INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LGBTQ INDIVIDUALS IN ST. VINCENT AND THE GRENADINES

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<td></td>
<td>• Section 146 [BUGGERY]</td>
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<td>“Any person who —</td>
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<td>o commits buggery with any other person…or</td>
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<td>o permits any person to commit buggery with him or her;</td>
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<td>is guilty of an offence and liable to imprisonment for ten years.”</td>
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<td>• Section 147 [ASSAULT WITH INTENT TO COMMIT BUGGERY]</td>
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<td>Any person who commits an assault with intent to commit buggery, is guilty of an offence and liable to imprisonment for seven years.</td>
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<td>• Section 148 [GROSS INDECENCY]</td>
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<td><strong>SUMMARY</strong></td>
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<td>“Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.”</td>
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<td>“Significant human rights issues included…the criminalization of consensual same-sex activity between men….” (p. 1)</td>
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<td>“Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years’ imprisonment, and anal intercourse carries a maximum penalty of 10 years in prison…. No laws prohibit discrimination against a person based on sexual orientation or gender identity.” (p. 9)</td>
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<tr>
<td>“Laws and regulations related to employment and occupation prohibit discrimination based on sex or disability, but no laws prohibit discrimination against a person based on race, religion, political opinion, national origin, social origin, age, or language. Whether the law covers sexual orientation, gender identity, or HIV-positive status is untested in court. The government did not effectively enforce laws prohibiting employment discrimination.” (p. 11)</td>
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<td>“Human rights issues included . . . the criminalization of consensual same-sex activity between men…” (p. 1)</td>
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<td>There were two acts of violence on individuals due to their sexual orientation or gender identity. Both cases were under investigation as of October. In one case two men dressed in female clothing were chased and beaten by a crowd, all of which was captured and posted to social media. No individuals from the crowd were arrested. In the second incident, authorities suspected a man was killed...</td>
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- “The most significant human rights issues included criminalization of… same-sex sexual activity...
  There were no reported instances during the year of the government investigating or prosecuting officials who committed abuses…” (p. 1)
- “Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison... No laws prohibit discrimination against a person based on sexual orientation or gender identity. Anecdotal evidence suggested there was societal discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons…” (p. 9)


- “Other human rights problems included . . . laws that discriminate against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.” (p. 1)
- “Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison... No laws prohibit discrimination against a person on the basis of sexual orientation or gender identity. Anecdotal evidence suggested there was social discrimination against LGBTI persons…” (p. 11)


- “Other human rights problems included . . . laws that discriminate against lesbian, gay, bisexual, transgender, and intersex persons.” (p. 1)
**SUMMARY**

- “Consensual same-sex conduct is illegal under indecency statutes, and some sexual activity between men is also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison... No laws prohibit discrimination against a person on the basis of sexual orientation or gender identity.

Anecdotal evidence suggested there was social discrimination against lesbian, gay, bisexual, transgender, and intersex persons…” (p. 11)

**INTER-GOVERNMENTAL SOURCES**


   - “The Committee is also concerned at de jure and de facto discrimination against lesbian, gay and bisexual children, in particular the criminalization of consensual same-sex conduct between men under the Criminal Code (1990), which may penalize boys above 16 years of age for same-sex sexual activity. It is also concerned about the perception, reflected in policies and practices, that lesbian, gay and bisexual children have a psychosocial disorder. . . The Committee recommends that the State party repeal the legal provisions criminalizing same-sex conduct between males above 16 years of age, that it raise public awareness of the equality of and the importance of not discriminating against lesbian, gay and bisexual people and that it fully respect the diversity of children’s sexual orientation.” (p. 4) (emphasis in original)


   - “Australia regretted that that violence and discrimination against LGBTI persons had not been addressed appropriately.” (p. 5)

   - “With respect to same-sex relationships, the delegation indicated that these provisions have existed for long time and that the precepts underlying them have overwhelming public support in their Christian society, which adopts Judeo-Christian values in the Caribbean context. To conclude, there is currently no public or legislative appetite to revise any of the laws that prohibit sexual activities between consenting adults.” (p. 7)
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<tr>
<td></td>
<td>• “The Committee welcomes the adoption in April 2015 of the Domestic Violence Act, which broadens the definition of domestic violence by including not only physical violence but also sexual, psychological and economic violence. The Committee also notes with appreciation the adoption in 2015 of an interministerial national action plan on gender-based violence. However, the Committee notes . . . (c) That women in same-sex relationships are excluded from the categories of persons who can apply for protection under the Domestic Violence Act, as acknowledged by the State party” (p. 5)</td>
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<td>• Identifying St. Vincent and the Grenadines as a country meeting the following characteristics:</td>
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<td><strong>Same Sex Sexual Acts Legal? No</strong></td>
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<td>Gender: Any gender</td>
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<td>Max Penalty: 10</td>
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<td></td>
<td><strong>Protection</strong></td>
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<td>Constitution: No</td>
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<td>Broad Protections: No</td>
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<td>Employment: No</td>
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<td>Hate Crimes: No</td>
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<td>Incitement: No</td>
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<td>Ban on CTS: No</td>
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<td><strong>Recognition</strong></td>
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<td>Same Sex Marriage: No</td>
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<td>Civil Unions: No</td>
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<td>Joint Adoption: No</td>
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   - “Although ‘homosexuality’ in and of itself is not a crime, laws criminalize same-sex sexual conduct between consenting adults. Among them are . . . St. Lucia and St. Vincent and the Grenadines.” (p. 112)

   - “In 2015, a gay author from St Vincent published a book after he moved to Canada, based on his personal experiences of anti-gay violence and prejudice while growing up. This echoes the findings in the 2017 US Department of State Human Rights Report that there remains social discrimination against LGBTI persons. . . More recently, a 2018 Human Rights Watch report found many instances of violence and discrimination, often committed by the police or family members.” (p. 423)


   - “In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the IACHR criticized the 11 OAS Member States, all from the Caribbean, that maintain laws that criminalize consensual sexual relations between adults of the same sex in private, and that also affect trans persons and persons not conforming to gender, namely . . . Saint Vincent and the Grenadines, and Trinidad and Tobago. The IACHR recalls that the perpetuation of such laws generates a culture of hostility, discrimination, and serious violations against LGBTI persons. The Commission regrets that, despite the recommendations made in this report, all of these norms remain in force in these States, in violation of their international obligations regarding the right to equality and nondiscrimination.” (p. 117-118)


   - “From the reports reviewed and the interviews conducted, violations of human rights across the region appear to be because of four (4) main factors . . . (2) A
permissive legal and policy framework, which allows stigma, discrimination and abuse to thrive.” (p. 9)

- “[Persons living with HIV, or] PLHIV and LGBT persons are subjected to physical violence, verbal abuse harassment and intimidation in public spaces, discrimination in employment, and discrimination against relatives.

2. Abuse of rights is most prevalent in public health institutions and in public spaces. Stakeholders indicated that there are still systematic violations of the rights of persons living with HIV and marginalized groups, primarily in healthcare settings, in public spaces, in their communities and even in their homes.

