speech, in accordance with the American Convention on Human Rights and the standards established by the Inter-American Commission and Court, as developed in Chapter 4 of this Report.

30. Undertake the necessary measures to ensure that LGBTI persons are not excluded from the legal frameworks that seek to protect people from violence within the families, domestic unit or any intimate relationship.
31. Take all necessary measures to apply due diligence in preventing, investigating, punishing and providing reparations regarding violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, the latter of which includes education and health facilities.

32. Undertake effective, prompt and impartial investigations into killings, torture, and acts of cruel, inhuman and degrading treatment, as well as other acts of violence against LGBTI persons.

   a. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to take all necessary measures in the search for the truth, in order to clarify what happened and establish possible discriminatory motives.

   b. In conducting these investigations, State authorities should rely on experts who are able to identify the often-nuanced discrimination and prejudice against LGBTI persons which is pervasive and embedded in the societies of the region.

   c. Investigations should not be limited to disciplinary proceedings. Rather, criminal proceedings should be initiated in all instances of human rights violations against LGBTI persons committed by police and other law enforcement agents.

33. Take measures to ensure from the very beginning of the investigation that there is an examination into the motives of the act of violence, and that this examination includes consideration of the relevance of the victim’s sexual orientation or gender identity, real or perceived.

34. Establish specialized prosecutorial units or appoint specialized prosecutors to investigate and prosecute crimes committed against LGBT persons. Staff them with trained personnel in the fields of human rights and non-normative sexual orientations and gender identities.

35. Adopt measures to: (i) address deficiencies in the investigation and prosecution of cases of violence based on sexual orientation and/or gender identity; and (ii) tackle the many specific obstacles and barriers faced by LGBTI persons when they seek justice.

36. Ensure that investigations are not permeated by prejudice based on the real or perceived sexual orientation and/or gender identity of the victim or the perpetrator.

37. Undertake the necessary legal and policy changes to expressly indicate that the sexual orientation, gender identity, or gender expression of victims can
never be used to establish a partial or full justification of crimes committed against them.

38. Strengthen public legal aid services — including legal advice, assistance, and representation — and ensure that LGBTI victims of crime are afforded access to justice. This includes adopting measures to ensure that victims of discrimination and violence are aware of and have access to effective legal remedies.

39. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that penalize public conduct on vaguely defined grounds related to the protection of “public order,” are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.

40. Adopt measures to guarantee the life, security, and personal integrity of those who report killings and other instances of prejudice-based violence, particularly if the alleged perpetrators are state agents or member of illegal armed groups or gangs.

41. Adopt protocols and prioritize specialized training for “justice operators” (including judges, prosecutors, and public defenders), regarding the human rights of LGBTI persons, in accordance with international human rights law and standards on sexual orientation, gender identity, and bodily diversity, particularly taking into account the following:

a. Protocols and training must ensure that justice operators do not subject victims, witnesses, and those accompanying them to ill or discriminatory treatment. Law enforcement agents should respect the gender identity of every person and refer to persons with their preferred pronouns.

b. Victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBTI victims, because they may fear further victimization following the disclosure of their sexual orientation, gender identity or bodily diversity in public.

c. Protocols and training should include a component on how to identity elements or indicia that may be key in identifying whether crimes were committed based on prejudice toward sexual and gender diversity.

d. Training should be frequent and periodic and include clear explanations of concepts that are central to sexual orientation, gender identity, and bodily diversity. Protocols and training should acknowledge, and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities.
e. Training should also include information on local trends concerning
violence based on sexual prejudice, and should be made aware of the
existence of groups, where they are present, that may specifically target
LGBTI persons.

f. Protocols and training should be directed not only at judges and
prosecutors, but at all state employees in the justice sector.

**SPECIFIC RECOMMENDATIONS: CONTEXTS OF VIOLENCE**

**FREEDOM OF EXPRESSION**

42. Undertake all necessary measures in order to ensure that LGBTI persons are
able to exercise their right to freedom of expression without discrimination.

43. Establish an enabling legal framework for community media, and provide
support, whether of a financial or regulatory nature, for media outlets or
media content that serve the informational and expressive needs of LGBTI
individuals and groups.

44. Take appropriate steps to combat hate speech against LGBTI persons on the
basis of the principles and standards developed in this Report. Ensure that
these measures form part of a comprehensive approach that goes beyond
legal measures and includes preventive and educational measures to
address and respond to hate speech. Preventive mechanisms could include:
education to promote understanding and combat negative stereotypes and
discrimination against LGBTI persons, including programs aimed at
schoolchildren and informational campaigns; training for law enforcement
agents and those involved in the administration of justice regarding the
prohibition of hate speech and incitement to violence; and data collection
and analysis in relation to freedom of expression and hate speech.

45. Adopt legislation to punish hate speech that constitutes incitement to
lawless violence against LGBTI persons, in accordance with Article 13(5) of
the American Convention on Human Rights and the principles and standards
established by the Inter-American Commission and Court, as set out in
Chapter 4 of this Report.

46. Raise awareness among public officials at all levels of their responsibility to
publicly reject hate speech against LGBTI persons whenever it occurs and
refrain from statements which may reasonably be understood as
legitimising hatred or discrimination against them. When appropriate,
establish appropriate sanctions for hate speech that constitutes incitement
to lawless violence.
47. Take appropriate measures to strengthen the role of public broadcasters to serve the informational and expressive needs of the LGBTI community, as well as to promote awareness of issues that concern this community.

48. Regarding the media, the IACHR recommends the following:

a. States should encourage media to play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to affected groups and by giving members of these groups an opportunity to speak and to be heard.

b. States should promote that journalistic activities be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State.

c. States should stimulate the adoption of voluntary professional codes of conduct for the media and for journalists, because these actors can play a fundamental role in combating discrimination and in promoting equality principles. These codes can include being alert to the danger of the role media outlets can play in furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.

LAW ENFORCEMENT

49. Undertake all measures to prevent instances of extrajudicial executions, torture, and other cruel, degrading and inhuman treatment against LGBTI persons by the police and other law enforcement agents.

50. Adopt the necessary measures to reduce police profiling, selective pat downs and arbitrary arrests of trans women, trans women of color, and LGBT persons engaged in sex work. Ensure that police and other law enforcement agents do not detain persons because of their race, socioeconomic status, and/or the perception of their sexual orientation, gender identity, or gender expression.

51. Eradicate deeply rooted practices of ill-treatment, abuse and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints.

52. Undertake the necessary measures to ensure that there are effective mechanisms to denounce and investigate cases of torture, cruel and inhuman treatment, police abuse and other acts of violence perpetrated by law enforcement agents.

53. Establish protocols and conduct trainings of police and law enforcement agents regarding human rights and the rights of persons with non-
normative sexual orientations and gender identities, in order to curtail abuses and violence against LGBTI persons, taking into account the following:

a. Protocols and training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing.

b. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Law enforcement agents should respect at all times the gender identity of all persons, and refer to them using their preferred pronouns.

c. Attention protocols, including those related to mechanisms and processes to present a complaint against these human rights violations must be public, and States must ensure that they are known by the general population, and in particular, by people under State custody.

HEALTH

54. Design and implement public policies that ensure the rights of LGBTI persons to access health care services, without being subject to discrimination, violence, or mistreatment of any kind, whether in public or private health care settings. Health care professionals should receive continuous training on matters of diversity around sexual orientation, gender identity, and sex characteristics. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.

55. Undertake measures to ensure that the regulatory entity of the state health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer “therapies” that attempt to “modify” sexual orientation and gender identity. Further, to adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject.

56. Regarding intersex persons,

a. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision
not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.

b. Incorporate specific safeguards for intersex children into legal instruments and medical protocols to protect and ensure their right to informed consent, particularly in the context of non-necessary medical interventions and surgery.

c. Adopt measures to ensure that professionals properly inform patients and their parents of the consequences of surgical and other medical interventions.

d. Undertake training of medical personnel and members of the medical community in order to provide adequate treatment and support to intersex persons and their families. Support intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood.

e. Ensure intersex persons have access to their medical records.

f. Adopt measures to prevent medical photography and unnecessary genital exams for non-consensual research concerning intersex persons and infants.

g. Ensure effective consultation with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.

EDUCATION

57. Adopt measures to prevent violence against LGBTI students and teachers, or those perceived as such.

58. Ensure that education policies and curricula are specially designed to change harmful social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them.

59. Implement a comprehensive program of education concerning human sexuality in school curricula, at all levels, inclusive of a perspective of diversity around issues of gender, sexual orientation, gender identity, and bodily diversity. Comprehensive sexuality education can be a tool to combat discrimination and violence based on prejudice.
60. Revise school and university internal regulations and manuals, in both the public and private education systems, to prohibit discrimination on the basis of sexual orientation, gender identity, gender expression, or sex characteristics. Manuals must avoid punishment or sanction for using garments or accessories that are not socially associated with the sex assigned to the person at birth. Restrictions on same-sex displays of affection should not be more onerous than those included for different-sex couples.

61. Undertake measures to effectively prevent, investigate and sanction bullying and violence in the context of education, including on the basis of sexual orientation, gender identity, and bodily diversity, whether committed by peers, teachers, or school administrators.

SPECIFIC RECOMMENDATIONS: PARTICULAR GROUPS OF LGBTI PERSONS

INDIGENOUS PEOPLES

62. Undertake measures to address the violence as well as the underlying historical and structural causes of the violence against indigenous persons with diverse sexual orientations and gender identities.

63. Incorporate into legislation and public policy the specific needs of indigenous peoples with diverse sexualities, and adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexual orientations and gender identities.

64. Conduct research with a gender and intercultural perspective to take into account the specific needs of indigenous persons with non-normative sexual orientations and gender identities, and two-spirited persons.

65. Collect and disseminate disaggregated statistics and information on cases of violence against indigenous persons with non-conforming gender identities.

WOMEN

66. Undertake measures to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.
67. Adopt measures to specifically include lesbian, bisexual, transgender, and intersex women in legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence.

68. Adopt measures to address the underlying causes of violence affecting trans women, including affirmative actions to provide formal employment; safe and accessible shelter; and access to education. Undertake specific measures to address violence against trans persons within the family.

69. Undertake actions to study and assess the pervasiveness of violence against lesbian, bisexual, transgender and intersex women. Adopt specific measures to prevent and investigate this type of violence, with a differentiated approach that takes into account power relations at the intersection of sex, gender, sexual orientation and gender expression.

70. Adopt measures to protect lesbian, trans, and bisexual women from violence, including sexual violence, perpetrated by gangs and illegal armed groups.

PERSONS IN THE CONTEXT OF HUMAN MOBILITY

71. Adopt measures to specifically include LGBTI persons in legislation, public policies, and all government-led efforts regarding the rights of migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, internally displaced persons, and other persons who might be more vulnerable to human rights violations in the context of human mobility. Sexual orientation and/or gender identity are factors which may make persons more vulnerable to being internally displaced or trafficked.

72. Adopt the necessary measures to comply with the obligation not to return refugees to places where their life or personal integrity would be in danger on account of their actual or perceived sexual orientation and/or gender identity.

73. Undertake measures to ensure that the processes for the determination of refugee status are accessible to persons who flee because of reasons related to their sexual orientation or gender identity, real or perceived. Further, to design and develop guides and protocols, as well as trainings of agents that make the assessment and determination of refugee status, so that LGBTI persons seeking asylum are treated adequately and respectfully. These guides and trainings must include guidelines to ensure that decisions on the granting of refugee status are not based on stereotypes or inaccurate presumptions regarding LGBTI people. The IACHR urges States to take into account the guidelines and manuals published in this regard by the UN High Commissioner for Refugees (UNHCR).

74. Conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims. This training should be
developed in consultation with LGBT organizations and support groups. States are urged to take into account existing guidelines on the subject issued by the UN High Commissioner for Refugees.

75. Adopt specific guidelines and policies to ensure that asylum seekers and other migrants who are deprived of liberty are effectively protected from discrimination and violence, whether from custodial staff or other detained persons. This includes ensuring that the decision on where to house trans persons is done on a case by case basis, with due respect for the person’s dignity, and whenever possible, with prior consultation with the trans person concerned.

CHILDREN AND YOUTH

76. Undertake measures to fulfill the obligations to respect and guarantee the rights of LGBTI children and adolescents, or those perceived as such, to a life that is free from discrimination and violence, including in the context of the family, health facilities, and educational environments. Such measures include, among others, adopting comprehensive policies to prevent, investigate, and sanction violence against LGBTI children, regardless of where it takes place. Guides developed by UN agencies, such as UNESCO, can support such measures.

77. Eradicate from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities. Further, ensure that school curricula and textbooks include material that promotes respect for and acceptance of diversity.

78. Adopt measures to ensure that school regulations do not include discriminatory provisions against LGBTI students, or rules which could be used to discriminate against them.

79. Establish complaint mechanisms to enable the effective investigation of instances of violence against LGBTI children, regardless of where they occur.

80. Conduct trainings of state institutions, school and university authorities, and teachers, so they are able to identify abuse and violence against children in the home that is related to sexual orientation and gender identity, and provide appropriate measures of response. Training should also be geared toward promoting respect and tolerance regarding LGBTI persons.

81. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.
82. Create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood. Ensure that intersex persons and activists are consulted.

83. Adopt public awareness campaigns featuring LGBTI children and diversity in families so as to promote respect and acceptance of diverse family configurations, among other measures.

84. Adopt measures to protect all LGBTI children and young adults from violence – including LGBTI youth who are homeless – and ensure that effective child protection and support systems are in place, including shelters and other safety mechanisms for those in need of protection.

85. Adopt specific programs to provide support and protection to LGBTI children and their families. These programs, geared toward pregnant couples and families with both younger and older children, should incorporate positive models of raising children, as well as awareness-raising and sensitization with respect to non-normative sexual orientation, gender identity/expression and bodily diversity.

86. Ensure that children are consulted and take part in decision-making related to public policies and other State measures to prevent and address violence and discrimination against them.

HUMAN RIGHTS DEFENDERS

87. Adopt measures to prevent, investigate, punish, and provide reparations for violence aimed at LGBTI human rights defenders, who face heightened vulnerability due to the intersection of their sexual orientation and/or gender identity or expression, their role as defenders, and the issues they address in their work. Specific measures should be designed and adopted, in consultation with defenders and activists, to effectively address violence against trans activists who are engaged in sex work. These measures also need to take into account the specificities of violence exerted against LGBTI human rights defenders by law enforcement agents, as well as gangs and members of illegal armed groups.

88. Undertake measures to ensure that effective investigations into killings and other acts of violence against LGBTI human rights defenders are carried out. Authorities must conduct an exhaustive analysis of every possible theory of the crime and thus establish whether or not the motive for the crime was the victim’s promotion and defense of human rights and/or the sexual orientation or gender identity of the victim.

89. Continue or initiate dialogue with LGBTI human rights defenders, with the aim of learning about the problems they face with respect to violence or the threat of violence. Facilitating their active participation in the adoption of public policies in this regard.
90. Undertake measures to ensure that any attempt by authorities to question the legitimacy of the work of human rights defenders and their organizations will not be tolerated. Public officials must refrain from making statements that stigmatize human rights defenders and they must adopt specific measures of protection for LGBTI human rights defenders. Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.

91. Adopt measures to take into account the particular vulnerability to violence of LGBTI human rights defenders, within the broader group of human rights defenders, in the design and implementation of all State policies that are intended to protect human rights defenders.

AFRO-DESCENDANT PERSONS AND THOSE AFFECTED BY RACIAL DISCRIMINATION

92. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and LGBTI persons of color.

93. Adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and diverse sexual orientation, gender identity, and gender expression affect LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.

94. Undertake effective actions to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons, and all those affected by racial discrimination.

95. Allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating cultural practices, prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Such preventive efforts should be part of an overall holistic strategy to provide restitution for acts of violence and discrimination as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.
PEOPLE LIVING IN POVERTY

96. Adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and to continue to devote efforts and resources to eradicate poverty.

97. Undertake measures to address discrimination based on sexual orientation, gender identity, and sex characteristics when designing and implementing actions and programs to tackle poverty.

98. Ensure that the programs provided by the State for low income, homeless or unemployed persons are accessible to LGBTI persons. Persons should be able to decide their shelter based on their gender identity, and gender neutral shelters should be available.

PERSONS DEPRIVED OF LIBERTY

99. Adopt urgent and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region’s places of detention, including prisons and immigration detention centers. This includes the development of comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.

100. Ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not place undue restrictions on such LGBT persons. Restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons.

101. Adopt measures to prevent violence against LGBT persons deprived of liberty, including, but not limited to: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake and appropriate allocation within the prison or detention system; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers, as well as other detainees.

102. Implement effective measures to ensure due diligence in the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons.

103. Conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBT persons who are deprived of liberty.

104. Adopt the necessary measures to ensure that the decision on where to house trans persons in detention (including prisons, police lock-ups and migration detention centers), is conducted on a case by case basis, with due respect to
the person’s personal dignity, and whenever possible, with prior consultation of the person concerned.
Tab 5
February 27, 2015

Washington, D.C. - On the occasion of Zero Discrimination Day, celebrated around the world on March 1, the Inter-American Commission on Human Rights (IACHR) calls on the Member States of the Organization of American States (OAS) to maximize their efforts to combat discrimination against all people living with HIV.

The stigma and discrimination faced by people who test positive for HIV is endemic in the Americas. The IACHR continues to receive information concerning situations that occur as a result of that discrimination, such as violence by health care providers, State agents, relatives, or members of the community; denial of public services; loss of employment; loss of family and social ties; lack of access to credit; and other direct and indirect forms of marginalization. Discrimination and stigma, in turn, hamper efforts to provide an effective response to the epidemic and have a negative impact on the exercise of the human rights of people living with HIV.

Moreover, even today there continue to be major challenges in terms of equal access to HIV-related services that could improve and even save the lives of seropositive persons. "In the Americas of the 21st century, not one single person who is seropositive should be without access to comprehensive medical treatment, free of charge. This goal is far from being met, even though some countries have adopted public programs and policies that have improved services for people with HIV," said IACHR Commissioner Paulo Vannuchi, who is in charge of the IACHR Unit on Economic, Social, and Cultural Rights. "Stigmatizing someone who lives with HIV virus constitutes a violation of that person’s right not to be discriminated against, and also becomes a public health problem. This happens because as a result of the stigma, many people are reluctant to seek medical supervision, and that hampers proper prevention and treatment, the Commissioner added."
In this regard, the Joint United Nations Programme on HIV/AIDS (UNAIDS) has expressed its alarm over the high rates of discrimination against people who are seropositive and those at a higher risk of contracting HIV ("key populations"). This last group includes men who have sex with men, sex workers and their clients, trans persons, and people who use injectable drugs. Zero Discrimination Day, announced by UNAIDS in December 2013, constitutes a call to promote and celebrate everyone’s right to live a full life with dignity, independent of such factors as what they look like, their sexual orientation, where they come from, or their HIV status.

One of the main obstacles to achieving universal access to such services stems from existing laws and public policies being implemented in a number of OAS Member States. Along these lines, there are laws that criminalize certain types of consensual sex between adults, gender identities, and/or expressions of sexual diversity. In addition, some States in the region have discriminatory restrictions, based on serological status, to determine criteria for entering or staying in the country.

“Education has a critical role to play in preventing discrimination,” indicated IACHR Chair Tracy Robinson, the Commission’s Rapporteur on the Rights of Women and the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons. “Education is the means to a lasting cultural change in which discriminatory actions are not tolerated or allowed. Therefore, we believe the States should urgently adopt educational policies designed to change social and cultural patterns of conduct, counteract prejudices and customs, and eliminate practices based on stereotypes that can legitimize or aggravate discrimination against persons living with HIV and key population groups disproportionately affected by HIV. The States should particularly expand their efforts to implement educational policies that help to reduce and eventually eliminate the disturbing levels of stigma that these persons endure.”

The IACHR calls on the OAS Member States to remove all barriers in law and in practice that impede the full exercise of human rights by people living with HIV and key populations. The Commission urges the Member States to take positive measures to guarantee their human rights and to eliminate all forms of stigma and discrimination against people living with HIV and those affected by the epidemic in the Americas.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.
Tab 6
This month Trinidad and Tobago decriminalized consensual gay sex, which was previously punishable with up to 25 years in prison.

While the news has invigorated LGBT rights advocates, the picture for gay rights in the region is still far from ideal: Same-sex relations are still illegal in nine Caribbean countries, all of which are part of the British Commonwealth. And while laws are not always enforced, they have a chilling effect on the local LGBT community, which can often face harassment, discrimination and even violence. Sodomy laws also inhibit many LGBT Caribbeans from reaching out to police or HIV/AIDS agencies for help.

British Prime Minister Theresa May met with Commonwealth leaders last week and expressed regret for the U.K.’s role in criminalizing same-sex activity in former colonies. “I am all too aware that these laws were often put in place by my own country. They were wrong then and they are wrong now.”

Below we look at the state of affairs in the Caribbean nations where homosexuality is still against the law.

1. In Antigua, “buggery” is punishable by up to 15 years in prison (https://www.equaldex.com/region/antigua-and-barbuda), or up to five years when committed by a minor.

   The government has stated it doesn’t intend to decriminalize homosexuality (https://76crimes.com/2016/08/26/caribbean-anti-gay-law-is-ripe-for-reversal-antigua-says/) through executive or legislative means. But leaders admit that if a legal challenge was brought in court, it would likely end the same way it did for Belize, which ruled its buggery law unconstitutional (http://www.newnownext.com/belize-gay-sex-ban/08/2016/) in 2016.

   Minister of social transformation Samantha Marshall called Antigua’s ban antiquated, saying “I don’t know that it is something that is enforced [or] serves any purpose, so [it] should be removed.”

2. Barbados punishes same-sex relations with ten years to life (https://www.equaldex.com/region/barbados) in prison, the harshest punishment on this list. As in Antigua, a challenge to the law would almost certainly see it struck down, as Barbados falls under the same legal jurisprudence as Belize.


3. On this island republic in the Lesser Antilles, anal sex between men is punishable by up to 10 years in prison (https://www.equaldex.com/region/dominica). “Gross indecency,” or any act besides intercourse, is punishable by up to five years behind bars. And the court can order those convicted be sent to a psychiatric hospital.
In 2012, two American men arrested for having sex (http://abcnews.go.com/US/gay-cruise-passengers-werent-put-show/story?id=15993808) on the balcony of a cruise ship docked in Dominica. They were initially charged with buggery but plea-bargained down to indecent exposure.

4.

Grenada’s sodomy ban punishes anal sex between men (https://www.equaldex.com/region/grenada) with up to ten years in prison. (Female same-sex relations are not illegal on the island of some 107,300.) While the law is rarely enforced, a 41-year-old man was charged with having sex with a 17-year-old (https://www.sfgate.com/news/article/Police-in-Grenada-arrest-man-for-having-gay-sex-2370245.php) in 2011, even though both were considered consenting adults according to Grenadan law.

In 2013, Senator Lawrence Joseph encouraged the legislature to reexamine its ban, saying “the day is fast approaching” when it would be struck down.

5.

Guyana’s penal code (https://www.equaldex.com/region/guyana) lists buggery as a felony, punishable by up to life imprisonment. A man who commit an “act of gross indecency,” which is not defined but likely includes sexual activity other than anal sex, can be imprisoned for up to two years.

President David A. Granger has signaled he’d be open to repealing the statute, which is not commonly enforced.

“I am prepared to respect the rights of any adult to indulge in any practice which is not harmful to others,” Granger said back in 2016. However, to date there has still been no change to the law.

6.

While Jamaica advertises itself as “welcoming to all,” (http://www.newnownext.com/jamaica-insists-gay-tourists-welcome-despite-horrific-anti-lgbt-violence/12/2017/) homosexual intercourse is punishable by up to ten years in prison, which can include hard labor. (Any other sexual contact between men is punishable by up to seven years in prison.)

Other Caribbean countries have stricter penalties, but anti-LGBT violence is endemic in Jamaica: Gay men have been beaten, shot and stoned to death (http://www.newnownext.com/young-gay-man-stoned-to-death-in-jamaica/03/2015/). In 2017, LGBT activist Dexter Pottinger, dubbed the “face of Pride,” was murdered in his home. Some young queer Jamaicans are even forced to live in the sewers (http://www.newnownext.com/grace-phelps-helps-lgbt-youth-in-africa/12/2014/) after being rejected by their families.

There are efforts toward change: In 2005, the European Parliament called on Jamaica (https://www.hrw.org/news/2005/05/31/european-union-parliament-calls-jamaica-end-violence-and-homophobia), to repeal its sodomy ban and actively combat homophobia.

In a 2011 debate, former Jamaican Prime Minister Portia Simpson-Miller said “no one should be discriminated against because of their sexual orientation.” A year later, LGBT rights campaigner Maurice Tomlinson filed suit at the Inter-American Commission on Human Rights to get the ban lifted. But he was forced to flee the country after news of his marriage to another man hit local media.

An inaugural Jamaica Pride event was held in Kingston in 2015, though security concerns meant there was no parade.

7.

Saint Kitts and Nevis’s Offences Against the Person Act punishes “the abominable crime of buggery” between men (https://www.equaldex.com/region/saint-kitts-and-nevis) with up to 10 years in prison with the possibility of hard labor. (Female same-sex relations, however, are not illegal.)

According to Human Dignity Trust (http://www.humandignitytrust.org/uploaded_Map/Country_Reports/Saint_Kitts_and_Nevis.pdf) the law hasn’t been enforced in recent history. But in 2005 a gay cruise was barred from docking and the captain was taken to shore for a meeting with port, police, customs and immigration officials. The port’s general manager told reporters that Nevis does not want homosexuality “to be a part of our culture.”

8.
Saint Lucia punishes consensual sex between men (https://www.equaldex.com/region/saint-lucia) with up to ten years in prison. (If the defendant doesn’t contest the charges, the sentence is only five years.)

In 2008, the country was the only U.N. member state in the Americas to formally oppose a declaration that the U.N.’s principles of non-discrimination included sexual orientation and gender identity. Three years later, a group of gay Americans were robbed and beaten (http://www.cnn.com/2011/TRAVEL/03/15/st.lucia.attack/index.html) in their hotel room.

“They asked if we were gay,” one of the victims, Michael Baker, told The Georgia Voice (https://thegavoice.com/gay-atlanta-men-attacked-in-st-lucia-hate-crime/) after the attack. “Why had we showered together? Todd and I both said it was because the water heater was so small. They said if we were faggots they would kill us.”

He added that while they contacted authorities, “the police were almost annoyed with us, almost as if we were the criminals.”

9.

Anyone who commits “an act of gross indecency with another person of the same sex” can face up to five years behind bars (https://www.equaldex.com/region/saint-vincent-and-the-grenadines) in Saint Vincent. Receptive partners, male or female, actually face up to ten years in prison.

In 2011, ARC International encouraged the country to repeal its sodomy laws, but its efforts were rejected (http://arc-international.net/global-advocacy/universal-periodic-review/s/saint-vincent-and-the-grenadines/).

Source (http://www.newnownext.com/homosexuality-illegal-caribbean-countries/04/2018/)
NBA star Dwyane Wade says it's his “job as a father” to support gay son at Pride.

Black and gay in the church: 'We need to open our hearts up'

Color of Pride: Earl Fowlkes advocates for queer people of color internationally

Botswana legalizes gay sex, striking down colonial-era laws

What I've Learned Since My Son Came Out

Rainbow flags set on fire outside Harlem gay bar day before LGBTQ Pride Month: police

Kenyan court upholds laws criminalizing same-sex relations

Kenyan author, LGBT activist Binyavanga Wainaina dies at 48

How This Black Gay Politician Is Standing Up to the Far-Right Government in Brazil

College Guide for LGBTQ Students
Tab 7
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The Situation Analysis for Grenada is a product of collaborative effort by various stakeholders. UNICEF acknowledges with gratitude the contribution of everyone who participated in the process culminating in this report. The report provides vital information on the realization of children’s rights in Grenada.

UNICEF would like to thank the following organisations and people for their valuable contributions and insights:

Government ministries and departments who facilitated consultation meetings and provided valuable information and insights which informed the situation analysis.

The consultant who gathered quantitative and qualitative information from various sources and analysed them using an equity-focused approach with reference to international commitments made for the realization of children’s rights (CRC, MDGs, regional and national development objectives);

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Situation Analysis of Children in Grenada

Foreword

The UNICEF Office for the Eastern Caribbean Area is very pleased to present this Situation Analysis of Children in partnership with the Government of the Grenada.

Evidence-informed programming is critical not only to our Multi Country Programme of Cooperation with the governments of the Eastern Caribbean Area but to the day-to-day decisions that are needed to determine policy, programme delivery and budget allocation in good governance to focus limited resources to the most critical issues and vulnerable groups.

Notwithstanding some obvious gaps in data availability, we see this assessment as an integral contribution to the enhancement of knowledge of children and their families in Grenada.

This Situation Analysis of Children in Grenada is designed to help government shape national policies and action plans in line with the new Sustainable Development Goals agreed by the international community. It describes the current situation of children, identifies barriers and bottlenecks in advancing children’s rights in health, education and child protection and sets forth recommendations.

It was also a critical tool in the preparation of the current 2017-2021 UNICEF ECA Multi Country Programme as the identification of the vulnerable segments of the child population sharpened our focus as we designed strategies to support government to respond to the needs all children, but especially those most at risk of multiple deprivations.

This document represents the first time in decades that we have attempted to compile separate updates for each of the 12 countries and territories in the Multi Country Programme. It has been an arduous, but rewarding task, as while there are many similarities between the countries of the Eastern Caribbean Area, some features and situations distinguish one state from the other.

It is hoped that this Situation Analysis will be a valuable tool to all sectors including Government; international, regional and national organizations; other Development Partners and UN agencies; non-state actors and the media, as well as well as special interest groups and organizations whose mission is to work towards the advancement of the rights of children.

We sincerely thank all our partners in government, civil society, children, youth and others who contributed to its development.
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## Abbreviations

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<tr>
<td>CARICOM</td>
<td>Caribbean Community</td>
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<td>CDB</td>
<td>Caribbean Development Bank</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CFS</td>
<td>Child Friendly School</td>
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<td>CPA</td>
<td>Country Poverty Assessment</td>
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<td>CPEA</td>
<td>Caribbean Primary Exit Assessment</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CSEC</td>
<td>Caribbean Secondary Education Certificate</td>
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<td>CSME</td>
<td>CARICOM Single Market and Economy</td>
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<td>CVQ</td>
<td>Caribbean Vocational Qualification</td>
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<td>ECE</td>
<td>Early Childhood Education</td>
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<td>ECD</td>
<td>Early Childhood Development</td>
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<td>EFA</td>
<td>Education for All</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GPRS</td>
<td>Growth and Poverty Reduction Strategy</td>
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<td>HFLE</td>
<td>Health and Family Life Education</td>
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<td>IMR</td>
<td>Infant Mortality Rate</td>
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<td>LGBT</td>
<td>Lesbian, Gay, Bisexual and Transgender</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MPM</td>
<td>Multidimensional Poverty Measurement</td>
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<td>NCD</td>
<td>Non-Communicable Disease</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>OECS</td>
<td>Organisation of Eastern Caribbean States</td>
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<td>PAHO</td>
<td>Pan-American Health Organization</td>
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<td>RCP</td>
<td>Roving Caregivers Programme</td>
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<td>SIDS</td>
<td>Small Island Developing States</td>
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<td>SDG</td>
<td>Sustainable Development Goal</td>
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<td>SitAn</td>
<td>Situation Analysis</td>
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<tr>
<td>TVET</td>
<td>Technical and Vocational Education and Training</td>
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<tr>
<td>U5MR</td>
<td>Under-5 Mortality Rate</td>
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<td>UNICEF</td>
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INTRODUCTION

This Situation Analysis (SitAn) of children in Grenada is designed to help the Government shape national policies and action plans in line with the Sustainable Development Goals (SDGs). It describes the current situation of children, identifies barriers and bottlenecks in advancing children’s rights in health, education and child protection and sets forth recommendations.

The Archipelago of Grenada comprises three sister islands – Grenada, Carriacou and Petit Martinique – and about 600 mostly uninhabited small islets. The country’s total land area covers 133 square miles and is volcanic in origin. Grenada is the largest of the three islands, more mountainous than the others and covered by dense forest. The population was reported at 105,508 in the 2011 Census, with 6.5 per cent living on Carriacou and Petite Martinique. It is the second smallest island population in the world. In 2012, men outnumbered women by 52,992 to 52,516.

METHODOLOGY

The report draws on an extensive desk review covering more than 60 national, regional and global resource documents (development plans, surveys, studies and reports). The documentation was useful and current but accuracy was often uncertain. This reflected lack of information sharing among government departments, civil society organizations and the wider public, and lack of necessary infrastructure and human resources for consistent data collection, collation and presentation. Due to the limitations of available quantitative data, the use of qualitative information is highlighted.

The resource documents helped in the formulation of questions for the interviews and focus groups and to examine specific issues. The qualitative sample comprised multiple key informants representing the Government, development partners and civil society who shared their opinions on the status of children in the country. The interviews provided on-the-ground observations, insights and experiences of national level policies and programmes. At the community level, interviewees comprised teachers, health workers and parents/caregivers. The children interviewed were between the ages of 8 and 18 and from a range of backgrounds.
They included both in-school and out-of-school children, with more girls represented (68 per cent) than boys (32 per cent). It was not possible to meet with children living with disabilities or those in police cells or prison.

**FINDINGS**

Grenada is a constitutional monarchy with an elected bicameral parliament consisting of a 16-member House of Representatives and 19-member Senate. The Governor General represents the British monarch, and the Prime Minister is the leader of the party that wins the majority of seats in elections. The Constitution was adopted in 1973 and came into force in 1974 when the country became an independent state within the Commonwealth. The Government is committed to protecting its citizens’ human rights and has ratified a number of international conventions, including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

In the 1970s, Grenada made the transition from a largely agriculturally based economy towards growing reliance on the services sector, especially tourism. The impact of the 2008 financial crisis was severe – growth rates plummeted, debt and fiscal imbalances rose to unsustainable levels and labour market conditions deteriorated as the financial sector demonstrated limited capacity to support growth and job creation. In recent years, the Government has diversified the economy with the development of a manufacturing sector focused on paper products and electronic components, offshore financial services and direct marketing. With this reform effort and an emphasis on social development, Grenada was projected to record real GDP growth (at market prices) of 5.1 per cent in 2015.

The 2008 Caribbean Development Bank (CDB) country poverty assessment (CPA) indicated a significant decline in the indigent poverty rate, from 12.9 per cent in 1998 to 2.3 per cent in 2008. The CPA also reported that 37.7 per cent of the population was living below the poverty line, with 14.6 per cent deemed vulnerable. One of every two children in Grenada was poor. A higher percentage of men (40 per cent) than women (36 per cent) were classified as poor. With 48 per cent of all poor households headed by single women, Grenada has the highest percentage of women household heads among members of the Organization of Eastern Caribbean States (OECS). The majority of the poor are located in two parishes: St Mark, where more than half of the residents live below the poverty line, and St Andrew, where 44 per cent live below the poverty line. Carriacou and Petite Martinique have the lowest rate of poverty (6.6 per cent).

The 2008 CPA reported a total employed labour force of 47,581, with a slightly higher percentage of employed women (51 per cent) than employed men (49 per cent). The unemployment rate was estimated at 24.9 per cent, with nearly twice as many women (31.8 per cent) as men (17.9 per cent) unemployed.

The education budget increased steadily from 5.5–7.7 per cent of GDP in the 1970s to 9.9 per cent in 2013. Among all line ministries, education received the largest amount of the national recurrent and capital expenditure budgets in 2012–2013 (12.4 per cent) and in 2016 (10 per cent). Poor children are disproportionately disadvantaged, particularly in families with more than one child attending school. Social safety net strategies targeting these families are underfunded, thus student support schemes (cash and in-kind) reached only 10 per cent of school-age children.

In 2013, there were 107 preschool centres, of which 66 were government owned. Among the publicly owned centres, 52 per cent are located in the parishes of St George and St Andrew where 57 per cent of the population reside. The 2014 Statistical Digest for Grenada reported 3,934 children enrolled in public and private preschool centres, 189 preschool teachers (26 more than in 2008–2009) and a teacher/pupil ratio of 14:1. By 2015, enrolment reached nearly 100 per cent, but the quality in the curriculum varies and the level of teacher training is inadequate. In addition, more than 62 per cent of teachers in the HighScope programme are over the age of 45, and many interviewees perceive this to be an issue at other levels of education.

Grenada has made progress towards universal quality primary school education. There are 76 primary schools owned and operated by the Government, private sector and churches (many church schools receive government and/or private support). In 2013–2014, total enrolment was 12,948. Among the 756 teachers, nearly 80 per cent were female but only 62 per cent were trained. In 2012–2013, about 95 per cent of new entrants to kindergarten attended preschool. The repetition and dropout rates, which continue to be among the lowest in the OECS, are higher among males than females.

In 2012–2013, 9,851 pupils (48.5 per cent girls) were enrolled in the nation’s 24 public and private secondary schools, representing 89 per cent of children aged
12–16. There were 719 teachers in secondary schools, and the teacher/pupil ratio was 14:1. The repetition rate for 2012–2013 was 4.6 per cent and the dropout rate was 0.09 per cent. Repetition rates were higher for boys than girls. The number of trained graduates among the teacher corps almost tripled from 6 per cent in 2008–2009 to 17 per cent in 2012–2013. Less than 20 per cent of secondary students achieved five subject passes including English and math in the Caribbean Secondary Education Certificate (CSEC) examinations in each year from 2009 to 2013. This means that 80 per cent of secondary students in Grenada did not attain the requisite minimum matriculations required to enter tertiary education.

The Government has prioritized the provision of technical and vocational education and training (TVET) in primary and secondary schools and refocused on education and training systems that reflect the skills required by employers. The Caribbean Vocational Qualifications (CVQ) programme is designed to facilitate certification corresponding to specific and relevant occupational areas, based on a regional set of standards and competencies. The first 181 students completed CVQ training in November 2015 and graduated with a 91 per cent completion rate.

Grenada is one of the more progressive OECS members in terms of the legal framework for child protection. Parliament has passed three of the four model laws in an OECS package for family law reform (including domestic violence), and in July 2012 Grenada became the second country to pass the Juvenile Justice Bill. The law was promulgated in April 2016 but implementation has not been without difficulties in terms of coordinating multiple stakeholders and bringing about a cultural shift. A survey on attitudes to corporal punishment, child sexual abuse and domestic violence indicated a positive shift in attitudes towards corporal punishment, with 78 per cent of respondents acknowledging that discipline of children is possible without its use. More than a third of respondents were willing to see a ban on the use of corporal punishment in schools, but just 14 per cent were willing to see a ban in the home. A total of 1,907 child abuse cases were reported in 2011–2015. The most commonly reported were cases of sexual abuse (32 per cent), physical abuse (32 per cent) and neglect/abandonment (28 per cent). There were 128 cases of emotional and verbal abuse.

There are five residential care centres in Grenada, housing approximately 78 children in 2015. The Child Protection Authority struggles with large, demanding caseloads and limited resources – insufficient staff capacity, both in terms of numbers and qualifications, and lack of comprehensive written procedures to guide and standardize processes. Those interviewed emphasized the lengthy periods of time many children spend in care, and one administrator spoke about the difficulty of placing children through adoption, especially the older ones. The option of working with the families of children in alternative care to ‘repair’ the home environment is not enough utilized. Sometimes children are in care for months before receiving visits from their biological families.

Probation services, a family court, legal aid and other important services are among the components in the overhauling of Grenada’s social services system. The newly constructed Bacolet Juvenile Rehabilitation Centre is a secure facility for the treatment and rehabilitation of boys and girls aged 12–18. It was opened in 2016 with an allocation of EC$1 million for initial operational and set-up costs, including 30 staff. A regional analysis of country-submitted data in 2015, covering the five-year period 2009–2013, provides a snapshot of the scope and categories of juvenile offences in Grenada. The cumulative total of juvenile (9–17 years) arrests in the period was 1,326. Among the 10 countries submitting data, Grenada reported the highest number of children charged in 2012 (nearly 325), 2013 (250) and 2014 (just under 250), and one of the highest rates of children charged per capita (about 225 per 100,000). Boys are 5.8 times more likely to be charged with offences than girls (e.g., 700 boys compared to 120 girls in 2014). The top three juvenile offences in Grenada are stealing, using obscene language and causing harm.

A birth registration drive, known as the ‘Catch Up Campaign’, set out to achieve article 7 of the CRC, which calls for registration immediately after birth. In 2011 the Government estimated that 14,000 Grenadians, including more than 9,000 children under the age of 18, were unregistered. By 2012, a total of 7,339 names were reconciled and registered, marking an 81 per cent success rate. A second phase, implemented in 2013, resulted in the reconciliation and registration of an additional 1,744 names. As of June that year, only 887 names remained to be reconciled and registered.

The Ministry of Health and Social Security administers the public sector health services through six districts, each managed by a district medical officer. Four public hospitals, six health centres and 30 medical stations deliver the services along with three small private hospitals and more than 30 private physician practices. Although 65 per cent of the population live in rural areas, there is good geographic coverage. Basic
reported health indicators, such as births attended by a skilled health-care worker and immunization coverage, are excellent.

Expenditures in the health sector for 2008–2012 totalled 3 per cent of GDP. In 2016, allocations from the recurrent and capital budget were EC$75.7 million. The infant mortality rate (IMR) stood at 11 per 1,000 births in 2015, having declined from 18 per 1,000 births in 1990. This is well within the expectation of IMR decline in Latin American and Caribbean countries sharing similar characteristics. The majority of infant deaths occurred within the first 28 days and were caused by prematurity and/or congenital anomalies or conditions originating in the perinatal period. As in the case of IMR, Grenada has achieved a steady decline in the under-5 mortality rate (USMR), with 23 per 1,000 births reported in 1990 and 12 per 1,000 births in 2015. Among infants, 7 per cent were moderately undernourished in 2008–2010, and although most infants were breastfed, only 35 per cent were exclusively breastfed for at least three months. According to the 2009 MDGs Progress Report, antenatal care coverage is nearly 100 per cent and trained health workers attend 100 per cent of hospital births.

The first case of HIV in Grenada was diagnosed in 1984. As of 2012, a cumulative total of 485 confirmed cases have been recorded, with consistently more men affected than women. Grenada is described as a ‘low-level epidemic’ country with an estimated prevalence of less than 1 per cent. New HIV cases have fallen from a high of 32 in 2013 to 26 in 2014 to just 12 in January–September 2015. Six pregnant HIV-infected women received antiretroviral drugs in 2009–2010 for the prevention of mother-to-child transmission (PMTCT) of HIV.

The health system in Grenada was largely designed to combat malnutrition and preventable infectious diseases and now struggles to adequately respond to increases in chronic non-communicable diseases (NCDs). In 2012, NCDs caused 82 per cent of premature deaths in the 30–69 year age group. Most of these deaths (65 per cent) were caused by the four major NCDs – cardiovascular diseases, malignant neoplasms, diabetes mellitus and respiratory diseases. Behavioural risk factors (e.g., smoking, drinking) are more prevalent among males and biological risk factors (e.g., overweight, obesity) generally more prevalent among females.

Marijuana continues to be the main controlled substance used in the country. Approximately 20 per cent of secondary students reported a lifetime prevalence of cannabis use, 13 per cent indicated a one-year prevalence and 7 per cent said a one-month prevalence. Overall, males use cannabis more than females. Alcohol consumption is a problem in Grenada, with the total adult per capita consumption reported at 12.5 litres annually in 2014, double the worldwide average of 6.2 litres and higher than the average of 8.4 litres in the Americas. Moreover, the prevalence of heavy drinking episodes was 8 per cent among those aged 15 and older and notably higher among males (8 per cent) than females (1 per cent).

To combat and control NCDs, the public health system requires a overhaul – different equipment (e.g., lab set-ups, x-ray tools, imaging instruments to enhance investigation and diagnoses); revised outreach strategies (e.g., efforts to equip health personnel with the skills to monitor and communicate for behavioural change); and higher quality human resources (e.g., to handle drug and alcohol dependency). Efforts to reduce the incidence of NCDs will not produce immediate results but require long and sustained input.

**CONCLUSION**

The idea behind the SDGs is to create a global movement to advance work on the Millennium Development Goals (MDGs) towards new commitments. Nations should therefore frame their development plans and policies for the next years based on this new globally agreed development agenda.

To maintain an enabling environment conducive to delivering equitable social and economic growth and effective poverty reduction, certain capacities must be put in place or strengthened. These include: mobilizing and channelling resources to the appropriate sectors at the appropriate time for optimal production; enforcing standards and regulations (specifically, operationalizing the legislation and policies identified and/or in draft form); establishing a mix of social partnerships with key actors (local councils, civil society, research institutions, the private sector); and improving systems for generating, collating and managing information so that it is easily accessible and shared across different agencies and with partners.
RECOMMENDATIONS

The following specific actions are recommended in terms of the legal and policy framework and survival, development and protection rights.

LEGISLATIVE AND POLICY FRAMEWORK

- Revisit and amend legislation to end the use of corporal punishment in the school and home
- Implement the Juvenile Justice Bill, including operationalization of the Juvenile Rehabilitation Centre
- Enforce the Children (Protection and Adoption) Act, 2010; Domestic Violence Act, 2010; and Trafficking in Persons (Prevention) Act, 2014
- Fix one minimum age of criminal responsibility
- Introduce legislation to reduce discrimination against persons living with HIV and AIDS and protect LGBT rights
- Ratify the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families

SURVIVAL RIGHTS

- Complete and implement the National Strategic Plan for Health 2016–2025
- Draft, approve and implement policies and legislation to guide delivery in the areas of NCDs and mental health
- Expand access to SRH information and services appropriate for adolescents
- Improve outreach and communication with the LGBT community
- Update and implement of the National HIV Strategic Plan
- Train and equip health workers to monitor and coach patients with NCDs and to guide and treat the results of workplace and family stress that can result in drug and alcohol abuse
- Strengthen the health ministry’s capacity for evidence-based planning, monitoring, evaluation and budgeting

DEVELOPMENT RIGHTS

- Maintain and increase coverage and efficiency of pro-poor education assistance programmes
- Expand access to early childhood education (ECE) and improve standards
- Reinforce the multi-stakeholder coordination mechanism for ECE
- Put in place a plan to train more teachers as well as staff at the Early Childhood Development Unit to replace those retiring and help prevent a future shortage
- Reduce overcrowding in secondary schools
- Increase provision of technical and vocational education and training (TVET) in primary and secondary schools
- Review initiatives designed to reduce violence in the schools and scale up those that prove effective

PROTECTION RIGHTS

- Improve the data collection capacity with regard to statistics on child victims of child sexual abuse as well as juveniles charged with offences (disaggregation of data by sex and age is essential)
- Offer incentives to university students to specialize in counselling and child psychology
- Encourage the establishment of peer support groups and networks at community level and in schools to provide support for child victims and help eliminate the stigma associated with child abuse
- Improve standards, monitoring and support to residential care services including collaborative partnerships
- Promote programmes for improving parenting skills and include men in their parenting role
Keep the criteria and level of public assistance under continuous review

Accelerate plans to produce a multi-dimensional analysis of poverty

Maintain funding of projects addressing troubled children and dropouts, particularly targeting residential care for children in need of care and protection.
1 Introduction
As part of its country programming process, the United Nations Children’s Fund (UNICEF) assists governments to analyse the situation of children, youth and women. A Situation Analysis (SitAn) of children helps shape national programmes of action for children, UNICEF’s own programmes of assistance and the work of local and external development partners. It not only describes the current situation of girls and boys but also identifies and analyses the barriers and bottlenecks that prevent the full realization of their rights related to health, education and child protection. It is part of a process to help ensure that national policies to address the needs of children are on track to achieve the new Sustainable Development Goals (SDGs).

Two previous SitAns conducted in the Eastern Caribbean (2007 and 2010) covered the members of the Organisation of Eastern Caribbean States (OECS) in one document; however, a new series of SitAns presents individual reports for each country. Although UNICEF may have initiated and sponsored the process, this SitAn is the result of cooperation between the Fund and the Government of Grenada and aims to attract as many stakeholders as possible into the process. It is intended to support the Government, civil society and other stakeholders to better understand the situation of girls and boys in Grenada, increase national capacity for promoting human development and consequently contribute to the realization of human rights.

The UNICEF SitAn exercise undertaken in Grenada takes a particularly close look at vulnerable children who are at risk of violence and abuse and children whose rights to education and health are not being respected, protected and fulfilled. Analysis of behaviour and values related to the Grenadian family/community traditions and culture helps to better understand how policy, legislation and supply and demand of services impact on the realization of children’s rights. Conditions that are pervasive in upper-middle-income environments – such as social capacity for organization and mobilization and ability to strengthen human capital within the economic and cultural context – are observed in order to assess how they currently affect the well-being of children and women.

In keeping with the UNICEF mandate “to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential”, the SitAn exercise is guided by human rights and equity principles. When applying the rights-based approach, a deliberate focus on equity is fundamental to better understand who are the most marginalized, what makes them vulnerable and why their rights are compromised. Table 1 summarizes the basic features of these two approaches.

<table>
<thead>
<tr>
<th>Rights-based approach</th>
<th>Equity-based approach</th>
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<tr>
<td><strong>Definition:</strong> Application of human rights principles in child survival, growth, development and participation</td>
<td><strong>Definition:</strong> Application of an equity-focused approach in the realization of child rights</td>
</tr>
<tr>
<td>Respect, protect, fulfil</td>
<td>Poorest, most marginalized, deprived of opportunities, etc.</td>
</tr>
<tr>
<td><strong>Scope:</strong> All children have the right to survive, develop and reach their full potential regardless of gender, race, religious beliefs, income, physical attributes, geographical location or other status.</td>
<td><strong>Scope:</strong> All children have equal opportunity to survive, develop and reach their full potential without discrimination, bias or favouritism. The focus is on the most marginalized children.</td>
</tr>
<tr>
<td><strong>Guiding principles:</strong> Accountability, universality, indivisibility and participation. Justice is the overriding theme.</td>
<td><strong>Guiding principles:</strong> Equity is distinct from equality. Equality requires all to have the same resources, while equity requires all to have equal opportunity to access the same resources.</td>
</tr>
<tr>
<td><strong>Violations of child rights arise when these are not realized as per the CRC’s four principles:</strong> non-discrimination; best interest of the child; right to survive, grow and develop; and right to participate/be heard.</td>
<td>Inequities arise when certain population groups are unfairly or unjustly deprived of basic resources that are available to other groups.</td>
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Table 1: Human rights and equity approaches

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1 UNICEF 2003.
At the root of the rights-based approach are the Convention of the Rights of the Child (CRC), the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and other core international, regional and domestic human rights instruments. The measurement of progress against these formal obligations is a central benchmark by which to assess the situation of children and women.

Equity means that all children have an opportunity to survive, develop and reach their full potential without discrimination, bias or favouritism. This interpretation is consistent with the CRC, which guarantees the fundamental rights of every child regardless of gender, race, religious beliefs, income, physical attributes, geographical location or other status. Inequities generally arise when certain population groups are unfairly deprived of basic resources that are available to other groups. It is important to emphasize that equity is distinct from equality. Equality requires everyone to have the same resources. Equity requires everyone to have the opportunity to access the same resources. The aim of equity-focused policies is not to eliminate all differences so that everyone has the same level of income, health and education. Rather, the goal is to eliminate the unfair and avoidable circumstances that deprive some children of their rights. ²

**Methodology**

With a strong equity focus on the most disadvantaged, UNICEF has developed a framework that provides a basis for a holistic analysis of the determinant factors that affect the achievement of child rights as they relate to advocacy, policy analysis and partnership building in an environment of reduced financing. The framework can also assess the quality of and access to services that are available for children and women.

The SitAn seeks to contribute to the development of programmes, policies and strategies that understand and address the root causes of inequity so that all children, particularly those who suffer the worst deprivations in society, have access to education, health care, protection and other services necessary for their survival, growth and development. The framework of the 10 determinants includes:

<table>
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<th>DETERMINANTS</th>
<th>DEFINITIONS</th>
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<tr>
<td>Social norms</td>
<td>Social rules of behaviour which are mainly driven by social pressure</td>
</tr>
<tr>
<td>Legislation/Policy</td>
<td>Adequacy of laws and policies at national and sub-national levels</td>
</tr>
<tr>
<td>Budget/Expenditure</td>
<td>Allocation &amp; disbursement of required resources at national and sub-national levels</td>
</tr>
<tr>
<td>Management/Coordination</td>
<td>Rules of Accountability/Coordination/Partnership</td>
</tr>
<tr>
<td>Financial Access</td>
<td>Ability to afford</td>
</tr>
<tr>
<td>Social and Cultural practices and beliefs</td>
<td>Individual beliefs and practices that may be widely shared but are not mainly driven by &quot;social pressure&quot; or expectations.</td>
</tr>
<tr>
<td>Timing and continuity of use</td>
<td>Completion/continuity of services and adoption of practices</td>
</tr>
</tbody>
</table>

**Fig. 1: Ten determinants of equity**

² UNICEF, Strategic Plan, 2014.
(see Figure 1) offers an ‘equity lens’ to examine structural and systemic barriers and bottlenecks to children’s rights that often indicate persistent rights-based failures.3

This SitAn is not only guided by the 10 determinants but also draws on an extensive desk review, including the examination of a wide range of national and regional development plans, surveys, studies and reports relevant to children (the complete list of sources used for the quantitative analysis can be found in the bibliography). The existing documentation describing the status of children and women in Grenada was useful and current. However, there was uncertainty related to the quality of the data accessed and quoted, which could be more accurate; this uncertainty is ubiquitous in reports that cite statistics from different sources.

Moreover, the absence of data for indicators related to inequality, gender, health outcomes and behaviour, child development, nutrition, social and child protection, unemployment and social determinants of poverty is notably acute. When programmes, plans and strategies are formulated in the absence of sound analysis, it is difficult to appropriately allocate budgets to attain the goals and objectives needed to realize the rights of children.

Lack of information sharing, as a practice, among government departments, civil society organizations and with the public in general persists as an acute bottleneck to the development of informed opinions on economic and social development in the sub-region. Even where data exist, the infrastructure and human resources required for their consistent collection, collation and presentation are lacking, and the culture for evidence-based decision-making is embryonic. The SitAn exercise confirmed that information collection and sharing can be highly centralized, often requiring clearance at the Cabinet level before routine sectoral studies, surveys and basic information regarding budgets and expenditures can be distributed.

Through key informant interviews, focus group discussions and observations, the desk review of information and quantitative data analysis was combined with the voices of children and of a wide range of stakeholders who support children (see Figure 2). In view of the limited data available from surveys, studies and standard monitoring tables, this qualitative data was pivotal in understanding the immediate and long-term impacts of current policies and programmes on the lives of children and women in the country. A selection of these voices and individual stories are presented throughout the report in text boxes.

The focus group meetings were designed to be informal, were held in meeting rooms of either ministries or directorates of national programmes and took an average of 1.5 to 2 hours. Each person was given a chance to speak and express his or her opinion, and the discussions were recorded and later transcribed. The goal was to have a detailed discussion among social stakeholders and to gain insights into their understanding of issues affecting the achievement of the rights of children from both a duty-bearer and rights-holder perspective.

The first phase of fieldwork for the qualitative research took place from 28 July–7 August 2015. Semi-structured interviews were conducted in public places by a trained data collector, using a questionnaire prepared for the research. The aim was to identify and define the problems, obtain the thoughts and experiences of the participants and examine how people in both urban and rural settings viewed the problems facing children. It was also expected that participants would give their opinions about the reasons for and solutions to the problems. Although question categories prepared for the quantitative research
were the same as for the semi-structured interviews, participants were encouraged to expand on any topic they wished in the hope that more of their experiences would be explored.

Standard ethical research techniques were used for the discussions with children to avoid making them feel vulnerable and to protect them from any distress. Because the initial exercise took place during the summer break, it was not possible to coordinate discussions with many teachers, counsellors or social workers. Limited discussions with children were therefore arranged at the beach, playgrounds, bus stops and soccer fields.

Once the field data collection exercise was completed, emails were sent to the different government departments to follow up on requests for data and check for accuracy. Notes and recordings were transcribed and checked for errors and clarity.

As a ‘stocktaking’ exercise, the status and situation of children in Grenada emerging from the SitAn process were presented and discussed at exit meetings attended by government, NGO and UNICEF staff. This was done in two phases: first, the overarching results were presented and discussed at a high-level meeting attended by ministers and permanent secretaries; second, the full report was presented and discussed in plenary. The consultation meeting received attention from high-level officials, mid-level technicians and development practitioners from all sectors. The main findings from this report, including the voices of children, were presented followed by a robust discussion of concrete actions needed to address the issues emerging. The meeting resulted in agreement on short-term and long-term priorities for UNICEF and other key partners to include in programme plans and project designs. This step in the process will go a long way towards encouraging the Government and development partners to consult the SitAn report as a key reference document for programme development when it comes to designing interventions for children in Grenada.

Limitations

Participants in the semi-structured interviews were mostly from the core stakeholder groups, and comparably fewer parents/caregivers were interviewed.

Structure of the report

After this introductory chapter, the report provides a country overview in Chapter 2, including governance structure, legal framework related to children, demographics and the economy.

Chapters 3, 4, 5 and 6 then assess the situation of children relative to the right to an adequate standard of living; the right to protection (including from sexual, physical and emotional abuse and neglect); the right to education (early childhood development, primary, secondary and technical and vocational education and training); and the right to health (including infant and child mortality, HIV and AIDS, chronic diseases and obesity, drug and alcohol use and mental health services).

Chapter 7 looks at how the new Sustainable Development Goals (SDGs) can accelerate progress for children, and finally Chapter 8 offers concluding remarks and general recommendations.

The report aims to establish the extent to which child rights are realized in Grenada and determine the shortfalls with the intention of identifying opportunities to accelerate progress for the country’s children.
2 Overview of Grenada

Grenada
National and Parish Capitals

Caribbean Sea

GRENADA

Saint Patrick
Saint Mark
Saint John
Saint Andrew
Saint George
Saint Davids
Saint George's

Caribbean Sea
The most southerly of the Caribbean Windward Islands, the country of Grenada comprises three islands – Grenada, Carriacou and Petite Martinique – and some 600 small islets, most uninhabited. St. Vincent and the Grenadines and Trinidad and Tobago are its closest neighbours between the Caribbean Sea and the Atlantic Ocean. The country’s total land area is 133 square miles. The islands are all volcanic in origin, with Grenada itself more mountainous than the others and covered by dense forest. Often referred to as the ‘Spice Island’, it is the world’s second largest exporter of nutmeg and mace.

Grenada is classified as an upper-middle-income country and ranked 79 among the 188 countries and territories in the 2016 Human Development Report. Life expectancy at birth is estimated in 2013 at 73.68 years, with women expected to live slightly longer (76.35) than men (71). Ministry of Health and Social Security data show the infant mortality rate (IMR) at 11 per 1,000 births and the under-5 mortality rate (USMR) at 12 per 1,000 births.

Other welfare indicators such as pre-primary, primary and secondary school enrolment ratios show signs of improvement, as the Government and partners have noted in recent progress reports towards the Millennium Development Goals (MDGs). Teen birth rates (births to 15–19-year-olds per 1,000 live births) declined from 36 per cent in 1976 to 12.4 per cent in 2014. The literacy rate for age 15 and older in 2013 was reported at 98 per cent. Unemployment rates continue to be of concern at 25 per cent. Women and young people are most affected, with 15–19-years-olds making up 18.6 per cent of the total.

In the recent past, the Caribbean has been transformed from an inward-looking region to one that is increasingly and necessarily linked to other parts of the world. Globalization has led to increased integration of production, trade and finance on an unprecedented scale. The effects
have been profound on the SIDS of the Caribbean. The sub-region responded by moving forward with integration strategies as a means to leverage the emerging opportunities and mitigate the risks and individual repercussions on the political, economic, social and cultural sectors of these small societies.

Two major institutions were created to coordinate and guide these integration strategies:


2. The Organisation of Eastern Caribbean States (OECS), created in June 1981 with the Treaty of Basseterre, was a successor to the West Indies Associated States, a political body serving the Leeward Islands. By 2015, OECS counted 10 member or associate member States. Grenada, one of the original members, joined in June 1981 and ratified the revised Treaty of Basseterre in 2010. The Revised Treaty of Basseterre established the Organisation of Eastern Caribbean States Economic Union on 18 June 2010 and outlined a plan to: (a) establish a single financial and economic space within which goods, people and capital move freely; and (b) harmonize monetary and fiscal policies. Member States are expected pursue a common approach to trade, health, education and environment, as well as to the development of such critical sectors as agriculture, tourism and energy.

As a member of these institutions, the Government of Grenada benefits from the common standards and services of the Eastern Caribbean Central Bank (ECCB), the Caribbean Regional Negotiating Machinery (CRNM), the Caribbean Development Bank (CDB), the Eastern Caribbean Supreme Court (ECSC) and the Eastern Caribbean Civil Aviation Authority, among other important sub-regional entities.

Additionally, Grenada is an official member of the African, Caribbean and Pacific Group of States, Association of Caribbean States, Non-Aligned Movement, Organisation Internationale de la Francophonie, Organization of American States, United Nations and World Trade Organization. In December 2014, Grenada joined ALBA (Bolivarian Alliance for the Peoples of Our America), an intergovernmental organization based on the idea of the social, political and economic integration of the countries in Latin America and the Caribbean.

Grenada is an upper-middle-income country with a GNI of US$8,650 per capita. Tourism and agriculture are the main industries. During the past 10 years, it has been on a path to achieve a vision of sustained economic growth and poverty reduction. Underpinned by political and social stability and prudent macroeconomic management, it has experienced significant improvements in the standard of living and expansion of opportunities for the growing middle class. This improvement is largely driven by the country’s intentional transition from an agricultural to a service-based economy, with tourism as the main source of employment and foreign exchange earnings. Universal access to basic education with improved health and fewer gender imbalances are outcomes of this effort.

However, its achievements are highly vulnerable to external shocks and dependent on foreign savings to finance, build on and sustain development. Despite a relatively high per-capita income, inequality is persistent and the fight to reduce poverty is troubled by multi-faceted development challenges, including: overcoming gender inequality and its negative influence on sustainable development outcomes; achieving fiscal and debt sustainability; improving social inclusion and enhancing citizen security; and combatting a high level of economic, social and environmental vulnerability. Additionally, continuing urban-rural disparities pose serious challenges for achieving the recently adopted Sustainable Development Goals (SDGs), set out for 2030.

The protection of freedom of assembly and right of association is stipulated in the Constitution as a fundamental right and, according to all human rights reports reviewed, these rights are largely respected in practice by the Government. The history of trade unions is well documented, dating back to the formation of the Teacher’s Union in 1913, and they have been acknowledged as a means of advancing civil rights, with a proven ability to mobilize and influence policy. In 2005 about 25 trade unions represented 26 per cent of the country’s workforce. These unions are affiliated with and receive support from a wide range of regional and international trade unions.

There are dozens of non-governmental, civil society and faith-based organizations, several of which work with coalitions and councils in the areas of violence against women, education, community development and health. NGOs have been an effective voice for change on issues of equality, calling for transparency and justice and

12 Felix 2006.
working to keep the power and the spirit of volunteerism and active citizenship alive. However, as noted during the field mission, they suffer from inadequate funding and limited capacity to follow the development of issues in several technical areas. The presence of international NGOs is largely confined to hurricane response and recovery efforts.

The press is free, and discussions and interviews conducted for the SitAn indicate little government interference. Both daily and weekly privately owned print media are active. Two television stations are available, the most prominent being jointly owned by the Government and the Caribbean Communications Network of Trinidad and Tobago, which also operates two radio stations. Additionally, a dozen private radio stations also broadcast and cable subscription services are available and provide access to local and international channels.

Radio talk show formats have emerged as an important vehicle for discussions on social and economic issues. Young people in particular participate in these discussions by calling in from their cell phones. The number of mobile phone subscribers was estimated at 112.3 per 100 inhabitants in 2016 and the number of Internet users at 53 per cent. 13

Governance

Grenada achieved independence from Britain in 1974, with Eric Gairy – who had previously been the Premier – as the first Prime Minister. He was deposed by the first coup d’état in the English-speaking Caribbean in 1979. The country subsequently made international headlines again in 1983 with the overthrow and execution of Prime Minister Maurice Bishop, when the Deputy PM backed by the military seized the leadership. At the request of the OECS, the United States marines invaded Grenada on 25 October with support from 300 police from Antigua and Barbuda, Barbados, Dominica, Jamaica, St. Lucia and St. Vincent and the Grenadines. Several weeks later an interim government was appointed, followed by democratic elections in 1984. Similar to other members of the OECS (with the exception of Dominica) – as well as, in the wider Caribbean, the Bahamas, Barbados, Belize, Jamaica and the British Overseas Territories – Grenada is a constitutional monarchy within the Commonwealth of Nations and recognizes Queen Elizabeth II as the titular Head of Government. The British monarch is represented by the Governor General, who is the highest executive power on the islands.

Grenada has a stable democracy with two main political parties: ¬the National Democratic Congress (NDC) and the New National Party (NNP). The Grenada United Labour Party – which was in power under Gairy – is still active. The NNP won the most recent elections held in 2013.

The country is governed by an elected bicameral Parliament consisting of a 16-member House of Representatives elected to five-year terms and a 19-member Senate. The Prime Minister is the leader of the party that holds the majority of seats in the House obtained by victory at the polls. The current Constitution, the supreme law of the land, was adopted in 1973 and came into force when the country later became an independent State within the Commonwealth in 1974. The separation of powers is positioned across three branches of government where the legislative power is vested in the Parliament, the executive power is vested in the President and the Cabinet of ministers and the judicial power is vested in the courts.

As of February 2015, the 14-member Cabinet included the Prime Minister, who held the portfolios of national security, public administration, disaster management, home affairs and implementation. The Cabinet has overall responsibility for policy formulation and management of the day-to-operations of the nation covering the following areas: agriculture, commerce, education, finance, foreign affairs, health and the environment, housing, information, justice, planning and economic development, public works and ports, social services, human resource development, tourism, trade, youth, sports and culture and affairs on Carriacou and Petite Martinique.

The judicial branch includes the magistrate’s court for minor offences and the High Court for major ones. The Office of the Attorney General appoints the magistrates, but appointments and dismissals of magistrates must meet the unanimous approval of the Heads of Government in the OECS. Appeals are heard by the Court of Appeal of the Eastern Caribbean Supreme Court (ECSC), whose chief justice is appointed by the Queen. Appeals at the highest level may be taken to the Judicial Committee of the Privy Council in London if they conform to certain prescribed conditions, usually issues that require constitutional interpretation or are decisions of great general or public importance.

The country is divided into six parishes and one dependency (Carriacou and Petite Martinique) that serve as administrative structures to the national Government, but there is no constitutional provision for local government. However, a Ministry of Carriacou and Petite Martinique operates five administrative divisions to facilitate and coordinate all government matters there, including social development, public works and agricultural policies. Issues of procurement and human resource management are referred to Grenada.

13 UNDP 2016.
Legal framework related to children

The legislative framework for child protection in Grenada is grounded in international and regional conventions and universal systems of rules that govern and regulate decision-making, agreements and laws concerning children. International and regional conventions and agreements represent the foundation for standards and tools by which national frameworks can be constructed in an integrated universe.

The Constitution came into operation on 7 February 1974 and was restored in 1983 after a three-year suspension. It guarantees a comprehensive set of fundamental rights and freedoms to which every person in Grenada is entitled. It protects people from discrimination on the basis of race, place of origin, political opinions, colour, creed or sex, but also establishes an exception for those who are not citizens of Grenada. This could be significant for the rights of migrant children or those born into migrant families. A constitutional review process has been underway for some time, targeting issues of gender equality, concepts of discrimination and a child’s right to education for proposed changes.

The Age of Civil Legal Responsibility Act, the Criminal Code, the Electronic Crimes Act (2013), the Child (Protection and Adoption) Act (2010) and the Employment Act form the core of legislation guiding the protection of children in Grenada (these and other laws are listed in the box). The Juvenile Justice Act (2012) correctly defines a child as a person who has not attained the age of 18 years, but establishes that a child from 7 years of age to 12 years of age can be criminally responsible. The 2014 Juvenile Justice Act sets the age of criminal responsibility at 12 years and stipulates that children who commit crimes before the age of eighteen must be treated as children. Until the Juvenile Justice Act is in full force, the Criminal Code, allowing less stringent exceptions to the minimum age, guides the court. The Committee on the Rights of the Child strongly advises against this practice and considers that a system of two minimum ages can result in discriminatory practices and confusion.

As a newly independent state, the Government acknowledged its commitment to human rights with the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in August 1990. It went on to ratify the Convention on the Rights of the Child (CRC) that same year, extending the protection, survival, development and participation rights of children across all aspects of their lives. The initial reports were submitted in 1992 for the CRC and 2010 for CEDAW. The Convention on the Rights of Persons with Disabilities (CRPD) was ratified in 2013, making good on the Government’s commitment to protect and promote the inherent dignity, worth and inalienable rights of people living with disabilities.

Both the CRC and CEDAW highlight that discrimination and being treated unfairly because of being a girl must end; girls have a right to education, health and nationality; all forms of violence against girls and women, such as trafficking and prostitution, must end; both parents are responsible for raising their children; play, rest and leisure are important for all children; and governments must do all they can to make sure girls’ rights are protected.  

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14 UNICEF 2011.

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Table 2: Key national policies and laws

- Children (Protection and Adoption) Act, 2010 (passed not enforced)
- Status of Children act, 1991
- Status of Children Bill (before parliament)
- Age of Civil Legal Responsibility Act, 2011
- Civil Registration Bill, 2013 (passed but not enforced)
- Maintenance Act, 1972
- Electronic Crimes Act, 2013
- Domestic Violence Act, 2010 (passed not enforced)
- Juvenile Justice, 2012 (passed not enforced)
- Marriage Act, 1966 (and related amendments)
- Legitimacy Act, 1929
- Education Act, 2002 (and related amendments)
- Trafficking in Persons (Prevention) Act, 2014 (passed not enforced)
- Employment Act, 1999 (and related amendments)
- Criminal Code, 1958 (amendments)
- Criminal Code Act (amendment) 29, 2012
- Criminal Code Act (amendment) 34, 2013
In addition to the CRC, CEDAW and CRPD, Grenada has also signed and/or ratified the following key international human rights instruments:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): 2013
- International Covenant on Civil and Political Rights (ICCPR): 1991
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: 2014
- Optional Protocol to the CRC on the involvement of children in armed conflict: 2012

Established by an Act of Parliament in 2007, an Office of the Ombudsperson is accredited as a national human rights institution and participates in the regional network of national human rights institutions (NHRI). As with many of the ombudsperson offices in the sub-region, it mainly focuses on rights issues in public bodies as opposed to addressing global human rights or child rights violations in the country.

At the writing of this report, Grenada is preparing the final report on progress towards the Millennium Development Goals (MDGs) and a long-term national strategic development plan (National Sustainable Development Plan to 2030). This will permit adjustment of all national and sector plans to include appropriate goals, objectives and targets to complete unfinished MDG business and align future plans with the up-and-coming Sustainable Development Goals (SDGs) (see Chapter 7).

**Demographics**

The population of Grenada was reported at 107,599 in the 2011 Census, with 6.5 per cent of the population living on Carriacou and Petite Martinique. This is the second smallest island population in the world. The overall growth rate was recorded at 0.54 per cent. In 2012, the male population (54,435) outnumbered the female (53,164).

The population is young, with almost 35 per cent under the age of 18 and 57 per cent under the age of 35 (see Figure 3). The 2015 State of the World’s Children report estimated about 9,000 children under the age of 5 and noted 31 per cent urbanization (in 2008), with a 0.2 per cent rate of growth among the urbanized population. According to the 2008 country poverty assessment (CPA), the parishes of St. George (excluding the town of St. George’s) and St. Andrew accounted for 57 per cent of the total population. A little over 9 per cent of the population is over the age of 65.

The 2008 CPA established that 47 per cent of Grenadian households are headed by women, with more than 20 per cent located in the rural areas compared to just 13 per cent of those headed by men. The 2011 Census reported an average household size of 3.0 for the nation.

In terms of ethnicity, the 2008 CPA reports 90 per cent of the population as having descended from Africans as part of the historical slave period. There are small communities of Portuguese, Chinese, Lebanese and East Indians. The religious life of Grenadians is predominantly Roman Catholic, with nearly half the population practicing Catholicism.

Although English is the official language and language of instruction, many Grenadians – particularly older residents – speak Creole as well.

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16 Ibid
17 Ibid
18 Ibid
19 UNICEF 2015.
20 Kairi Consultants Ltd. 2009.
21 UNICEF 2015.
22 Kairi Consultants Ltd. 2009.
24 Kairi Consultants Ltd. 2009.
Migrant population

Migration is a vital element in the history of the Caribbean and – although the trends, destinations and origins differ from island to island – has influenced the language(s) spoken and culture. There are three primary migration flows in the region: (a) internal migration (e.g., from rural areas to a city); (b) intra-regional migration (e.g., movement among islands); and (c) outward migration or emigration (e.g., movement to Latin America, Europe or North America). Three of the most important factors influencing these flows are socio-economic inequalities (both within the Caribbean and globally), tourism and human trafficking. The liberalization of trade barriers and the free movement of workers as a consequence of globalization have resulted in both legitimate and illicit migratory flows in the region.

The 20th century saw many Grenadians emigrate to Canada, Trinidad and Tobago and the United States on cargo boats (sometimes referred to locally as ‘banana boats’) in search of better social and economic opportunity. During the 1960s, there was a notable growth in the production of sugar, which led to the importation of seasonal workers from neighbouring islands. By mid-1970s, with the rise in the tourist industry, Grenadians migrated to other islands in the Caribbean to work in the construction of hotels and housing, to work as hotel service personnel and to perform myriad other tasks. Many left Grenada for Aruba, Trinidad and Tobago and Venezuela during that era. Women usually stayed behind and managed the family household and land while the men sent home remittances with intentions of returning.

Grenada currently has an estimated net migration of -3.13 migrants per 1,000 population. The impact of outward migration is much greater on smaller islands and there is now notably a feminization of migration flows. Currently the net outward migration rate for Grenada is considered moderate, and it has been consistent over the past two decades as a result of volunteer emigration of skilled labour. Emigration, particularly among the educated elite,
has long been a troubling factor in forming adequate human development capital.

Regarding inter-regional and international migration, the inflows into the country have included economic migrants from Jamaica and Guyana, the latter (made up mainly of East Indians) being the most distinctive group in the context of Grenada. According to World Bank data, the migrant population in Grenada totalled 12,957 in 2010, a 37 per cent increase over the 2000 total of 7,943. As evidenced by the focus group discussions and interviews, the degree to which the migrant population is assimilated varies depending on the communities and the perceptions and economic level of those interviewed.

The CARICOM Single Market and Economy (CSME), signed in 1989, and the 2011 OECS Revised Treaty of Basseterre established a political and legal framework for intra-regional movement of skills, labour and travel while harmonizing access to social services, providing for the transfer of social security and setting common standards and measures for accreditation and equivalency. The free movement of labour is an integral and critical aspect of the region’s development strategy and of the success of the economic union. There are key benefits offered by the OECS framework where the CSME is lacking: for example, the former permits citizens to hold permanent residence and retire in any member State, and travel is facilitated with any picture ID; whereas the latter permits a minimum of six months without a work permit, and a return ticket and evidence of financial support are required.