3. There are no laws which specifically target HIV-related hate speech, abuse and harassment, although legislation exists across the region which makes it an offence for a wide variety of behaviours including: using threatening, abusive, insulting, obscene, or profane language which may provoke a breach of the peace. . .

4. Across the Caribbean, legislation exists that criminalizes at-risk behaviors of key populations. These include male-to-male homosexuality, sex work, sex among adolescents, and substance use. Legislation and Regulations governing prisons also affect access by prisoners to commodities such as condoms.

5. The definition of communicable diseases under Public Health Acts and Quarantine Acts, which could result in quarantine, isolation or segregation, is broadly stated. The natural and ordinary meaning of the words include HIV/AIDS.” (p. 9-10)

- “PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice.” (p. 17)

- “While HIV & AIDS is recognized as a protected ground against discrimination, in employment, in some countries, the same is not the case for sexual orientation and gender identity.” (p. 17)

- “Disadvantaged groups of women, including: rural; Maroon and indigenous women; women with disabilities; and lesbian, bisexual, transgender and intersex women, continue to experience intersecting forms of discrimination, domestic abuse and violations of their human rights.” (p. 19)

- “Nine Caribbean States continue to criminalize same sex activity among males . . . Saint Vincent and the Grenadines: Criminal Code, Sections 146 and 148 . . . Sexual orientation is not a protected ground against discrimination in Caribbean constitutions.” (p. 21)

- “There is a lack of law enforcement investigation and barriers in reporting crime, especially by LGBT persons. . . Some Caribbean constitutions explicitly exclude access to justice for human rights violations, where the constitutional challenge relates to laws that existed before independence or before a specified date, and which affect those vulnerable to HIV.” (p. 22)
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<td>“Stigma and discrimination from police, armed forces, and judicial officials act as deterrents to approaching the police and the courts” (p. 23)</td>
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<td>“PLHIV, MSM and Transgender stakeholders report that they experience abuse of rights in public spaces, in their communities and even in their homes. In the community and in public spaces there is stigmatization, verbal abuse, emotional abuse, humiliation and in some instances, physical violence against MSM and transgender persons. In discussions with representatives of the LGBT community, they indicated that members of the community report being harassed and alienated by their family members, relatives, neighbors and friends - ‘…information travel fast’ expressed one interviewee in Antigua.” (p. 68)</td>
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<td>“PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice: Despite the adoption of workplace policies and programmes, civil society stakeholders indicated that PLHIV and LGBT individuals still encounter prejudice and abusive situations in seeking jobs and within the workplace. These negative encounters, they believe, are directly attributable to their health status, sexual orientation or gender identity.” (p. 84)</td>
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<td>“Some Caribbean States deny employment visas based on HIV status: Saint Kitts and Nevis, Saint Vincent and the Grenadines, Belize and the Dominican Republic have laws that deny employment visas and/or work permits based on HIV status.” (p. 92)</td>
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<td>“However, in St Vincent and the Grenadines, under section 291 of the Criminal Code cap. 124, any person who unlawfully or negligently does any act which he knows, or has reasons to believe, to be likely to cause the spread of any infectious or contagious disease, is guilty of an offence and liable to imprisonment for one year. It appears that a person who deliberately infects another person with HIV, knowing that he is living with that disease, may be prosecuted under that provision.” (p. 95)</td>
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- “The report includes seven Eastern Caribbean countries: Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Populations in these countries range from 54,000 in St. Kitts and Nevis to 285,000 in Barbados. All seven countries have versions of buggery and gross indecency laws, relics of British colonialism, that prohibit same-sex conduct between consenting persons. The laws have broad latitude, are vaguely worded, and serve to legitimize discrimination and hostility towards LGBT people in the Eastern Caribbean.” (p. 1)
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<td>• “Manage, 35, from St. Vincent and the Grenadines, told Human Rights Watch: ‘On a daily basis, people see me coming and are very loud calling me “Battyman, Faggot, Battyman fi dead” and using aggressive negative slurs towards me in public. Like in Jamaica, the type of music you listen to, when they talk about gays, the music says “kill them.” Music in St. Vincent is anti-gay.’” (p. 25)</td>
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<td>• “I’ve had coworkers that didn’t want me to use certain things. People who didn’t want to eat off the same plate, cups…They discriminated against me in my job. — Augusten, St. Vincent and the Grenadines, February 18, 2017” (p. 28)</td>
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<td>• “Alfred, a gay 53-year-old man from St. Vincent and the Grenadines, told Human Rights Watch: ‘My mother put me out of my house at age 15–I wasn’t accepted and I struggled on my own.’ He roamed the streets from village to village for most of his teenage years in seek of shelter.” (p. 32)</td>
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<td>• “James, a 24-year-old bisexual man from St. Vincent and the Grenadines, said that he was shunned by his family, thrown out of his home, and beaten by his brothers, even as he sought shelter with friends. He said: ‘At age 16, I was kicked out of the house. My brothers would go to my friends’ houses and told them that if they see me they would kill me… Black and blue eyes, mainly one of them was doing the bashing, taunting, beating and threatening me. I thought my mother knew [but she played ignorant]. I never spoke about it.’” (p. 33)</td>
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<td>• “In many cases violence occurs out of the blue, as was the case with Augusten, a 36-year-old gay man and store clerk from St. Vincent and the Grenadines, who blacked out after being attacked by a stranger in public. He said: ‘I had several instances where people pelted rocks and coconuts at me. One time I was walking home and a gentleman stopped me and slapped [me] in the face because I was gay. I actually blacked out, he caught me unguarded.’” (p. 42)</td>
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<td>• “James, a 24-year-old bisexual man from St. Vincent and the Grenadines, recalls the slurs he receives on a daily basis: ‘They call me names: faggot, pussy, battyman, fish, “burn the gays alive.” When I try to defend myself they throw things…. Strangers verbally assault me every day. I receive threats of physical violence also, almost every day.’” (p. 46)</td>
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<td>• “Most gay people don’t go to the police, they are afraid of being physically bashed by them. I had experienced passing the police barracks and the police will turn yelling to me ‘little miss going there!’ In 2013 a police officer called me a ‘buller’ when he was walking back to town. Today if I pass the police barracks people will say things.” (p. 49)</td>
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| • “St. Vincent and the Grenadines received eight recommendations related to SOGI calling for decriminalization and nondiscrimination. Again, the government rejected all of the recommendations and argued that the discriminatory laws had public support within the country’s ‘Christian society,’
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  - “In 2015, the CEDAW Committee noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.” (p. 119)  
  - “The 2016 US Department of State Human Rights Report indicates that anecdotal evidence suggested there was social discrimination against LGBTI persons. . . .” (p. 119) |
  - “161. However, the Commission is aware that some criminal offenses, such as public incitement to crime, condoning crime, and conspiracy, have been used improperly by some States in order to criminalize the promotion and protection of the rights of lesbian, gay, bisexual, and transgender persons (LGBT).  
  162. In this regard, the Commission has received information which indicates that most of the Caribbean countries still criminalize sexual relations between consenting adults of the same sex. [Citing to the Saint Vincent and the Grenadines Penal Code]. The crimes contemplate penalties ranging from ten years of imprisonment—as is the case in in Jamaica, Belize, Granada, St. Lucia, and Trinidad and Tobago, for example—to life imprisonment in Barbados and Guyana. In the context of public hearings on Guyana; Jamaica and Belize; and Trinidad and Tobago, the IACHR received particularly concerning information regarding the criminalization, discrimination, harassment, and abuses suffered by LGBT persons in those countries. In this respect, the IACHR has expressed concern about the impact of legislation criminalizing consensual sex between adults of the same sex, even if those rules are not applied in practice, with respect to the rights to life, personal integrity, personal liberty, privacy, access to health, access to justice and other services.” (p. 82) |
  - “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)’. [Citing to laws of Saint Vincent and the Grenadines]. 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. . . 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.” (p. 53)

- “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. [Citing to laws of Saint Vincent and the Grenadines] 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, as well as cultural and societal opposition. [Citing to laws of Saint Vincent and the Grenadines]. Other States have indicated that this is a sensitive issue that requires consultation at the national level. [Citing to laws of Saint Vincent and the Grenadines].” (p. 55)

- Citing to the Saint Vincent and the Grenades in support of the statement that “[t]here 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” (p. 57)

- “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.” (p. 60)


- “This study compared attitudes of the general public obtained through public opinion polls 2013–2014 towards homosexuals and willingness to socialize with them in seven Caribbean countries. Informants were asked if they ‘hate, tolerate or accept’ homosexuals and if they would socialize with them. In St. Vincent 53% indicated they ‘hate’ homosexuals, compared with 12% in Suriname; the converse
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<td>was observed for those who ‘accept’ homosexuals; 63% of St. Vincent informants would not socialize with homosexuals. . .” (p. 1)</td>
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**MEDIA SOURCES**

- “The 1990 Criminal Code of Saint Vincent and the Grenadines states that ‘any person who “commits buggery [anal intercourse] with any other person,” and any person who “permits any person to commit buggery with him or her,” is “liable to imprisonment for ten years”’. . . There are no government programs or non-governmental organizations in place that offer services to the homosexual community of Saint Vincent and the Grenadines.”

20. 5 Essex Court, “Jeremy Johnson QC and Peter Laverack instructed on claim to decriminalise homosexuality in St Vincent and the Grenadines” (Jul. 26, 2019),
- “Today, two gay men filed court proceedings to challenge St Vincent and the Grenadines' ‘buggery’ and ‘gross indecency’ laws, which criminalise homosexuality. . . They have filed claims with Affidavits stating that they have been exiled from the Caribbean nation due to the severely draconian and damaging effects of these laws.”
- “Javin Johnson, aged 22, successfully claimed asylum in the United Kingdom in 2017 having established that he could not live as a gay man in St Vincent.”

21. Dinah Zeldin, Xtra, “Why gay author from St Vincent only came out in Canada” (Nov. 26, 2015),
- “No Safeguards draws on Thomas’ experiences growing up as a gay man in St Vincent, where anal sex is still punished with 10 years imprisonment. An incident recounted in the book, where a gay couple’s house is surrounded, the men beaten, and the home burned to the ground, is drawn from Thomas’ early childhood memories.

‘One night I heard a lot of noise, running and shouting,’ he recalls. ‘The next morning I discovered that this was because of a gay chap who had a date in the village. A man had asked him to meet in the banana field . . . When he took off his clothes, other guys came out and began beating him. They chased him through the field . . . until someone came to the rescue.’

According to Thomas, violence was a common occurrence and, as an effeminate boy, he was often its target.”
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<td>“Thomas was also criticized for his openness by Montreal’s Vincentian community. Following an interview with the Montreal Gazette in 2000, where he spoke about black people in the LGBT community, he received angry phone calls. ‘Some people said that they would burn my books,’ he recalls.”</td>
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<td>22. Public Letter to the Office of the President of the United States by a group of Christian ministers from Saint Vincent and the Grenadines, the Bahamas, Guyana, St. Maarten, and Trinidad &amp; Tobago (Jan. 31, 2017), available at: <a href="https://world.wng.org/sites/default/files/assets/Caribbean%20church%20leaders%20letter%20to%20President%20Trump.pdf">https://world.wng.org/sites/default/files/assets/Caribbean%20church%20leaders%20letter%20to%20President%20Trump.pdf</a></td>
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<td>• “It is not only the view of our Christian churches, but the testimony of the recorded history of millennia of civilization, that marriage can only be between a man and a woman.” (p. 1)</td>
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<td>• “In the United States, you have recently seen several of your government agencies using executive orders to foist transgender confusion through the bathroom issue on your public schools by threatening the loss of federal funds. Comply, or be defunded. Please understand that this same kind of coercion is being used against our countries to force us to fall in line with the entire same-sex agenda. In this letter, there is no room to enumerate the various ways in which this is happening. As Christian ministers and churches, we hope and pray that we and our flocks will always choose to suffer for Jesus Christ rather than comply with a lie. How ironic that it should be the United States that might place us in this position.” (p. 2)</td>
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Dated: [DATE]  
[CITY, STATE]  
Respectfully submitted,  

[FIRM]  
*Pro Bono* Counsel for Respondent__________

By: _________________________  

[FIRM]  
[NAME]  
[ADDRESS]  
[PHONE NUMBER]  
[FAX NUMBER]
CHAPTER 171
CRIMINAL CODE

• Act • Subsidiary Legislation •

ACT

Act No. 23 of 1988

Amended by

Act No. 26 of 1989
SRO 9 of 1991
Act No. 53 of 1992

ARRANGEMENT OF SECTIONS

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18. Use of force in effecting arrest.
19. Person not to be punished twice for the same offence.
20. Principal offenders.
22. Counselling another to commit an offence.

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33. Forfeiture of property used for commission of offence.
34. Security for keeping the peace.
35. Security for coming up for judgement.
36. General punishment for offences.
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39. Treason.
40. Citizen of Saint Vincent and the Grenadines.
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44. Cesser of application of 25 Ed. 3 Stat 5 c. 2: 11 Hen. 7 c. 1: 1 Anne Stat 2 c. 21.
45. No bail.
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47. Aiding, etc., acts of mutiny.
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CRIMINAL CODE

An Act to amend and codify the criminal laws of Saint Vincent and the Grenadines, and for matters incidental thereto.


[Date of commencement: 30th October, 1989.]

[SRO 33 of 1989.]

CHAPTER I

Preliminary

1. Short title

This Act (hereinafter referred to as “this Code”) may be cited as the Criminal Code.
of the judicial officer, is acting *bona fide* in the interests of any woman, that there is reasonable cause to suspect that such woman is detained for immoral purposes by any person in any place within his jurisdiction, such judicial officer may issue a warrant authorising the person named therein to search and, when found, to take to and detain in a place of safety such woman until she can be brought before a magistrate. A magistrate before whom such a woman is brought may cause her to be delivered to her parent or guardian or otherwise dealt with as circumstances permit and require.