The success of the economic union and Integration policies is determined by the level of political, social and financial support and the resources leveraged to facilitate effective implementation. Several administrative, labour-related challenges continue to slow progress. High transportation and communication costs throughout the region represents a major deterrent to the movement of the poor seeking better-paying jobs commensurate with their education levels and skill sets. A major concern revolves around the movement of women and children and the weaknesses in and inconsistencies of social protection systems among the member States. Policies need to be strengthened and enforced to address child labour, sexual exploitation of children, violence and abuse exacerbated by the absence of one or both migrant parents. Grenada is one of several countries that have yet to sign/ratify the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. The fact that CARICOM membership extends beyond the nine OECS member States also complicates attempts at coordination and standardization.


Economy

The impact of the 2008 crisis has proven severe in the Caribbean, with sharp decreases in flows from official development aid and declines in tourist arrivals, remittances and foreign direct investment (FDI). Growth rates plummeted, debt and fiscal imbalances increased to unsustainable levels and labour market conditions deteriorated. With decreasing productivity and weak external demand in key sectors, the financial sector demonstrated limited capacity to support growth and job creation. Further, Caribbean island States are particularly vulnerable to natural disasters, such as hurricanes and other extreme weather events including droughts, which are now being exacerbated by the adverse impacts of global climate change.

Economic growth in Grenada was seriously interrupted by Hurricane Ivan in 2004 and Hurricanes Lenny and Emily in the following year. Reconstruction efforts spanned a period of years and contributed to a widening fiscal deficit and increased public indebtedness. The damage from Ivan was particularly devastating, with direct and indirect costs totally 200 per cent of gross domestic product (GDP). These disasters effectively reduced the domestic capital stock, led to an increase in the cost of capital, through high replacement rates, and forced the Government to resort to additional borrowing for aid recovery efforts.

Research on the ideal environment to sustain increases in per capita GDP show a direct correlation with five key drivers of economic and social growth: (a) macroeconomic stability; (b) high levels of investment, including both human capital and infrastructure; (c) enhancements in productivity; (d) openness to ideas, technology and capital; and (d) effective institutions. Like other OECS member States, Grenada is beleaguered by small domestic markets that constrain efficiency and the growth of the private sector; limited product diversification, increasing both the risk and the return that can be derived from economic activity; and scale diseconomies in public service provision.

Grenada depends heavily on tourism, remittances, external aid and, to some degree, the export of cocoa, nutmeg and other spices. The 1970s represented years of economic transitioning as the country moved from a largely agriculture-based economy towards growing reliance on the services sector. It has done well in recent years to diversify the economy with the development of a manufacturing sector focused on paper products and electronic components, offshore financial services and direct marketing. By 2012, the primary sectors had shrunk significantly, representing a 52.1 per cent change in their relative
contribution to GDP. Conversely, the tertiary sectors grew with a 22.9 per cent change in their relative contribution. High levels of construction activity in response to the hurricanes initially helped to grow this sector, but it later fell victim to the impact of the world recession in 2008 along with budding tourism-related businesses.

With the aid of the International Monetary Fund (IMF), the Government accessed a Poverty Reduction and Growth Facility for support to overcome the overall deficit situation and address the general economic imbalance. The strategies and austerity measures adopted helped to: make fiscal adjustments aimed at reduction of the public sector debt; implement structural policies to optimize the investment climate; reduce vulnerabilities to extreme weather events that were showing signs of developing patterns; and take important action to strengthen the social agenda needed to maintain and accelerate the fight against poverty. This effort saw the emergence of cash transfers and other social safety net mechanisms needed to address rising unemployment rates associated with the contraction in demand for services and commodities, all associated with weakening tourism and construction activities.

By 2010, the Government obtained an extended credit facility and doubled-down on efforts to reduce the debt-to-GDP ratio to the target of no more than 60.0 per cent by 2020, among other priorities. Similar to many other Caribbean countries at the time, the debt-to-GDP ratio had reached triple digits (108 per cent in 2012, 109.1 per cent in 2014 and 103.6 per cent in 2015). Other partners, such as the Eastern Caribbean Central Bank (ECCB), joined in support for Grenada to succeed in making the structural adjustments needed to generate high and sustainable growth and a vibrant and stable economy, including a private sector that would play an important role in reducing unemployment and opening up opportunities for new earnings.

The continued emphasis on convincing and appropriate strategies for the ‘home-grown’ reform effort and an accent on social development have led to a performance today with few systemic difficulties and good medium-term prospects. Grenada is projected to record real GDP growth rate (at market prices) of 5.1 per cent, following a growth rate of 5.7 per cent in 2014, amounting to the third consecutive year in which the country’s growth rate will exceed the ECCU average of 1.9 per cent. Nominal GDP grew 3.1 per cent in 2015, with Grenada one of only three countries in the region showing 4 per cent or above growth in tourism and construction, the mainstays of the economy. The inflation rate was at 2.41 per cent in 2012 with a slight decrease (1.6 per cent) noted in the 2015 Budget Statement.

Grenada recorded the first primary surplus (2.1 per cent of GDP) in over 10 years in 2014. The latest debt restructuring efforts were successfully completed in November 2015 with half of the 50 per cent ‘haircut’ completed and the second half expected in 2017. Improved tax administration, including revised tax incentives, contributed to tax revenues recovered at 19 per cent of GDP in 2014, a considerable increase over the 16.7 per cent in 2013, an all-time low. The increase in revenue from EC$437.6 million in 2013 to EC$502.3 million in 2014 and EC$550.4 million estimated in 2015 is also due to incoming revenues from the Citizenship by Investment Programme (CBI), although this brought in 36 per cent less than expected. Total expenditures fell from EC$718.1 million in 2014 to EC$669.8 million estimated in 2015, mainly due to reductions in the public sector (wage freezes, among others) and lower capital expenses.

The signs of growth are timid and remain fragile. By September 2015, experts forecast positive economic growth generally for the Eastern Caribbean, with expectations for accelerated growth over the medium term. However, capitalizing on this trend in terms of sustaining progress and achievements towards the SDGs may prove difficult with high unemployment rates (particularly among women and youth), persistent poverty among the rural population and increased dependency on tourism. Although Grenada has recently benefited from major improvements in tourism activities, unemployment and poverty reduction remain significant hurdles towards a path of stable economic and social growth.

30 World Bank 2015.
31 Mitchell 2015.
32 All the figures in this and the following paragraph also come from Mitchell, 2015.
3 The Right to an Adequate Standard of Living
**Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing (CRC, article 27)**

The lives of children are overwhelmingly more affected than those of adults by the discrimination and marginalization they endure as a result of deprivation and poverty. The shame, abuse, psychological stress, exclusion and stigma they experience diminish their self-esteem, confidence and ability to function socially, often leaving psychological footprints deeply affecting their personal growth and development. When examining the patterns and drivers of the lives of children living in poverty, a rights-based approach grounded in the four core principles of the Convention on the Rights of the Child (CRC) is imperative: the right to life, survival, and development; non-discrimination; consideration of the best interests of the child; and respect for the views of the child. In keeping with the CRC and other key human rights instruments, the framework for poverty analysis should look beyond economic deprivations towards persistent inequalities that are likely to underpin the causes.

The Caribbean Development Bank (CDB) has conducted two country poverty assessments (CPA) in Grenada since 1995, with the latest – completed in 2008 – noting significant improvement in the situation. The CPA methodology was enhanced in 2008 to include an assessment of the macro social and economic environment, a household budget survey (HBS) and an institutional analysis covering 54 organizations including NGOs and community-based organizations. These changes create some difficulty in comparing results from the two studies. Nevertheless, the national poverty level findings indicate an important decline in the indigent poverty rate (where the two methodologies are comparable) from 12.9 per cent in 1998 to 2.3 per cent in 2008. The CPA also reported that 37.7 per cent of the population were poor (below poverty level), while 14.6 per cent were deemed vulnerable or sufficiently close to the poverty line than any event or shock would make them susceptible to falling into poverty.

**Figure 4: County poverty assessment**

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**Poverty**

- Population indigent or critically poor: 37.7%
- Unable to meet basic food needs. Some can meet food but not non-food needs: 2.4%
- Poor households are headed by women (highest in OECS): 42.2% of children w/women household; 34.8% of children w/men household:
- GINI coefficient:
  - Poorest 20%: enjoyed 5.2% of expenditures
  - Richest 20%: 54.1%
- Highest rate of poverty:
  - Among the 0-18 pop. 53%
- Under 24:
  - 56% live in St. Andrew and St. George's: 66.4%

*The accuracy of poverty analysis, including analysis of income poverty, has been compromised by difficulties in comparing estimates, and the uses of different sources and methodologies of data produced since the 2007 CPA.*

A study published in 2010 by the Institute of Development Studies (IDS) revisits ideas about the distribution of poverty asserting that over 60% of the world’s poor are to be found in middle-income countries (MICs) like Grenada and other Eastern Caribbean States. (Summer 2010). 44% of female households are in 3 lowest quintiles vs 18% of male households.

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33 Kairi Consultants Ltd. 2009.
34 Ibid.
35 Ibid.
Poverty in Grenada is characterized by major differences in income distribution as reflected in the Gini coefficient rate of 0.37 in 2008. The CPA noted that the most affluent 10 per cent of the population accounted for almost one third (29.8 per cent) of total consumption compared to the poorest 10 per cent who accounted for just 2.9 per cent. The majority of the poor were located in the parishes of St. Mark, where more than half of the residents lived below the poverty line, and St. Andrew, where 44 per cent lived below the poverty line. The islands of Carriacou and Petite Martinique had the lowest rate of poverty (6.6 per cent).

With 48 per cent of all poor households headed by single women, Grenada has the highest percentage of female-headed households recorded in the OECS. Forty-four per cent of urban households headed by women are found in the poorest quintiles compared to only 18 per cent for men. One in every two Grenadian children lives in poverty, with 39.3 per cent of the poor found in the 0–14 years of age group (compared to 29.4 per cent of the non-poor). Although the average household size at the national level is two in the highest quintile and three in the middle, for the poorest quintile it is five. The CPA found that only 48 per cent of the poorest households had indoor sanitation or water closets and 85 per cent had electricity.

Grenada is an upper-middle-income country working to stabilize the economy and grow decent work opportunities. In 2014, it reported a gross national income (GNI) per capita (World Bank Atlas method) of US$7,460. A study published in 2010 by the Institute of Development Studies (IDS) revisits ideas about the distribution of poverty, asserting that over 60 per cent of the world’s poor are to be found in middle- and high-income countries such as Grenada and other Eastern Caribbean States. These countries contain many of the standard characteristics of rural poverty at significant national levels. To understand and properly address this, a focus is needed on different and more indicative factors that go beyond GNI. This should include the level of economic growth, the fiscal ability of governments to effectively address economic and social development issues using own-generated resources, and the percentage of the population living in rural areas. Although fewer people in Grenada are living in extreme poverty in 2008 than previous years, nearly 15 per cent of all households are considered vulnerable. While acknowledging these gains and intentions to continue the positive growth trends, sustaining these achievements and preventing vulnerable households from sinking into poverty constitute a major challenge.

### Employment, poverty and vulnerability

The World Bank Enterprise Surveys (WBES) stress the importance of an adequately trained labour force and high participation rate of women in the workforce as key determinants for private sector business development as well as a generally healthy economy. However, gender disproportionally affects the likelihood of employment in Grenada. The 2008 CPA reported a total employed labour force of 47,581 with 49 per cent men and 51 per cent women, but the unemployment rate was estimated at 24.9 per cent with nearly double the number of women (31.8 per cent) unemployed than men (17.9 per cent). It is widely acknowledged that women and youth experience higher unemployment than national figures suggest. The 2014 labour force survey (LFS) highlighted the following:

- Although unemployment had declined by 3.6 percentage points since 2013 to 28.9 per cent, it had been decades since Grenada saw a single digit unemployment rate.
- The total number of unemployed persons fell by 1,286 persons from 2013 to a total of 16,689 in 2014.
- The number of employed persons slightly increased to 41,046 in 2014, with 3,681 joining the employed labour force.

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36 Baksh 2014. The Gini coefficient measures income distribution on a scale of 0 to 1, with 1 indicating absolute inequality.
37 Kairi Consultants Ltd. 2009.
38 Ibid.
39 Ibid.
40 Government of Grenada 2011, p. 22.
41 Kairi Consultants Ltd. 2009
42 UNICEF 2015
43 Sumner 2012.
44 Kairi Consultants Ltd. 2009.
47 This is most likely due to the implementation of IMANI, a second chance, skills development programme that strives to skill up and employ youth, no matter how many times they might have been unsuccessful before and regardless of their level of education.
Most employed persons in 2014 had attained at least a secondary education (61 per cent).

Many of the employed live in households whose income or consumption levels fall below the poverty level threshold, and they therefore spend considerable time looking for better-paying jobs. Research has observed that people in this group, categorized as the ‘working poor’, are generally clustered in the 25–44 age group, work in the informal sector and are more or less economically depressed, disenfranchised and marginalized. In 2010, it was reported that 21.2 per cent of all workers fell into the category of the working poor, with more women than men.48

Young people between the ages of 15 and 25 experience the highest unemployment rates in Grenada and the Caribbean in general. A CDB study released in 2015 identifies an acute unemployment problem for youth (18–24), who make up a quarter of the region’s population.49 It shows a rate of 25 per cent among youth compared to 8 per cent among adults, with unemployment among young females (30 per cent) considerably higher than young males (20 per cent).50 As noted above, the 2008 CPA revealed that a total of 14.6 per cent of Grenadians were deemed vulnerable.51

Poverty and the female-headed household

High unemployment and underemployment rates among women carry significant implications for the 48 per cent of the country’s poor households headed by women.52 With fewer women employed, higher unemployment rates among women than men, the boom in the male-dominated construction industry and the traditional gender-based barriers facing women, single female-headed households face significant disadvantages. With 42.2 per cent of Grenada’s children living in poor households headed by women (compared to 34.8 per cent among male-headed poor households), unemployment of women has a profound effect on children.53

Information collected during the SitAn field mission indicates that more female-headed households are vulnerable and experience poverty than male-headed households and that the dimensions of poverty take on different characteristics in the former. This is confirmed by the CPA results, which reported that women dominate household headship in the lower two consumption quintiles.54

“The visiting partner situation is preferred because men don’t move in unless they can assume the whole household...also, my friends have boyfriends who work on boats or on other islands...”

Mother working as housekeeper

As women generally support larger households than men, they are more at risk of becoming or remaining poor. They carry greater responsibilities for caring for and the maintenance of the family. These poor households tend to have three or more children in addition to one or two extended family members, including other working age adults. The inequalities associated with the negative consequences of the low status of women in society can result in little support from intra-family relationships, largely dominated by males.

These households are also characterized by low levels of education (26.6 per cent of heads of poor households attended only primary school and 61.7 per cent received secondary education 55), low school attendance rates among the children living in the household, children fathered by multiple men, inadequate adult guidance and support for children and limited access to basic health care. Most men engaging with female-headed households prefer a ‘visiting relationship’, leaving parenting to the woman. Many poor women living in this scenario resort to survival strategies that may include illegal activities and/or transactional sex.

Typically, these poor households headed by single women support prime conditions for inter-generational poverty to take hold, promoting a ‘learned helplessness’ (see Figure 4). Sexual and gender-based violence and drug and alcohol abuse are more likely to occur in these households as

48 Labour Market and Poverty Studies Unit 2010.
49 CDB 2015.
50 Ibid.
51 Kairi Consultants Ltd. 2009.
52 Baksh 2014.
53 Kairi Consultants Ltd. 2009
54 Ibid.
opposed to non-poor households with common-law or married couples. Poverty promotes casual or dysfunctional relationships as single women pursue men who can bring monetary contributions to the household, evolving into ‘revolving door hook-ups’ and transactional sex. With a change in partners, the chances of pregnancy increase, adding to the already overwhelming responsibilities of the growing household.

Children in these households are seriously affected by these conditions in different ways depending on their age group and sex. Dysfunctional mating patterns and early pregnancies may lead to the girl child repeating the cycle of poverty that traps the single mother heading the household. The boy child can also get caught in this poverty trap by dropping out of school to bring more income into the household and potentially falling into gang activity and the drug trade. There may also be other far-reaching and negative consequences on children’s growth, development, survival, protection and capacity to express themselves.

Table 3 shows what the interviewees and members of the focus group discussions perceived to be the vulnerabilities facing these children.

At the same time, emerging research in the region points to more nuanced analysis that drills down on the female-headed household and the union status that would likely contribute to her poverty. While conducting the fieldwork for the SitAn, many of the female government administrators identified themselves as single mothers. Others applauded their mothers who raised them single-handedly. However, in these cases, the children experienced a ‘connectedness’ with the community, extended family and/or religious community that promoted resilience. A female heading a poor household where the male has migrated, for example, does not necessarily present the same outcome as a female-headed household involving a ‘visiting’ or ‘revolving door’ relationship. Also, several Caribbean countries are showing that elderly women heading households are less likely to be poor. It is important to make these distinctions when discussing single female-headed

56 CDB 2016.
57
households, poverty and child abuse and neglect, particularly in cultures that sometimes prefer visiting relationships to marriage and do not assume there is welfare gain from the latter. The budding research on this subject will undoubtedly stimulate the debate and bring fresh analysis to light that can be applied to better address the complex linkages between poverty, child protection and the cultural practices that result in negative consequences.

Poverty clearly constitutes a multidimensional phenomenon that invades all aspects of the lives of individuals, families and communities, greatly affecting children who experience poverty differently to adults. They particularly suffer from the non-income dimensions of poverty, including social and emotional deprivation, exclusion, inferiority and ill treatment from adults and their peers. Young children are often less able to cope than their older siblings and have long-term problems relating to the absence of adult care and supervision. The more connected the child is to the adult who provides care and protection, the more resilient s/he is to the individual vulnerabilities, risks and challenges faced when living in a poor female-headed household.

Table 3: *Children perceived to be vulnerable in Grenada*

<table>
<thead>
<tr>
<th>Who is perceived to be vulnerable in Grenada</th>
<th>What makes them vulnerable</th>
<th>How the vulnerability is manifested</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Children (0–5)</strong>&lt;br&gt;Harmful consequences are difficult to reverse in this age group.</td>
<td>– Physical and emotional neglect&lt;br&gt;– Abuse&lt;br&gt;– Malnutrition</td>
<td>– Harmful behavioural patterns&lt;br&gt;– Slow cognitive development&lt;br&gt;– Poor socialization process</td>
</tr>
<tr>
<td><strong>Children (5–7)</strong>&lt;br&gt;Removal of children from their biological homes is sometimes needed for protection and care.</td>
<td>– Miss out on connectedness to family and community</td>
<td>– Poor socialization processes&lt;br&gt;– Face stigmatization that can have long-term effect on self-esteem</td>
</tr>
<tr>
<td><strong>Children (7–15)</strong></td>
<td>– Poor health and nutrition results in poor school attendance</td>
<td>Poor performance in school&lt;br&gt;Drop out</td>
</tr>
<tr>
<td><strong>Adolescent girls and boys (15-19)</strong>&lt;br&gt;This group represents a major opportunity for the future of Grenada. Children in conflict with the law</td>
<td>– Girls at risk of sexual violence, abuse&lt;br&gt;– Boys at risk to drop out of school w/out certificate&lt;br&gt;– Both at risk to engaging in harmful and risky behaviours&lt;br&gt;– Out-of-school and out-of-work&lt;br&gt;– Risk of life-long negative effect: no second chance, no higher level education due to absence of diversion programme</td>
<td>– Teen pregnancy&lt;br&gt;– Unemployment&lt;br&gt;– Marginalization&lt;br&gt;– Non-participation&lt;br&gt;– Substance abuse&lt;br&gt;– Crime&lt;br&gt;– Early parenting&lt;br&gt;– Recidivism&lt;br&gt;– Unemployment&lt;br&gt;– Economic vulnerability</td>
</tr>
<tr>
<td><strong>Children of migrant families</strong></td>
<td>– Low social status associated with situation of parent in country (low paid, low skills, language barrier)&lt;br&gt;– Parental absence&lt;br&gt;– Lack of legal status/appropriate documentation to access social services&lt;br&gt;– Separation from extended family and culture&lt;br&gt;– Language barrier</td>
<td>– Stigma&lt;br&gt;– Poor academic performance&lt;br&gt;– Comparative difficulty for social inclusion</td>
</tr>
</tbody>
</table>

Government action on poverty

The Government continues to articulate a commitment to the principles of social protection, with a ‘pro-poor’ focus even during prolonged periods of fiscal difficulties. The national Growth and Poverty Reduction
Strategy (GPRS) 2012–2015 charted a course to guide reconstruction and transformation in the diversification period. Protection of the most vulnerable was among the core strategies in order to promote social as well as economic transformation in the face of considerable social development and poverty reduction challenges. The GPRS dedicated priority areas to strengthening social safety nets, addressing vulnerability and increasing social protection. Coverage, efficiency and effectiveness of existing programmes were identified as major challenges: the school feeding programme was reaching a mere 7 per cent of the poor; the school uniform programme was also only reaching a small number of poor school-age children; and the public assistance programme had limited capacity. Additionally, the established safety net programmes were operating with different administrative systems, leading to duplication, and the delivery mechanisms needed rationalizing and more efficient and compatible approaches.

This analysis of and effort to reduce poverty culminated in the development of a number of national strategy documents in agriculture, health, education and nutrition. The Government looked to increase both the budget for social assistance programmes and the number of beneficiaries and to put in place a policy framework that would render poverty reduction programmes more coherent, efficient and effective. By 2016, the Government was prepared to complete the development of a proxy means test to ensure the most vulnerable families and individuals benefitted from safety net programmes, and develop an effective management information system.

The current generation of social protection programmes in Grenada are designed to target the following groups:

- Infants and young children, particularly those who are income poor
- ’At risk’/‘unattached’ adolescents and young single mothers (and their families)
- Teenage parents
- The unemployed
- The working poor
- Persons with disabilities, particularly those who are income poor
- The chronically ill, particularly those who are income poor
- Older persons, particularly those who are income poor.

To facilitate the strengthening of the social protection programmes, the 2016 budget of recurrent and capital expenditures reveals important allocations for the relevant

### Table 4: Budget allocations to selected ministries, 2016

<table>
<thead>
<tr>
<th>Ministry</th>
<th>Recurrent expenditure budget</th>
<th>Capital budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Social Development and Housing</td>
<td>EC$7.44 million</td>
<td>EC$28.6 million</td>
</tr>
<tr>
<td>Ministry of Education and Human Resources Development</td>
<td>EC$90.1 million</td>
<td>EC$12.1 million</td>
</tr>
<tr>
<td>Ministry of Health and Social Security</td>
<td>EC$46.1 million</td>
<td>EC$14.9 million</td>
</tr>
<tr>
<td>Ministry of Youth, Sports and Religious Affairs</td>
<td>EC$6.4 million</td>
<td>EC$10 million</td>
</tr>
<tr>
<td>Ministry of Agriculture, Lands, Forestry and Fisheries</td>
<td>EC$29.3 million</td>
<td>EC$32.9 million</td>
</tr>
<tr>
<td>Ministry of Carriacou and Petite Martinique Affairs and Local Government</td>
<td>EC$9.0 million</td>
<td>EC$4.6 million</td>
</tr>
</tbody>
</table>

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ministries (see Table 4). 59

These allocations from the recurrent and capital budgets are intended to fight poverty and improve the quality of life in Grenada by concentrating on:60

- Refurbishment of secondary schools
- Nearly 200 scholarships for students to pursue education in health, education, agriculture and tourism
- Restoring the functionality of the dialysis unit
- Retrofitting of four health facilities and construction of Gouyave Health Centre
- A soft loan housing programme to help improve personal dwellings
- Providing EC$1 million to the school uniform and transportation programme
- Providing EC$1 million to the Roving Caregivers Programme
- Providing EC$1 million to the Bacolet Juvenile Rehabilitation Centre
- Construction of new classrooms, including a science and TVET laboratory at several schools.

The CDB and Grenada are in the process of preparing a new CPA, with an important shift from the model based on the definition of poverty limited to income/expenditure analysis (poverty line) towards a multidisciplinary model. This shift is grounded in a more inclusive analysis, which recognizes that poverty is linked to multiple dimensions of human development such as education and health, with significant gender-related disparities. This change acknowledges the global departure from traditional uni-dimensional to multidimensional poverty measurement (MPM). The agreement to use MPM as a tool for supporting poverty eradication and the reduction of social exclusion and inequality in the Eastern Caribbean is expected to deliver more effective and innovative approaches to policy, planning and development for the achievement of poverty reduction goals. Grenada, in partnership with the CDB, OECS and other partners, is currently piloting this new model while developing an ‘enhanced’ CPA.

59 Mitchell 2015.
60 Ibid.
4 The Right to Education
Children’s education should develop each child’s personality, talents and abilities to the fullest. It should encourage children to respect human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights of their parents, and education should aim to develop respect for the values and culture of their parents (CRC, article 29).

No nation has achieved sustained economic development without considerable investment in human capital, including education at all levels: early childhood, primary, secondary, tertiary and technical and vocational education and training (TVET). All people – regardless of sex, age, race, ethnicity, migrant status and ability/disability – have a right to life-long learning opportunities that equip them with the skills and knowledge needed to seize opportunities and fully participate in society. Education empowers the vulnerable, shapes a capable workforce and is a major influence of a country’s standard of living.

The cornerstones for the Government’s approach to education are the CARICOM description of the Ideal Caribbean Person (adopted by Heads of State in 1997), the OECS early regional education strategy, and UNESCO’s Pillars of Education (1996). These principles survived the decades of political struggle and policy reforms and remained the basis of the Education Act of 2004, which continue to serve as the legal framework for operationalizing the education system. The current education system is consistent with key regional frameworks designed to guide educational development and standards in the sub-region, including:

- Towards Regional Policy on Gender Equality and Social Justice, approved in The Bahamas in 1995
- OECS Education Sector Strategy 2012–2021

Figure 6: Spending on education 2012-2015
The Government has a long history of elaborating sound strategic plans to guide education policies, with the 2006–2015 Strategic Plan for Educational Enhancement and Development (SPEED II) as the most recent. Education sector investment steadily increased from 5.5–7.7 per cent of GDP\(^61\) in the 1970s to 9.9 per cent in 2013.\(^62\) The education budget totalled 12.4 per cent of the national recurrent and capital expenditure budgets in 2012–2013 and 10 per cent in 2016, having received the largest amount among all line ministries.\(^63\) Grenada is one of only a few countries in the region to prioritize a small percentage of funding for special education (1.5 per cent of the education budget in 2012–2013) (see Figure 5). The T.A. Marryshow Community College was established in 1988 by a merger of the Grenada Teachers College and other institutes of further education. The Government is also committed to building and improving the skills base of its workforce using a three-pronged approach: (a) expanding access to tertiary education; (b) improving the quality of education and (c) refocusing the education and training systems to develop skills demanded by employers.

The 2011–2012 education landscape included 62 primary schools, with 10,453 students aged 5 through 12 enrolled and 794 teachers (2010–2011).\(^64\) There were 21 secondary schools, with total enrolment of 7,439 students and a teaching staff of 637.\(^65\) There were also two special education schools serving 113 students.\(^66\) Although both public and private institutions operate at all levels, the role of the church is prominent in the delivery of education in the country.

While the existence of an improved network of public schools that are free and accessible for children ages 5–16 is a considerable achievement, the quality of basic education is affected by the low percentage of fully trained teachers and there is a continuing disparity in academic success among girls and boys. The Government has struggled with improving the chronic shortage of qualified teachers for decades: in 1968 only 22.8 per cent of the 692 primary school teachers and one third of the 120 secondary school teachers were trained.\(^67\) Inadequate levels of teacher quality coupled with rapid turnover, use of temporary status for employing teachers and failed attempts to increase their salaries represent major barriers. Notably, 205 teachers received their letters of permanent appointment in 2015, a first step to regularize the employment status of teachers who have been temporarily employed for many years.

Free education does not translate to no cost, particularly for poor and migratory families who have more difficulty than non-poor households in meeting the expense of uniforms, shoes and textbooks, estimated at about EC$250 per child in 2008.\(^68\) Additionally, pupils are frequently asked to bring paper, toilet paper and other basic items from home to supplement local operating budgets. Poor children are disproportionately disadvantaged, particularly in families with more than one child attending school. Social safety net strategies targeting these families are underfunded and thus unable to reach 100 per cent coverage: student support schemes (cash and in-kind) reached only 10 per cent of school-age children from poor households, while the school feeding programme reached 9,500 students in 2008 with total expenditures of EC$55.7 million (3.2 per cent of GDP, 9.2 per cent of expenditures).\(^69\)

**Early childhood education**

It is widely acknowledged that the skills developed in early childhood represent the foundation for future learning, skill building and labour market success. Failure to invest in early childhood education (ECE) means that children in the 0–5 age group are robbed of their potential for optimal development in the physical, cognitive, linguistic and socio-emotional areas. Investments in quality early childhood development (ECD) strategies and services are a basic first step towards enhancing the long-term potential for a healthy and well-educated workforce with the knowledge and skills needed to engage in productive and fulfilling work and fully participate in society. Children completing pre-primary have begun to form the basis for

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61 Smith 2008.
62 Allocations are decided by vote.
63 Allocations are decided by vote.
65 Ibid.
66 Ibid.
67 Smith 2008.
68 Ibid.
successfully working with others, learning patience and negotiation and developing other skills that are the footing for life-long learning opportunities and social interaction in the school years and beyond. Every child denied ECE opportunities potentially contributes to growing poverty and unemployment and is less disposed to fully participate in the economic and social growth of the nation.

The associations between poverty and physical, cognitive and socio-emotional development in children at an early age have been evidenced by a convincing body of international research. This research further notes that young children living in poverty and in other vulnerable situations are: (a) apt to perform poorly in primary and secondary school, (b) prone to repetition and (c) inclined to leave school prematurely. Inclusive pre-primary education provides children in poor communities with equality of opportunity for realizing their right to education and the potential to perform to the best of their ability. Reaching adolescent and young adult stages in life without achieving the basic skills offered by primary and secondary school is likely to produce adults with fewer opportunities for becoming productive citizens who attain adequate income status. They are more likely to become parents prematurely with undeveloped parenting skills that eventually contribute to the intergenerational transmission of poverty. In addition to children living in poor communities, children of migrant families and children living with disabilities are equally vulnerable.

The Government began to incorporate ECE into the system of education in the 1960s. By 1990, there were five nursery schools with 215 children in attendance and 68 pre-primaries serving 3,283 children. In 2008, government-owned centres were limited to three nursery schools and five infant schools with nursery sections compared to 12 private nursery schools, corresponding to a decrease in enrolment. Since this period, enrolment in pre-schools has steadily climbed at the rate of 57 pupils per year.

Similar to the situation in other countries, the informal approach to early childhood care services resulted in rising concerns regarding standards of care and quality, issues of licensing, certification and monitoring, a preponderance of small, operators with weak capitol and business foundations, and low levels of training among caregivers. The experiences of Barbados, Jamaica, St. Kitts and Nevis and Trinidad and Tobago were shared through sub-regional networks supported by UNICEF, Save the Children and the Bernard van Leer Foundation, among others, to help shift the focus from care towards attention to other key dimensions of programme delivery such as parent education and awareness activities.

In the late 1990s, programming at the operational level expanded with the influence of processes developed to monitor the implementation of the Caribbean Plan of Action for Early Childhood Education Care and Development. Political will in the region was further enhanced by international developments, most notably the outcomes of the Education For All (EFA) 2000 processes and the United Nations Special Summit on Children, which included a dimension on ECD. A Regional Early Childhood Action Plan 2002–2015 was endorsed by the 5th Special Meeting of the Council for Human and Social Development (COHSOD) in October 2002. In the same year, Grenada established an EDC Policy with the goal “to determine and implement the most cost effective strategies for achieving beneficial and comprehensive early childhood development.”

In response to the increase in demand for ECE services and the need for a range of methodologies that respond to community contexts, the Government began looking at the HighScope model, introduced to the region in the late 1990s. This moved teaching methods away from a ‘teacher-directed’ approach towards ‘child directed’ or active participatory learning, including a daily routine of: (a) small and large group activities; (b) plan-do-review; and (c) outside time. The model was officially piloted in Grenada in 2006–2008 with a view to improving the learning environments and quality of developmental and educational programmes. By 2015, 13 pre-schools were using the HighScope curriculum, with plans to expand to all centres. Every registered preschool practicing HighScope approaches receiving supplies of appropriate furniture and materials.

Of the 107 preschool centres, 66 were government owned in 2013. Over half (52 per cent) of all publicly owned centres were located in St. George and St. Andrew parishes. By 2015, enrolment in ECD services in Grenada was nearly 100 per cent. However, the quality of the curriculum varies and the level of teacher training is inadequate. The 2014 Statistical Digest for Grenada reported a total of 3,934 children enrolled in public and private preschool centres, 189 preschool teachers (26 more than 2008–2009) with a teacher/pupil ratio of 14:1. With regard to sustained capacity, over 62 per cent of the teachers in the HighScope

70 See Engel and Black 2008.
71 Ibid.
72 Smith 2008.
73 Government of Grenada, Ministry of Education and Human Resources, Education Statistic Digest 2014
75 Manitou Inc. 2015.
programme are above the age of 45, and many interviewees perceived this to be the case in many levels of education. With this in mind, a plan to train and replace retiring teachers and staff in the ECD Unit will help to prevent a future shortage.

Despite demonstrated government commitment and visible achievements, important deficiencies in access, quality and system support persist that block optimal expansion and quality of ECE, including the need to supplement services provided at ECD centres. According to a review of the Early Childhood Policy Brief drafting process, there was robust consultation and participation before the policy (including service standards and the first year implementation plan) was presented to the Cabinet in 2008 and later approved. A review of implementation could support scaling up and moves towards achievement of universal access to ECD.

To encourage good parenting practices and early stimulation, the Government has funded the Roving Caregivers Programme (RCP) for many years, allocating nearly EC$1 million in 2016. Such interventions highlight the importance of making the child a priority within the family setting while boosting the demand for ECD services. The improvement of parenting skills is essential, and the RCP is intended to provide early childhood stimulation to high-risk children from birth to 3 years using a model of home visitation intervention that focused on parent(s)-child interaction. The Rovers reach rural children, many of whom are in families that cannot afford day care or do not understand the importance of providing proper care and stimulation for ECD. Caregivers, or ‘rovers’, go from home to home to work with young children and parents, introducing them to developmentally appropriate child-care practices. The programme takes into account nutritional and disciplinary practices and parenting knowledge as they affect the family and children with a view to better prepare the child to meet standard growth and development milestones expected by pre-primary schooling. Rovers work in their home communities delivering routine home visits. The programme operates in all but two parishes and engages 90 full-time trained rovers. The RCP partnered with the Windward Islands Research and Education Foundation in 2014 to pilot efforts to reduce the practice of corporal punishment.

76 Ibid.
77 Charles 2010.
Another programme – REACH Grenada, founded in 2008 – aims to improve the emotional and social well-being of abused and abandoned children through the provision of training, support and wellness programmes for children and their caregivers. They mainly work with children in Grenada’s residential care homes, serving child victims of physical, sexual and/or emotional abuse, neglect and abandonment.

The existing system to monitor the health aspects of children’s development is effective in the areas of child mortality, immunization rates and the routine checks of the internationally established set of milestone indicators. While there is a link between developmental and growth monitoring through the health system and ECD, it could be stronger. Developmental screening is inadequate to detect and treat physical, emotional, social, behavioural, sensory and communication delays before children enter the formal education system. Because the home visit programmes focus on enhancing cognitive development and socialization skills, to a certain degree they are helpful in detecting and addressing some developmental problems early on.

Although these programmatic approaches work with families, community members and teachers, continued efforts to build closer relationships between parents, teachers and health-care workers are needed to motivate parents to construct active adult-child relationships and enhance their role as manager and supporter of their children’s education, growth, protection and development starting at birth. Promotion of better parenting and parent-child interaction can be accomplished through a mix of home visits, parental training, individual counselling and centre-based approaches.

A major bottleneck that weakens the on-going efforts of health professionals to monitor and address the physical and developmental progress of children through routine milestone visits to local health facilities is the limited number and quality of counselling professionals providing services to the health and ECD sectors. Specialized staff are needed for early detection, diagnosis and treatment of intellectual, developmental and psychological disabilities. Many disabilities can be overcome if detected and treated early. The link to achieving universal ECD coverage is clear, as programmes targeting early stimulation provide a valuable service directly into the household with the potential to influence parents to enrol their children in ECD centres.

Improving the quality of ECE will require increased investment in the number and level of training of caregivers, leaders, teachers and health workers in the different sectors, particularly to maintain or improve the existing teacher-student ratio as enrolment rises. Whilst health centres work hand-in-hand with the ECD Unit to identify children not attending preschool, it is important to reach all children, particularly in rural areas where parents adhere to the long-held cultural and traditional practice of keeping younger children at home. Finally, additional resources and a broader range of skill sets will be required to extend coverage to the most vulnerable and disadvantaged (indigent communities, migrant families, children living with disabilities and families in remote areas).

The current gains should be reinforced by prioritizing ECD across the service delivery ministries, including health, social services, family and gender affairs, education and human resource development. In addition, a functional mechanism to coordinate ECD planning, programming and monitoring across sectors and ministries is essential. The dynamics of such a mechanism will encourage a social dialogue within ECE systems and institutions, i.e., between employers (whether national or institutional, such as boards of ECE centres or individual managers), educators and their trade unions. It may cover broad policy issues – funding, governance, organization, etc. – but focus specifically on workplace relations.

**Primary education**

Universal primary education (UPE) was established as a national priority as early as the 1960s in Grenada, with equal opportunities for girls and boys, and was achieved many years ago. Sweeping policy reform in the education sector as a result of the OECS Education Policy Reform in the mid-1980s led to the abolishment of school fees and compulsory schooling from ages 5 to 14, followed by significant investments in the recruitment of human resources and the rehabilitation of schools.

The primary tier of the education system caters to students aged 5–12 who attend kindergarten through grade 6. Progress through grades is automatic and on an age basis, although a child may repeat a grade if the parent and teacher agree.

**Table 5: Overview of primary schools, 2012–2013**

<table>
<thead>
<tr>
<th></th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net enrolment rate (NER)</td>
<td>99.4</td>
<td>93.1</td>
</tr>
<tr>
<td>Gross enrolment rate (GER)</td>
<td>123.6</td>
<td>117</td>
</tr>
<tr>
<td>Repetition rates</td>
<td>0.6</td>
<td>0.1</td>
</tr>
<tr>
<td>Dropout rates</td>
<td>0.02</td>
<td>0.01</td>
</tr>
</tbody>
</table>
The 2006–2015 Strategic Plan for Educational Enhancement and Development (SPEED II) targets issues of access, underperformance, quality of education and student achievement, human resource development, collaborative partnerships, school management and financing. The GPRS 2012–2015 also underscores efforts and strategies to address the inadequate level of teacher quality and improvement in leadership and management of educational institutions.

Against this backdrop, the Government has made promising strides towards providing quality primary school education to all children. In 2013/2014, total enrolment in the 76 primary schools — public, church (many of which receive government support) and private — was 12,948 children with 756 teachers (nearly 80 per cent female), of which 62 per cent were trained. New entrants to kindergarten who had attended preschool were at about 95 per cent in 2012–2013. The repetition and dropout rates for this year continued to be extremely low (see Table 5). Dropout and repetition rates are higher among males than females.

The decline in numbers in primary school (see Figure 6) is in line with the government policy to achieve universal secondary education. The decrease since 1995–1996 has occurred at an annual rate of 3.56 per cent and the present rate of decline is 4.2 per cent. The teacher-pupil ratio has also decreased from 25:1 in 2008–2009 to 15:1 in 2012–2013.

The Child Friendly School (CFS) concept was launched in 2013 in nine pilot schools. It is designed to: help children learn what is needed to face the challenges of the new...
“Decoration in the classroom is more appealing and relevant to the lives of the children.”

*Primary school teacher*

century; enhance their health and well-being; guarantee them safe and protective spaces for learning, free from violence and abuse; raise teacher morale and motivation; and mobilize community support for education. CFSs focus on positive behaviour management, with the principles of student-centred classrooms, democratic participation and inclusiveness. By 2014, 62,000 children in nine countries in the Eastern Caribbean, including Grenada, are benefitting from child-friendly environments at their schools. As of August 2016, the pilot schools in Grenada covered 1,270 students. In 2015, it was the first island in the Windwards to adapt the CFS approach to children with special needs by introducing it at the Victoria School of Special Education.

CFSs in Grenada promote practices and behaviours that offer protective measures so children, teachers and communities can identify inappropriate behaviours and identify the best action to respond to bullying and sexually abusive advances. The CFS aims to create a better understanding about the harmful consequences of social norms supporting practices such corporal punishment and looks towards more ethical practices in dealing with behavioural issues. The success of this model is impressive, as noted in a series of UNICEF-supported studies of CFS schools. The study noted a decrease in the use of corporal punishment, often seen as a bottleneck to successful completion of primary school. The lessons learned can be useful in orientations on human rights that should be part of training for teachers and other school personnel.

The OECS Education Sector Strategy 2012–2021 speaks of “strengthening learners’ pastoral care” as a cross-cutting strategy to improve leadership management and accountability, teachers and professional development, teaching and learning, and curriculum and assessment. This ‘child-centred’ approach calls for actions that proactively identify and target children at risk of social, emotional and/or physical harm to reduce the intensity, severity and duration of risk behaviour. The strategy is grounded in concepts similar to the CFS and life skills training, all designed to build and strengthen the dimensions of ‘connectedness’ all children need to successfully pursue and profit from lifelong learning opportunities.

The provision of specialized counselling services needed to deal with relationships, communication disorders and school and family issues continues to be constrained by the limited number of trained professionals as well as the limited areas of special skills represented in the pool of counsellors that responds to children facing hardship and learning difficulties.

“The quality of the experience is a key element for completing primary and secondary education satisfactorily... this alone can determine whether education ‘outputs’ are sufficient to prepare and/or permit adolescents to continue the lifelong learning agenda and/or flow seamlessly into the workforce...”

*Interviewee*

Secondary education

Grenada achieved universal secondary education in September 2012. During that same year two new secondary schools were established: one in St. George’s and the second in St. Andrew. Prior to this, the issue of access to secondary schools was a major barrier, particularly for rural children, with only 20.8 per cent having access in 2010 (compared to 95.2 per cent of children living in urban areas). The Caribbean Primary Exit Assessment (CPEA) was introduced and implemented, replacing the Common Entrance Exam previously used for placement of students in secondary schools. In 2012–2013, the Government

78 UNICEF-supported studies in the region documented CFS practices in schools including in Antigua and Barbuda, Barbados, St. Lucia and others.

79 OECS 2012, p. 9.

recorded a total of 9,851 pupils enrolled (48.5 per cent girls) in the nation’s 24 private and publicly owned secondary schools, representing 89 per cent of 12–16-year-olds. The teacher-pupil ratio in 2012–2013 was 14:1.

The repetition rate for 2012–2013 was 4.6 per cent and the dropout rate was 0.09 per cent, with repetition rates higher for boys than girls. Grenada counted 719 teachers in secondary schools in that school year. There was a notable improvement in the number of trained graduates among the teacher corps (17 per cent); three times as many as the 2008–2009 figure of 6 per cent.

The 2008 CPA attribute the dropouts and absences from schools to a number of causes, including: inability of parents to provide meals, transportation, text books, school fees, uniforms or examination fees for their children; teenage pregnancy; indiscipline by students at school; staying home to care for younger siblings; finding employment as a means of improving their quality of life; and low interest in the education curriculum. Dropout rates for girls have declined as the country records a slight decline in teenage pregnancy rates. Provisions under the Education Act permit the return to school for teenage girls after giving birth. However, it is clear that exercising the ‘return’ option rests with the discretion of the school principal and other factors. Teenage pregnancy continues to carry a certain amount of stigma, evidenced by the fact that most girls who chose to return after giving birth enrol at a different school.

In an effort to offset the non-direct costs of secondary education, the Government implements social safety net programmes, particularly targeting low-income families. Whilst its coverage of transportation fees and books, contributions to school uniforms and examination fees and the school feeding programme absorb a considerable amount of the programme budget, there are still many children left behind. Additional non-direct costs of education present a considerable difficulty for middle-class and poor families, who often have more than one child enrolled.

In terms of knowledge acquisition, an important dimension of quality education, less than 20 per cent of students achieved five passes in the Caribbean Secondary Education Certificate (CSEC) including English and math in each year from 2009 to 2013. This means that 80 per cent of secondary students in Grenada did not attain the minimum matriculations required to enter the tertiary education level. Of the 1,318 students who wrote five CSEC subject exams in 2012–2013, the pass rate including English and math was 16.7 per cent.

Secondary schools are required to state annually how many places they have available for new entrants and may reserve 30 per cent of these to pupils who pass the CPEA, the rest being allocated by the Ministry. The results of the CPEA determines which of the public or private schools a student will attend, with the highest scoring students given the school of their choice regardless of their residency. Those not in this category are enrolled in the school nearest to their place of residence. Dropouts are highest following completion of forms 3 and 4. Students struggling to meet the standards at these levels are referred to technical training opportunities if they are 17 years or older.

**Technical and vocational education and training**

Achieving lifelong learning and promoting full and productive employment – as called for by the SDGs – will largely depend in most Caribbean countries on overcoming the structural weaknesses in education and technical and vocational education and training (TVET) systems. Caribbean youth face serious challenges in the labour market as a result of inadequate employability skills. The focus for general formal education has been oriented towards academic results rather than vocational or technical outcomes. Some would argue that this is a residue of the colonial past, which left in place a British-type system for grammar schools. The educational model was formal, with an emphasis on classic study in literature, science and math. Interestingly, this was during a period when the economy of the islands was largely defined by an agricultural sector that in Grenada, for example, employed 30–40 per cent of the workforce. Later, as the region promoted eco-tourism as a primary source of income and acknowledged the importance of sustainable use of natural resources, educational systems were slow to keep in tandem with these changes in workforce requirements. Major education policy changes are called for to fill the skill gaps exposed by the changes in the Caribbean economic landscape and changing global production patterns. This change is accelerated by the drive for a more competitive edge and the advent of technological applications for improved production.

The CARICOM Regional Strategy for Workforce Development and Economic Competitiveness is conceived

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82 Ibid.
83 Ibid.
84 Ibid.
85 Ibid.
86 OECS 2014.
87 Ibid.
with a vision of “sustainable economic prosperity through the creation of a globally competitive regional workforce enabled by a market-responsive education and training system”. In pursuing achievements under the regional strategy, the management of TVET in Grenada is under the authority of the Ministry of Education and Human Resource Development. The first 181 participants completed their Caribbean Vocational Qualifications (CVQ) training in November 2015 and graduated with a 91 per cent completion rate, and 13 have secured permanent employment. The CVQ programme is designed to facilitate certification corresponding to specific occupational areas that are relevant to employment needs and based on a regional set of standards and competencies.

The New Life Organization (NEWLO) Centre also offers skills training for disadvantaged youth, while the IMANI programme provides a second chance for students to build skills and find employment.

The Grenada GPRS 2012–2015 includes priority action to increase the provision of TVET in primary and secondary schools and refocus on education and training systems reflecting the skills demanded by employers. A new block of classrooms was completed in 2015 with science and TVET laboratories at four primary and secondary schools. The increasing need for medical equipment to diagnose and monitor non-communicable diseases — scanners and other special imaging equipment, for example — requires skilled service technicians. These services should be available locally instead of calling someone in from another island, Canada or the United States to get the job done.

A major shortcoming in building a successful TVET programme is the lingering perception that it is for ‘slow learners’ or students who cannot ‘follow along the mainstream’. Changing this attitude requires long-term advocacy efforts. In fact, basic education skills in reading and writing are essential for successful completion of TVET courses, which require comprehensive mastering of complex concepts communicated through technical textbooks.

The strategy revolves around seven logically sequenced components: TVET redefined and promoted as an agent of workforce development and economic competitiveness; TVET integrated with general education for life and livelihood; a CARICOM training system; labour market intelligence of workforce development; career guidance and counselling; instructor training; and TVET financing: public-private partnerships.

88 The strategy revolves around seven logically sequenced components: TVET redefined and promoted as an agent of workforce development and economic competitiveness; TVET integrated with general education for life and livelihood; a CARICOM training system; labour market intelligence of workforce development; career guidance and counselling; instructor training; and TVET financing: public-private partnerships.

89 Mitchell 2015.

“…Until the perception that TVET is for slow learners changes, we will have difficulty achieving TVET objectives.”

Government official

Education for children with special needs

The Government ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2014, but it has not yet enacted provisions of the Convention and the law does not specifically prohibit discrimination against persons with disabilities. There is no legal requirement for access to buildings for persons living with disabilities, for example, so accessing polling stations can be a bottleneck for them to enjoy the right to vote. There is no official number of persons living with disabilities nor a state agency specifically responsible for protecting the rights of unemployed persons with disabilities. Discussions with civil society suggest that the overall number of people living with disabilities in Grenada could be considerable, with many of them unemployed because employers refused to hire persons with disabilities.

There are three centres serving 119 children with intellectual or mental disabilities, all largely government funded. Twenty-one teachers (11 trained) provide guidance and curriculum material for children with physical disabilities, mental challenges or hearing and vision impairments. The Special Education Department offers assessment, diagnosis and intervention services in speech and language therapy; clinical psychology for assessment and therapeutic services; educational assessment and intervention; teaching students with moderate to severe mental challenges; and working with visually impaired students.

CFSs include a focus on training that aims to combat attitudes towards children with exceptionalities, including disabilities and, as noted above, the CFS approach was recently introduced at one of the schools for children with special needs. The education of children with disabilities remains a serious problem in terms of removing the stigma facing those children who are mainstreamed in the public school system and extending educational opportunities to children in rural areas who remain in their homes.
Children’s well-being (violence at school and participation)

The fundamental challenge in assessing the effectiveness of school violence prevention strategies in the Caribbean is that, although a multitude of programmes exist, there is very little evaluated evidence of such interventions to guide policymakers and practitioners in identifying their relative effectiveness (including cost-effectiveness).

As mentioned above, school, community, church and family ‘connectedness’ are fundamental in reducing risky behaviour among adolescents, including violence at school. School connectedness is pivotal when it comes to enabling an environment in which adolescents can establish and maintain healthy connections with school and their communities. Because they connect with adults and peers before they connect with institutions, school-based relationships are the key. These include relationships with teachers, counsellors and administrators, janitors, coaches, lunchroom servers, office assistants, parents and school volunteers. They all have the potential of fostering the positive attitude needed to establish the bond between the pupil, school and community. But several factors depend on contributions from the institutions themselves: high academic rigour and expectations, supportive learning, positive adult-student relationships and physical and emotional safety.

Without this enabling environment, the stress of living in poverty, dysfunctional households and/or with a disability can be overwhelming and lead to harmful and risky behaviours such as violence, bullying and harassment in school. Clear policies, programmes and procedures on the school ethos, culture, structures and student welfare can be important to create an enabling environment, including a statement on processes for preventing and dealing with incidents of violence, victimization, bullying, alienation, etc. Programmes/strategies to create a positive school culture and empower student participation are also helpful (e.g., peer support groups, initiatives to support students in decision-making bodies, peer mediation and teacher teams working with student groups on school issues). School assessment and reporting policy should go beyond budget and training/qualification indicators and incorporate elements of health, well-being, connectedness, resiliency and academic care. Democratic decision-making bodies/boards, parent-teacher associations (PTAs), meetings, newsletters and school-based and extra-curricular activities should be included in the accountabilities of school leadership. School discipline policies should be reviewed, with an emphasis on more ethical practices that minimize harm in dealing with behavioural issues.

Violence at schools is often associated with poverty, unemployment and political and social inequities. The Government’s stated position in 2011 was that “… corporal punishment is regulated by the Education Act and could not be prohibited” . But in cultures that continue to legalize and practice corporal punishment in schools, households, the juvenile justice system and alternative care institutions, it can be a major challenge to eradicate violence in schools. Indeed, there is growing evidence that the use of humiliation and intimidation by teachers, parents and law enforcement can influence violence within the student population. Many experts opine that childhood aggression can be closely linked with the degree of negative criticism and violence experienced at a young age . Ending legalized violence against children is an important step towards eliminating violence in schools. The Government is making progress towards changing the use of violence in schools and communities.

With the increasing prevalence of gang violence and the emergence of gang cultures at schools in the sub-region, security on school premises has received heightened attention. Work on violence prevention and understanding the root causes of violence in communities and schools was launched in a number of OECS countries in 2011. This pilot experience, aimed at ensuring a peaceful environment and enabling improved academic performance, helped to identify risk behaviours and assess staff and student needs. Unlike many other Caribbean countries, however, Grenada does not appear to have a significant problem with gang violence, particularly since it put in place an anti-gang unit in 2012. The average murder rate in the country was 10.1 per year in 2000–2009.

“Grenada have the lowest rate of crime in the Caribbean … young unemployed boys getting in trouble can threaten this fine reputation … especially when dem bad boys start thinkin’ dey some kinda gang.”

Young person

90 Global Initiative to End All Corporal Punishment of Children 2012.

considered among the lowest in the region.\textsuperscript{92}

The CFS approach to creating an enabling environment in school settings promotes self-respect and respect for others, which is a major tool to change bullying behaviour. Grenada has a well-established and resourced CFS culture, particularly at the primary school level, which is likely a major contributing factor to the low level of gang activity and violence in the schools. Peace promotion modules are incorporated into the CFS initiatives and form part of the health and family life education (HFLE) curriculum widely available in primary and secondary schools. Grenada has received support in the form of a UNICEF-sponsored violence prevention project, which involves training of teachers, assessment of schools, putting into effect specific policies to address anti-social behaviour and an evaluation of the targeted outcomes. The HFLE curriculum reinforces healthy family and community connectedness to the school environment by promoting open discussion regarding self and interpersonal relationships and providing basic information on sexuality and sexual health.

Although the recently adopted Juvenile Justice Act does not provide for corporal punishment as a sentence, further efforts are needed to move away from violent and other cruel and degrading punishment of children. Reducing youth-on-youth violence, particularly in schools, requires consistent coordination among multiple stakeholders in order to break the cycle of youth crime centred on four main issues: violence against children, school violence, gender-based violence and youth gangs and violence. This cannot be achieved without considering the influence of gender, culture and other social determinants.

5 The Right to Protection
States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. (CRC, article 19)

According to UNICEF, there is significant evidence that violence, exploitation and abuse can affect children’s physical and mental health in the short and longer term, impairing their ability to learn and socialize and impacting their transition to adulthood, with adverse consequences later in life. Violence, exploitation and abuse are often practiced by someone known to the child, including parents, other family members, caretakers, teachers, employers, law enforcement authorities, state and non-state actors and other children. Worldwide only a small proportion of acts of violence, exploitation and abuse are reported and investigated, and few perpetrators are held accountable. This situation is exacerbated in a society such as Grenada, where the small size of the population creates a situation where everyone living in an area is easily identifiable.

All nations are obligated to protect their children’s right to a life free from conditions that violate their rights. As outlined in the Convention on the Rights of the Child (CRC), all children less than 18 years old have a right to be protected from conditions that violate their childhood rights, expose them to abuse and exploitation, devalue them and draw them prematurely into adult roles. Particularly vulnerable are children deprived of parental care, in conflict with the law, living with one or more disabilities, or victims of physical, emotional abuse and neglect or of trafficking, exploited for commercial purposes.

A robust, dynamic and comprehensive legal framework is indispensable to enable rights-holders to exercise their rights and duty-bearers to discharge their responsibilities in achieving the ultimate goal of a developmental approach to child care and protection. In addition to the conventions on the rights of children, women and people with disabilities (CRC, CEDAW and CRPD), Grenada has adopted other key international legal instruments aimed at addressing interlinked problems of harmful child labour, trafficking and the sexual exploitation of children for commercial gain. Further, national legislation and policies articulate bold targets aligned with the Sustainable Development Goals (SDGs) and strategic regional visions that aim to improve the lives of boys and girls in the areas of education, health, food security and social protection.

Grenada is steadily building an impressive framework of support for its children. Early childhood education (ECE) services are accessible for 87 per cent of the population. Almost all children are enrolled in primary education. Women and children in need can find referral services from the Child Protection Authority, associated with the Ministry of Social Development and Housing, established
As a result of the enactment of the Child Protection and Adoption Act. A range of social transfers, grants and services are available for direct relief in the areas of housing, education and welfare. These, and other services are examples of the nation’s commitment to realizing the rights of all Grenadian children.

Optimal implementation of these services and programmes are dependent on a robust legal and institutional framework (see also Chapter 2). Grenada is considered one of the more progressive countries in the OECS when it comes to law reform in the area of child protection. It has enacted three of the four model laws OECS put forth as a package for family law reform (including on domestic violence) and enhanced the corresponding policy landscape. It is also only the second country to pass the Juvenile Justice Bill in July 2012, which went into effect in April 2016.

In 2004, the Government ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and introduced anti-trafficking legislation for approval by the Parliament in 2014. It passed the Electronic Crimes Act in 2013 prohibiting the use of children in pornography and further stipulating that the procurement and distribution of child pornography is illegal. This framework addresses child protection violations occurring at home, school, foster homes, residential care institutions and hospitals, but there is no specific legislation that addresses these violations when they occur in juvenile justice institutions or the workplace.

The Child Protection Authority is responsible for social and community services that assist families on protection issues. It is understaffed, however, with only a handful of social welfare officers who double as social workers and probation officers. Caseloads vary but can include a dozen or so child care, protection or public assistance cases and juvenile probationers at any given time. There are several formal social assistance programmes that are somewhat dispersed across ministries and agencies with very modest budgets and often informal coordination mechanisms. This loosely structured system of social protection is a barrier to finding effective, appropriate and swift solutions for children in need of protection.

Sexual, physical and emotional abuse and neglect

Child abuse takes a variety of forms – physical, verbal and psychological – and often includes varying degrees of

Figure 8: Reported cases of child abuse, 2011-2015

![Graph showing reported cases of child abuse from 2011 to 2015.]

- **Sexual abuse**
- **Physical abuse**
- **Neglect/abandonment**
- **Emotional/verbal**
Child sexual abuse has graduated away from the home setting...towards schools and centres where young people gather.”

Teacher

Global data show that about “six in 10 children between the ages of 2 and 14 (almost a billion) are subjected to physical punishment by their caregivers on a regular basis.” Girls are more often the victims of abuse than boys as they are particularly at risk of sexual abuse, including incest. The 2007 Joint Report by the United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank indicates a rise in sexual assault, sexual violence and domestic violence in the region. Region-wide research conducted by the University of Huddersfield and commissioned by UNICEF also helped to highlight the gravity of child sexual abuse in the Caribbean. Strengthening national protection systems relies on several very important determinants and their complex interaction. In Grenada, one of these is the high social tolerance for child abuse in some communities.

The number of child abuse cases reported over the period 2011–2015 totalled 1,907 (see Figure 7). Sexual abuse and physical abuse were the most common types of reported abuse during the five-year period, each accounting for about 32 per cent of reported cases, while neglect/abandonment accounted for 28 per cent of the cases. Emotional and verbal abuse represented 128 of the total cases reported. All categories show a significant reduction in 2015.

In May 2014, UNICEF conducted a social survey on attitudes to corporal punishment, child sexual abuse and domestic violence in Grenada. It involved face-to-face interviews with 600 adult men and women. The results provide a valuable basis for understanding practices, experiences and attitudes towards corporal punishment, as well as views on child sexual abuse. On a positive note, the results indicate: (a) a slight cultural shift in terms of acknowledging that discipline of children is possible without the use of corporal punishment (see Figure 8); and (b) a willingness among some respondents to see a ban on the use of corporal punishment in schools (36 per cent) and in the home (14 per cent).

With regard to child sexual abuse, the survey validates the perceptions of those interviewed for the SitAn, as 45 per cent of the respondents in the survey believed this to be a major problem in Grenada. The survey confirms a clear understanding of what constitutes child sexual abuse, with nearly 100 per cent of the respondents opining yes on the following: engaging in sexual activities with a child; indecent exposure to a child; physical contact of a sexual nature with a child, such as touching or stroking the child’s...
private parts; showing pornography to children; asking to see a child’s private parts; and voyeurism (peeping/looking a child’s private parts for adult’s sexual gratification).

When it comes to reporting incidents of child sexual abuse, however, the UNICEF survey confirms that much work is yet to be done to: (a) convince children, parents and service providers to take the appropriate action when learning that a child has been abused (report the incident to the relevant authority); (b) ensure that the child is protected and counselled to avoid any cumulative effects of the incident; and (c) apprehend and prosecute the perpetrator to the full extent of the law. Figure 9 gives the reasons suggested by survey respondents for lack of reporting.

Interviews with stakeholders during the preparation of this study indicate that, even with the increase in reporting resulting from recent advocacy efforts (such as the Break the Silence awareness campaign), there is reason to believe many cases go unreported because: (a) Grenada is a small society where there is no confidentiality and people worry about the stigma; (b) negative consequences of cultural values prevail that depreciate the role and place of children; (c) there is a belief that the end of childhood for a girl coincides with beginning of the menstrual cycle; (d) many of the perpetrators are powerful people; and (e) abuse often occurs in poor female-headed households where the mother has ‘visiting’ boyfriends; among others.

Of the 45 primary and secondary school children interviewed in focus groups for the SitAn, 14 said that they knew someone (friend or relative) who had been a victim of sexual abuse.

The manifestations of child abuse and neglect cover a broad spectrum, including when a parent/caregiver fails to provide for the development of the child. Experiences of child sexual abuse, in particular, can result in serious health consequences later in life. Research shows that psychological (depression and anxiety, developmental delays, suicidal and self-harm, among others), behavioural (alcohol and drug abuse, poor self-esteem, under performance in school, etc.), reproductive (sexually transmitted disease, unwanted pregnancy, reproductive health problems) and sexual (sexual dysfunction) issues can persist for years even and decades. Some children have symptoms that do not reach clinical levels of concern until later in life while others meet the full criteria for clinical intervention immediately.

Assisting and monitoring the child victim requires up-to-date integrated information systems, cross-agency case management and conferencing, committed and specialized personnel as well as delicate and confidential approaches.

With limited counselling and psychological support capacity, the Child Protection Authority is strapped in its effort to do more in providing support to child victims and their families. Working with child victims requires trained professionals.

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100 Ibid.
101 Ibid.
102 See, for example, Fergusson et al. 1996.
and experienced personnel, who are in limited supply in Grenada. Offering an incentive for university students to specialize in areas needed and providing opportunities for exchange visits to other countries can help to fill this gap. Peer support groups and networks at community level and in schools will provide support for child victims and help to eliminate the stigma associated with child abuse.

In an effort to strengthen parental responsibility and their ability to protect their children, the Ministry of Social Development and Housing has implemented the National Parenting Programme since 2007 to provide overall direction, training and information for parents. The programme is operated in collaboration with 10 Government and NGO stakeholders, including the Child Protection Authority, the RCP, the New Life Organization (NEWLO), the Programme for Adolescent Mothers (PAM) and others. Using methodologies that promote robust interaction between parents, including role play, the sessions attempt to build a better understanding of what is needed to take parenting beyond the custodial role and render families more functional. Topics covered include stages of development, communication among family members, conflict resolution, alternative disciplinary approaches, the parental role in helping the child succeed in school, the signs and effects of child abuse and how to protect your child from abuse, and roles and responsibilities of parents and children. Activities include parenting training programmes, men as fathers, parenting support groups and family information services.

Data collection and collation capacity has greatly improved over the past five years along with the willingness to report. However, children living with disabilities and those in migrant communities experience added vulnerabilities specific to their status. For example, migrants may not report abuse cases for fear of deportation even though these children would be afforded the same assistance as nationals. The language barrier of non-English-speaking families and children with speech and hearing disabilities can pose unique challenges.

Interviews and discussions also pointed to the importance of legislation addressing the issue of child abuse and pornography. The use of cell phones to access pornography and the mounting prevalence of ‘sexting’ among teenagers were raised as real concerns. Success in prosecuting and sentencing perpetrators of sexual, physical and emotional abuse and neglect remains very limited. Again, discussions with stakeholders revealed their perception that there are serious delays in the court processing system and a lack of capacity to respond to breach of orders. Discussants also noted that “a payoff to the parents” often occurs before the case gets to court.

Many of the actions needed to further improve the institutional response to child sexual, physical and emotional abuse of children in Grenada are included in the GPRS 2012–2015 in the areas of legislative framework and enforcement, advocacy, mapping, reporting and monitoring. Under this plan, the social protection system will be strengthened to enhance targeting systems, improve coverage, train human resource requirements and improve monitoring and evaluation of the social safety net programmes required to provide effective and efficient child protection services.
Residential care

As noted above, the loosely structured system of social protection is a barrier to providing children with effective, appropriate and swift solutions. This is particularly important to children who must be removed from the family and require a temporary solution until they can be permanently placed with biological family members or in foster care. In 2015, there were five residential care centres in Grenada with approximately 78 children including the following private and publicly owned institutions (see Table 6).

Father Mallaghan Home for Boys: Located in Victoria (in the parish of St. Mark), the home was founded in 1916 to provide stability and a sanctuary for boys aged 12–18. Originally privately run, it has been managed by the Child Protection Authority since 2012. The physical environment was designed to help boys in need of care and protection to establish positive relationships with staff who nurture them to become responsible adults. However, the current condition of the dormitory and facilities falls short of meeting minimum standards of quality. Nine children were resident in 2014. The home is run with a staff of one manager, three supervisors and eight caregivers.

Emergency Shelter for Children: Also run by the Authority, the shelter houses a fluctuating number of residents as children are moved as quickly as possible to longer-term solutions. In 2014, 12 children were being sheltered in the dormitory.

Queen Elizabeth Home: Established in 1974 and located in a community setting, with capacity for 45 children from newborns to age 14, the home is cheerful and well designed. Boys and girls are looked after separately, and teenage boys are rarely admitted. The estimated cost of care per child per year is EC$5,500. There is a staff of 13, and a partnership with the US Peace Corps allows the home to provide sustained specialized services such as one-to-one tutoring, psychosocial services or music lessons depending on the qualifications of the Peace Corps volunteer. Local volunteers also offer reading services, help with homework, etc. The home provides a family atmosphere, with the older children acting as siblings to the younger residents. Recently renovated, the physical structure sets a high standard. There were 20 children in residence in 2016.

Bel Air Home: Located in a suburban setting, this home has operated since 1997 when it was founded by professors at St. George’s University. It was turned over to an NGO in the early 2000s. Although it has a full board of directors, it is governed by the Authority and receives an annual budget to cover very basic operating cost. Additionally, the home receives a monthly contribution from the Trustees of St. George’s University for operating expenses and relies heavily on fundraising efforts such as ‘sponsor a child’. The home admits boys (birth to 8 years) and girls (birth to 18 years). The space is commodious, with capacity for 50 children, and is staffed with 23 employees to ensure around-the-clock supervision and care. There were 24 children living at the home in 2014.

Dorothy Hopkins Centre: Founded in the 1960s, the centre has the capacity for 36 residents who are living with disabilities. The residents are mentally or physically

Table 6: Residential children’s homes

<table>
<thead>
<tr>
<th>Name of the facility</th>
<th>Cohort</th>
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</thead>
<tbody>
<tr>
<td>Father Mallaghan Home for Boys (St. Marks)</td>
<td>Boys 12-18 years</td>
</tr>
<tr>
<td>Government of Grenada Emergency Shelter for Children (St. George’s)</td>
<td>Girls 0-18 Years</td>
</tr>
<tr>
<td>Queen Elizabeth Home (St. George’s)</td>
<td>Children 2-12 years</td>
</tr>
<tr>
<td>Dorothy Hopkins Centre (St. George’s)</td>
<td>Children and adults with disabilities</td>
</tr>
</tbody>
</table>
| Bel Air Home (St. George’s) | Children Boys: 0-8 years  
Girls: 0-12 years (girls allowed to stay until 18 years) |

103 Directly from Director of the home
challenged and are admitted because they require care rather than protection. Many of the current residents are adults with autism and other disabilities who have been there for many years. The centre relies on donations from local businesses, government subventions and contributions from local citizens and overseas donors. In 2014, 11 residents were recorded.

Founded in 2008, Reach Grenada works with all of these residential care centres to improve the emotional and social well-being of child victims of abuse and neglect. They provide training, support services and wellness programmes to the children and their caregivers. They also offer summer camp services for the children. Children at all the residential care facilities, with the exception of Dorothy Hopkins Centre, are also assigned a case worker from Authority who has oversight for the operation and delivery of services, which includes developing a ‘care plan’ for each child that should be routinely monitored and reviewed with the centre staff.

Although services were extended to Carriacou in late 2013 with the opening of an office with two staff in Hillsbourough, the Child Protection Authority has met with difficulties in fulfilling its mandate, most of which are documented in a 2014 institutional appraisal. Despite immense efforts, it struggles with large and demanding caseloads and limited, insufficiently qualified staff and fragmented formal written procedures needed to guide and standardize processes. Those interviewed emphasized the sometimes lengthy periods of time many children spend in care, and one administrator spoke about the difficulty of placing children through adoption, especially the older ones. The option to work with families of children who are in alternative care to ‘repair’ or ‘heal’ the home environment in preparation for the child to return to her or his biological family is not exercised enough. Sometimes children go for months without visits from their families. These weaknesses are major barriers to effective and efficient monitoring of standards for residential care centres.

Administrators of the care centres interviewed for the SitAn suggested that a closer ‘partnership’ with the Child Protection Authority would allow them to better prepare the children for their arrival, stay and exit from the residential services they provide. The Government has since given serious attention to the functioning of the Authority and made changes towards improving its capacity to redress these issues. Grenada could benefit from a closer ‘partnership’ with the Child Protection Authority would allow them to better prepare the children for their arrival, stay and exit from the residential services they provide. The Government has since given serious attention to the functioning of the Authority and made changes towards improving its capacity to redress these issues. Grenada could benefit from a closer ‘partnership’ with the Child Protection Authority who has oversight for the operation and delivery of services, which includes developing a ‘care plan’ for each child that should be routinely monitored and reviewed with the centre staff.

With regard to the age of criminal responsibility, the Act gives discretionary power to the public prosecution to lower the age of criminal responsibility (section 4 and 5), leaving open the possibility of prosecuting children aged 10–12. The CRC advises against the practice of allowing

Children in conflict with the law and juvenile justice

The results of the qualitative analysis for the SitAn presented a general perception of high crime, anti-social behaviour and ‘delinquent’ misbehaviour among youth. Interviewees attribute the causes to a complex interaction of risk factors including poor parenting (lack of ‘care and control’); increasing numbers of female single-parent households; unemployment; growing drug use (alcohol and cannabis); teenage pregnancy; problems with suspension/expulsion/dropout from school; child abuse and exposure to violence; and general poverty.

Grenada was the first of only two countries in the OECS to draft and pass legislation based on the OECS model child justice bill: the Juvenile Justice Act 2012, which conforms to the Beijing Rules. The model bill speaks to establishing and implementing a juvenile justice process that respects and conforms to international instruments and standards, incorporates diversion of cases away from formal court processes, provides for a compulsory initial inquiry procedure, ensures that the trial of juveniles takes place in an appropriate court, and underscores the notion of restorative justice. However, as is the case in other OECS countries, bringing forward a more child rights-focused administration of justice for children in Grenada has been slow due to (a) difficulties in adjusting cultural paradigms and social ideas that favour punishment over rehabilitation, and (b) limitations in terms of the financing and human resource capacity required to implement reform.

With regard to the age of criminal responsibility, the Act gives discretionary power to the public prosecution to lower the age of criminal responsibility (section 4 and 5), leaving open the possibility of prosecuting children aged 10–12. The CRC advises against the practice of allowing
Grenada is 1 of 2 countries to have passed the juvenile justice Act (July 2012)
Bill prohibits flogging and whipping
Alternative diversion program (run by Legal Aid and Counselling Clinic) for 12-19 year-olds

BOTTLENECKS TO IMPLEMENTATION:
- Youth rehabilitation centre completed in 2015 but not yet operational: child offenders are remanded in lock-ups or in the prison: 19 children in custodial care (2014)
- Limited human resource capacity: only two probation officers
- Lack of family court: regular Magistrate’s Court for juvenile cases
- Limiter access to legal aid services for child offenders
- Fragmented service and programmatic responses: aftercare, recovery and rehabilitation including psycho-social services and educational vocational programming

exceptions to a minimum age of criminal responsibility in cases where the child is considered mature enough to be held criminally responsible. The Act prohibits certain forms of punishment to be imposed on a child, including whipping and flogging (section 64). However, the Education Act and the Criminal Code still allow for corporal punishment in schools, and the appropriate sections/text need to be repealed to correspond with the Juvenile Justice Act and make way for its enforcement. The Act prohibits the imposition of a sentence of life imprisonment to a child, offering community-based sentences, restorative justice sentences and other options.

The model bill calls for the establishment of a child justice committee to preside over the initial inquiry stage of proceedings as part of the juvenile justice legislation and system. The child justice committee is linked to the family court. In absence of the family court, Grenada currently relies on the regular magistrate’s court for juvenile cases. Although the Act states that a child shall be provided with legal representation by the State, juveniles do not have access to the legal aid services that are readily available to child offenders.

Despite positive law reform, there remain significant gaps in the social service infrastructure vital to support the effectiveness of the new laws. The implementation phase has not been without difficulties in the areas of coordination across a playing field of multiple stakeholders and bringing about a cultural shift from the old system grounded in traditional habits. Optimum coordination is essential to ensure that personnel from the police, Ministry of Legal Affairs, courts and prison are all on the same page when it comes to the age of criminal responsibility, timely assessments by probation and shorter sentences to accommodate rehabilitation.

Probation services, a specialized family court, enhanced legal aid and other important services are among the critical components key to the overhauling of Grenada’s social services system. The newly constructed Bacolet Juvenile Rehabilitation Centre was opened in 2016 will, once fully operational, provide a secure facility for the treatment and rehabilitation of young people aged 12–18. It was allocated EC$1 million from the recurrent budget to cover initial operational and set-up costs for 2016 including 30 staff. The Centre will not only provide education and training that address special needs but also facilitate mainstream education processes such as preparation for the CSEC regional examinations. Vocational training in areas including woodwork, welding and masonry will also be available. A health unit will operate with a part-time doctor.
and full-time nurse in order to address basic health-related matters including counselling services and the nutritional and hygiene needs of the children. Treatment and reintegration services will be at the centre of activities and services in view of the ultimate objective of allowing children to go back into their communities able to function as productive members of society.