(2) A woman shall be deemed to be unlawfully detained for immoral purposes if she is detained for the purpose of having unlawful sexual intercourse, and—

(a) is under the age of fifteen;

(b) if of or over the age of fifteen and under the age of eighteen and is detained against her will, or the will of her parents or any person having the lawful charge or care of her; or

(c) is over the age of eighteen and is detained against her will.

(3) Any person authorised by warrant under this section to search for any woman may enter (by force if need be) any house, building or other place named in the warrant and may remove such woman therefrom.

142. Incest by a man

Any man who has sexual intercourse with a woman whom he knows to be his granddaughter, daughter, sister or mother is guilty of an offence and liable to imprisonment for fourteen years.

143. Divesting of authority

On the conviction before any court of any person for an offence under section 142, or of an attempt to commit such offence, against a female under the age of eighteen, it shall be in the power of the court to divest the offender of all authority over such female and, if the offender is the guardian of such woman, to remove the offender from such guardianship and in any such case to appoint any person to be the guardian of such woman during her minority period:

Provided that the High Court may at any time vary or rescind the order by the appointment of some other person as guardian or in any other respect.

144. Incest by a woman

Any woman of the age of fifteen or over who permits a man who she knows to be her grandfather, father, brother or son to have sexual intercourse with her is guilty of an offence and liable to imprisonment for seven years.

145. Test of relationship in incest

In sections 142 and 144 the expressions “*brother*” and “*sister*” include halfbrother and halfsister respectively, and the provisions of the sections shall apply whether the relationship between the person charged with the offence and the person with whom the offence is alleged to have been committed is, or is not, traced through lawful wedlock.

146. Buggery

Any person who—

(a) commits buggery with any other person;

(b) commits buggery with an animal; or
(c) permits any person to commit buggery with him or her, is guilty of an offence and liable to imprisonment for ten years.

147. Assault with intent to commit buggery

Any person who commits an assault with intent to commit buggery, is guilty of an offence and liable to imprisonment for seven years.

148. Indecent practices between persons of the same sex

Any person who, whether in public or private, commits any act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.

CHAPTER IX

Abortion, etc.

149. Abortion

(1) Any person who, with intent to procure the miscarriage of a woman, whether she is with child or not, unlawfully administers to her, or causes her to take, any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of an offence and liable to imprisonment for fourteen years.

(2) A person shall not be guilty of an offence under subsection (1) when a pregnancy is terminated in a hospital or other establishment approved for that purpose by the Chief Medical Officer, by a medical practitioner, if two medical practitioners are of the opinion, formed in good faith—

(a) that the continuation of the pregnancy would involve risk to the life of the pregnant woman, or injury to her physical or mental health or of any existing children of her family, greater than if the pregnancy were terminated; or

(b) that there is a substantial risk that, if the child were born, it would suffer from such physical or mental abnormality as to be seriously handicapped:

Provided that the reference to the opinion of two medical practitioners and to an approved hospital or other establishment shall not apply to the termination of a pregnancy by a registered medical practitioner in a case in which he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life of, or to prevent grave permanent injury to the physical or mental health of, the pregnant woman.

(3) In determining, for the purpose of subsection (2), whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a), account may be taken of the pregnant woman’s actual or reasonably foreseeable environment.

(4) A person shall not be guilty of an offence under subsection (1) when a pregnancy is terminated in a hospital or other establishment approved for that purpose by the Chief Medical Officer, if the pregnancy had resulted from an act of rape or incest as defined in section 142, whether or not any person had been charged with the offence of rape or incest which resulted in the pregnancy in question.

150. Woman attempting own miscarriage

Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of
TAB 2
SAINT VINCENT AND THE GRENADINES 2019 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Saint Vincent and the Grenadines is a multiparty, parliamentary democracy. The prime minister is the head of the government. The United Kingdom’s Queen Elizabeth II is the head of state, represented by a governor general. In 2015 Ralph Gonsalves was elected by his party to a fourth consecutive term as prime minister. International observers assessed the election as generally free and fair.

The Royal Saint Vincent and the Grenadines Police are the only security force in the country and are responsible for maintaining national security. Its forces include the Coast Guard, Special Services Unit, Rapid Response Unit, Drug Squad, and Antitrafficking Unit. The police force reports to the minister of national security, a portfolio held by the prime minister. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included the criminalization of libel and the criminalization of consensual same-sex activity between men, which was not enforced during the year.

The government took steps to investigate and punish officials who committed human rights abuses, and there was not a widespread perception of impunity for security force members.

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 the government employed them systematically.

Prison and Detention Center Conditions

Prison conditions were less than adequate, although they varied depending on the facility. Key problems with prison facilities included understaffing, overcrowding, the inability to control contraband, and limited space to segregate noncompliant and juvenile prisoners.

Physical Conditions: Limited prison capacity prevented authorities from segregating juvenile offenders, with 32 offenders between the ages of 16 and 21 housed with adult prisoners. Nongovernmental organizations (NGOs) reported that juvenile offenders were not housed in the juvenile center. Female prisoners were housed in a makeshift facility while construction of a women’s prison was underway. The two facilities for male prisoners were near capacity throughout the year.

Administration: There were no reports of mistreatment, but the authorities worked with an NGO to investigate credible allegations of mistreatment. There was inadequate prison security staffing. There was a report of a prisoner held on murder charges who walked out of prison and called his lawyer to pick him up before officials became aware of the escape.

Independent Monitoring: An NGO monitors the prison and conducts twice-yearly inspections.

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. The government generally observed these requirements.

Arrest Procedures and Treatment of Detainees

The law requires a judicial authority to issue arrest warrants. The bail system was generally effective. Authorities generally gave detainees prompt access to a
lawyer. For indigent detainees accused of a capital offense, the state provides a lawyer. For other crimes the state does not provide a lawyer, and defendants without the financial means to hire a lawyer must represent themselves.

Although lengthy delays prior to preliminary inquiries were reported, government authorities and civil society reported compliance with Court of Appeal guidelines, which require a preliminary hearing to be held within nine months of detention.

The government operated a juvenile justice reform program to reduce recidivism.

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.

Defendants are presumed innocent until proven guilty and were informed promptly and in detail of the charges. Defendants have the right to a fair, timely, and public trial and to be present at the trial. Defendants are able to select an attorney of their choice. The court appoints attorneys only for indigent defendants charged with a capital offense. Defendants had adequate time and facilities to prepare a defense. Defendants had access to free assistance of an interpreter as necessary. Defendants could confront and question witnesses and present their own witnesses and evidence. Defendants cannot be compelled to testify or confess guilt. Witnesses and victims sometimes refused to testify because they feared retaliation. Defendants may appeal verdicts and penalties.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent, impartial judiciary in civil matters, where one may bring lawsuits seeking damages for human rights violations. Individuals may appeal
domestic courts’ decisions to the Eastern Caribbean Court of Appeals or the United Kingdom’s Privy Council.