For most OECS countries, preventative and diversion programmes, where children who have committed an offence are kept out of prison, are becoming the preferred option as they emphasize rehabilitation approaches to juvenile offenders, within a restorative justice framework, rather than criminalization and punitive measures. Referral options are available to ensure diversion of juvenile cases away from formal criminal court procedures towards community support, particularly at the pre-charge stage of the process. The region has limited diversion programmes, but there are several examples of initiatives that intervene before the child gets admitted to the system. The Alternatives’ diversion programme was introduced in Grenada in 2008 by the Legal Aid and Counselling Clinic (LACC), an NGO established in 1987 that offers cost-effective services to low-income persons, particularly women and children. The programme offers alternative sentences to young persons who have appeared before the courts as well as to those who are at risk of committing offences against the law. In collaboration with the Ministry of Social Development and the police, the programme is operated in St. George and St. Andrew parishes, targeting 12–18-year-old at-risk youth with a 12-week ‘psycho-educational programme’. The programme reached 92 children in 2012 and 86 in 2013.106

A regional analysis of country-submitted data, conducted in 2015 and covering a period of five years (2009–2013), provides the following snapshot of the situation in Grenada: 107

- Cumulative total of juvenile arrests (persons aged 9–17 years): 1,326
- Highest number of children charged on an annual basis among the 10 reporting countries: nearly 325 in 2012, 250 in 2013 and just under 250 in 2014
- One of the highest number of children charged per capita: 225 per 100,000
- More boys (700) than girls (120) charged with offences in 2014; boys were 5.8 times more likely to be charged than girls
- Top three offences: (1) stealing; (2) obscene language and (3) causing harm (see Figures 10 and 11 below for details covering 2009–2013 offences)

Under diversion, a Court will refer a child to the Probation Unit, which aids in the rehabilitation process for juvenile

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107 OECS 2015.

Figure 11: Age distribution of children arrested 2009-2013

![Figure 11](image-url)
offenders by providing supervision, guidance and counselling. The juvenile is normally enrolled in a life skills course held at one of the local programmes or services provided by community-based organizations.

Although the data collection and reporting system in Grenada is one of the more advanced in the region, the dearth of research in the area of juvenile justice and the absence of steady, reliable disaggregated data make it difficult to obtain a comprehensive understanding of the situation of youth offenders and therefore design appropriate preventative programmes and services. Legal aid and representation are not affordable or accessible for juveniles, resulting in violations of their rights and confidentiality. There is no child-friendly ombudsman or mechanism for filing complaints regarding treatment of juveniles in the justice system. Many of these constraints were mentioned in the initial CRC report.

Adolescent pregnancy

The problem of adolescent pregnancy continues to be a focus for the Government, although the numbers have declined slightly (see Table 7). In 2014, 96 girls under the age of 18 became new mothers.108

As in several other counties in the sub-region, legislation in Grenada allows for pregnant teens to continue to attend school for as long as possible. The law also provides for the option of girls to return to school after giving birth. However, few choose to return due to the stigma attached to teenage pregnancy and, it should also be noted, the decision to return is often ‘delegated’ to the school principal or administrator. If girls do opt to return to secondary education, they usually return to a different school. Girls who do not return but desire to complete their secondary education are able to enrol in courses that allow them to attain their certificate of completion and sit for exams. However, the fees associated with these courses are often a major bottleneck as teenage mothers struggle to gain employment and independence.

The Programme for Adolescent Mothers (PAM) was formed in 1995 with the support of UNICEF, the United Nations Population Fund (UNFPA) and the Government to help teenage mothers attending public schools. Now


"...Young mothers have daughters who have babies young too.”

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**Figure 12:** Key offences of children arrested, 2009-2013

### Source:
The Royal Grenada Police Force
an NGO and with continued support from the Grenada National Coalition for the Rights of the Child (GNCRC), PAM includes a fully functioning food and nutrition lab. It assists teenage mothers to continue their education and with day-care costs while they are in school studying. In 2014, of the PAM students sitting for the CSEC, 100 per cent passed the food and nutrition and French exams, 57 per cent passed human and social biology, 57 per cent passed principles of business, 57 per cent passed office administration and 75 per cent passed clothing and textiles. Since its inception, more than 500 young mothers aged 11–20 have passed through the programme, and many are gainfully employed as nurses, caregivers, cosmetologists, social workers, secretaries, receptionists, clerks, waitresses, sales persons and media workers.

Many interviewees perceived the introduction of the ‘morning-after pill’ to be a principle reason for the decline in adolescent pregnancies, and they insisted that abortion – while illegal – is accessible and that a significant number of young women are treated in hospital for incomplete abortions. While women in Grenada decide freely on the number and spacing of children, adolescents have little access to sexual and reproductive health (SRH) information. The legal age of consent to sex is 16, but the legal age of majority is 18. Below the age of majority, the law requires parental consent for medical treatment. Access to contraceptives and other aspects of SRH care and services for 16- and 17-year-olds is restricted, although legally they are allowed to have sex. Health services provide very basic family planning options that include distribution of condoms. Most schools do not offer comprehensive sex education despite the evidence that the number of sexually active adolescents in Grenada is high. Young people who are out of school have even less access to SRH information. Open dialogue between adults and children regarding sexuality and reproductive health rights is likely to be constrained among a population that is predominantly Catholic and conservative Christians.

**Table 7: Adolescent pregnancy, 2008–2012**

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>14.6%</td>
</tr>
<tr>
<td>2009</td>
<td>12.4%</td>
</tr>
<tr>
<td>2010</td>
<td>14%</td>
</tr>
<tr>
<td>2011</td>
<td>12.3%</td>
</tr>
<tr>
<td>2012</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

**Birth registration**

Article 7 of the CRC calls for the registration of a child immediately after birth. In 2011, the Government estimated that approximately 14,000 Grenadians were without registered names and that 9,063 of these were children under the age of 18. In response, that same year the Ministry of Health and Social Security launched a Mobile Complete Birth Registration project referred to as the ‘Catch Up Campaign’. By 2012, a total of 7,339 names had been reconciled and registered, an 81 per cent success rate for the project. A second phase, implemented in 2013, was also successful and resulted in the reconciliation and registration of an additional 1,744 names. As of June 2013, 887 names remain to be reconciled and registered.

As a preventative measure, the Ministry in partnership with social security introduced a bedside registration procedure with a view to ensure birth registration is completed in a timely and efficient manner and that the right for every child to be registered at birth is respected. This process requires the duty bearers/fathers of children born out of wedlock to be present with their personal birth certificate and valid picture identification in order to have their name(s) immediately entered on the birth record. These initiatives are designed to ensure that every child is fully registered before s/he leaves the birth centre.

110 Ibid.
111 Ibid.
6 The Right to Health
Children have the right to live. Governments should ensure that children survive and develop healthily (CRC, article 6).

Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy (CRC, article 24)

Mothers should have appropriate pre-natal and post-natal health care (CRC, article 24)

Health care system overview and accessibility

The Ministry of Health is divided into the three programme areas of administration, hospital services and community services, with the Permanent Secretary as the administrative head and the Chief Medical Officer as the principal technical officer. There are six health districts, each managed by a district medical officer who reports on service use, statistics and disease patterns to the Community Health Services Division. Public sector health services are delivered through four hospitals, six health centres and 30 medical stations. Three small private hospitals and more than 30 private physician practices complete the health sector landscape. Although 65 per cent of the population live in rural areas, there is good geographic coverage of public health services. Basic reported health indicators, such as births attended by a skilled health-care worker and immunization coverage, are excellent.

The main referral hospital, the General Hospital located in St. George’s, has 198 beds. Princess Alice Hospital in St. Andrew has 56 beds and the Princess Royal Hospital serving Carriacou and Petite Martinique has 40 beds. There is also the Mt. Gay Psychiatric Hospital with 100 beds in St. George’s. A new state-of-the-art teaching hospital is under construction and expected to bring enormous benefits including medical tourism. Hospitals provide support to all the health centres and medical stations and offer a wide range of services, including ambulance, laboratory, maternal health, radiology, obstetrics and gynaecology, eye care and testing, dental care and surgery.

Most households are within a three-mile radius of a health centre, the main community service delivery unit, and the population can access specialized services such as pediatrics, dentistry and psychiatry on different days. At 29.2 per 10,000, Grenada has a higher number of hospital beds per population than the regional average for Latin America and the Caribbean but a lower number than the average for upper-middle-income countries (34.9).

In 2010, the ratio of doctors per 100,000 people was estimated at 11.8, with two dentists per 10,000. The number of registered nurses per 10,000 declined from 37.9 in 2005 to 32 in 2010. Many OECS countries reflect this trend due to the emigration of nurses to Canada and the United States in the mid-2000s. In 2015, the Government recruited 43 new nurses and nine doctors and contracted 17 specialists from Cuba. The return of three medical lab and three x-ray technicians from overseas studies was expected in 2016, and five doctors have received scholarships to pursue specialized training in China and Cuba.

With regard to the private health sector, there are more than 30 private physician practices and a number of private clinics that often include their own diagnostic facilities and laboratory services (there is only one public laboratory). Patients with means prefer to use the private services to avoid long waiting times, limited availability of drugs and specialists, and the perception of inferior quality and poor customer service.

Grenada had a National Strategic Health Plan 2007–2011, but it remained in draft form until it ended in 2011. A new strategic plan is needed to address issues such as the new tertiary
hospital, dual employment policies, user fees and provider payment mechanisms. This plan is under development and due for completion in 2016. Civil society organizations, particularly the Grenada Planned Parenthood Association, and the media are energetically engaged in the health sector. However, formal mechanisms for citizen engagement are weak and consumer feedback systems are ad-hoc. Ministry capacity for evidence-based planning, monitoring, evaluation and budgeting could be strengthened.

Government expenditures in the health sector for 2008–2012 totalled 3 per cent of GDP.\textsuperscript{117} Allocations from the recurrent and capital budgets totalled EC$75.7 million in 2016.\textsuperscript{118} The health-care system is reasonably funded, with external funds received for the HIV and AIDS response and refurbishment of health facilities. However, HIV/AIDS funding is dwindling as the epidemic is stabilizing and sustainable systems are put in place. More recently, funding for the construction of the new teaching hospital was secured from China.

The primary health-care system is considered to be well functioning with good access to services. Nearly 100 per cent of women have a skilled birth attendant at delivery and vaccination coverage for all antigens is almost 100 per cent.\textsuperscript{119} Primary health-care centres provide limited family planning options, but the distribution of condoms is free. As a member of the OECS, Grenada participates in the Pharmaceutical Procurement System, which results in savings through high volume purchase of basic drugs. Primary and secondary level care services and medications are free for children and seniors over the age of 62. HIV drugs are free of charge.

Grenada accomplished a number of strategic achievements in health between 2006 and 2010: nearly 100 per cent immunization coverage and no reported cases of diseases covered by the routine immunization schedule; a decline in communicable diseases through efforts to improve sanitation and food handling; and continual access to antiretroviral drugs, which has helped to reduce the number of AIDS-related deaths and improve the quality of life for persons living with HIV. This effort has contributed to the general reduction in both infant and maternal mortality and led to increased life expectancy for Grenadians.

The health system has prioritized the improvement of health-care services and recognized the importance of addressing cross-cutting challenges by putting in place strategies that favour intersectoral collaboration at the base of health promotion and the use of public health messages to deliver essential health information. Moreover, the Government has developed strategic cooperative relationships with NGOs, faith-based organizations and the private sector to ensure maximum outreach and effective public education.

Despite a functioning and accessible health system, however, Grenada faces significant challenges related to the health and well-being of its women and children, outlined below. The 2008 CPA highlighted issues of inequity, particularly the delivery of health care to indigent, poor, vulnerable and migrant communities. The unacceptable level of gender-based violence places a stress on the health-care system. Although the capacity to provide secondary and tertiary care via the public hospital has increased, demand for such care is elevated due to the rise in chronic non-communicable diseases (NCDs), causing emerging concern that the health system is becoming overburdened. These developments, coupled with the fact that the country is fast becoming ineligible for donor funding due to its upper-middle-income status, reinforce the need to put an updated national health sector plan in place – including both public and private aspects – to examine strengths and weaknesses, address challenges and follow up with appropriate action for promoting greater efficiencies and strengthening the system.

**Infant and child mortality**

The infant mortality rate (IMR) has declined in Grenada since 1990, when it was reported at 18 per 1,000 births, to 11 per 1,000 births in 2015.\textsuperscript{120} The majority of infant deaths occurred within the first 28 days, and the main causes were prematurity and congenital anomalies or conditions originating in the perinatal period. Compared to the estimate for IMR in upper-middle-income countries (43 in 1990 and 15 in 2015 per 1,000 births), Grenada is performing well within the expectation for countries in Latin America and the Caribbean sharing similar characteristics (46 for 1990 and 16 for 2015).\textsuperscript{121} Seven per cent of infants were moderately undernourished in 2008–2010, and although most infants were breastfed, only 35 per cent were exclusively breastfed for at least three months.\textsuperscript{122} The antenatal care coverage rate is reported at nearly 100 per cent in the MDG progress report of 2009, with almost 100 per cent of births delivered in a hospital by trained personnel.\textsuperscript{123}

\textsuperscript{117} UNICEF 2015.
\textsuperscript{118} Mitchell 2015.
\textsuperscript{119} PAHO 2013.
\textsuperscript{120} UN IGME 2015.
\textsuperscript{121} Ibid.
\textsuperscript{122} PAHO 2013
\textsuperscript{123} Williams 2010.
As in the case of IMR, Grenada has managed to achieve a steady decline in the under-5 mortality rate (U5MR), with 23 per 1,000 births reported in 1990 and 12 per 1,000 births in 2015. The leading causes for morbidity in children under 5 years old included acute respiratory infections and gastroenteritis. The U5MR average for the Latin America and Caribbean region is 19 per 1,000 births for 2015, and the World Bank estimates that the U5MR for upper-middle-countries should be as low as 19 for 2015 as well. The MDG established goal for the U5MR 2015 for upper-middle-income countries is 18 per 1,000 births.

The Government acknowledges the effort required to sustain these achievements and, with support from international organizations, remains committed to the development and implementation of the forthcoming national health strategy to make quality health care affordable and accessible to all.

**HIV and AIDS**

As a region, the Caribbean has the second-highest HIV prevalence rate in the world after sub-Saharan Africa, and although the concentration of the epidemic is outside of the OECS, HIV-related deaths continue to be the leading cause of death among the 25–44 age group in the broader region. However, by 2012 and largely due to a successful coordinated response, the region also recorded the world’s most profound decline (49 per cent) in infections since 2001. The remaining epidemic is concentrated in key high-risk populations: sex workers and their partners, men having sex with men, and men and women engaged in transactional sex.

Since the first case of HIV was diagnosed in 1984, a cumulative total of 485 confirmed cases have been recorded in Grenada as of 2012. In 2008 and 2009, there were 56 newly diagnosed cases of HIV, most of which had been identified through provider-initiated testing. Statistics for 2012 provided by the Government reveal a total of 54 persons with advanced HIV currently receiving antiretroviral therapy. Six HIV-infected pregnant women received antiretroviral drugs during 2009–2010 for the prevention of mother-to-child transmission (PMTCT). In 2005, the seroprevalence rate for 137 male inmates at the Richmond Hill Prison tested for HIV (59 per cent of inmates on survey days) was 2.2 per cent, with all HIV-positive inmates between the ages of 15–49.

Grenada has made great progress towards achieving MDG Goal 6, combat HIV/AIDS, malaria and other diseases, with no indigenous malaria cases and a drop in new HIV cases. With an estimated prevalence of under 1 per cent, Grenada has seen a drop in new HIV cases from a high of 32 in 2013 to 26 cases in 2014 and only 12 by September of 2015, with consistently more males than females (see Table 8), making it essential to target men in prevention programmes.

Although Grenada ratified the International Covenant on Civil and Political Rights in 1991 without reservation or declaration, there are few signs of a cultural shift that would oblige the upholding of the civil and political rights of lesbian, gay, bisexual and transgender (LGBT) persons. The law criminalizes consensual same-sex sexual activity between men, which carries a penalty up to 10 years in prison. Arguments have been advanced in favour of repealing the law, but – as has been the case in other Caribbean nations – the Government has met with strong opposition to change.

124 UN IGME 2015.
125 Ibid.
126 Ibid.
127 PAHO 2013.

Table 8: New HIV-positive cases by age and gender, 2010 - 2014

In October 2014, there was a proposal to the National Consultation on Constitution Reform to expand the bill of rights to include protections for vulnerable populations, including LGBT people as well as other groups such as people living with disabilities. A forum was held in the National Trade Centre that was open to the public and broadcast live. Although the LGBT population is estimated at 6 per cent, the audience was less than receptive. However, this initiative represents an important step towards opening the dialogue and advancing towards a more inclusive society.

Despite the existence of the law, there has been relaxed enforcement and no public reports of violence or discrimination based on sexual orientation. However, some unofficial reports indicate that discrimination against LGBT persons continues and affects their willingness and ability to seek medical treatment and/or counselling on disease prevention.

Sex education in schools is very limited, as noted above, and the HFLE curriculum does not include LGBT human rights issues. The promotion and protection of adolescents’ right to access comprehensive sexual and reproductive health (SRH) information must go beyond the distribution of condoms. The fight to stamp out the HIV and AIDS epidemic must include access to family planning and sexual health education for in- and out-of-school youth. As it stands, adolescents require parental approval to access medical services including SRH information services. Laws and policies should be clear in protecting confidential SRH information for adolescents, and an effort should be made to ensure user-friendly access, including for adolescents who are new parents and/or share childcare responsibilities.

Chronic diseases and obesity

The major shift taking place in the field of health can be described as a rapid dietary and epidemiological transition where chronic non-communicable diseases (NCDs) have replaced malnutrition and infectious diseases as major health issues. The shift towards prevention and treatment of NCDs requires a very different approach to meet the new supply, demands and quality standards.

The functioning health system described at the beginning of this chapter is one largely designed to combat malnutrition and infectious diseases and is struggling to adequately meet the demands of responding to increases in NCDs. According to the PAHO 2012 Country Report, NCDs – including, for example, high cholesterol, hypertension, excess weight, diabetes, schizophrenia, depression and substance abuse – continue to rank high among the leading causes of illness, disability and death among adults in Grenada.133

Premature deaths caused by NCDs in the 30–69 year age group totalled 82 per cent in 2012, with 65 per cent of these deaths due to the four major NCDs (cardiovascular diseases, malignant neoplasms, diabetes mellitus and respiratory diseases).134 The prevalence of diabetes and the related risks from overweight, obesity and physical inactivity are very high, and generally more prevalent among females than males (see Table 9). Over 60 per cent of women are overweight and more than 30 per cent are obese.135

133 PAHO 2012.
134 PAHO 2015.
135 WHO 2016.
According to the World Health Organization (WHO), there are no policies/strategies/action plans in place for diabetes, to reduce overweight and obesity or to reduce physical inactivity among the population.136

The public health system is no longer adequate for optimal performance in an environment where control of NCDs requires: (a) a different set of equipment (lab set-ups and x-ray tools) to investigate and diagnose NCDs using delicate imaging instruments, at both the central and sub-national levels; (b) a change in outreach strategies including rigorous efforts to equip health personnel with skills to monitor and communicate for behavioural change; and (c) a higher quality of human resources prepared to handle patients dependent on drugs and alcohol as a result of stressful home and work environments. Additionally, unlike the fight against infectious diseases, efforts to reduce the incidence of NCDs will not produce immediate results but require long and sustained input to register significant change. The bid to change behaviours and attitudes regarding the production and consumption of nutritious foods is challenged by the need for resolved political will, sustained resources and considerable time.

**Drug and alcohol use and mental health services**

St. George’s is home to the government-run Richmond Hill Institutions, which include an 80-bed, long-stay mental health facility (Mt. Gay Hospital); a 20-bed acute psychiatric unit (Rathdune); and a day treatment substance abuse centre (Carlton House). Grenada has a 2008 Mental Health Act as well as a Mental Health Policy and Plan developed in 2006. However, there are no national plans, standards or policies to facilitate guidelines on diagnosis, treatment, reporting and recovery. There are only two psychiatrists servicing Grenada, Carriacou and Petite Martinique.

In 2011, 353 cases of mental disorders were reported from hospital discharge data, with more males treated than females.137 Additionally, 209 persons (mostly adults and mostly male) were admitted to the Rathdune Psychiatric Unit for problems associated with drug use during the first quarter of 2013.138

Alcohol consumption is a problem in Grenada, with the total adult per capita consumption reported at 12.5 litres annually in 2014, double the world average of 6.2 litres and higher than the average of 8.4 in the Americas. Moreover, the prevalence of heavy drinking episodes was 4.5 per cent among 15-year-olds and older – although 9.2 per cent when only drinkers were taken into account – and notably higher among males

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136 Ibid.
Marijuana continues to be the main controlled substance used in Grenada. Data on prevalence of marijuana consumption is not available. However, the Third Secondary Schools’ Drug Prevalence Survey in 2013 found that approximately 20 per cent of secondary students reported a lifetime usage of cannabis, 13 per cent indicated a one-year usage and 7 per cent said a one-month usage. Overall, males used cannabis more than females. While the trafficking of cocaine into Grenada continues to decline, data show that trans-shipment of cocaine in the Caribbean increased significantly in 2014 compared to 2013. This suggests that Grenada, which is along the cocaine trans-shipment route, should remain vigilant in this regard.

All drug-related admissions to Rathdune Psychiatric Unit or Carlton House were due to the consumption of alcohol and marijuana, with a few cases of cocaine use. There were no admissions due to heroin, stimulants such as ecstasy and methamphetamines, or the injecting of drugs.

While discussions are underway in the region regarding the legalization of cannabis, Grenada continues to strongly resist this idea.

139 WHO 2014. WHO defines per capita consumption as the per capita amount of alcohol consumed in litres of pure alcohol among individuals 15 years of age or older. Heavy drinking means consuming at least 60 grams or more of pure alcohol on at least one occasion in the past 30 days.
140 Hegamin-Younger 2014.
141 Alexander and Japal 2014.
The SDGs and a New Framework for Children
While the Millennium Development Goals (MDGs) set the international development framework for action until 2015, United Nations’ Member States agreed at the Rio +20 Conference to create a set of Sustainable Development Goals (SDGs) to coordinate the development efforts post-2015. The SDGs were officially adopted at the SDG Summit in September 2015 and represent a new framework for global development. The process of developing the SDGs was not limited to the United Nations; it involved vast participation from different stakeholders from civil society, private enterprises and citizens around the world. There are 17 Goals (see Table 10) and 169 targets. They are action-oriented, global in nature and universally applicable. Indicators to measurable progress on outcomes have also been adopted.

The Caribbean Joint Statement on Gender Equality and the Post 2015 and SIDS Agenda called on the SDGs to consider the social, economic and environmental vulnerabilities of SIDS and the resulting challenges for sustainable, human rights-based and gender-responsive development. The Statement highlighted the situation of girls and boys in its focus on freedom from violence, accessing capabilities, economic empowerment and leadership.


Table 10: The 17 Sustainable Development Goals

| Goal 1: End poverty in all its forms everywhere | Goal 10: Reduce inequality within and among countries |
| Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture | Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable |
| Goal 3: Ensure healthy lives and promote well-being for all ages | Goal 12: Ensure sustainable consumption and production patterns |
| Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all | Goal 13: Take urgent action to combat climate change and its impacts |
| Goal 5: Achieve gender equality and empower all women and girls | Goal 14: Conserve and use the oceans, seas and marine resources for sustainable development |
| Goal 6: Ensure availability and sustainable management of water and sanitation for all | Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss |
| Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all | Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels |
| Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all | Goal 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development |
| Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation |  |
The SDGs aim “to provide children and youth with a nurturing environment for the full realization of their rights and capabilities, helping our countries to reap the demographic dividend including through safe schools and cohesive communities and families.” They include targets on reducing inequality, combating child poverty and “ending abuse, exploitation, trafficking and all forms of violence and torture against children”.\textsuperscript{145} Aligned with this last target, the international community has renewed the commitment to reform child protection agencies and systems. Though the SDGs explicitly refer to child protection, it is clear that many of the other targets will not be achieved without addressing the concerns of vulnerable children. Actors and institutions at the individual, interpersonal, community, organizational, and policy levels bear the duty of delivering the services, creating the demand and enabling the environment that nurture the growth and development outcomes essential for the realization of children’s rights.

In addition, the SDGs call for a “data revolution”. All targets must be measurable to ensure equitable results for all children. In addition, disaggregated data will be essential for strengthening social accountability and ensuring that the gaps between the most and least advantaged groups are narrowing. Data should also be disaggregated by all grounds of discrimination prohibited by international human rights law, including by sex, age, race, ethnicity, income, location, disability and other grounds relevant to specific countries and contexts (e.g., caste, minority groups, indigenous peoples, migrant or displacement status).\textsuperscript{146} The global framework of goals, targets and expected indicators for 2016–2030 have significantly expanded compared to the MDG era and will place higher demands on data collection. Adequate resources and increased capacities will be critical to generating quality disaggregated data for SDGs monitoring. This will be particularly challenging for Grenada, given its resource and capacity constraints. However, part of the responsibility arising from signing in support of the SDGs is a commitment to regularly report on progress.

\textsuperscript{145} United Nations 2015, Target 16.2.
\textsuperscript{146} Ibid.
8 Conclusion and Recommendations
This Situation Analysis (SitAn) has identified a number of areas in which action is needed to ensure that the rights of all girls and boys in Grenada are realized. These general observations and recommendations are being made with the acknowledgement that a proper, equity-based analysis of the situation of children depends on the availability of disaggregated data covering different aspects that might influence their lives, including gender, age and socio-economic status. While the Government produces some documentation that was useful in describing the situation of children and women, the quantitative data sources needed to understand trends and changes in their status were often not accessible.

The absence of data for indicators related to inequality, gender, health outcomes and behaviour, child development, nutrition, social and child protection, unemployment and social determinants of poverty is notably acute. Despite its importance, poverty has not been monitored in the territory since 2007/2008, and so the full impact of the global economic crisis is hard to assess. In addition, some groups and families might not be characterized as poor but are vulnerable in ways that negatively impact on the realization of children’s rights.

The SitAn exercise confirmed that information collection and sharing in Grenada can be highly centralized, often requiring clearance at Cabinet level before routine reports, sectoral studies, surveys and basic information regarding budget and expenditures can be distributed. Even where data exist, there is a lack of infrastructure and human resources required for their consistent collection, collation and presentation. When programmes, plans and strategies are formulated in the absence of sound analysis, it is difficult to reach appropriate and required allocation of budgets to attain goals and objectives needed to realize the rights of children. The Sustainable Development Goals (SDGs) firmly acknowledge this weakness with a specific target for Small Island Developing States (SIDS) (see previous chapter).

Gender was seen as a crosscutting topic in the SitAn. More female-headed than male-headed households experience poverty, and they carry greater responsibilities for caring for and the maintenance of the family. Sexual abuse and domestic violence are also predominantly carried out against girls and women. Moreover, gender issues also affect men and boys – for example, there is continued disparity in their academic achievement and more boys drop out of school. There is a need to properly assess the gender balance in society and create policies that are able to position women and men at the same level, as called for by the SDGs.

To maintain an enabling environment conducive to delivering equitable social and economic growth and effective poverty reduction, certain capacities must be put in place or strengthened in Grenada. These include: mobilizing and channelling resources to the appropriate sectors at the appropriate time for optimal production; enforcing standards and regulations (specifically, operationalize the legislation and policies identified and/or in draft form); establishing a mix of social partnerships with key actors (local councils, civil society, research institutions, the private sector); and improving systems for generating, collating, and managing information so that it is easily accessible and shared across different agencies and with partners. The following specific actions are also recommended.

**Legislative and policy framework**

The legislative framework for child protection in Grenada is grounded in international and regional conventions. However, it needs to keep pace with changes occurring in the international human rights arena. There are also cornerstone pieces of legislation and policies missing or in draft form, and completion, adoption and/or enforcement of these should be accelerated for operationalization. It is also recommended that the Government:

1. Revisit and amend legislation to end the use of corporal punishment in the school and home
2. Implement the Juvenile Justice Bill, including operationalization of the Juvenile Rehabilitation Centre
3. Enforce the Children (Protection and Adoption) Act, 2010; Domestic Violence Act, 2010; and Trafficking in Persons (Prevention) Act, 2014
4. Fix one minimum age of criminal responsibility
5. Introduce legislation to reduce discrimination against persons living with HIV and AIDS and protect LGBT rights
6. Ratify the International Convention on the Protection of Rights of All Migrant Workers and Members of the Their Families.

**Survival rights**

In general, women and children have access to healthcare services, nearly 100 per cent of women have a skilled birth attendant at delivery and vaccination coverage is also almost 100 per cent. However, the rise in chronic non-communicable diseases (NCDs) calls for new
approaches and service delivery in health-care systems designed to combat the behavioural and biological risks. In this context, the following actions are recommended:

1. Complete and implement the National Strategic Plan for Health 2016–2025
2. Draft, approve and implement policies and legislation to guide delivery in the areas of NCDs and mental health
3. Expand access to SRH information and services appropriate for adolescents
4. Improve outreach and communication with the LGBT community
5. Update and implement of the National HIV Strategic Plan
6. Train and equip health workers to monitor and coach patients with NCDs and to guide and treat the results of workplace and family stress that can result in drug and alcohol abuse
7. Strengthen the health ministry’s capacity for evidence-based planning, monitoring, evaluation and budgeting

Development rights

For education to be compulsory, it is necessary for it to be free. Indirect costs of education can render compulsory education too expensive for poor families. For example, as social safety net strategies targeting families are underfunded, student support schemes (cash and in-kind) reach only 10 per cent of school-age children. To ensure that all citizens, at every stage of their learning journey from early years to adulthood, are able to reach their full potential and be successful in life, at work and in society, the following recommendations are made:

1. Maintain and increase coverage and efficiency of pro-poor education assistance programmes
2. Expand access to early childhood education (ECE) and improve standards
3. Reinforce the multi-stakeholder coordination mechanism for ECE
4. Put in place a plan to train more teachers as well as staff at the Early Childhood Development Unit
to replace those retiring and help prevent a future shortage
5. Reduce overcrowding in secondary schools
6. Increase provision of technical and vocational education and training (TVET) in primary and secondary schools
7. Review initiatives designed to reduce violence in the schools and scale up those that prove effective

Protection rights

Care and protection of children is a moral imperative for the Government and all members of society. Much has been accomplished to change a culture of silence on sexual, physical and emotional abuse of children in Grenada, but it is generally felt that many cases still remain unreported. Further investments and sustained effort is needed in the following areas:

1. Improve the data collection capacity with regard to statistics on child victims of child sexual abuse as well as juveniles charged with offences (disaggregation of data by sex and age is essential)
2. Offer incentives to university students to specialize in counselling and child psychology
3. Encourage the establishment of peer support groups and networks at community level and in schools to provide support for child victims and help eliminate the stigma associated with child abuse
4. Improve standards, monitoring and support to residential care services including collaborative partnerships
5. Promote programmes for improving parenting skills and include men in their parenting role
6. Keep the criteria and level of public assistance under continuous review
7. Accelerate plans to produce a multi-dimensional analysis of poverty
8. Maintain funding of projects addressing troubled children and dropouts, particularly targeting residential care for children in need of care and protection.
**The SDGs and the future**

The Sustainable Development Goals (SDGs) represent a new framework for global development. The aim is to create a global movement to continue the work begun with the Millennium Development Goals (MDGs) as well as advance towards new commitments. Nations should therefore start framing their development plans and policies for the next years based on this globally agreed development agenda. For Grenada, that means some strategic changes in terms of producing and using data. Information systems that collate, manage and generate information should be easily accessible and shared across different agencies and with partners to produce evidence-based decisions and a national research agenda that fills the notable gaps in the existing body of knowledge.

With the rebound from the global financial crisis, budgets are stretched thin according to real growth and competing priorities. These times of austerity require the development of innovative funding and private-public partnerships at the local, national, regional and global level. The shift in human and financial resources toward resettlement and reconstruction will be a costly one coming at a moment when the economy is just showing signs of recovery. However, investing in children is not only a moral imperative but can also have high returns in terms of human lives as well as economic productivity. Priority should be given to promoting child-centred initiatives and sustaining recent gains in the areas of education, health and protection.


Smith, MG with L Comitas, Education and Society in the Creole Caribbean, Comitas Institute for Anthropological Study (CIFAS), New York, 2008.


Tab 8
Grenada: Criminalization of Same-Sex Relations

PREVIOUS IACH HEARINGS (HTTP://HRBRIEF.ORG/SPECIAL-HEARINGS/PREVIOUS-IACH-HEARINGS/)
Commissioner Tracy Robinson, Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) Persons, addresses petitioners from Grenada. (photo credit: Andrea Flynn-Schneider)
Commissioners: Tracy Robinson; Felipe Gonzalez; and James L. Cavallaro. Petitioners: Groundation Grenada (http://groundationgrenada.com); GrenCHAP (https://www.facebook.com/groups/grenchap/); Malaika Brooks-Smith-Lowe; Richie Maitland; and Kizzy Abraham. State: State of Grenada (not present) “We waste our time condemning and attacking people because they differ from us,” said Grenada Prime Minister Dr. Keith Mitchell, “we need to understand that we can’t all believe in the same thing, but we can work for the common good of development of mankind.” On October 19, 2015 Petitioners GrenCHAP and Groundation Grenada argued before the Inter-American Commission on Human Rights (http://www.oas.org/en/iachr/) (IACHR) concerning Section 431 of the country’s criminal code (http://www.wipo.int/wipolex/en/text.jsp?file_id=253233). The law criminalizes anal sex between consenting adults and continues to be used as grounds for blatant discrimination against homosexual individuals. According to the petitioners, his section conflict with human rights guaranteed by international law, including rights enshrined in the American Convention (http://www.hrcr.org/docs/American_Convention/oashr.html), namely, the rights to: dignity and privacy; equal protection under the law and non-discrimination; health; and freedom of expression. Further, petitioners contended, the law creates social stigma, condones family and community violence, and prevents homosexuals from accessing counseling and testing for HIV/AIDS. Petitioners cited to a United Nations poll data from 2014 which showed that 38% of participants in Grenada reported being homophobic, 52% indicated that they would not “hang out” with someone who is gay, and 57% were not in favor of equal rights for gay, lesbian and bi-sexual populations. Malaika Brooks-Smith-Lowe (http://www.malaikabsl.com) spoke of her own brother’s story as an example of the challenges faced by LGBTI persons in Grenada. While her family was walking along the beach one day, an individual began to shout hateful anti-gay words at her brother. “I couldn’t even spend time with my own family without being verbally assaulted because of my sexuality,” she read from her brother’s affidavit, “I was constantly being told I was wrong for who I wanted to kiss.” Harassment not only extends to those who actually identify as homosexual, she explained, but also those perceived to be homosexual whether or not they actually are. Richie Maitland (http://www.grenada40.com/social-activism/richie-maitland-lgbt-rights-activist-caribbean/) took some time to speak about how workplace discrimination and domestic violence in Grenada disadvantages LGBTI individuals. Grenada is undergoing employment legislation reform including an anti-discrimination section, which states employees cannot be discriminated against on grounds of race, color, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, age, or disability. However, sexual orientation and/or gender identify is not a protected category. Maitland highlighted stories of LGBTI persons being fired, not promoted, or harassed out of their jobs. He further contended that domestic violence law should include same sex couples, and offered of an example where police arrested a domestic violence victim after learning her abuser was her lesbian partner. Commissioner Tracy Robinson (http://www.oas.org/en/iachr/women/mandate/composition.asp) extended her regret at the States’ absence at the hearing, and expressed the importance of a continuing dialogue on the rights of LGBTI persons in Grenada. It was her hope the State would offer, at a minimum, a response in writing so that, “in good faith,” the conversation could continue. Robinson endorsed the petitioner's recommendation for the employment and domestic violence legislation to include sexual orientation and gender identity to the full range of protections for LGBTI persons. Robinson
reminded the petitioners how the Inter-American Commission (http://www.oas.org/en/iachr/media_center/PRelases/2015/053.asp) continues to push for laws, like 431, to be repealed, and agreed criminalization creates and fosters stigma against homosexuals. She called on state officials to advance the public debate so reforms can be considered. Additionally, she reiterated that progressive statements by political leaders, like that of Prime Minister Mitchell's, need to be made at home in order to advance respect for LGBTI individuals. The hearing concluded with the commissioners promise to follow up with the State to find out why they were not present to respond to petitioners allegations. **Author's Legal Analysis:** The Constitution of Grenada guarantees a number of human rights to its citizens. Section 1 of the Bill of Rights, articulates them broadly as life, liberty, security of the person and the protection of the law; freedom of conscience, expression, assembly and association; protection for the privacy of his home and other property and from deprivation of property without compensation; and the right to work. However, most acts of discrimination suffered by LGBTI persons have no legal protections within the framework of the country's Constitution. While Grenada is party to a number of international instruments (http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Grenada.pdf) including The United Nations' International Covenant on Civil and Political Rights (http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx) (ICCPR), International Covenant on Economic Social and Cultural Rights (http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) (ICESR), and The Charter of the Organization of American States (http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm) (whereby Grenada became a member of the OAS), the country's legislation is not in accordance with these instruments. Petitioners made strong arguments, citing to concrete examples, of how LGBTI persons in Grenada continue to be discriminated against by repressive laws like section 431. The government of Grenada should respond, as Commissioner Robinson suggests, to petitioners accusations in order to create an open dialogue about the ongoing problems facing LGBTI persons in Grenada. Spanish Version Available Here (http://hrbrief.org/2015/10/grenada-criminalizacion-de-relaciones-entre-personas-del-mismo-sexo/)

Andrea Flynn-Schneider (http://hrbrief.org/author/andrea-flynn-schneider/)

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Informes de tráfico de niños y adolescentes en el Perú (http://hrbrief.org/hearings/informes-de-trafico-de-ninos-y-adolescentes-en-el-peru/)
Tab 9
This report is submitted by GrenCHAP\(^1\), Gorundation Grenada\(^2\) and the Sexual Rights Initiative\(^3\). This report deals with the situation of sexual rights in Grenada, with special focus on the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people. The report draws upon the last UPR report released in July 2007 entitled ‘Sexuality, Gender, HIV, Vulnerability and Human Rights in Grenada’, local laws, international instruments, summary poll data, on the ground assessments and other information relevant to the presented issues. The report also draws upon the experience and expertise of people working as human rights defenders on behalf of vulnerable minorities in Grenada.

**Key Words:** LGBT People – Sexual Orientation – Gender Identity and Expression – Discrimination based on SOGIE

**Background and Legal Framework**

1) In Grenada there is still much stigma and discrimination against LGBT people together with strong public sentiments against equality movements. UN poll data from 2014 shows 38% of participants reporting strong homophobia that took the form of “hate” and 52% indicated that they would not “lime/hang out” with someone who is gay. 57% were not in favour of equal rights for gay, lesbian and bi-sexual populations.

2) The Constitution of Grenada codifies a number of human rights in Grenada. Section 1 of the Bill of Rights, referred to as the opening section, expresses them broadly as life, liberty, security of the person and the protection of the law; freedom of conscience, expression, assembly and association; protection for the privacy of his home and other property and from deprivation of property without compensation; and the right to work.

3) Sections 2–15 of the Bill of rights, referred to as ‘the detailed section’ specifies the content of the broad rights stated in the opening section. Section 13 protects against discrimination by laws and public officials. The prohibited axes of discrimination are race, place of origin, political

\(^1\) GrenCHAP is the Grenada chapter of the Caribbean HIV/AIDS Partnership — a network of groups in small Caribbean countries working to promote Human Rights and Health, with a focus on marginalised populations such as LGBT, Sex Workers, and persons living with and affected by HIV.

\(^2\) Gorundation Grenada is a social action collective which focuses on the use of creative media to assess the needs of our communities, raise consciousness and act to create positive radical growth.

\(^3\) The Sexual Rights Initiative is a coalition including Akahata– Latin American team work on sexualities and genders--; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others)
opinions, colour, creed or sex. While ‘sex’ has been interpreted as including sexual orientation in international instruments⁴, those interpretations aren’t binding on the high court of Grenada.

4) Section 16 allows people whose detailed section rights have been, are being or will be violated, to seek redress before the high court sitting in its constitutional capacity. Section 106 of the Constitution says that laws are void to the extent of their inconsistency with the constitution. This allows people to get redress for laws which violate their rights. Where the high court finds that rights have been violated it has the power to make orders compelling the state to pay compensation, take specific actions and/or cease and desist from doing something. High Courts in their constitutional capacity generally have wide powers to craft remedies in relation to constitutional rights violations.

5) Rights in the detailed section are much more restrictively defined than in the opening section. For instance, the ‘right to privacy’ mentioned in the opening section translates in the detailed section as “no person shall be subjected to the search of his person or his property or the entry by others on his premises”. This is much more limited than is jurisprudentially entailed in the broader ‘right to privacy’, therefore private consensual sexual activity between same sex/gender persons are excluded of these provision.

6) Also, rights in the constitution are enforceable against the state of Grenada only and not against other private citizens. This also applies to the discrimination sections; consequently most acts of discrimination suffered by LGBT have no legal provisions.

7) The only law that provides discrimination protections among private citizens is the Employment Act which says that employees can’t be discriminated against on the grounds of race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, age or disability. Sexual orientation and/or gender identity is not a protected category.

8) Section 106 of the Grenada Constitution establishes the Constitution as the supreme law of Grenada and says that any laws inconsistent with this Constitution shall be void to the extent of the inconsistency. This section operates along with the redress section to allow citizens to challenge laws that violate any of the fundamental rights in the constitution. As indicated earlier, the rights, which are redressable, are the detailed rights. The restrictive definitions in the detailed rights make it difficult for vulnerable communities like LGBTI people to bring challenges.

9) The Government of Grenada started a constitutional reform process in 2013. The draft that was initially circulated for consideration, extended protections from discrimination to LGBT people.

⁴ Toonen vs. Australia, the Human Rights Committee held that the references to "sex" in Article 2(1) (non-discrimination) and article 26 (equality before the law) of the ICCPR, include sexual orientation.
That draft has since been removed and replaced by the current 1974 constitution that citizens are expected to make suggestions on at the various ongoing island wide consultations.

**International Instruments**

10) Grenada is also party to a number of international instruments including The United Nations International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESR), The Charter of the Organization of American States (whereby Grenada became a member of the OAS). However, country legislation is not in accordance with international instruments signed.

**Universal Periodic Review**

11) During Grenada’s inaugural Universal Periodic Review, Grenada recognized that section 435 of the Criminal Code, which broadly criminalizes anal sex, including, anal sex between consenting adult men, “could be viewed as discriminatory, as it took away from the freedom of the individual. With the passage of time, growing tolerance on the part of the people would help in addressing this issue. It was a policy issue on which the Cabinet would have to deliberate. It was noted that there was no discrimination in the provision of health and other services in that regard.”

12) Considerable stigma continues to exist in Grenada against LGBT people, partly fuelled by public expressions against homosexuality by religious leaders. In November 2013, the a Seventh Day Adventist Church organised a march where participants walked through Grand Anse in Grenada chanting “man to man is so unjust, woman to woman is even worst” and other anti-gay sentiment.

**Criminalization of same gender/sex intimacy**

13) Section 435 of the Grenada Criminal Code still criminalizes consensual anal sex between adult consenting men. Section 435 remains a very active threat to LGBT people in Grenada. It legislatively entrenches discrimination and signifies the state’s contempt for LGBT people and MSM in particular. Section 435 is also actively used in Grenada.

14) Within the last 5 years, GrenCHAP and Groundation Grenada have become aware of 2 people charged under the section for having sex with people above the legal age of consent in circumstances that suggest. One of the people was convicted in 2011 and is currently serving a 6 year sentence. The other person was charged but the charge was withdrawn by the DPP after 2 lawyers in Grenada mounted a constitutional challenge to section 435.
15) Section 435 also impedes public health efforts in the fight against HIV/AIDS despite arguments to the contrary. There is international public health consensus, including in organisations like the Pan Caribbean HIV AIDS Alliance (PanCap) and UNAIDS that laws criminalising same sex intimacy help to drive stigma and discrimination against LGBT which causes LGBT people and particularly MSM to avoid situations where they might have to reveal practices implicating them in homosexuality. Laws criminalising same sex intimacy also impede the ability of health care providers to tailor interventions specifically to MSM who are particularly vulnerable.

16) Section 435 violates the international human rights to non-discrimination, privacy and health. It also violates Grenada's OAS undertakings.

**Lack of Legislative Protections Against Discrimination**

17) No civil protections exist in relation to non-workplace related discrimination such as discrimination in the context of provision of services. The workplace related discrimination clauses don’t protect against discrimination on the basis of sexual orientation and/or gender identity. LGBT people in Grenada are particularly socio-economically disadvantaged. Workplace discrimination is one of the key instruments of this disadvantage.

18) St. Lucia, Grenada's CARICOM neighbours, in a 2012 amendment to their *Employment Act*, includes sexual orientation as a prohibited category of discrimination.

19) The existence of these discriminatory laws in Grenada also contributes to the barriers LGBT people face in accessing to healthcare. LGBT persons continue to face high levels of stigma and discrimination from healthcare workers and auxiliary staff that deters them from visiting health facilities. Reports\(^5\) have has found that HIV prevalence rates are higher among men who have sex with men (MSM) and transgender persons in countries with these punitive laws.

**Other Forms of Exclusionary Legislative Discrimination**

20) The laws in Grenada applicable to succession are the *Probate Act* and the *Intestate Estate Act*. Under these laws, unmarried couples are precluded from benefits such as priority in applying for letters of probate and of letters of administration. Unmarried spouses are also denied beneficiary benefits, which apply generally to spouses, children and other family.

21) Some countries in the region like Barbados and Trinidad and Tobago have passed legislation extending spousal benefits to unmarried cohabiting couples. However, these laws still define spouses in ways, which exclude LGBT people.

22) This issue is not specific to LGBT rights or issues but cross cuts across the issue of extending rights to non-married couples who are precluded from many spousal rights and benefits.

**Recommendations**

The government of Grenada should:

23) Repeal section 435 of the Grenada Criminal Code;

24) Harmonize national legislation with international conventions so as to ensure that its citizens enjoy the human rights set out in such legislation and those conventions, and give international conventions precedence over national legislation;

25) Extend constitutional protections against discrimination based on sexual orientation, gender identity and expression;

26) Conduct continuous sensitivity training of health-care, police, legal system, police officers and workers on non discrimination based on SOGIE;

27) Ensure healthcare facilities adopt policies, which unequivocally prohibit discrimination of all of persons accessing healthcare, and have measures in place to sanction persons who violate these regulations.

28) Take every necessary measures, such as legislation, training, policies among others, to eliminate discrimination both in public and private sphere.
Tab 10
The Health Finance and Governance Project
USAID’s Health Finance and Governance (HFG) project will help to improve health in developing countries by expanding people’s access to health care. Led by Abt Associates, the project team will work with partner countries to increase their domestic resources for health, manage those precious resources more effectively, and make wise purchasing decisions. As a result, this five-year, $209 million global project will increase the use of both primary and priority health services, including HIV/AIDS, tuberculosis, malaria, and reproductive health services. Designed to fundamentally strengthen health systems, HFG will support countries as they navigate the economic transitions needed to achieve universal health care.

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SUSTAINING THE HIV AND AIDS RESPONSE IN GRENADA: INVESTMENT CASE BRIEF

DISCLAIMER
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ACRONYMS

ART  Antiretroviral Therapy
ARV  Antiretroviral
CSW  Commercial Sex Workers
ECD  Eastern Caribbean Dollars
HFG  Health Finance and Governance
KiW  German Development Bank
MARPs More-at-risk populations
MOH  Ministry of Health and Social Security
MSM  Men who have sex with men
NSP  National Strategic Plan
OECS  Organization of Eastern Caribbean States
PEPFAR President’s Emergency Plan for AIDS Relief
PLHIV People living with HIV/AIDS
PMTCT Prevention of Mother to Child Transmission
PSI  Population Services International
STI  Sexually transmitted infections
UNAIDS Joint United Nations Program on HIV/AIDS
UNGASS United Nations General Assembly Special Session
USAID United States Agency for International Development
The HIV/AIDS program in Grenada is at a turning point, facing both opportunities to expand and target its efforts and threats of decreasing funding. As its National HIV/AIDS Strategic Plan awaits ratification, the country must consider whether and how to implement strategic priorities related to controlling and mitigating the effects of the epidemic. Critical decisions must be made about programming and budgeting for the HIV response in the coming years.

This brief provides analytic inputs to help Grenada develop an “investment case” for its HIV/AIDS program. The Joint United Nations Program on HIV/AIDS (UNAIDS) and the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) have encouraged the small-island countries of the eastern Caribbean to develop HIV investment cases, which are reports that aim to help program leaders target investments on the interventions and populations where they will have maximum impact, given limited resources (UNAIDS 2012). The priorities and analysis outlined in this brief will also inform a multi-country regional application to the Global Fund for HIV/AIDS, TB and Malaria (a.k.a. “Global Fund”).

A key component of UNAIDS’ investment case framework is a quantitative analysis of trends in the HIV epidemic and the impact of various prevention and treatment efforts to date, along with a projection of possible future programming scenarios and their implications for the epidemic and program costs. The Goals and Resource Needs models – part of the Spectrum/OneHealth modeling system that estimates the impact and costs of future prevention and treatment interventions – are UNAIDS’ suggested tools for this type of analysis. With funding from the U.S. Agency for International Development (USAID), experts from the Health Finance and Governance Project have applied these tools to analyze available data from Grenada. The scenarios described in this report can help the Government of Grenada and civil society stakeholders to advocate for increased domestic funding for HIV and AIDS, and apply for available external funding from donors.

1.1 Background: HIV/AIDS Response in Grenada

Cases of HIV and AIDS in Grenada were first reported in 1984 and peaked in the early to mid-2000s. In 2013, the estimated prevalence was 0.83% of among adults over 15 years of age. By the end of 2013, a cumulative total of 517 HIV and AIDS cases had been confirmed in Grenada since 1984 (UNGASS 2014). Stigma and discrimination faced by people with HIV and AIDS remains strong in Grenada, and is believed to be hampering prevention and outreach efforts, along with the ability to expand coverage of HIV testing and counseling efforts. More males have been affected by HIV and AIDS, with a cumulative male-to-female ratio of 1.83:1. The mode of transmission is predominantly via sexual intercourse, heterosexual and through men who have sex with men. There is no known case of transmission through intravenous drug use and no record of transmission via blood transfusion. Although the number of newly diagnosed cases increased from 2012 to 2013, the number of HIV positive babies due to mother to child transmission continues to remain at zero. The data also shows decreases in the number of new AIDS cases and AIDS-related deaths. The number of new AIDS cases decreased from 39 (2010 – 2011) to 21 (2012 – 2013) while the number of AIDS-related death went from 28 to 17 during this same time period.
As of July, 2014, the Grenada Ministry of Health and Social Security (MOH) had prepared a draft National HIV and AIDS Strategy Plan (NSP) for 2014 – 2019, which is still in the process of being finalized, ratified, and implemented. The NSP focuses on six key priorities (in order):

- Creating an enabling environment that will promote and protect human rights
- Prevention of HIV transmission
- Treatment, care, and support of persons living with and affected by HIV
- Strengthening the multi-sectorial response
- Strengthening governance and management systems
- Research, monitoring, and evaluation

The activities noted in the NSP are led by the MOH (through its National Infectious Disease Control Unit [NIDCU]) and implemented in collaboration with key stakeholders in the public and private sectors. Along with prioritizing care and treatment, the draft NSP outlines a package of interventions consisting of counseling and rapid testing, educational campaigns, school-based campaigns, workplace programs, mass media campaigns and targeted interventions for most at-risk populations (MARPs).

The country has benefited from substantial external financial and technical support for HIV and AIDS programming, which have been essential to control the epidemic given the country’s human resource constraints and vulnerability to economic downturns and weather events. Grenada benefited from a multi-country Global Fund Round 3 grant from 2005 to 2011 (Global Fund (a)). Today, Grenada continues to access subsidized antiretroviral drugs through the Organization of Eastern Caribbean States (OECS) Pharmaceutical Procurement Service (PPS), with funding from a multi-country Global Fund Round 9 grant to the Caribbean Community (CARICOM). This grant will end in early 2016 (Global Fund (b)). PEPFAR has also been a key partner, providing technical assistance in each of the country’s strategic priority areas, with a particular emphasis on reducing stigma and discrimination, behavior change and prevention, lab strengthening, improving the sustainability of health financing, enhancing the role of the private sector, and strengthening strategic information systems (PEPFAR 2010).

Today, Grenada faces a transition point in its HIV programming. With an aging population and high prevalence of non-communicable diseases like hypertension and diabetes, the country faces many competing demands on its health resources. Moreover, in August 2014 the U.S. government announced that PEPFAR funding to the small-island states of the Eastern Caribbean will be largely reallocated to higher-burden countries (U.S. Department of State 2014). At this time, this has resulted in the discontinuation of most PEPFAR technical assistance funding to Grenada, including the termination of PEPFAR-supported USAID grant funding to the Eastern Caribbean Community Action Program (EC CAP II), implemented by the Caribbean HIV/AIDS Alliance (CHAA) which ended September 30, 2014. In Grenada, where CHAA has been the main provider of outreach and prevention activities to populations most at risk of contracting HIV (namely sex workers and men who have sex with men), the discontinuation of PEPFAR funding to CHAA may seriously disrupt key prevention efforts on the islands should alternative funding not be secured. In combination with the expiration of the Global Fund subsidy for antiretroviral drugs, Grenada faces a potential funding crisis for HIV efforts.

The OECS countries have recently begun preparing to apply for newly-available Global Fund monies, which might help mitigate the funding crisis for the period from 2016-2018. A description of costs, inputs and expected impact of investments in the HIV response is a required input for Global Fund concept notes. Thus, in addition to helping Grenada to consider its strategic priorities and budgetary needs for the next five-year period, it is hoped that this brief will provide useful inputs to the concept note development process.
1.2 Rationale

Grenada is one of six Organization of Eastern Caribbean States (OECS) countries applying for funding through the Global Fund’s New Funding Model. Grenada is responsible for contributing to a regional concept note that will be submitted in January 2015. In January 2014, UNAIDS and PEPFAR held a meeting in Saint Lucia on the topic of “Strategic HIV Investment and Sustainable Financing” for nine small-island countries in the eastern Caribbean. During that meeting, the two sponsoring agencies encouraged each participating country to prepare a sustainability plan, including an HIV investment case – a report that would identify opportunities to “improve country-level prioritization, technical efficiency and decision making for the allocation of HIV program resources” (UNAIDS 2014).

A key component of UNAIDS’ investment framework is a quantitative analysis of trends in the HIV epidemic, the impact of various prevention and treatment efforts to date, as well as a projection of possible future programming scenarios and their implications for the epidemic and program costs. With assistance from USAID-funded Health Finance and Governance Project (HFG), this analysis was conducted using the Goals and Resource Needs Models, part of the Spectrum/OneHealth modeling system, and estimates the impact and costs of future prevention and treatment interventions.

Beyond the development of an investment case and concept note for new external funding, this quantitative modelling will produce strategic information aimed to assist policymakers in Grenada in other ways. First, it will encourage the prioritization of limited resources for HIV and AIDS to those interventions that are most likely to produce impact in the epidemic. It can also be used to spur investments in programs that are both equitable and efficient. Second, these analyses will assist the Ministry of Health and other key HIV and AIDS stakeholders to make a strong case for additional domestic funding. It can be used as a tool to explain why HIV and AIDS funding is crucial – both by explaining the harmful impact that reduced funding will have on the HIV and AIDS epidemic and the gains that can be achieved if greater funding is received.
2. METHODS AND MODELS

In this section, we describe the projection model developed to estimate trends in the HIV epidemic, the projected impact of HIV and AIDS programs on the epidemic in terms of expected new infections, AIDS deaths, and the number of people receiving anti-retroviral therapy (ART) under different scenarios, and the potential costs of these future program options.

2.1 Methodology and Data

2.1.1 Methodology

This analysis uses the Goals model, a module implemented in the Spectrum modeling system that estimates the impact of future prevention and treatment interventions. The Goals model partitions the adult population aged 15-49 by sex and into six risk groups: not sexually active, low-risk heterosexual (stable monogamous couples), medium-risk heterosexual (people engaging in casual sex with multiple partners per year), high-risk heterosexual (female sex workers and their male clients), men who have sex with men, and injecting drug users. The Goals model implements a dynamical compartment model to project transmission forward in time, and to model the costs and impact of interventions that reduce transmission.

The Goals model calculates new HIV infections by sex and risk group as a function of behaviors and epidemiological factors such as prevalence among partners and stage of infection. The risk of transmission is determined by behaviors (number of partners, contacts per partners, condom use) and biomedical factors (ART use, male circumcision, prevalence of other sexually transmitted infections). Interventions can change any of these factors and, thus, affect the future course of the epidemic. Goals uses an impact matrix that summarizes the international literature on the average impact of each intervention type on these behaviors and biomedical factors to influence overall transmission in the modeled population.

The Goals model is also linked to the AIM module in Spectrum, which calculates the effects on children (aged 0-14) and those above the age of 49. The AIM module also includes the effects of programs to prevent mother-to-child transmission on pediatric infections.

2.1.2 Data and assumptions

The model parameters and sources used are provided in Annex 1. Data on the epidemiology of HIV and AIDS in Grenada, including historical surveillance of HIV prevalence and the number of individuals receiving prevention of mother to child transmission therapy (PMTCT) and ART, were taken from directly from data provided by the NIDCU. Validated international studies were used to set values of epidemiological parameters such as the per-act probability of transmission and variation in risk of

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1 Bollinger LA, How can we calculate the “E” in “CEA” AIDS 2008, 22 (suppl 1): S51-S57.
transmission by stage of infection, type of sex act, prevalence of other STIs, use of condoms, and other factors. The model was further parameterized using a combination of country-specific published data sources whenever available; when country-specific estimates were unavailable, we substituted estimates from published Caribbean regional sources or expert opinion derived from interviews with clinicians and program staff familiar with the local epidemic.

The model was first fit to the historical pattern of HIV prevalence in Grenada in order to reproduce the historical epidemic dynamics. Figure 1 displays the closeness of fit between observed prevalence and the model-generated prevalence. The quality of this fit provides assurance that the model will accurately predict future dynamics, subject to projected changes in program coverage.

**Figure 1: Goals Model Fit to Historical Prevalence Trend**

![Model fitting - Total](image)

Table 1 summarizes the data used to estimate program costs. Most unit cost estimates were generated from recent studies conducted in the OECS (including estimates for testing and counseling, ART drug costs, and costs of prevention among most-at-risk populations). Some costs were derived from published regional averages.
<table>
<thead>
<tr>
<th>Intervention</th>
<th>Unit Cost</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>ART (first line)</td>
<td>$174.38 per patient per year</td>
<td>OECS purchase price for TDF/3TC/EFV</td>
</tr>
<tr>
<td>ART (second line)</td>
<td>$518.78 per patient per year</td>
<td>OECS purchase price for TDF/FTC/LPV/ritonavir</td>
</tr>
<tr>
<td>PMTCT</td>
<td>$607 per mother-baby pair</td>
<td>Average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support</td>
</tr>
<tr>
<td>Condoms</td>
<td>$0.29 per condom</td>
<td>LAC regional average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014</td>
</tr>
<tr>
<td>Sexually Transmitted Infection (STI) Treatment</td>
<td>$65 per case</td>
<td>Global average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014</td>
</tr>
</tbody>
</table>

We included the costs of program support as a 9.2 percentage markup of direct costs, based on regional averages published in the National AIDS Spending Assessments (NASA) conducted by UNAIDS. Categories of program support are: enabling environment (estimated at 0.3 percent of direct costs), administration (5.5 percent), research (0.3 percent), M&E (1 percent), communications (0.2 percent), program level HR (0.9 percent) and training (1 percent).
2.2 Modeling scenarios

In consultation with the Grenada NIDCU, we created three model scenarios. Each reflects a possible set of changes in program coverages\(^2\), corresponding to an increase or decrease in resource expenditure. The scenarios are projected from a baseline year of 2013, the last full year for which any data are available. They begin to diverge in 2015, the first year in which program changes will begin. All three scenarios estimate changes in program coverage to be achieved by the year 2020.

1. **Reduce Prevention**: In this scenario, coverage of prevention programs drops significantly in 2015 and remains constant thereafter, reflecting the discontinuation of USAID’s funding toward prevention activities through organizations such as CHAA’s EC CAP II program prevention activities among most-at-risk populations in October 2014. In 2015, coverage of community mobilization efforts drops by 33%, condom provision by 20%, and outreach among most-at-risk populations (MARPs, such as sex workers and MSM) drops by 67%, relative to 2013 baseline. The ART eligibility threshold remains constant at a CD4 count of 350 cells/\(\mu\)L, and the percentage of eligible individuals receiving ART (ART coverage) remains constant.

2. **Maintenance**: Funding for prevention programs such as community mobilization, condom provision, and outreach to MARPs remains constant at 2014 levels rather than dropping. The CD4 count threshold for ART eligibility remains constant at 350 cells/\(\mu\)L. ART coverage remains constant at present levels.

3. **90-90-90 in 2020**: This scenario reflects the UNAIDS’s proposed target levels of HIV program coverage by the year 2020 (90% of HIV positive individuals aware of their status; 90% of ART eligible individuals on ART; and 90% of people on treatment have suppressed viral loads)\(^3\). Funding to MARPs prevention programs remains constant. However, voluntary counseling and testing coverage increases from 2.1% to 65% of the population in order to capture 90% of all PLHIV aged 15-49. The CD4 threshold for ART eligibility increases from 350 to 500 cells/\(\mu\)L in 2015, reflecting the new WHO guidelines. ART coverage increases to 90% in 2020, and remains constant thereafter.

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\(^2\) Coverage is defined as the percentage of a target population that is reached with the intervention.

### Table 2. Coverage of Key Interventions Under Three Scenarios

<table>
<thead>
<tr>
<th>Intervention</th>
<th>2013</th>
<th>Reduce Prevention</th>
<th>Maintenance</th>
<th>90-90-90</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Baseline</td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>CD4 eligibility threshold</td>
<td>350</td>
<td>350</td>
<td>350</td>
<td>500</td>
</tr>
<tr>
<td>Community mobilization</td>
<td>10%</td>
<td>6.7%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Percentage of the adult population tested every year</td>
<td>2.1%</td>
<td>2.1%</td>
<td>2.1%</td>
<td>65%</td>
</tr>
<tr>
<td>Population covered by condom promotion and distribution</td>
<td>37.4%</td>
<td>29.9%</td>
<td>37.4%</td>
<td>37.4%</td>
</tr>
<tr>
<td>Prevention outreach to sex workers</td>
<td>34.1%</td>
<td>11.3%</td>
<td>34.1%</td>
<td>34.1%</td>
</tr>
<tr>
<td>Prevention outreach to MSM</td>
<td>31.2%</td>
<td>10.3%</td>
<td>31.2%</td>
<td>31.2%</td>
</tr>
<tr>
<td>STI treatment</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Blood safety</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>ART for eligible adults</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>36.6%</td>
<td>36.6%</td>
<td>36.6%</td>
<td>90%</td>
</tr>
<tr>
<td>Females</td>
<td>26.4%</td>
<td>26.4%</td>
<td>26.4%</td>
<td>90%</td>
</tr>
<tr>
<td>ART for children*</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
</tr>
<tr>
<td>PMTCT**</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*In this scenario, eligibility for ART for both adults and children changes in 2015 to the new WHO guideline recommendations. For adults this means eligibility begins once the CD4 count falls below 500 cells/µl; plus all HIV+ pregnant women, serodiscordant couples, those co-infected with tuberculosis, and those co-infected with hepatitis B are automatically eligible. For children that mean eligibility for all HIV+ children below the age of 5 and all others with CD4 counts < 500.

### 2.3 Limitations of the modeling process

Goals is a globally-recognized tool for modeling the costs and impact of HIV programs, and is being used in all OECS countries as well as other countries in the region, such as Guyana and the Dominican Republic. However, the precision of any compartmental model can be limited in describing small populations (less than ~100,000) with low HIV prevalence.
As noted in Annex 1, this analysis used regional or global estimates for some behavioral parameters (i.e. sex acts per partner, number of partners per year). Country-specific estimates were used whenever available, but in some cases, it was necessary to use regional or global estimates. Similarly, some cost estimates were drawn from regional estimates (i.e. treatment service delivery costs drawn from an Antigua and Barbuda study).

The estimated average impact of interventions, expressed in the Goals software’s impact matrix, is drawn from a global review of the literature. This is commonly-accepted standard practice for modeling exercises of this type, because sufficient intervention impact studies have not been performed at the local or even the regional level in the Eastern Caribbean. Coverage estimates for Grenada were unknown for interventions such as mass media and counseling and testing.
3. SCENARIO RESULTS

3.1 Impact of scenarios

Figures 2-4 display selected results from each scenario. Both the Reduced Prevention and 90-90-90 scenarios diverge from the Maintenance scenario in 2015, when CD4 eligibility threshold increases from 350 to 500 in both. They further diverge from each other starting in 2016, when ART coverage of eligible PLHIV begins to increase rapidly to 90% in 2020 in the 90-90-90 scenario.

In the Reduced Prevention scenario (Figure 2), although the expansion of ART eligibility temporarily reduces the annual number of infections, incidence continues to increase because outreach efforts and testing rates are insufficient to reduce transmission and infections among sex workers, MSM, and those groups with highest prevalence and highest annual risk of infection. The number of new infections in the Maintenance scenario remains nearly constant through 2025; it begins to decrease later. In the 90-90-90 scenario, there is a steep and continued decline in the number of new infections.

**Figure 2.** Projection of the total number of new HIV infections annually, 2010-2025, under each scenario.

The number of annual deaths in the Reduced Prevention scenario (Figure 3) remains below the number of annual deaths in the Maintenance scenario because a larger proportion of PLHIV are on ART and...
therefore at much lower risk of mortality. Under the 90-90-90 scenario, there is a profound and steep decrease in AIDS deaths because of expanded ART coverage.

The 90-90-90 scenario has an immediate and profound effect on all aspects of the epidemic. The dramatic increase in the proportion of PLHIV over the age of 15 years receiving ART (Figure 4) is responsible for reducing both mortality and transmission, but implies a proportional increase in costs. Note that the 90-90-90 scenario as modeled here represents an increase in testing and ART coverage only; we do not model any increase in coverage of prevention programs. This is therefore a conservative analysis in terms of both impact and costs, since it would be very difficult to achieve the target of 90% of PLHIV knowing their status without an increase in coverage of such prevention programs – especially outreach to vulnerable populations with low testing rates and high prevalence. Thus it is likely that costs for prevention and outreach associated with reaching these targets could be higher than estimated below.

Figure 3. Projection of the annual number of AIDS deaths, 2010-2025, under each scenario.
Figure 4. Projection of the number of adults >15 years old who are receiving ART, 2010-2025, under each scenario.
Figure 5. Estimated need for ART among adults 15+
It is also important to consider comparing the cost-effectiveness of the various scenarios. Under the 90-90-90 Scenario, it would cost EC$117,461 per infection averted as compared with the Maintenance scenario in the six-year period between 2015 and 2020. Under the Maintenance Scenario, it would cost EC$41,414 more to avert an infection than it would under the Reduced Prevention Scenario in the six-year period between 2015 and 2020. Similarly, under the 90-90-90 scenario, it would cost EC$2,063,970 per death averted as compared with the Maintenance scenario. Under the Maintenance Scenario, it would cost EC$111,418 more to avert a death than it would under the Reduced Prevention Scenario. The cost figures appear high in the short-term six-year period. The 90-90-90 Scenario and the Maintenance Scenario would require longer timelines and continued investment to avert infections and deaths. The authors predict that the cost per infection averted and cost per death averted would actually begin to reduce annually as the prevention interventions start having wider epidemiological impact far after the six-year period that this report was limited to. In the short-term, this data illustrates the need to eliminate inefficiencies in any scenario implemented in order to reduce cost for each infection and death averted.

### 3.2 Cost of scenarios

As shown in Figure 8, the 90-90-90 scenario is by far the most costly, nearly tripling in total cost from 2015 to 2020, as the costs of ART and counseling and testing increase to meet the ambitious targets. (Figure 8 below provides a more detailed breakdown of program costs for this scenario.) The projected resource gap in 2020 is over EC $ 7.44 million. The costs of this 90-90-90 scenario are driven by the massive scale up in testing required to identify 90% of PLHIV. The targets for testing and treatment coverage are ambitious both in absolute terms and in the pace of scale-up required to achieve them by the year 2020. As mentioned in the limitations section above, it should also be noted that the scenario as modeled here does not include scale-up of MARPs outreach (or other interventions that rely on samples too small to be considered in the Goals model) that would be required in any real-world campaign to test and treat 90% of PLHIV in a concentrated epidemic context. The true costs of implementing a scenario like 90-90-90 by 2020 would likely be even higher than this analysis indicates. The Reduced Prevention and Maintenance scenarios are roughly equal in cost. Direct cost savings from reduced condom distribution, community outreach, and MARPs outreach in the Reduced Prevention scenario are almost exactly balanced by increasing costs of treatment due to the expanded eligibility threshold in that scenario (see Figures 8 and 9). However, the assumption that ART coverage can be maintained at 2013 levels even as the eligibility threshold is increased may not hold in real-world implementation, since it will be challenging to identify new eligible PLHIV and link them to care. Declining outreach among MSM and commercial sex workers – the populations with highest prevalence and risk of infection – might actually lead to falling rates of ART coverage as eligibility expands. The negative impact of reductions in outreach and other prevention activities might be worse than this Reduced Prevention scenario indicates.
Figure 6. Break down of resources required by program element: Reduced Prevention Scenario

Reduce Prevention
Resources required (ECD millions)

- Commercial sex workers
- MSM
- Condom promotion
- STI management
- Voluntary counseling and testing
- PMTCT
- Treatment
- Program support
- Other direct costs
Figure 7. Break down of resources required by program element: Maintenance scenario
Figure 8. Break down of resources required by program element: 90-90-90 in 2020 scenario
4. RESOURCE AVAILABILITY ANALYSIS

Grenada has not conducted an in-depth National Health Accounts (NHA) analysis and does not have detailed tracking of HIV expenditures in the form of NHA sub-accounts in the country’s reporting to United Nations General Assembly Special Session (UNGASS) on HIV. Data on current spending levels was thus estimated by the team of researchers who worked with the MOH and international donors to identify estimates of past expenditures in these institutions’ records.

In recent years, direct donor funding for HIV and AIDS-related activities has largely declined in Grenada. The World Bank credit-funded HIV and AIDS Prevention and Control Project ended in 2009, having disbursed US$2.6 million to Grenada between 2003 and 2009. Along with the other OECS countries, Grenada also benefited from a multi-country Global Fund Round 3 grant (totaling US$8.3 million across the six countries) that ended in 2010. The grant was used for prevention, care, and treatment, with a particular emphasis on voluntary counseling and testing as well as behavior change campaigns. The country received free ARV drugs through the OECS PPS, with funding from a multi-country Global Fund Round 9 grant to the Caribbean Community (CARICOM). The final subsidized ARVs will be purchased at the end of 2015 for the year 2015/2016.

Grenada is a member of the United States–Caribbean Regional HIV and AIDS Partnership Framework, a five-year collaborative effort of the government of the United States and 12 Caribbean countries. The Partnership Framework is meant to facilitate efforts by U.S. government agencies and the 12 countries to combat HIV and AIDS, with funding from PEPFAR. PEPFAR funding mainly supports the provision of technical assistance for laboratory strengthening, improved surveillance, enhanced prevention efforts, stigma reduction, and health systems strengthening (estimated at 75 percent of all PEPFAR expenditures in the region). The following chart summarizes expenditures into HIV and AIDS programming by source for 2014.
In addition to the chart above, the table below presents estimated expenditures into HIV by source from 2012 to 2014.\(^4\)

**Table 3. HIV and AIDS Expenditures by Source 2012 - 2014**

<table>
<thead>
<tr>
<th>Expenditure by Source</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Expenditure</td>
<td>$242,590</td>
<td>$265,867</td>
<td>$279,857</td>
</tr>
<tr>
<td>Private Sector</td>
<td>$9,478</td>
<td>$9,766</td>
<td>$12,000</td>
</tr>
<tr>
<td>Global fund</td>
<td>$37,935</td>
<td>$68,469</td>
<td>$27,910</td>
</tr>
<tr>
<td>PEPFAR</td>
<td>$622,111</td>
<td>$640,961</td>
<td>$656,344</td>
</tr>
<tr>
<td>PAHO</td>
<td>$16,989</td>
<td>$17,504</td>
<td>$17,924</td>
</tr>
<tr>
<td>KfW</td>
<td>$231,937</td>
<td>$97,715</td>
<td>$67,793</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,161,040</td>
<td>$1,100,282</td>
<td>$1,061,828</td>
</tr>
</tbody>
</table>

In terms of government expenditure, the MOH does not have a system for tracking expenditures associated with the HIV and AIDS program administered by the NIDCU. The only reported estimate provided by the MOH of domestic spending was for US$92,176.67 (EC$248,877).\(^5\) This figure represents the salaries for staff members in the NIDCU. In addition to expenditures on ARVs incurred through the OECS PPS, researchers also used cost estimates from a recent hospital costing study.

\(^4\) Where exact data was not available on spending each year, the authors estimated expenditures by adjusting 2014 figures with the inflation rate for that year.

\(^5\) This figure is likely over or underestimated. The NIDCU staff is responsible for activities apart from HIV programming. Moreover, other ministerial staff (such as those from the health promotion, planning, and epidemiology units, as well as staff at the MOE) may spend a portion of their time implementing HIV-related activities.
conducted by HFG that estimated the cost of delivering HIV and AIDS care through the St. George’s Hospital (Johns et al. 2013).

As indicated in the background section, in August 2014 the US government announced substantial cutbacks to its PEPFAR programs in OECS countries, which resulted in the termination of grant funding to CHAA. According to PEPFAR’s Regional Coordinator (U.S. Department of State 2014), PEPFAR’s expected support will decrease to less than one-fifth of its prior levels over the coming three years; by 2019, PEPFAR funding to Grenada will be discontinued. Though not fully determined yet, the focus of remaining PEPFAR support will likely be on laboratory strengthening, surveillance, and prevention efforts. We assume based upon results from the 2011 NHA that approximately 25% of total PEPFAR funding going forward will be available to the country for direct HIV programming around care, treatment, and prevention efforts, with the remainder allocated to technical assistance and training efforts (Table 4).

Table 4. Current and projected PEPFAR funding to Grenada (2014 – 2019) (ECD)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total indicated PEPFAR funding to all implementing partners working in Grenada</td>
<td>$656,344</td>
<td>$675,000</td>
<td>$540,000</td>
<td>$405,000</td>
<td>$270,000</td>
<td>$0</td>
</tr>
<tr>
<td>Of which:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated PEPFAR resources available for direct HIV programming in Grenada</td>
<td>$164,086</td>
<td>$168,750</td>
<td>$135,000</td>
<td>$101,250</td>
<td>$67,500</td>
<td>$0</td>
</tr>
<tr>
<td>Estimated PEPFAR resources available for training and technical assistance to Grenada</td>
<td>$492,258</td>
<td>$506,250</td>
<td>$405,000</td>
<td>$303,750</td>
<td>$202,500</td>
<td>$0</td>
</tr>
</tbody>
</table>

Private sector costs were estimated from published accounts of funds dedicated by corporations such as The Bank of Nova Scotia (Scotiabank) as well as Grenada Electricity Services Ltd. that host HIV testing campaigns. Estimates of expenditures from international donors such as Global Fund, PEPFAR, and Pan-American Health Organization (PAHO) were obtained from the MOH as well as from the PEPFAR Coordinator for the Caribbean Region. The majority (61 percent) of expenditures were made by PEPFAR; however, as presented in the section around resources available, these funds are expected to decline in the next several years. The following chart illustrates HIV and AIDS expenditures by program areas in 2014.
A large majority (61 percent) of expenditures in 2014 were directed toward HIV and AIDS care and treatment programs. An estimated 22 percent of funds were directed toward prevention activities (for e.g., VCT and outreach for MARPs) and another 16 percent of expenditures went toward the administration of the programs through the NIDCU.