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. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

Libel/Slander Laws: Civil society observers reported concerns about criticizing the government, primarily due to fear of facing libel charges, including under the 2016 Cybercrime Act. Civil society representatives indicated these fears resulted in media outlets practicing self-censorship. The act establishes criminal penalties, including imprisonment, for offenses including libel by electronic communication, cyberbullying, and illegal acquisition of data. The government did not charge anyone with libel or defamation during the year.

Internet Freedom

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

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. Civil society, however, reported
citizens were hesitant to participate in antigovernment protests due to fear of retaliation.

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.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

Access to Asylum: The law does not provide for the granting of asylum or refugee status; the government addresses each case individually. The government has not established a system for protecting refugees.

g. Stateless Persons

Not applicable.

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 2015 the United Labour Party won eight of the 15 elected seats in the unicameral House of Assembly, which also includes six appointed senators. The New Democratic Party won seven seats. International observers from the Caribbean Community and the Organization of American States declared 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. Women reportedly were reluctant to campaign for office, with only three women in the 21-seat legislature; all were appointed senators.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Officials at times engaged in corrupt practices with impunity. NGOs and the opposition party reported instances of government corruption during the year, including allegations of misappropriation of money allocated for aid and development programs.

Corruption: Allegations of political handouts and other forms of low-level corruption persisted.

Financial Disclosure: There are no financial disclosure laws for public officials.

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

The Saint Vincent and the Grenadines Human Rights Association (SVGHRA), a domestic human rights group, generally operated without government restriction, and investigated and published its findings on human rights cases. The government held various meetings with civil society that included the SVGHRA. Civil society reported that even where government officials shared the SVGHRA’s concerns, government officials were intimidated by senior officials from investigating allegations of human rights abuses.

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

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal, and the government generally enforced the law. Sentences for rape begin at 10 years’ imprisonment. Authorities referred allegations of rape or physical or sexual abuse of women to the police, and police were generally responsive to these complaints. The government operated sexual abuse awareness training, but civil society cited the lack of public education efforts in perpetuating an environment of insensitivity to sexual abuse victims. Police and human rights groups reported that perpetrators
commonly made payoffs to victims of rape or sexual assault in exchange for victims not pressing charges.

Civil society groups reported domestic violence against women remained a serious and pervasive problem. The Division of Gender Affairs in the Ministry of National Mobilization offered programs to assist women and children. The ministry maintained a crisis center for survivors of domestic violence.

**Sexual Harassment:** The law does not specifically prohibit sexual harassment, although authorities could prosecute such behavior under other laws. Local human rights groups and women’s organizations considered enforcement in the workplace ineffective.

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

**Discrimination:** Women enjoy the same legal rights to family, nationality, and inheritance as men. Women receive an equitable share of property following separation or divorce. The law requires equal pay for equal work, and authorities generally enforced it.

**Children**

**Birth Registration:** Citizenship is derived by birth within the country’s territory or from either parent. Birth registration usually occurred within a few days of a child’s birth.

**Child Abuse:** The law provides a legal framework for the protection of children, including within domestic violence laws. The Family Services Division of the Ministry of Social Development monitored and protected the welfare of children. The division referred all reports of child abuse to the police for action and provided assistance in cases where children applied for protection orders with the family court. Unlawful sexual intercourse with children younger than age 15 remained a problem, and it was in some cases linked to transactional sex with minors. Government and NGO interlocutors indicated that child abuse remained a significant problem.

**Early and Forced Marriage:** The legal minimum age for marriage is 18. Parental consent is required for underage marriage.
Sexual Exploitation of Children: The law does not prohibit the use of children for prostitution, pornography, or pornographic performances. The law prohibits girls younger than age 15 and boys younger than age 16 from engaging in consensual sexual relations, and the government enforced the law. The law prohibits statutory rape, with special provisions for those younger than age 13. Observers noted that male and female teenagers engaged in prostitution and transactional sex. NGO and government representatives reported some mothers pressured their daughters to have sexual relations with older men as a way to generate family income. Government officials conducted sensitization workshops in the community and schools to address the problem.


Anti-Semitism

There was no organized Jewish community, and there were no reports of anti-Semitic acts.

 Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, mental, and intellectual disabilities, and the government generally enforced these prohibitions. The law does not mandate access to buildings for persons with disabilities, and access for such persons generally was difficult. NGOs reported government funding for organizations supporting persons with disabilities was insufficient to meet the need. NGOs reported subtle discrimination in hiring practices throughout the economy but noted the government’s strong attempt to recruit and hire persons with disabilities through programs such as the Youth Employment Scheme and the Secondary Education Training Program.
Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years’ imprisonment, and anal intercourse carries a maximum penalty of 10 years in prison, although these laws were rarely enforced. No laws prohibit discrimination against a person based on sexual orientation or gender identity.

HIV and AIDS Social Stigma

Anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS, especially in employment. The government provided food packages to some persons with HIV/AIDS, but civil society reported that eligible participants had to preregister at health centers, which some individuals were reluctant to do out of fear of public identification and discrimination. NGOs operated a network to assist persons with HIV/AIDS with medical services and psychosocial support.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The government recognizes the right to freedom of association, with restrictions. The International Labor Organization (ILO) noted with concern the discretionary authority of the government over trade union registration, and the government’s unfettered authority to investigate the financial accounts of trade unions. The government generally respected the right to collective bargaining in the private sector. The law provides for the right of workers to form and join unions of their choice, bargain collectively, and conduct legal strikes. The law does not require employers to recognize a particular union as an exclusive bargaining agent. Authorities formed arbitration panels, which included tripartite representation from government, businesses, and unions, on an ad hoc basis when labor disputes occurred.

The law prohibits antiunion discrimination and dismissal for engaging in union activities. Although the law does not require reinstatement of workers fired for union activity, a court may order reinstatement.
Workers providing essential services—defined as the provision of electricity, water, hospital, and police services—are prohibited from striking unless they provide at least 14 days’ notice to the authorities. Some of these sectors were not covered under the ILO’s description of essential services.

The government generally enforced labor laws effectively. Government penalties were sufficient to deter violations.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government did not effectively enforce the law. Penalties against forced labor carry punishments commensurate with serious crimes and were sufficient to deter violations. The ILO expressed concern that membership in an illegal organization could result in prison labor, in contravention of Convention 105, Abolition of Forced Labor.

While there were no forced labor investigations during the year, civil society reported that during the tourist season a small number of persons—including minors—were vulnerable to forced labor in underground economic activities in the drug trade and prostitution.

Also see the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/

c. Prohibition of Child Labor and Minimum Age for Employment

The law bars the worst forms of child labor and sets the minimum working age at 14. Compulsory education ends at age 16. The law prohibits children and youth from working between the hours of 10 p.m. and 7 a.m. Children younger than age 18 may not work for more than 12 hours a day. Types of hazardous work prohibited to children are not specified by law or regulation.