In this section, we estimate the envelope of financial resources available to Grenada to support HIV prevention, care, treatment, and program management in the coming years. For this analysis, we make the assumption that patterns of HIV spending by government and the private sector are likely to remain relatively consistent into the future (barring any major economic disruptions). Contributions from international donors, on the other hand, may change substantially from year to year, and thus past spending levels are less useful for predicting future allocations.

In August 2014 PEPFAR announced substantial cutbacks to its funding in OECS countries, and the termination of grant funding to CHAA. According to email communications from the PEPFAR’s Regional Coordinator, PEPFAR’s expected support will decrease to less than one-fifth of its prior levels over the coming three years; by 2019, PEPFAR funding to Grenada is expected to be discontinued. Though not fully determined yet, the focus of remaining PEPFAR support will likely be on laboratory strengthening, surveillance, and prevention efforts. Based upon results from the 2011 NHA conducted in the region, approximately 25% of total PEPFAR funding going forward will be available to the country for direct HIV programming around care, treatment, and prevention efforts, with the remainder allocated to technical assistance and training efforts.

---

6 Pers. comm. from Regional PEPFAR Coordinator, September 8, 2014.
In order to estimate the total expenditure on HIV and AIDS, HFG obtained data from various sources:
- NIDCU for information on salary payments for staff engaged on the HIV/AIDS program and on-budget funding from PEPFAR.
- PEPFAR HIV/AIDS regional coordinator for information on total funding to Grenada. This funding included direct support to the HIV program through prevention activities and technical assistance through external contractors.
- Antiretroviral (ARV) medicines projections from the OECS Pooled Procurement System (PPS).
- Other donors e.g. KfW and Global Fund
- Own calculations of expenditures by hospitals on HIV patients (excluding drugs which were obtained separately) based on a recent costing study and other sources.

In terms of prospects for future funding, the following table projects the resources that are expected to be available to finance HIV and AIDS programming from 2014 to 2020.

| Table 5. Projected resources available for direct HIV programming in Grenada (in ECD millions) |
|---------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| Government Expenditure | $0.28 | $0.28 | $0.28 | $0.29 | $0.29 | $0.29 | $0.29 |
| Private Sector | $0.01 | $0.01 | $0.01 | $0.01 | $0.01 | $0.01 | $0.01 |
| Global Fund | $0.03 | $ - | $ - | $ - | $ - | $ - | $ - |
| PEPFAR | $0.66 | $0.68 | $0.54 | $0.41 | $0.27 | $ - | $ - |
| PAHO | $0.02 | $0.02 | $0.02 | $0.02 | $0.02 | $0.02 | $0.02 |
| KfW | $0.07 | $0.02 | $ - | $ - | $ - | $ - | $ - |
| Total Resources Available | **$1.06** | **$1.00** | **$0.85** | **$0.72** | **$0.59** | **$0.32** | **$0.32** |

Expected government contributions are expected to increase slight starting from 2015 by an estimated 1% of the prior year. The increase was set at a low rate because interviews from MOH staff revealed that the Ministry of Finance (MOF) will be focused on keeping budgets stable for planning future activities. Estimates for Global Fund resources does not account for the scenario that the joint funding application is successful. The funds from PEPFAR were estimated by the PEPFAR Coordinator for the Caribbean Region. These projections illustrate a significant decrease in total funds available for the HIV response from EC$1,061,827 (US$393,269) in 2014 to EC$324,056 (US$114,734) in 2020, a 69 percent decline in available funding. This may prove challenging for Grenada in light of projected estimates of needed resources.
Finally, we estimate the costs of each of the three projection scenarios and compare these to the estimated resources available from domestic and international sources. Figure 11 below shows the projected total costs ("resources required") of the three scenarios through the year 2020. Figure 11 compares these total costs in the short run (2014-2020), represented by the solid bars, to the estimated resources available, represented by the decreasing red line.

Figure 11. Estimated resources required compared to resources available, 2014-2020
Table 6. Estimated resources required compared to resources available (in ECD millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost: Reduce prevention</strong></td>
<td>$2.01</td>
<td>$2.07</td>
<td>$2.12</td>
<td>$2.17</td>
<td>$2.22</td>
<td>$2.28</td>
</tr>
<tr>
<td><strong>Cost: Maintenance</strong></td>
<td>$2.36</td>
<td>$2.40</td>
<td>$2.45</td>
<td>$2.49</td>
<td>$2.54</td>
<td>$2.59</td>
</tr>
<tr>
<td><strong>Cost: 90/90/90</strong></td>
<td>$2.41</td>
<td>$3.32</td>
<td>$4.27</td>
<td>$5.26</td>
<td>$6.31</td>
<td>$7.44</td>
</tr>
<tr>
<td><strong>Resources available</strong></td>
<td>$1.00</td>
<td>$0.85</td>
<td>$0.72</td>
<td>$0.58</td>
<td>$0.32</td>
<td>$0.32</td>
</tr>
<tr>
<td><strong>Resource gap: Reduce prevention</strong></td>
<td>$1.01</td>
<td>$1.21</td>
<td>$1.40</td>
<td>$1.59</td>
<td>$1.90</td>
<td>$1.96</td>
</tr>
<tr>
<td><strong>Resource gap: Maintenance</strong></td>
<td>$1.35</td>
<td>$1.55</td>
<td>$1.73</td>
<td>$1.91</td>
<td>$2.22</td>
<td>$2.27</td>
</tr>
</tbody>
</table>

Grenada does not currently have the necessary resources to implement an adequate response to its HIV epidemic. Simply maintaining the Maintenance will require the government or other donors to step in to fill the gaps in coverage of prevention programs. For the Maintenance scenario, the total estimated resource gap over the four year period 2015-18 is EC$6.54 million, or about EC$1.64 million per year over this four year period. Even if the CD4 eligibility threshold is increased, and the proportion of eligible PLHIV receiving treatment is maintained despite reduced outreach (which may not be possible), the Reduced Prevention scenario is no cheaper than the Maintenance. Furthermore, after a small initial decline, the incidence of new HIV infections in the Reduced Prevention scenario begins to increase – making an adequate response even more expensive down the road.
Grenada does not have the necessary resources to implement an adequate response to its HIV epidemic. Simply maintaining the status quo requires the government or other donors to step in to fill the gaps in prevention program coverage left by the discontinuation of funding for CHAA’s USAID-funded EC CAP II program. Other possible gaps in HIV response management and programming impacted by the changing PEPFAR regional priorities include lab strengthening and health system strengthening.

If prevention outreach is scaled down, the number of new HIV infections each year will likely increase sharply because of reduced investments in prevention among most-at-risk populations. Even under this scenario, the estimated resource gap starting in 2015 is EC$1.01 million and widens to EC$1.96 million in 2020. Cumulative for this six-year period, the resource gap amounts to EC$9.07 million.

If MARPs prevention resources are maintained, ART eligibility remains unchanged, and treatment coverage levels are maintained, Grenada will face an EC$11.03 million resource gap cumulative over that six-year period, or approximately EC$1.84 million on average per year. HIV incidence will stay relatively constant, and the number of individuals on ART will continue to climb slowly.

The ambitious 90-90-90 by 2020 scenario has the greatest impact on the epidemic, dramatically curtailing new HIV infections and saving many lives through its greater emphasis on counseling, testing, and expanded ART eligibility and coverage. Over the long-term, this approach will eventually mean overtaking and potentially ending the epidemic. But it is also very costly, as it entails testing many more individuals and long-term maintenance of a substantial number of people on ART. Under this scenario, the projected resource gap over the next six years is EC$25.22 million or on average EC$4.2 million per year.
ANNEX 1. GOALS MODEL PARAMETER INPUTS

<table>
<thead>
<tr>
<th>Goals Data</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATOR</strong></td>
</tr>
<tr>
<td>Distribution of the Population by Risk Group</td>
</tr>
<tr>
<td>Percentage of males</td>
</tr>
<tr>
<td>Not sexually active (Never had sex)</td>
</tr>
<tr>
<td>Low risk heterosexual (One partner in the last year)</td>
</tr>
<tr>
<td>Medium risk heterosexual (more than one partner in last year)</td>
</tr>
<tr>
<td>High risk heterosexual (Client of sex worker)</td>
</tr>
<tr>
<td>MSM</td>
</tr>
<tr>
<td>Percentage of females</td>
</tr>
<tr>
<td>Not sexually active (Never had sex)</td>
</tr>
<tr>
<td>Low risk heterosexual (One partner in the last year)</td>
</tr>
<tr>
<td>Medium risk heterosexual (more than one partner in last year)</td>
</tr>
<tr>
<td>High risk heterosexual (Sex worker)</td>
</tr>
<tr>
<td>Condom use in last sex act (Latest available, plus earlier years if available)</td>
</tr>
<tr>
<td>Low risk</td>
</tr>
<tr>
<td>Medium risk</td>
</tr>
<tr>
<td>High risk</td>
</tr>
<tr>
<td>MSM</td>
</tr>
</tbody>
</table>
### Number of partners per year

<table>
<thead>
<tr>
<th></th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Low risk</strong></td>
<td><strong>Low risk</strong></td>
</tr>
<tr>
<td></td>
<td>1 by definition</td>
<td>1 by definition</td>
</tr>
<tr>
<td></td>
<td><strong>Medium risk</strong></td>
<td><strong>Medium risk</strong></td>
</tr>
<tr>
<td></td>
<td>4.0 not available; typical value</td>
<td>4.0 not available; typical value</td>
</tr>
<tr>
<td></td>
<td><strong>High risk</strong></td>
<td><strong>High risk</strong></td>
</tr>
<tr>
<td></td>
<td>30 Required to balance number of high risk sex acts. See Calculations.</td>
<td>100 Required to balance number of high risk sex acts. See Calculations.</td>
</tr>
<tr>
<td></td>
<td><strong>MSM</strong></td>
<td><strong>MSM</strong></td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

### Sex acts per partner

|        | **Low risk**                                                          | **Medium risk**                                                          |
|        | 80 Typical international value                                        | 20 Assumed value. See Calculations, St. Kitts KAPB Table 131: Typical number of acts per partner in past 12 months is roughly 3-5, not plausible. |
|        | **High risk**                                                         | **MSM**                                                                  |
|        | 3 Not available; typical value giving reasonable average number of sex acts per high risk male per year. See Calculations. | 14 Not available; reasonable value consistent with 6 acts/partner.        |

### Age at first sex

|        | **Males**                                                            | **Females**                                                            |
|        | 15.0 2011 Grenada KAPB Table 94 page 123                             | 17.0 2011 Grenada KAPB Table 94 page 123                               |

### Percent married or in union

|        | **Males**                                                            |
|        | **Low risk**                                                          |
|        | 100.0% By definition all are married/in union                         |
|        | **Medium risk**                                                       |
|        | 27.0% Not available; value for Domenica                                |
|        | **High risk**                                                         |
|        | 27.0% Not available; value for Domenica                                |
|        | **MSM**                                                               |
|        | 27.0% Not available; value for Domenica                                |
### Females

<table>
<thead>
<tr>
<th>Risk Level</th>
<th>Prevalence (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low risk</td>
<td>100.0%</td>
<td>By definition all are married/in union</td>
</tr>
<tr>
<td>Medium risk</td>
<td>27.0%</td>
<td>Not available; value for Domenica</td>
</tr>
<tr>
<td>High risk</td>
<td>27.0%</td>
<td>Not available; value for Domenica</td>
</tr>
</tbody>
</table>

**STI prevalence (Latest available, plus earlier years if available)**

#### Males

<table>
<thead>
<tr>
<th>Risk Level</th>
<th>Prevalence (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low risk</td>
<td>4.3%</td>
<td>2011 Grenada KAPB Table 140 page 165, among both men and women, 1.2% have had genital ulcer/sore in last 12 months -- not plausible as prevalence estimate. Use half of female estimate.</td>
</tr>
<tr>
<td>Medium risk</td>
<td>10%</td>
<td>Not available -- assumed value.</td>
</tr>
<tr>
<td>High risk</td>
<td>15%</td>
<td>Not available -- assumed value.</td>
</tr>
<tr>
<td>MSM</td>
<td>17%</td>
<td>8.6% of n=70 reported penile or anal sores in past 6 months. St. Vincent estimate, From &quot;Men Who Have Sex with Men Behavioural and HIV Seroprevalence PILOT Study conducted in St. Vincent &amp; the Grenadines, 2010.&quot; Ministry of Health and Wellness.</td>
</tr>
</tbody>
</table>

#### Females

<table>
<thead>
<tr>
<th>Risk Level</th>
<th>Prevalence (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low risk</td>
<td>8.6%</td>
<td>2011 Grenada KAPB page 165</td>
</tr>
<tr>
<td>Medium risk</td>
<td>15%</td>
<td>Not available -- assumed value.</td>
</tr>
<tr>
<td>High risk</td>
<td>30%</td>
<td>Not available -- assumed value.</td>
</tr>
</tbody>
</table>

**Coverage of behavior change interventions**

#### General population

<table>
<thead>
<tr>
<th>Intervention</th>
<th>Coverage (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community mobilization: reached by intervention per year (%)</td>
<td>10.0%</td>
<td>NAP Coordinator estimate.</td>
</tr>
<tr>
<td>Mass media: reached by campaigns per year (%)</td>
<td>25.0%</td>
<td>NAP Coordinator estimate.</td>
</tr>
<tr>
<td>VCT: Adult population receiving VCT each year (%)</td>
<td>2.1%</td>
<td>See Calculations. This seems too low, but best available estimate</td>
</tr>
<tr>
<td>Condom coverage (%)</td>
<td>37.4%</td>
<td>2011 Grenada KAPB Table 124</td>
</tr>
<tr>
<td>Prisoners reached (%)</td>
<td>100.0%</td>
<td>All prisoners reached in 2012</td>
</tr>
</tbody>
</table>

#### Most-at-risk populations

<table>
<thead>
<tr>
<th>Population</th>
<th>Coverage (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female sex workers (%)</td>
<td>34.1%</td>
<td>McLean et al., &quot;The Cost of HIV Prevention</td>
</tr>
</tbody>
</table>


|------------------|-------|------------------------------------------------------------------------------------------------------------------|

**Medical services**

<table>
<thead>
<tr>
<th>Males with STI receiving treatment</th>
<th>15%</th>
<th>St. Vincent estimate from PSI Planned Parenthood data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Females with STI receiving treatment</td>
<td>15%</td>
<td>St. Vincent estimate from PSI Planned Parenthood data</td>
</tr>
<tr>
<td>Units of blood for transfusion tested</td>
<td>100%</td>
<td>NAP Coordinator estimate</td>
</tr>
</tbody>
</table>

**Treatment**

<table>
<thead>
<tr>
<th>(CD4 count threshold for eligibility by year)</th>
<th>350</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of adult males in need receiving ART by year</td>
<td>36.6%</td>
<td>Average of 2011 and 2012 coverages as of Dec 31, based on actual number on ART divided by AIM estimated need.</td>
</tr>
<tr>
<td>Percent of adult females in need receiving ART by year</td>
<td>26.4%</td>
<td>Average of 2011 and 2012 coverages as of Dec 31, based on actual number on ART divided by AIM estimated need.</td>
</tr>
</tbody>
</table>

**Unit Costs**

**General populations**

<table>
<thead>
<tr>
<th>Community mobilization cost per person reached</th>
<th>$3.29</th>
<th>LAC regional average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mass media cost per person reached</td>
<td>$4.00</td>
<td>LAC regional average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014</td>
</tr>
<tr>
<td>Cost per VCT client</td>
<td>$ 30.00</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Cost per male condom distributed by the public sector</td>
<td>$0.29</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Cost per teacher trained in primary school education</td>
<td>$ 68.61</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Cost Description</td>
<td>Cost (2013)</td>
<td>Source and Notes</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>--------------</td>
<td>-----------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Cost per teacher trained in secondary school education</td>
<td>$68.61</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Cost of peer education for out of school youth</td>
<td>$16.22</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Cost per person in employment reached (peer education)</td>
<td>$9.65</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td>Prisoners</td>
<td>$45.00</td>
<td>Dominica estimate</td>
</tr>
<tr>
<td><strong>Most-at-risk populations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Medical Services</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost per STI treated in clinics</td>
<td>$65.00</td>
<td>Global average; Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014</td>
</tr>
<tr>
<td>Cost of screening a unit of blood for HIV</td>
<td>$18.57</td>
<td>LAC Regional Average; Bollinger and Stover, &quot;Background paper on update of unit costs for UNAIDS GRNE&quot; (2014). These are estimates for costs in 2013.</td>
</tr>
<tr>
<td><strong>PMTCT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HIV testing (per test): PCR for infant after birth</td>
<td>$62.00</td>
<td>Default</td>
</tr>
<tr>
<td>ARVs (cost per person per day): Triple treatment (AZT+3TC+NVP/EVF)</td>
<td>$1.66</td>
<td>$607/year divided by 365 days. SAS regional average, from: Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014.</td>
</tr>
<tr>
<td>ARVs (cost per person per day): Triple prophylaxis</td>
<td>$1.66</td>
<td>$607/year divided by 365 days. SAS regional average, from: Financial Resources Required to Achieve National Goals for HIV Prevention, Treatment, Care and Support, 2014.</td>
</tr>
<tr>
<td>Treatment</td>
<td>Cost per Patient per Year</td>
<td>Source</td>
</tr>
<tr>
<td>-----------</td>
<td>---------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Adults (cost per patient per year): First line ART drugs</td>
<td>$174.38</td>
<td>OECS data point from GPRM: TDF/3TC/EFV</td>
</tr>
<tr>
<td>Adults (cost per patient per year): Second line ART drugs</td>
<td>$518.80</td>
<td>OECS data point from GPRM: TDF/FTC/LPV/ritonavir</td>
</tr>
<tr>
<td>Children (cost per patient per year): ARV drugs</td>
<td>$174.38</td>
<td>OECS data point from GPRM: TDF/3TC/EFV</td>
</tr>
<tr>
<td>Service delivery requirements (per patient per year): ART out-patient visits</td>
<td>$1.00</td>
<td>Annual cost</td>
</tr>
<tr>
<td>Service delivery requirements (per patient per year): OI treatment in-patient days</td>
<td>$1.00</td>
<td>Annual cost</td>
</tr>
<tr>
<td>Migration from first to second line (% per year)</td>
<td>15%</td>
<td>St. Vincent estimate. 2014 GARP Report, page 16. 15 clients all ages on 2nd line, 229 all ages on 1st line. Same among 15+, not given for 15-49.</td>
</tr>
</tbody>
</table>

**Policy and Program Support**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enabling environment</td>
<td>0.3%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Program management</td>
<td>5.5%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Research</td>
<td>0.3%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Monitoring and evaluation</td>
<td>1.0%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Category</td>
<td>Percentage</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Strategic communication</td>
<td>0.2%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Logistics</td>
<td>0.0%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Programme-level HR</td>
<td>0.9%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Training</td>
<td>1.0%</td>
<td>Regional NASA average</td>
</tr>
<tr>
<td>Laboratory equipment</td>
<td>0.2%</td>
<td>Regional NASA average</td>
</tr>
</tbody>
</table>
## ANNEX 2. EPIDEMIOLOGICAL PARAMETERS

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transmission of HIV per act (female to male)</td>
<td>0.0019</td>
<td>Baggeley et al., Gray et al.</td>
</tr>
<tr>
<td>Multiplier on transmission per act for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Male to female</td>
<td>1.0</td>
<td>Galvin and Cohen, 2.2-11.3</td>
</tr>
<tr>
<td>- Presence of STI</td>
<td>5.5</td>
<td>Powers et al. 5.1-8.2</td>
</tr>
<tr>
<td>- MSM contacts</td>
<td>2.6</td>
<td>Vittinghoff et al.</td>
</tr>
<tr>
<td>Relative infectiousness by stage of infection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Primary infection</td>
<td>9–40</td>
<td>Boily et al. 9.17 (4.47-18.81)</td>
</tr>
<tr>
<td>- Asymptomatic</td>
<td>1</td>
<td>Pinkerton</td>
</tr>
<tr>
<td>- Symptomatic</td>
<td>7</td>
<td>Reference stage</td>
</tr>
<tr>
<td>- On ART</td>
<td>0.04 – 0.08</td>
<td>Boily et al. 7.27 (4.45-11.88)</td>
</tr>
<tr>
<td>Efficacy in reducing HIV transmission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Condom use</td>
<td>0.8</td>
<td>Weller and Davis</td>
</tr>
<tr>
<td>- Male circumcision</td>
<td>0.6</td>
<td>Auvert et al, Gray et al. (2007), Bailey et al.</td>
</tr>
<tr>
<td>- PrEP</td>
<td>0.55 – 0.73</td>
<td>Partners PrEP Study</td>
</tr>
<tr>
<td>- Microbicide</td>
<td>0.6</td>
<td>Abdool Karim et al.</td>
</tr>
</tbody>
</table>
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Powers KA, Poole C, Pettifor AE, Cohen MS. Rethinking the heterosexual infectivity of HIV-1: a systematic review and meta-analysis The Lancet Published on line August 5, 2008 DOI:10.1016/S1273-3099(08)70156-7.


Tab 11
The Caribbean has the second highest rate of HIV infection in the world after sub-Saharan Africa. The epidemic poses serious development and economic challenges. Although heterosexual transmission is considered to be the main route of HIV transmission in the Caribbean, gay men and other men who have sex with men account for a significant number of cases.

False reporting is thought to be common, since homosexuality is criminalised in many Caribbean islands. High levels of homophobia and violence against gay men cause widespread denial, making people more likely to engage in high-risk behaviour, and increasing the potential for HIV transmission from men who have sex with men to their female partners and children. Rates of infection among sex workers are also high.

The Caribbean HIV&AIDS Alliance’s (CHAA) regional programme builds the capacity of local community-based organisations and reaches out to key populations in the region (sex workers, men who have sex with men, and people living with HIV).

The CHAA conducts focussed programmes in Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Since CHAA’s birth in 2003 with support from USAID, there has
been a leveraging of additional resources to scale up its efforts.

Caribbean HIV/AIDS Alliance – Map View

Location:
8 Gallus Street
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Phone: +(868) 623 9714, 623
Fax: +868 627 3832

Email address: info@alliancecarib.org.tt

Caribbean HIV/AIDS Alliance on:
- Facebook

Type of network resource:
- Activist Organization

Issues addressed:
- LGBT
- Education
- Gender Equality
- Human Rights
- Poverty / Hunger
- Health / Medicine

Further classification:
- Regional Office

When force is used against one who has not yet carried out his evil intent, I can never know which would be greater — the evil of my act of violence or of the act I want to prevent ... What an immense mass of evil must result, and indeed does result, from
allowing men to assume the right of anticipating what may happen. Ninety-nine per cent. of the evil of the world is founded on this reasoning.

*Leo Tolstoy*  [View all quotes](#)
Tab 12
HIV/AIDS-related stigma and discrimination: Accounts of HIV-positive Caribbean people in the United Kingdom

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Abstract
This paper explores the effects of HIV/AIDS-related stigma and discrimination (HASD) on HIV-positive Caribbean people in the Caribbean and the UK. In-depth, semi-structured interviews were held with a purposively selected group of 25 HIV-positive people of Caribbean origin, using primary selection criteria of sex, age, sexuality and country of birth. Interviews with respondents revealed that they are keenly aware of the stigma surrounding HIV/AIDS, which some attribute to a particularly Caribbean combination of fear of contamination, homophobia, and ignorance, reinforced by religious beliefs. In fact, religion serves a double role: underpinning stigma and assisting in coping with HIV. HASD has usually occurred where respondents have lost or do not have control over disclosure. Compared to UK-born respondents, the accounts of Caribbean-born respondents, most of whom were born in Jamaica, include more reports of severe HASD, particularly violence and employment discrimination. All respondents mobilise a variety of strategies in order to avoid HASD, which have implications for their social interactions and emotional well-being. While some manage to avoid the “spoiled identity” of the stigmatised, thereby creating their own understandings of HIV infection, these may remain individual-level negotiations. HASD affects HIV-positive Caribbean people at home and in the diaspora in a variety of ways: emotionally, mentally, financially, socially and physically. Interventions specifically addressing stigma and discrimination must be formulated for the UK’s Caribbean population. Tackling stigma and discrimination requires more than education; it requires “cultural work” to address deeply entrenched notions of sexuality.

Introduction
HIV/AIDS is a matter of urgent concern both in the Caribbean and in the United Kingdom’s (UK) Caribbean population. Indeed, while in the Caribbean the prevalence rate is second only to that of sub-Saharan Africa (UNAIDS, 2006), there is now clear evidence of an emerging HIV epidemic among the black Caribbean community in the UK. In recent years, there has been a 164% increase in the number of HIV-positive (HIV+) Caribbean people accessing treatment and care services in the UK, and a 178% increase in the number of new HIV diagnoses in this ethnic minority population (PHLS Communicable Disease Surveillance Centre, 2002). This represents the largest proportional increase of any ethnic group in the UK, apart from black Africans (UK Collaborative Group for HIV and STI Surveillance, 2006).
HIV/AIDS-related stigma and discrimination (HASD) has been deemed one of the greatest challenges to the fight against HIV infection (Aggleton, 2000; Mann, 1987). It is a worldwide phenomenon, with serious implications for both the HIV epidemic and the lives of people living with HIV/AIDS (PLWHA). HIV testing, HIV prevention (Brooks, Etzel, Hinojosa, Henry, & Perez, 2005), access to treatment and care (Aggleton, 2000), disclosure (Clark, Lindner, Armistead, & Austin, 2003; Liu, Hu, Li, Stanton, Naar-King, & Yang, 2006), support-seeking (Flowers, et al., 2006), social interaction (Varas-Diaz, Serrano-Garcia, & Toro-Alfonso, 2005), identity (Flowers, et al., 2006; Hernandez & Torres, 2005), and PLWHA's human rights (Aggleton, Wood, Malcolm, & Parker, 2005), for example, have been shown to suffer under HASD.

Although there is a small body of literature pointing to high levels of HASD in the Caribbean, there has been no parallel research among the UK's Caribbean population. This paper is a first step towards filling that gap, by providing evidence for the existence of HASD in the Caribbean population. The results discussed here emerge from a larger study called the LIVITY Research Project, the first in-depth study of HIV among Caribbean people in the UK (see Anderson et al., 2007 for details on study methodology). This study aimed to assess the present situation and future course of HIV infection among people of Caribbean origin in South London. The LIVITY Research Project enrolled 250 HIV+ patients and 300 Caribbean genito-urinary medicine (GUM) clinic attendees (considered an “at risk” population), and used a mixed quantitative and qualitative methodology, including sociodemographic, behavioural and epidemiological research, mathematical modelling, and in-depth interviews. This paper is the outcome of the latter research method.

The existing literature on the manifestations of HASD provides the theoretical underpinnings of this research by demonstrating that HASD is a multi-layered phenomenon, and that an important distinction is that between “felt” and “enacted” stigma. According to Aggleton et al. (2005), HASD can reinforce already stigmatised behaviours and identities, typically homosexuality, prostitution and injecting drug use, as well as a fear of outsiders and the vulnerable; and it places blame on the people living with HIV/AIDS (PLWHA) themselves, with the aim and consequence of distancing others from a sense of their own personal risk. A variety of metaphors are mobilised in this process of legitimisation and reinforcement of stigma: HIV/AIDS as shameful, as death, punishment, war, horror and “otherness” (Aggleton, 2000). As well, PLWHA experience HASD at the societal, community and individual levels; HASD manifests itself within the family, community, workplace, health care system, and within the affected individual himself or herself (Aggleton, 2000). Some researchers divide this “experience” of stigma into felt and enacted stigma: the former refers to people’s feelings about their condition and their expectations about others’ reactions to them; the latter to the actual experiences of stigma and/or discrimination (Jacoby, 1994). This distinction is important for revealing the relationship between the two: researchers have found that felt stigma reduces the experience of enacted stigma (Aggleton, 2000).

The present research focuses on Caribbean PLWHA in the UK. This includes recent immigrants, and those who were born and raised in the UK and have at least one parent or grandparent of Caribbean descent. There is a relatively small body of literature on HASD in the Caribbean. Many accounts take the form of anecdote-informed speeches or declarations (Alleyne, 2004; Thomas, 2004), larger discussions on policy (Trotman, 2000), articles in or letters to newspapers (Blair, 2005; Jamaica Observer, 2005), or as part of behaviour surveillance surveys conducted by government ministries or regional organisations (e.g., CAREC & PAHO, 2006; Hope Enterprises, 2004). The relatively few studies that directly address HASD tend to focus on Jamaica: all agree that there is a high level of stigma in this country, and link this to what is also agreed to be a high level of homophobia in Jamaican society (Bain, 1998; Carr, 2002; Dinnal & Bain, 1994; Norman, Carr, & Jimenez, 2006; White & Carr 2005; Wickramasuriya, 1994). Important exceptions to this focus on Jamaica are Castro and Farmer’s (2005) work on Haiti, and Varas-Diaz, Serrano-Garcia, and Toro-Alfonso’s (2005) study of Puerto Rican PLWHA. Castro and Farmer’s (2005) research took a different (critical medical anthropological) approach to HASD than most other studies, suggesting that HASD was less important than socioeconomic factors in hindering rural Haitians’ care-seeking behaviour. In Puerto Rico, HASD was found to result in the loss of social support, subjection to persecution, isolation, loss of employment and problems accessing health care (Varas-Diaz et al., 2005).

There is no research on black Caribbean’s experiences of HASD in the UK. What there is concerning the UK’s ethnic minorities focuses on Africans (Anderson & Doyal, 2004; Dodds et al., 2004; Erwin, Morgan, Britten, Gray, Peters, 2002; Erwin & Peters, 1999; Flowers et al., 2006; McMunn, Mwanje, & Pozniak, 1997), due to their disproportionate representation among the ranks of the HIV+ in the country (UK Collaborative Group for HIV and STI Surveillance, 2006). Research on this population confirms findings elsewhere: for example, Dodds et al. (2004) report the link between HIV status and immorality. They also find HASD against Africans at the state and institutional levels, as well as at the community, family and individual levels.

**Methodology**

MA conducted in-depth, semi-structured interviews with 25 of 250 HIV+ participants in the LIVITY Research Project. A quota-based sample was used, with the primary selection criteria being sex, age, sexuality and country of birth. After filling out the main study instrument—an 11-part questionnaire seeking information on pre- and post-diagnosis sexual behaviour and condom use, travel and sex in the Caribbean, HIV knowledge, and STI history, among other things—patients were invited to participate in an in-depth interview. Researchers (MA and IS) helped participants to fill out the questionnaire if respondents requested assistance. Roughly two-thirds of the patients asked to participate were willing to do so. The sample size (25) was deemed appropriate to reach saturation.

Patients gave informed consent and were compensated for their time. Interviews were tape-recorded, lasted
between two and three hours, and were later transcribed by a professional with full adherence to patient confidentiality. The topic guide covered the issues in the questionnaire with an emphasis on ascertaining patients’ motivations and beliefs behind their (sexual) behaviour. Important additions to the quantitative arm of the study in the in-depth interview were stigma and discrimination and coping strategies. In particular, respondents were asked to describe their knowledge of HIV-related stigma prior to diagnosis and the reasons for it; their reactions to their diagnosis; decision-making around disclosure of their status; stigma and discrimination they may have experienced; how they felt HASD affected their lives; and how and how well they believed they were coping with their illness.

In the course of recruiting patients for the quantitative component of the LIVITY Research Project (i.e., the questionnaire), more information was gained on patients’ experiences of stigma and discrimination (among other issues) through their comments in response to the questions or issues brought up by the questionnaire. These data are also included in this paper.

Transcribed interviews were analysed using the qualitative analysis software ATLAS.ti. Interviews were analysed for recurrent themes in relation to levels of stigmatisation, the degree of felt and enacted stigma, and the impact of HASD on their lives and identities.

Of the 25 patients, 10 were homosexual or bisexual men, five heterosexual men, and 10 heterosexual women. Two-thirds of patients were born in the Caribbean. Of the 16 patients born in the Caribbean, most (10) were born in Jamaica. The proportion of Caribbean-born vs. UK-born patients, and of Jamaican-born vs. the rest of the Caribbean-born patients approximates the proportions found in the larger sample of 250 patients. Patients’ ages ranged from 19 to 72. Four patients were diagnosed in the Caribbean. Thirteen believed they had acquired their infection in the Caribbean. Respondents had been living with HIV for between nine months and 13 years. (See Table 1 for selected characteristics of the sample.)

The LIVITY Research Project was approved by the North West Research Ethics Committee, United Kingdom.

Results

We first explore respondents’ views on the reasons for HASD, as these impact on their negotiation of and experience(s) of stigma. This latter is addressed in the two subsequent sections, which are divided into “felt stigma” (their feelings about being HIV positive and the reactions they fear from others) and “enacted stigma” (the actual experience[s] of HASD) (Jacoby, 1994). We then discuss how respondents avoid HASD, while the final section considers the positive outcomes of respondents’ diagnosis.

Reasons for stigma

Respondents linked the stigmatising attitudes and behaviour of others to fear of contamination, HIV’s association with immoral behaviour, and ignorance. All respondents spoke of others’ fears of catching the disease, based on perceptions of the ease of transmission.

They...don’t want to have nothing to do with you, because they...think if you’ve got it and you sit beside them, you can pass it on to them some way or the other. (Jamaican-born woman)

HIV acquisition was associated with sexual behaviours and identities that were regarded as immoral. While women included promiscuity in their description of immoral behaviour, and there was some mention of prostitution, it was HIV’s link with homosexuality that dominated respondents’ accounts, particularly those of Caribbean-born respondents.

I think that the stigma is more around sexuality, how HIV ties in with the homosexuality. So HIV is linked to homosexuality and because homosexuality is stigmatised, then HIV gets stigmatised. I suppose HIV is seen as a by-product of being gay in Jamaica. (Homosexual Jamaican-born man)

Religion was a key factor in the link between immoral behaviour and HIV: many respondents had heard the view that only “sinners” contracted HIV, and that the epidemic was a means of being “punished for your sins,” as a Barbadian-born man put it. Women repeated variations of a morality tale told by their pastors in which a woman was infected by a man she had met on holiday. The tale laid the blame at the feet of the woman, not the man who infected her, for having sex outside the context of a committed relationship:

Because the way that [the preacher told the morality tale], the way [he] describe the [woman in the tale]... a very spiritual and holy person, who you wouldn’t think that that person would do that sort of thing, they’d
wait until probably they’re in a marriage or something like that. But it was she went out there and all this holiness went out the window, and she got this venom. (Trinidadian-born woman)

Ignorance is understood as a general lack of awareness of HIV/AIDS, which is blamed in part on the influence of religion, lack of health promotion especially in the Caribbean, and the refusal of parents to discuss sexual issues with their children. There was also, however, in respondents’ opinions, a refusal to learn about HIV, which they believed was a peculiarly Caribbean phenomenon.

Sitting on a bus sometimes conversations will come up and the things that they say, it’s ignorance. And how do you teach a person who doesn’t know to be tolerant? I mean it’s there, you get it from books, television, in the soaps, they put it in everything, they inform you. But yet people, they don’t see that. Most Caribbean people, they don’t take time to understand. They would beat something, but they don’t take the time to understand what they read. (Trinidadian-born woman)

A Jamaican woman called this “ignorance” the Jamaican “mentality” and linked it to homophobia as well:

Q: Do you have any idea why there’s so much stigma?
A: We’ve got this mentality which is just ... look at their mentality towards gays. Willing to take out a gun and shoot you if you are gay. I don’t even think it’s even education, because by now we should know that HIV and AIDS is not passable through [physical contact], but it’s our mentality I think. (Jamaican-born woman)

Most respondents believed that this “mentality” rendered HASD higher in the Caribbean and among members of its diaspora than among British people.

Felt stigma

PLWHA’s expectations about others’ reactions to them were dominated by worries about ostracism and disdain (“scorn,” as Caribbean respondents put it), violence, blame, and uncontrolled, malicious disclosure (“scandal” as a verb in Caribbean vernacular; or gossip) in response to people’s fear of contamination arising from the twin associations of HIV with imminent death and ease of transmission and a tendency for communities to blame HIV acquisition on immoral behaviour:

And if you have it, they think you’re nobody and they’ll scandal you all over the place. They will tell everybody. (Bisexual Jamaican-born man)

So it’s like they scorned [a PLWHA], they don’t eat with him. You know, he can’t cook for them. They cleaned down the whole house with bleach, Dettol and everything. (Homosexual UK-born man)

The use of the word “leper” when referring to the feared reaction encapsulates the relationship between fear of transmission and ostracism. In the words of one man:

I notice before this happened to me, that people who’ve got HIV and tell their friends, their friends sort of number them like, er, leper... [whispers] “They’re HIV, keep away from them.” (Grenadian-born heterosexual man)

Caribbean-born women and gay UK-born men in particular worried about being blamed for their illness. The women’s fear seems justified in light of the morality tales told in church.

Jamaican people, they get confused that dirty people have AIDS. Jamaican people make you feel it—I’m the cause of this. (Jamaican-born woman)

Some compared HIV/AIDS with other diseases, especially cancer, to highlight the particular stigmatisation and blame associated with HIV.

If you’ve got cancer or some other illness like that, people are like, “Ahhh,” and all the rest of it. The minute they hear HIV, “It’s his own fault, he should have been using protection!” (Homosexual UK-born man)

Women in particular said that words like “dirty,” “nasty” and “bad” were used to describe PLWHA. These words point to behaviour as well as physicality: a “dirty” person is someone who infringes moral boundaries, is thus contaminated and can contaminate others.