The government did not effectively enforce child labor laws. The Department of Labour did not conduct any inspections specifically related to child labor. Instead, the government relied on general labor inspections to identify any child labor violations, but these inspectors had no specialized training on identifying child labor. There were no reported complaints related to child labor. Covered under its trafficking in persons legislation, penalties for child labor could result in 20 years’ imprisonment and were sufficient to deter violations.
d. Discrimination with Respect to Employment and Occupation

Laws and regulations related to employment and occupation prohibit discrimination based on sex or disability, but no laws prohibit discrimination against a person based on race, religion, political opinion, national origin, social origin, age, or language. Whether the law covers sexual orientation, gender identity, or HIV-positive status is untested in court. The government did not effectively enforce laws prohibiting employment discrimination. It was unclear whether penalties were sufficient to deter violations.

e. Acceptable Conditions of Work

Minimum wages, updated in 2017, varied by sector and type of work and were below the poverty line. The law prescribes hours of work according to category, such as industrial employees (40 hours per week), professionals (44 hours per week), and agricultural workers (30 to 40 hours per week). The law provides that workers receive time-and-a-half for hours worked above the standard workweek. There was a prohibition against excessive or compulsory overtime, which authorities did not enforce effectively.

The law concerning occupational safety and health is outdated. Workers have the right to remove themselves from unsafe work environments without jeopardizing their employment, but authorities did not effectively enforce this right.

The government did not employ enough inspectors to enforce the law effectively. The Ministry of Agriculture conducted inspections and worksite visits in the agricultural sector related to occupational safety and health. The Department of Labour stated it did not have the legal authority to impose fines for violations, but it conducted follow-up inspections to assess if the shortfalls had been addressed. The Department of Labour and judicial officials have the authority to prosecute violations of workplace law and impose fines. Workers who receive less than the minimum wage may file a claim with labor inspectors, who investigate and, if warranted, refer the matter to arbitration. The department received very few complaints concerning minimum wage violations but received more complaints regarding wrongful dismissal.

See the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/agencies/ilab/resources/reports/child-labor/findings.
TAB 3
SAINT VINCENT AND THE GRENADEINES 2018 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Saint Vincent and the Grenadines is a multiparty, parliamentary democracy. The prime minister is the head of the government. In 2015 Prime Minister Ralph Gonsalves was elected to a fourth consecutive term. International observers assessed the election as generally free and fair.

Civilian authorities maintained effective control over the security forces.

Human rights issues included the criminalization of libel; the criminalization of consensual same-sex activity between men (which was not enforced during the year); two cases of violence against LGBTI persons; and child labor.

The government took steps to investigate and punish officials who committed abuses, and there was not a widespread perception of impunity for security force members.

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 generalized reports the government employed them. In a high-profile case, however, a woman was committed to the Mental Health Center for two weeks of observation after pleading not guilty to a charge of abusive language. The abusive language was against the wife of a senior government minister. Following a mental health evaluation, she
was granted bail and released, and the case was adjourned until December 17. Legal experts in the country cited this incident as an example of a misuse of the judicial system.

**Prison and Detention Center Conditions**

Prison conditions were generally adequate, although they varied depending on the facility.

**Physical Conditions:** The government continued to use Her Majesty’s Prison, an old building in the center of Kingstown, the capital city, to hold both male and female inmates. Men and women were held separately. Key problems included the inability to segregate prisoners who misbehaved, gang activity, and contraband, including the smuggling of cell phones and drugs. In contrast with Her Majesty’s Prison, there were no reports of inadequate living conditions in the newer Belle Isle facility.

Conditions were inadequate for juvenile offenders. Authorities held offenders between the ages of 16 and 21 years of age with convicted adult prisoners.

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

**Independent Monitoring:** The government permitted prison visits by independent human rights observers.

**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 Saint Vincent and the Grenadines Police is the only security force in the country and is responsible for maintaining national security. Its forces include the Coast Guard, Special Services Unit, Rapid Response Unit, Drug Squad, and Anti-Trafficking Unit. The police force reports to the minister of national security, a portfolio held by the prime minister. The Criminal Investigations Department investigated all police killings and referred them to coroner’s inquests.
Civilian authorities maintained effective control over the police, and the government has effective mechanisms to investigate and punish abuse. Citizens alleging police abuse could file complaints with the Complaint Department within the police force or an independent, government-operated oversight committee tasked with monitoring police activity and hearing public complaints against police misconduct. If a complaint is deemed to have merit, the Office of the Director of Public Prosecutions files charges. Authorities indicated there were 74 investigations into police misconduct during the year, one of which resulted in a police officer being sanctioned. There were no verified reports of impunity involving security forces during the year.

**Arrest Procedures and Treatment of Detainees**

The law requires judicial authority to issue arrest warrants. Detainees may seek judicial determinations of their status after 48 hours if not already provided. The bail system was generally effective. Authorities generally allowed detainees prompt access to a lawyer. For indigent detainees accused of a capital offense, the state provides a lawyer. For other crimes, the state does not provide a lawyer, and defendants represent themselves in court.

Although lengthy delays were reported prior to preliminary inquiries, government sources reported compliance with Court of Appeal guidelines, which require a preliminary hearing to be held within nine months of detention. In 2017 there were approximately 20 detained defendants who had awaited trial for more than two years. More than half of the cases were delayed pending psychiatric evaluations.

**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. The court appoints attorneys only for indigent defendants charged with a capital offense. Defendants are presumed innocent until proven guilty, may be present at the trial, are informed promptly and in detail of the charges, and may confront and question witnesses. Defendants had access to free assistance of an interpreter as necessary and adequate time and
facilities to prepare a defense. Defendants may present their own witnesses and evidence and cannot be compelled to testify or confess guilt. Witnesses and victims sometimes refused to testify because they feared retaliation. Defendants may appeal verdicts and penalties.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

There is an independent, impartial judiciary in civil matters, where one may bring lawsuits seeking damages for a human rights violation. Individuals may appeal adverse domestic decisions to regional human rights bodies.

**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. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

Censorship or Content Restrictions: Civil society observers continued to report concerns about expressing criticism of the government, primarily due to fear of facing libel charges, including under the 2016 Cybercrime Act. Civil society indicated these fears resulted in media outlets practicing self-censorship.

Libel/Slander Laws: The 2016 Cybercrime Act establishes criminal penalties, including imprisonment, for various offenses, including libel by electronic communication, cyberbullying, and illegal acquisition of data. Freedom of speech organizations harshly criticized the law as being inconsistent with international freedom of speech norms. Civil society also expressed concerns that the
prohibition on libel by electronic means would give rise to government efforts to silence its critics. The government did not charge anyone with libel or defamation during the year.

Internet Freedom

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

According to the International Telecommunication Union, 66 percent of citizens 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. Various civil society organizations, however, reported citizens were hesitant to participate in antigovernment protests due to fear of retaliation.

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; each case is addressed on an individual basis. The government has not established a system for providing protection to refugees.
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 2015 voters returned to office the ruling United Labour Party, giving it eight of the 15 elected seats in the unicameral House of Assembly (which also includes six appointed senators). The opposition New Democratic Party maintained its seven seats. International observers from the Caribbean Community and the Organization of American States declared the elections generally free and fair.

Political Parties and Political Participation: Opposition party members claimed the government restricted the use of public buildings for political events but used government facilities to hold United Labour Party functions.

Participation of Women and Minorities: No laws limit participation of women or minorities in the political process, and they did participate. Women held only three of 23 legislative seats.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials at times engaged in corrupt practices with impunity. There were isolated reports of government corruption during the year.

Corruption: Allegations of political handouts and other forms of low-level corruption persisted. The government stated there was no need to have a national anticorruption agency. The law provides the Office of the Director of Public Prosecutions with the authority to prosecute the following offenses related to official corruption: extortion by public officers, public officers receiving property to show favor, false claims by officials, abuse of office, and false certification by public officers.

Financial Disclosure: There are no financial disclosure laws for public officials.
Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

The Saint Vincent and the Grenadines Human Rights Association (SVGHRA), a domestic human rights group, generally operated without government restrictions and investigated and published its findings on human rights cases. The government held various meetings with civil society that included the SVGHRA. Government officials rarely cooperated with the SVGHRA or shared its views on human rights issues.

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

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal, and the government generally enforced the law when victims came forward. Sentences for rape begin at 10 years’ imprisonment. Authorities referred allegations of rape or any abuse against women to the police. Police were generally responsive to these complaints. Police and human rights groups reported that perpetrators commonly made payoffs to victims of rape or sexual assault in exchange for victims not pressing charges.

Civil society groups reported that rape and violence against women remained a serious and pervasive problem. The Division of Gender Affairs in the Ministry of National Mobilization offered different programs to assist women and children. The ministry maintained a crisis center for survivors of domestic violence.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although authorities could prosecute such behavior under other laws. Local human rights groups and women’s organizations considered enforcement ineffective.

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

Discrimination: Women enjoy the same legal rights to family, nationality, and inheritance as men. Women received an equitable share of property following separation or divorce. The law requires equal pay for equal work and authorities generally enforced it.
Children

Birth Registration: Citizenship is derived by birth within the country’s territory or from either parent. There was universal birth registration, which usually occurred within a few days of a child’s birth.

Child Abuse: The law provides a legal framework for the protection of children, including within domestic violence laws. The Family Services Division of the Ministry of Social Development monitored and protected the welfare of children. The division referred all reports of child abuse to the police for action and provided assistance in cases where children applied for protection orders with the family court. Reports of unlawful sexual intercourse with children under age 15 remained a problem, and these reports were in some cases linked to transactional sex with minors. Government and nongovernmental organization (NGO) interlocutors indicated that child abuse, including neglect, incest, and physical, sexual, and emotional abuse were significant problems.

Early and Forced Marriage: The legal minimum age for marriage is 18. Parental consent is required for underage marriage.

Sexual Exploitation of Children: The law does not specify a minimum age for consensual sex but stipulates punishment for persons who have sexual relations with a girl under age 15. The law prohibits statutory rape, with special provisions for those under age 13. Observers noted that male and female teenagers engaged in prostitution and transactional sex. NGO and government sources reported some mothers pressured their daughters to have sexual relations with older men as a way to supplement family income. Government officials conducted sensitization workshops in the community and schools to address the problem.


Anti-Semitism

There was no organized Jewish community, and there were no reports of anti-Semitic acts.
Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, mental, and intellectual disabilities, and the government generally observed these prohibitions. The law does not mandate access to buildings for persons with disabilities, and access for such persons generally was difficult. NGOs reported government funding for organizations supporting persons with disabilities was insufficient to meet the needs of persons with disabilities. NGOs reported subtle discrimination in hiring practices throughout the workforce but noted the government’s strong attempt to recruit and hire persons with disabilities through programs such as the Youth Employment Service.

Education was provided until age 21 for persons with disabilities, and the government partially supported a separate school for persons with disabilities. Persons with disabilities also could attend public schools. A separate rehabilitation center treated an average of five persons daily.

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

Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years’ imprisonment, and anal intercourse acts carry a maximum penalty of 10 years in prison, although these laws were rarely enforced. No laws prohibit discrimination against a person based on sexual orientation or gender identity.

Anecdotal evidence suggested there was societal discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, although local observers believed such attitudes of intolerance were slowly improving. Members of professional and business classes were more inclined to conceal their LGBTI status.

There were two acts of violence on individuals due to their sexual orientation or gender identity. Both cases were under investigation as of October. In one case
two men dressed in female clothing were chased and beaten by a crowd, all of which was captured and posted to social media. No individuals from the crowd were arrested. In the second incident, authorities suspected a man was killed during a same-sex encounter. Police detained a suspect, who later admitted to the killing.

**HIV and AIDS Social Stigma**

Anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS, especially in employment. The government provided monthly financial assistance to persons with HIV/AIDS. The SVGHRA, which serves as coordinator for these NGOs, reported that funding continued to be a problem since each organization must find its own funding sources.

**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 unions of their choice, bargain collectively, and conduct legal strikes. The government enforces and recognizes the right to collective bargaining and freedom of association in the private sector.

The law prohibits antiunion discrimination and dismissal for engaging in union activities. Although it does not require reinstatement of workers fired for union activity, a court may order reinstatement.

The law does not require employers to recognize a particular union as an exclusive bargaining agent. The law provides that if both parties consent to arbitration, the minister of labor can appoint an arbitration committee to hear the matter. The law provides for establishment of an arbitration tribunal and a board of inquiry in connection with trade disputes and allows provision for the settlement of such disputes.

Authorities formed arbitration panels, which included tripartite representation from government, businesses, and unions, on an ad hoc basis when labor disputes occurred.

Workers providing services deemed essential (defined as electricity, water, hospital, and police) are prohibited from striking unless they provide at least a 14-
day notice to the authorities. Some of these sectors exceeded the International Labor Organization’s standard for essential services.

The government generally enforced labor laws effectively. Government penalties of up to 5,000 Eastern Caribbean Dollars (XCD) ($1,850) generally were sufficient to deter violations.

Freedom of association and the right to collective bargaining were generally respected.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. Authorities reported their efforts to investigate forced labor violations functioned well and that additional staff would complement efforts. Penalties against forced labor carry punishments of up to 20 years’ imprisonment with fines. These penalties are commensurate with serious crimes and were sufficient to deter violations. While there were no forced labor investigations underway, anecdotal evidence indicated that a small number of persons—including minors—were vulnerable to forced labor in underground economic activities in the drug trade and prostitution.

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum working age at 14. Compulsory education ends at age 16. The law prohibits children and youth from working between the hours of 10 p.m. and 7 a.m. Children under 18 may not work for more than 12 hours a day. According to observers, the government did not effectively enforce applicable law regarding child labor. The Department of Labor did not conduct any inspections specifically related to child labor during the year. Instead, the government relies on general labor inspections to identify any child labor violations. The department reported no complaints related to child labor. Covered under its trafficking-in-persons legislation, penalties for child labor could result in 20 years’ imprisonment and were sufficient to deter violations.