Some bisexual and heterosexual men in particular were afraid of being labelled homosexual:

People ask “How did you get it?” and people think in Jamaica that you have to be a batty-man: “well, you must be gay.” (Bisexual Jamaican-born man)

Respondents also expected violent reactions from the community, especially Caribbean-born respondents, who shared more reports of violent incidents than UK-born PLWHA: “Nothing can take gunshot,” said one Jamaican-born woman explaining why she had not disclosed her status to a sexual partner. Caribbean-born respondents reported hearing of HIV+ people’s houses being stoned, burned down (as an act of purification as well as violence), beaten up, killed, and of communities ejecting PLWHA from their neighbourhoods.

Feelings about HIV

Respondents’ feelings about their condition were characterised by depression, alcoholism and suicidal ideation, arising from the association of HIV with likely death and social vilification. While many were better able to control these feelings/urges with time, one man still considered suicide an option 12 years after diagnosis:

[Suicide] is still there for me; I’m still getting counselling for it. I’m not where I was two years ago, but it’s still there and I think for me now it will always be there; I’ve made my peace with suicide. (UK-born homosexual man)

Some respondents, particularly women, fought with internalisation of stigma.

When I was first diagnosed I felt like... oh don’t drink from my cup, or, I didn’t want to kiss my son.” (UK-born woman)

Heterosexual men seemed to be the most affected psychologically. One Jamaican-born man said, “I can’t be happy,
I can’t be focused.” Another’s health (physical and psychological) was too fragile for him to commit to employment.

Because for instance I tried having a job and living a normal life, [but] it’s on and off ... something will happen and I don’t even feel like getting out of bed, and that disturbs everything at work. (Jamaican-born heterosexual man)

**Enacted stigma**

The above fears (“felt” stigma) mobilise stigma avoidance strategies, which will be discussed in the next section. As a result, there has been little “enacted” stigma. Enacted stigma was driven by a fear of contamination, arising from association with social transmission and death, and driven by immorality. The most notable difference among patients’ experiences is their variation by region. The most severe examples of HASD occurred in Jamaica, as verbal abuse, employment discrimination and community-level HASD. Family-level stigmatisation in either region was rare, and in some cases (in both regions) was corrected when the respondent explained routes of transmission. There are accounts of discrimination within both the Jamaican and UK health care systems.

**HASD in the Caribbean**

The only respondents diagnosed in the Caribbean were diagnosed in Jamaica. Community-level HASD was experienced in the form of disclosure of HIV status against the will of PLWHA and verbal abuse in the neighbourhood:

People were saying I’ve got AIDS where I was living, throwing abuse at me... calling me “AIDS Woman.” (Jamaican-born woman)

Employment discrimination could follow diagnosis in Jamaica:

You have to have a medical and as soon as they see you’re positive, then they don’t take you. I started the training and everything, passed the test and passed the physical, but they did a blood test as part of the physical, and they found I was positive and stopped me ...I went by the office and they said to me that they had stopped me because of medical reasons...I might die in their system, or something. (Jamaican-born woman)

A teacher was fired as the news of her status spread:

Parents were streaming in now [saying] they don’t want no AIDS teacher teaching their kids. “AIDS Miss [her name]”... The principal called me, she said, “There’s rumours going around that you’ve got AIDS!” She didn’t say HIV! She said, “You’ve got AIDS. I don’t want nobody to come and burn my school down, so it’s best if you leave.” (Jamaican-born woman)

These women felt that HASD had forced them out of the country.

**Stigma in the family**

Stigmatisation by family members was rarely reported. Family members, usually mothers, aunts, and sisters, made their opinions on PLWHA known in a variety of ways, from “cleansing” to separation to outright rejection.

[When my mother does my laundry she] disinfects my clothes...because she thinks that my clothes are probably soiled or whatever, because I have a disease. (Homosexual UK-born man)

But then after that I noticed this cup was mine, and that plate was mine; before nothing was mine. I noticed this blanket is mine...[nervous laugh] So my things were segregated now. (Jamaican-born woman)

One woman’s parents and one man’s sister refused to allow them into their homes.

[My sister asked] me, “What these tablets for?” and I tell her. She said, “Oh!” and she had two young kids, she tell me I can’t stay in the house with her. I feel bad. Up till now, I don’t even ... do much well with her now. I had to go and live with another sister. (St Lucia-born heterosexual man)

All family members eventually accepted the respondents back into their family, after the former allayed their fears about onward transmission.

**Healthcare discrimination**

In both Jamaica and the UK, respondents had been treated with insensitivity by members of the medical profession.

He said, “You’re HIV positive and you’ve got something like three months to live. And looking at you now, I think you haven’t even got that much!”...In Jamaica, the doctors, they just treat you like you’re second class...the way they talk to you... you know it’s because of your status. (Jamaican-born woman)

Some, as the woman above states, treat PLWHA with contempt. Others have tried to avoid contact: through refusing to see HIV+ patients; perceived excessive prophylactic measures, such as putting on gloves; or neglecting to conduct physical examinations.

Respondents complained also of breaches of confidentiality in both parts of the world, with a man stating, for example, that doctors discussed his status loudly on a non-HIV ward. They said also that doctors in the UK treated their HIV status as the sole cause of any other symptoms. Apart from one instance, complaints are reserved for doctors who are not HIV specialists. This HASD can have consequences for access to health care services. One woman, for example, delayed her dental appointment for several months out of her conviction that her dentist was discriminating against her.

**Stigma avoidance**

**Limited disclosure**

This was the most sure-fire way to avoid stigma. Patients made very careful calculations about who they would tell their status to. They employed passive and active assessment strategies (which some called “research”: observation and questioning) to decide on potential disclosees:
Deception

When the victim of uncontrolled disclosure, patients tended to lie if confronted:

She said, “Is it true?” I said, “No it’s a lie.” Well, I lied. (Jamaican-born woman)

One woman subjected to uncontrolled disclosure depended on the perceived physicality of HIV/AIDS to convince others that she was not in fact HIV+:

Because like nobody’s ever really seen me like what they’re saying, skinny or … I always make sure that if I’m like going out and what not, I’m well dressed and like if I’m leaving the area, I’m well dressed and put together, with my hair combed and then they’ll look at me and say, “No, it’s all lies. Look at her, look at her.” So, a lot of people now have started to think, no it’s not true. (UK-born woman)

Relationships I: Refusal to enter relationships. This was most likely among older Caribbean-born women (i.e., past child-bearing age). While most patients felt that disclosure to sexual partners was important, these women felt that it was a necessary condition and thus would not enter into a relationship without doing so.

I’m not ready to have a relationship with anybody. I mean, I do go out with friends. But to get physical with anybody, no, I can’t see that. Sex is an important part of my life and it’s a bond, and honesty—I cannot now sleep with a person and not be honest with them. And I think if I tell anyone, what if he reacts badly? That would be too much for me to take. So to avoid that just no. (Trinidadian-born woman)

Relationships II: Casual/doomed relationships. Gay and bisexual men were most likely to say that disclosure to a casual partner was less important, as no relationship of trust had been or would be established. Lack of disclosure to a regular sexual partner could cause tension in a relationship, and lead to its premature end.

I’ve been in a few relationships, but then I think I have a problem because of my situation. I think I haven’t been honest because I can’t say, and with me, I try to be as honest as I can, that’s who I am and if I can’t be, then it is a problem. So at some stage, I just phase it out because of it. (Jamaican-born bisexual man)

Relationships III: Relationships without disclosure. In those few situations in which the respondent had been unable to disclose to a regular sexual partner unaware of their status, there were feelings of guilt and attempts at safer sex.

However, respondents reported situations where they felt unable to disclose their status and had attempted to insist on safer sex, but were repeatedly met with refusal to use condoms by their partners.

Limited social interaction

Primarily those respondents suffering severe emotional distress believed that rather than open themselves up to the possibility of betraying their illness to others, they would restrict their social activities, out of shame and fear that others would discover they were ill. With time they usually re-entered their social world, determined to keep their secret. However, a Jamaican-born man who had only known for nine months of his diagnosis said, “I try to live a more simple and boring life right now, which is hard.”

The summary of findings shown in Table 2 below demonstrates the different impacts of the various roots of stigma. It reveals also that similar types of felt and enacted stigma can have different origins.

Positive positive stories

For all these tales of fear and worry, there are important positive stories to tell as well. For example, a UK-born woman disclosed to her Jamaican boyfriend, and he responded sympathetically: they subsequently married.

I was crying by this time and everything, and he was like…he took my face, he wiped my face clean, he hugged me and he kissed me and he was like, “You know what? It doesn’t matter. I love you for you.” (UK-born woman)

As well, there were respondents who felt that the disease has had positive effects. A small minority believed that HIV had imbued them with a stronger sense of self by forcing them to find reserves of strength in order to cope with their infection.

I feel that being positive might have been a blessing in disguise, in the sense that it’s made me the person that I am; stronger. I look at it as HIV can either make you or break you, and it didn’t break me, it made me the strong person that I am today. So, trying to picture my life adjusting without HIV, I just can’t—it’s been so long. Because having to deal with this over the years has made me stronger, so I wonder if I didn’t have to deal with this, if I would be this strong person that I am today. (Jamaican-born homosexual man)

Even the young woman who felt that she had been forced out of Jamaica believed that her infection had forced
positive behaviour change. She still felt guilt over cheating on her boyfriend, and suspected that that man had been the one to infect her.

If I wasn’t HIV positive, I’d still probably have multiple partners now. I’d still be sexually careless. I don’t think I’d be the type of mother I am to my child, with me setting an example for him; he’s never seen me being careless with men or nothing. He’d have probably seen men in and out of my house and that wouldn’t be a good example, I think. It’s made my life better as a person. (Jamaican-born woman)

Other patients with strong religious beliefs denied feelings of depression due to their faith in the support, and in some cases, the healing potential, of God.

I feel good about me. I feel good about me... I am of the firm belief that healing is possible, through my faith in God and Jesus, as a healer, he heals absolutely everything. It’s possible. (Trinidadian-born woman)

Other patients with strong religious beliefs denied feelings of depression due to their faith in the support, and in some cases, the healing potential, of God.

I feel good about me. I feel good about me... I am of the firm belief that healing is possible, through my faith in God and Jesus, as a healer, he heals absolutely everything. It’s possible. (Trinidadian-born woman)

Respondents who were coping well claimed that their family and their faith were instrumental in this process. Having this support, as well as being convinced of their own longevity (that HIV was not indeed, the “death sentence” many called it upon learning of their diagnosis) seemed to be keys to good coping. However, many of these respondents, including some of those who claimed they were better off now, also said that they had “ups and downs”: the woman who felt she had become a better example for her son said there were days when she felt she was “losing it... especially when you’ll think what’s going to happen.”

Discussion

This paper confirms that HASD serves to reinforce the marginalisation of previously stigmatised groups (Aggleton, 2000; Aggleton et al., 2005). This follows Goffman, who conceptualised stigmatisation—the discrediting of an individual or group—as a defence against a perceived threat, a means of social control over undesirable elements in society through marginalisation and exclusion (Goffman, 1963). The findings of this study show that HIV+ Caribbean people are keenly aware of the stigma surrounding HIV/AIDS, and believe it is based on a particularly Caribbean cocktail of fear of contamination, homophobia, religious beliefs and ignorance. Whether or not they are right that the Caribbean and its diaspora have higher levels of stigmatisation than the UK, the perception that this is the case mitigates against disclosure and openness.

In his study of HIV+ Jamaicans, Carr also found that fear of contamination was a key feature of HASD. Carr and others have found a clear association between HASD and what he calls “sex/gender transgressors” (Carr, 2002). Dinall and Bain (1994), in one of the earliest studies on stigmatisation in the Caribbean, found in the Jamaican church community what later researchers would confirm in other spheres of Jamaican and Caribbean life: stigmatisation of PLWHA was apparently particularly high when directed at male homosexuals and female prostitutes. This focus on “transgressors” was confirmed by subsequent studies of (prospective) members of the health care profession: Bain’s study of health care workers in Jamaica, and studies of medical students in Barbados and Jamaica (Bain, 1998; Norman, Carr, & Jimenez, 2006; Norman, Carr, & Uche, 2006; Wickramasuriya, 1994).
Felt stigma is strong and has, as previously noted (Aggleton, 2000), worked to limit enacted stigma, where patients have been able to control disclosure of their infection. For the most part, their disclosure decisions have been sound ones: instances of stigmatisation and discrimination have usually occurred where respondents have lost or do not have control over disclosure. Compared to their UK-born counterparts, Jamaican-born respondents’ accounts of HASD include more reports of overt or severe HASD, particularly violence and employment discrimination. Respondents mobilise a variety of strategies in order to avoid stigma, which have implications for their social interactions and emotional well-being.

This study suggests that HASD can undermine care and treatment of PLWHA, and limit opportunities for integration into society and economic independence. As Varas-Díaz et al. (2005) also found in their study of Puerto Rican PLWHA, employment and health care are particularly at risk. Although there was little indication here that respondents neglected their HIV-related care as a result of HASD, they may miss or delay other medical appointments, as well as be unable to work due to outright discrimination, or their psychological or physical health, and may therefore have to rely on social services for survival.

The examples of “successful” negotiation of stigma are instructive. Even with the full knowledge and, in some cases, the experience of HASD, respondents managed to avoid the “spoiled identity” of victims of stigma (Goffman, 1963). This information is important for revealing that while stigma is an oppressive reality for PLWHA, there is some scope for negotiation, for creating their own mitigation strategies and their own understandings, meanings, and implications of HIV infection. At the same time, it is important to note that most of the respondents who reported positive self-image were still unwilling to disclose their status widely. As well, emotional well being is not necessarily a constant: those “ups and downs” have to be negotiated and counteracted.

Carr’s (2002) finding that Jamaican PLWHA find solace in religion is reinforced by this work, as well as that of research in other contexts (also Kaplan, Marks, & Mertens, 1997; Moneyham et al., 1998; Tuck, McCain, & Elswick, 2001). In this way, the positive stories also show us religion’s double potential (as noted by Carr, 2002): while it can be used to condemn PLWHA, it can also be an important source of strength. Family support too is key (see also Carr, 2002; Dodds et al., 2004; Li et al., 2006; Serovich, Kimberly, Mosack, & Lewis, 2001). It seems that the belief that one has many years to live is an important aid to coping (Schwartzberg, 1994).

The gendered nature of HASD has been noted by many researchers (Aggleton, 2000; Carr, 2002; Rankin, Brennan, Schell, Laviwa, & Rankin, 2005; White & Carr, 2005). The primary culprits of HIV, as we have seen, were believed to be promiscuous women and homosexual men. This presumption reinforced the existing gender order dominated by a culturally determined masculinity—heterosexual, with multiple partners—and femininity—monogamous and sexually restricted.

Conclusions

These results of the qualitative arm of the LIVITY Research Project fill a gap in the literature on HASD by providing valuable understanding of the experiences and perspectives of PLWHA both in the Caribbean and in the Caribbean diaspora. They reveal the importance of addressing stigma both in the Caribbean and among British Caribbean people in the UK. And indeed, public health experts in the Caribbean are well aware of this and have implemented nationwide strategies to this end (e.g., the Jamaican Ministry of Health’s anti-stigma campaign, launched in September 2006 [Ministry of Health, 2006]). HIV/AIDS-related stigma and discrimination is a real issue for Caribbean people living with HIV at home and in the diaspora, affecting PLWHA’s lives in a variety of ways: emotionally, mentally, financially, socially and physically. Certainly in the UK, there is a need to create interventions specifically addressing stigma and discrimination in the UK’s Caribbean population. It seems clear that education alone is insufficient: just as Carr noted in his study of stigma in Jamaica (2002), the results of this paper suggest that tackling stigma and discrimination requires “cultural work” to address deeply entrenched notions of sexuality and understandings of HIV transmission and treatment.

Acknowledgements

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Tab 13
NEWS

17 MAY IS INTERNATIONAL DAY AGAINST HOMOPHOBIA, BIPHOBIA AND TRANSPHOBIA
By Danielle Greer

The International Day Against Homophobia, Transphobia and Biphobia (IDAHO) has been observed globally since 2004, to commemorate the removal of homosexuality from the International Statistical Classification of Diseases and Related Health Problems — a big step in acknowledging the validity of all individuals regardless of sexual orientation or gender identity.
This day draws plights faced by the LGBTI (Lesbian, Gay, Bisexual, Transgender, and Intersex) community which cannot be ignored, to the attention of policymakers, leaders and social movements. In Grenada, like many other Caribbean islands, there are no anti-discrimination laws especially relating to sexual orientation; LGBTI people are still treated as second-class citizens and individuals within the community can feel unsafe in an environment that blatantly oppresses their existence.
GrenCHAP [https://grenchap.org/], a sexual and reproductive health advocacy organisation with a focus on the LGBTI community and sex workers, has been working in Grenada since 2001, to mitigate and reduce discrimination. A major calling card for the organisation is the Safe Space Initiative, where GrenCHAP provides a safe space for individuals from the community to come to, as an avenue for self-expression without judgement, for help with any issues, as well as for referral to services needed.

Community-building is a big part of fighting homophobia. Growing up in the Caribbean where there is constant preaching that you are evil for who you love, can produce some internalisation and self-hate. GrenCHAP helps by promoting self-love and acceptance through our peer lead forum and outreach work. These fora tackle issues faced by the community and are led by those within the community as they take responsibility for themselves and for educating each other.

GrenCHAP works with the general population to change the stigma and discrimination surrounding the LGBTI community, and has produced several public service announcements (PSAs) addressing discrimination and human rights. Videos on human rights and its application in Grenada distributed via social media have garnered much attention and provoked discussion on the issues facing LGBTI individuals here.
GrenCHAP has hosted several educational booths at various venues, and is a certified rapid testing site for HIV and Syphilis. Apart from providing this service, we also use it as a teaching opportunity for the general public in understanding that HIV is not a gay disease and that anyone can get it. The idea that HIV is inherently gay is sometimes what fuels the hate and stigma associated with the LGBTI population, especially towards Men who have sex with Men [https://www.who.int/hiv/topics/msm/en/].
We produce a Facebook Live Chat on sexual health issues and other issues affecting the community. Individuals can ask questions and get informed answers, mitigating misinformation and fostering a greater understanding of the LGBTI community.

GrenCHAP is in constant discussion with policymakers about the treatment of LGBTI individuals in public sectors such as housing, law enforcement, and healthcare. We have held several training sessions for civil servants within these spheres to create a
more inclusive and equitable environment for all. The GrenCHAP family believes we are all equal and we fight for the rights we all need and deserve. We are dedicated to creating change, one small activity at a time. So today as we commemorate International Day Against Homophobia, Biphobia and Transphobia we stand our ground in a world that is just as much ours, as it is yours.
GrenCHAP's Programme Coordinator, Ajani Benoit, doing Education on HIV and other STIs

TAGS: HUMAN RIGHTS, IDAHOT, LGBTQI

17 MAY 2019

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Tab 14
No, AIDS has not died: It just kills less efficiently

Dec. 5, 2018

As Dominica and the rest of the world observe World AIDS Day (WAD), on 1st December, we were reminded that our Government has backed itself into a corner by bull-headedly contending that it will not shift its position on the decriminalization of homosexuality. We argue that this position cannot be sustained for very long because of the current trend in many countries of the world including our major aid donors in Europe.

Additionally, the pressure to end discrimination against persons because of their sexual preferences has been heightened by some of the Caribbean’s leading medical researchers. But the issue of the decriminalization of homosexuality, which could lead to the reduction in the levels of homophobia in the Caribbean, is still one of the most contentious issues that the region has had to confront on WAD.

This is important because although the joint United Nations programme on HIV/AIDS (UNAIDS) reports that prevention programmes worldwide are yielding better results, the global AIDS pandemic continues to be a major concern. No, AIDS is not dead; it has just taken a back seat in our consciousness.

According to the Caribbean Regional Strategic Framework on HIV 2014-2018: “Since the inception of the Pan Caribbean Partnership Against HIV (PANCAP) in 2001 the Caribbean regional response to HIV has made significant strides. HIV prevalence has declined from 1.3 percent to one percent in 2012. New infections among children have been reduced by 52 percent over the same time period. Treatment coverage rates have dramatically improved with over 90 percent of HIV positive pregnant women receiving services to prevent mother to child transmission and 70 percent of eligible people living with HIV receiving ARVs.

In Dominica in 2014, HIV/AIDS prevalence was about 0.75 percent of the population and health workers reported that they saw about 12-15 new cases of HIV and AIDS every year. From 1987, Dominica has recorded 4,010 cases of HIV/AIDS and many have died.

Reflecting global patterns, heterosexual sex is the main route of HIV transmission throughout the region and largely associated with commercial paid sex. Women are particularly vulnerable to HIV infection; but more than 75 percent of people living with HIV in Dominica are men. And interesting statistic is that a significant number of older men are contracting the disease.
The spread of HIV in the Caribbean has taken place against a common background of poverty, gender inequalities and a high degree of HIV-related stigma. Migration between islands and countries is common, contributing to the spread of HIV and blurring the boundaries between different national epidemics, Avert.org stated.

Nevertheless, AIDS experts in the Caribbean tell us that there will not be sustainable progress in the fight against the disease unless we seriously tackle the problem of discrimination and perceived stigma associated with the disease.

Additionally, the pressure to end discrimination against persons because of their sexual preferences has been heightened by some of the Caribbean's leading medical researchers.

Thus the issue of the decriminalization of homosexuality, which could lead to the reduction in the levels of homophobia in the Caribbean, is one of the most contentious issues that the region has had to confront.

This is important because although UNAIDS reports that prevention programmes worldwide are yielding better results, the global AIDS pandemic continues to be a major concern.

Key populations are groups who are at increased risk of HIV irrespective of epidemic type or local context. They include: men who have sex with men, people who inject drugs, people in prisons and other closed settings, sex workers and their clients, and transgender people. As yet, said the WHO, there is no cure for HIV infection. However, effective antiretroviral (ARV) drugs can control the virus and help prevent transmission so that people with HIV, and those at substantial risk, can enjoy healthy, long and productive lives.

Between 2000 and 2016, new HIV infections fell by 39%, and HIV-related deaths fell by one third with 13.1 million lives saved due to ART in the same period. This achievement was the result of great efforts by national HIV programmes supported by civil society and a range of development partners.

Although prejudice is directed at all persons who have AIDS, no matter how they contracted the disease, homosexuals with and without AIDS feel the greatest pressure from society because of their life style.

Homophobia, defined as an extreme and irrational aversion to homosexuality and homosexuals, is rampant in the Caribbean especially in countries like Jamaica with a predominant Rastafarian community. This level of discrimination makes little sense since the dominant form of transmission of AIDS in the Caribbean is heterosexual and not homosexual.

Nevertheless, in the context of fighting the spread of AIDS there have been suggestions that unless the Caribbean community takes measures to reduce homophobia, gay men who are affected by the virus will remain in the closet and continue pretending that they are heterosexual to avoid the pain of being outcasts of society.

What this does is to cause carriers of the disease to remain underground and thus fuel the spread of AIDS. Of course, it goes without saying that the church will be the major obstacle to any move to legalise homosexuality in the Caribbean even though the church understands the rationale.

In fact, the Catholic Church, in particular, has been severely criticized for its so-called intransigence on the issue of the use of condoms as a means of reducing the spread of the disease, even if most Catholics ignore the church's teachings on the subject. But on the issue of the legalization of homosexuality the church will continue to argue that to accept these sexual preferences as a means
of reducing the spread of AIDS is to condone promiscuity and to disregard the basic teachings of the Church on homosexuality. Most medical professionals disagree.
Tab 15
World AIDS Day: Know your status, get tested

CARPHA press release - Saturday, December 1st, 2018 at 12:11 PM

Port of Spain, Trinidad and Tobago. 30 November, 2018. The Caribbean region joins the global effort to ensure that no child is born with HIV or congenital syphilis. To date, six CARPHA member states have succeeded in being certified for eliminating the Mother to Child Transmission of HIV and syphilis.

CARPHA Executive Director Dr C James Hospedales said, “although significant gains have been made to turn the tide against this globally devastating disease, new HIV infections in the Region totalled 15,000 in 2017. More than 9,500 persons are reported to have died from AIDS-related illnesses in the Caribbean.” He further stated, that challenges remain, and efforts must continue in order to sustain and improve upon the progress that has been achieved.

Each year a new generation of persons enter their teenage years and need to know how to prevent this disease, protect themselves and promote their health.

A 2017 United Nations Programme on HIV/AIDS report[i] reveals that an estimated 310,000 people are living with HIV in the Caribbean. About 181,000 people are accessing anti-retroviral drugs, equivalent to 57 percent of people living with HIV. These medicines keep the virus suppressed so that persons have a virtually normal life. HIV prevalence is higher among young women (0.5% or 1 in 200) than young men (0.4% or 1 in 250). An estimated 73% or 3 in 4 persons living with HIV in the Region knew their status in that same year.

“Know your status” is the theme for World AIDS Day 2018. The campaign calls for raising awareness about the importance of knowing one’s status, and for the removal of all barriers to accessing HIV testing. Countries are encouraged to ensure that the rights of people living with HIV/AIDS are not violated, and that discrimination based on HIV/AIDS is not only reduced, but ultimately eliminated. This duty of care and non-
discrimination on the part of health professionals towards patients extends to many conditions, whether is diabetes, HIV, old-age, or cancer, for example.

Dr. Hospedales has said that “the only way to do this is to make sure that everyone knows their HIV status and ensures that their status is managed properly, in order to prevent the spread of new infections, and give themselves the best chance of having a normal life.” He urges “if you are negative, stay negative by avoiding risk-taking activities. If you are positive, live positively, stay on treatment and disclose to your loved ones. Persons living with HIV can lead normal healthy lives if they are diagnosed early and if they stick faithfully to their treatment plans.”

Access to HIV testing is a human right. However, many barriers to HIV testing remain. Stigma and discrimination are very common in the Caribbean and can deter people from taking an HIV test and getting treatment for the disease. This is due to a lack of education about the subject, false beliefs about transmission and HIV associated sexual practices. Some persons living with HIV continue to be shunned by family, peers and the wider community, while others report discriminatory behaviour towards them in healthcare and education settings, erosion of their human rights, and psychological damage.

The management of HIV/AIDS is a priority public health issue for CARPHA. The Agency in collaboration with partners, has identified activities that focus on reducing the impact of HIV/AIDS on key populations by recognising and addressing the barriers that people living with HIV must overcome to obtain adequate health care. CARPHA has supported new initiatives to expand access to HIV testing. And as part of the global strategy embraced by Caribbean governments, communities are engaged in making testing for HIV/AIDS more accessible to key at-risk populations. This strategy is aimed at ensuring that persons, not only know their status, but are treated appropriately, so that the virus is reduced to undetectable levels so that it can no longer be transmitted to others.

Dr Hospedales said "The fight against HIV/AIDS cannot be achieved in isolation. Strong collaborative action is needed to address the stigma that still exists. CARPHA will continue to work closely with Member States and regional and global partners to end AIDS as a public health threat by 2030."

World AIDS Day is observed on December 1st of every year. This year will mark its 30th anniversary.
Tab 16
Rhythms Of Spice Donates $2,000 To Hope Pals

- Written by the Grenada informer

Rhythms of Spice has kept its promise and donated part of the proceeds of its music festival to Hope Pal.

The gift of $2,000.00 was handed over last Thursday with a short ceremony at the Grenada Red Cross building. The donation was made to the National AIDS Council for Hope Pals.

Hope Pals is an organization that considers itself the authentic voice for people living with and affected by HIV/AIDS. The mission statement is “To facilitate an attainable and acceptable standard of living, in a positive and productive environment for people living with and affected by HIV/AIDS in the state of Grenada, Carriacou and Petite Martinique through Hope, Help and Empowerment.
Coordinator of Rhythms of Spice Matthias Williams referred to Rhythm of Spice more as a project than an event pointing to four aims of the activity; it seeks to showcase the local musicians; inspire, develop and guide the developing musicians; widen the appreciation of locals “the Grenadians at large” and give back to some form of charitable local organization. He thanked all those that contributed to the Rhythms of Spice 2018.

Rhythms of Spice 2019 will be on June 9th 2019 and from this early organizers are again pledging to support Hope Pals. They’re also hoping that when they begin promoting Rhythms of Spice 2019, they could give a report as to how their donations assisted some person in Hope Pals. They hope that for 2019 they can at least triple their contribution to Hope Pals. The Grenada Red Cross Society Director Terry Charles expressed his gratitude to Rhythms of Spice through Mr Williams for working along with Hope Pals to the venture. Charles said the life of persons who are infected with or affected by HIV/AIDS continues to be of paramount importance to organizations like Hope Pals, Red Cross etc. He said Hope Pals was formed around the year 2000 and is aimed at being a support and caring network for persons living with and affected by HIV.

He stated that many of the persons and families affected by HIV/AIDS, because of the stigma and discrimination, sometimes suffer a lot inside since there’s still the silence around HIV. He added that there are some things a person don’t pick in life like sicknesses; therefore the programs of Hope Pals work along with parents and the children affected, they run summer camps for the children who are affected by HIV whether they are infected or affected.

Mr Charles said there are families also that don’t have the basic necessity of life; some of them can’t provide meals because they don’t have a job. Hope Pal is able to work along with the families to help them find some means of livelihood and any other support that could be given to them. They also have support group meetings where person and families that are affected could come together and share issues in common instead of living an isolated life.

Genine Gill, chairperson of the National AIDS Council, accepted the cheque from Rhythms of Spice. She said right now there are over 300 tested positive HIV persons in Grenada and they are looking to get zero new cases and transmission level in Grenada and the Caribbean on a whole.
Tab 17
NEWS

MIND YOUR GODDAMN BUSINESS
by Danielle Greer

With the latest entries on social media aimed at alienating and discriminating against an individual who is allegedly living with HIV, we again need to be mindful of how we treat other people.

Individuals have been sharing this person's photo and giving information that is quite likely, not true. It is a blatant violation of someone's privacy, without any care of
implications and consequences for our actions. We need to think harder about the things we do and what we share. How would we feel if someone broadcasted our private business on social media for others to see? What if this person was someone close to you, someone in your household, an old friend, your mother, your sister or brother. Would you still be as eager to share and spread this message?

Some use the spread of this information as pseudo-concern for their own and other people’s health. Sharing a post of someone who allegedly is a person living with HIV does not protect you or anyone else from contracting HIV. How many of us are still having unprotected sex, and also continue to have unprotected sex with multiple partners? How many of us put ourselves at risk of contracting an STI (sexually transmitted infection), and share this post to ‘warn’ others? We need to take precautions in our own sex lives, take responsibility for ourselves and mind our own business by protecting ourselves instead of sharing ‘click-bait’ and fake news with our networks.

We also need not show our ignorance on a grand stage. People living with HIV who are on medication to maintain an undetectable viral load cannot transmit the virus, and therefore pose no threat to anyone.

People living with HIV are not the problem – they generally live healthy lives. The real issue lies with those who refuse to know their status yet find it suitable to share these kinds of posts and gossip – clearly showing hypocrisy and a lack of empathy.

Now is an opportunity to educate ourselves. Stigma and discrimination are the real diseases that we need to expose – our social media platform should be used to bring awareness to and help eradicate.
Let us promote love and respect each other, regardless of HIV status, sexual orientation or gender. We must remember that we all experience things that others may use against us, but if we model love and inclusion and treat others in the ways we would like to be treated, we would all live much happier lives.
Tab 18
“HIV is a disease with stigma and we have learned with experience, not just with HIV and AIDS but with other diseases, countries for many reasons are sometimes hesitant to admit they have a problem”

– Margaret Chan

Established in 2010 as the World AIDS Day Committee (WADC), for the past four years GrenAIDS has been at the forefront of HIV/AIDS and STI public education in Grenada. The organization continues to grow, and the annual review of 2014 indicates that it was the most accomplished year since its inception.

Our collective membership, which consists of HIV/AIDS peer educators, government employees, civil society, and youth volunteers, work hand in hand to complete
projects and programmes that are designed to achieve positive behavioural changes. Having a deep appreciation for volunteerism and community outreach, GrenAIDS programmes and activities are financed through small grant awards and generous donations from the private sector.

This is an overview of the organization’s recent achievements.

Love Without Fear

Utilizing a small grant award received from the Caribbean HIV/AIDS Alliance (CHAA), GrenCHAP collaborated with GrenAIDS to produce a video campaign, “Love without Fear.”

Love Without Fear: Get Tested
The campaign features one documentary and four public service ads, tackling HIV/AIDS stigma & discrimination, STI testing, consistent condom use, and diversity. The general public can expect to review these productions on local channels and social media in 2015.
Supporting Persons Living with HIV/AIDS

One of the major challenges that Persons Living with HIV/AIDS (PLHIV) face is unemployment. This adversely impacts their capacity to provide daily meals, which are an essential component of treatment adherence. GrenAIDS provided PLHIV with 297 food baskets throughout the year. Support for this initiative was received from CHAA, SGU Vagina Monologues and the Caribbean Treatment Action Group (CTAG). Additionally, the organization provided 6 households with stoves, mattresses and pot sets in Grenada and Carriacou.
Outreach through Poetry

Throughout the entire process GrenAIDS has sought opportunities to transfer our HIV/AIDS knowledge to the wider community. In May, a workshop was hosted 12 poets in Grenada, including some members from the Writers Association of Grenada.
The poets participated in two full-day workshops where they obtained information on the types of STDs and STIs, how they are transmitted, the intersection between Gender-Based Violence (GBV) and HIV infection, stigma & discrimination and human rights, gender and sexuality. They were also given an opportunity to dispel some of the myths about Sexually Transmitted Diseases and Infections, as well as listen to some testimonies from persons infected and affected by HIV and AIDS.

The poets were then challenged to use the information obtained to write pieces that can be used to sensitize the public in a creative and engaging way. Thus far, they have performed at 4 venues in Grenada, and their pieces will be recorded and shared via social media and local media houses in 2015.
Focus Group

The organization also conducted a focus group with clients to assess their immediate needs to gain an understanding of what we will have to do to help them maintain a healthy lifestyle.
healthy lifestyle. Two of the issues resounding in the feedback, were unemployment and treatment adherence. As a result, those are at the forefront of our plans for 2015.

Coding and confidentiality workshop for health care providers

GrenAIDS in collaboration with GrenCHAP and Ministry of Health, conducted a two-day workshop on coding and confidentiality for persons within the health sector. The workshop additionally addressed issues of patient care, and adherence counselling, among other topics. We were fortunate to have Mr Francis Burnett, managing director, OECS PPS, facilitating a session on “A fresh look at antiretroviral therapy.” The goal of the workshop is to improve the delivery of Health Care services to persons living with HIV and AIDS.
GrenAIDS thanks all the individuals and organizations that have contributed to our growth over the years, as we continue to play our part to incite positive behaviour change in Grenada.

To find out more and stay updated please join our Facebook Group [https://www.facebook.com/GrenAIDSGrenada]. To join us, email us
Moving towards Zero discrimination

The Right to Live and Love Without Fear of Discrimination

GrenCHAP Celebrates Zero Discrimination Day

You might also like
Tab 19
“There are a lot who are afraid to come forward”- PAHO official

Written by Rawle Nelson

‘There is an urgent need for the various Ministries of Health to seriously and immediately address the issue of homophobia in the public health sector by focusing on training and education.” This is according to an official within the Pan American Health Organization (PAHO) who spoke to this media house on the condition of anonymity.

The official said that there is also a need for the promotion of a manual designed to eliminate existing barriers to care offered to the Gay, Lesbian, Bisexual and Transgendered (GLBT) communities while noting that from unofficial surveys there seems to be an increase in the gay and bisexual communities. The official said that NGO’s working in the OECS, especially islands like Grenada, St Kitts and Nevis, St Vincent and Grenadines and Antigua and Barbuda, should look at organizing workshops and seminars with the view of training healthcare providers to deliver optimal care to groups which had previously raised issues of discrimination within the system, while pointing to how this impedes critical access to care.

The official stressed that there is a critical need within the healthcare system for such training pointing out that studies have repeatedly shown many healthcare workers are insensitive to the needs of certain groups largely considered sexual minorities. The need for education and training of not only healthcare providers but the public at large was enforced with the recent posting of a video on YouTube by a Kittitian national, Glenroy Marshall who listed his age at the time of his marriage in 2010 as a 22-year-old Dancer and Choreographer who said that they both met through mutual friends.

Marshall, according to the five-plus-minutes video that was posted a few years ago, said that he was married to Anthony Williams who now goes by the name of Anthony Marshall Williams, at the time of his marriage in 2010 was a 22-year-old Dancer and Choreographer who said that they both met through mutual friends.
of each other. The men who identify themselves as ‘gays’ disclosed that they were seeing each other for four months before getting ‘married’ one month after.

The video has sparked significant and mixed reactions from viewers with a number of persons condemning the men while an almost equal amount congratulating both Marshall and Williams for ‘being happy and enjoying life as they see it’. However the official at PAHO commenting on the issue said that because of the size of many of the small islands that a number of persons are hiding their sexuality for fear of being stigmatized and discriminated against, noting that there have been cases where people openly bash gays, bisexuals and lesbians but under cover they are the same. “I know of instances where people have violently spoken out against these individuals but are only discovered after their identities have been revealed because they were caught doing the same things that they condemned,” the official said.

The official noted that the islands’ Ministries of Health must be able to understand that they have a responsibility to ensure that healthcare providers are properly educated and informed thus resulting in the general public being able to get similar education and information also. Admitting that there are evident challenges with the issue, the official said that the persons who work in the health ministry and are healthcare providers are people with their own prejudices.

The official made references to a PAHO commission Terborg study, which found a few years ago that while Men who have Sex with Men (MSM) have access to STI and HIV-related services, such as knowledge, condoms, early treatment of STIs, and HIV testing, there were many who complained about the quality of the services, particularly public health services. He pointed out that MSM living with HIV have stressed the double burden of stigma and discrimination; firstly, they suffer stigma and discrimination based on their sexual lifestyles; and secondly, because they are HIV positive.