See the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings.
d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations prohibit discrimination based on sex or disability, but no laws prohibit discrimination against a person based on race, religion, political opinion, national origin, social origin, age, or language. Whether the constitutional provision covers sexual orientation and gender identity, or HIV-positive status is a matter of interpretation untested in court. The government did not effectively enforce applicable laws prohibiting employment discrimination. It was unclear if penalties were sufficient to deter violations.

e. Acceptable Conditions of Work

Minimum wages, updated in 2017, varied by sector and type of work. In agriculture the minimum wage for workers receiving shelter was $40 XCD ($14.80) per day or $36 XCD ($13.30) if shelter was not provided. For industrial workers it ranged from $25 XCD ($9.25) per day for an apprentice to $48 XCD ($17.80) per day for an experienced employee.

The law prescribes hours of work according to category, such as industrial employees (40 hours per week), professionals (44 hours per week), and agricultural workers (30 to 40 hours per week). The law provides that workers receive time and a half for hours worked more than the standard workweek. There was a prohibition against excessive or compulsory overtime, which authorities effectively enforced.

Legislation concerning occupational safety and health was outdated. Workers have the right to remove themselves from unsafe work environments without jeopardizing their employment, but authorities did not effectively enforce this right.

Although the government reported that the system of inspections worked well, civil society organizations reported that enforcement of regulations was ineffective because the government lacked a sufficient number of inspectors. Department of Labor inspectors conducted regular wage and workplace safety inspections. Department officials stated the number of inspectors was adequate. The Ministry of Agriculture conducted inspections and worksite visits in the agricultural sector related to occupational safety and health. The Department of Labor stated it did not have the legal authority to impose fines for violations but conducted follow-up inspections to assess if the shortfalls had been addressed. Law enforcement and
judicial officials have the authority to prosecute violations and impose fines. Workers who receive less than the minimum wage may file a claim with labor inspectors, who investigate and, if warranted, refer the matter to arbitration. The department received very few complaints concerning minimum wage violations but received complaints regarding wrongful dismissal. Department officials indicated that workplace violations were rare, since most employers adhered to the minimum labor standards. The department offered voluntary labor dispute mediation and advised employers and employees of their labor rights through a weekly radio program.
SAINT VINCENT AND THE GRENADES 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Saint Vincent and the Grenadines is a multiparty, parliamentary democracy. Government control lies with the prime minister and his cabinet. In 2015 Vincentians returned Prime Minister Ralph Gonsalves to office for a fourth term. International observers assessed the election as generally free and fair.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included criminalization of libel and same-sex sexual activity, although those laws were not enforced during the year.

There were no reported instances during the year of the government investigating or prosecuting officials who committed abuses, and there was not a widespread perception of impunity for security force members. Government procedures exist to investigate violations, but few reports of violations occurred.

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 constitution and law prohibit such practices, although various civil society groups reported that the police continued to disrupt peaceful protests (see section 2.b., Freedom of Peaceful Assembly and Association).
Prison and Detention Center Conditions

Prison conditions were generally adequate, although they varied depending on the facility.

Physical Conditions: The government continued to use an inadequate facility, Her Majesty’s Prison, an old building in the center of Kingstown, to house both male and female inmates. Men and women were held separately. Key problems included the inability to segregate prisoners who misbehaved, gang activity, and contraband, including cell phones and drugs. In contrast with Her Majesty’s Prison, there were no reports of inadequate living conditions in the newer Belle Isle facility.

Conditions were inadequate for juvenile offenders. Authorities held offenders between the ages of 16 and 21 years of age with adult convicted prisoners. There were no inmates under 16, but authorities reported two offenders under the age of 16 were being detained at a police station.

Administration: While there was no official prison ombudsman, a prison board composed of a magistrate and a justice of the peace visited both prisons monthly. During the visits prisoners with complaints could speak directly to the board. In addition, prisoners could file complaints by writing the court registrar.

Independent Monitoring: In addition to the prison board, the government permitted prison visits by independent human rights observers.

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/her arrest or detention in court, and the government generally observed these requirements.

Role of the Police and Security Apparatus

The Royal Saint Vincent and the Grenadines Police is the only security force in the country and is responsible for maintaining national security. Its forces include the Coast Guard, Special Services Unit, Rapid Response Unit, Drug Squad, and the Anti-Trafficking Unit. The police force reports to the minister of national security, a portfolio held by the prime minister. The Criminal Investigations Department investigated all police killings and referred them to coroner’s inquests.
Civilian authorities maintained effective control over the police, and the government has effective mechanisms to investigate and punish abuse and corruption. Citizens alleging police abuse could file complaints with the Complaint Department within the police force or an independent, government-operated oversight committee tasked with monitoring police activity and hearing public complaints against police misconduct. If a complaint is deemed to have merit, the Office of the Director of Public Prosecutions files charges. Authorities indicated 87 investigations into police misconduct occurred during the year, none of which resulted in convictions, sanctions, or dismissals. There were no verified reports of impunity involving security forces during the year.

Arrest Procedures and Treatment of Detainees

The law requires judicial authority to issue arrest warrants. Police apprehended persons openly. Detainees may seek judicial determinations of their status after 48 hours if not already provided. The bail system was generally effective. Authorities generally allowed detainees prompt access to a lawyer. For indigent detainees accused of a capital offense, the state provides a lawyer. For other crimes, the state does not provide a lawyer, and defendants represent themselves in court.

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 fair and public trials, and an independent judiciary generally enforced this right. The court appoints attorneys only for indigent defendants charged with a capital offense. Defendants are presumed innocent until proven guilty, may be present at the trial, are informed promptly and in detail of the charges, and may confront and question witnesses. Defendants had access to free assistance of an interpreter as necessary. Defendants may also present their own witnesses and evidence. Although lengthy delays were reported prior to preliminary inquiries, government sources reported compliance with Court of Appeals guidelines, which require a preliminary hearing to be held within nine months of detention. There were approximately 20 detained defendants awaiting trial for more than two years. More than half of those cases were delayed pending
psychiatric evaluations. Witnesses and victims sometimes refused to testify because they feared retaliation, which negatively affected prosecution of crimes. Defendants may appeal verdicts and penalties.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

There is an independent, impartial judiciary in civil matters, where one can bring lawsuits seeking damages for a human rights violation. Individuals may appeal adverse domestic decisions to regional human rights bodies.

**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 constitution and law provide for freedom of expression, including for the press, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

**Censorship or Content Restrictions:** Civil society continued to report concerns about expressing criticism of the government primarily due to fear of facing libel charges, including under the 2016 Cybercrime Act.

**Libel/Slander Laws:** The 2016 Cybercrime Act establishes criminal penalties, including imprisonment, for various offenses including libel by electronic communication, cyberbullying, and illegal acquisition of data. Freedom of speech organizations harshly criticized the law as being inconsistent with international freedom of speech norms. Civil society also expressed concerns that the prohibition on libel by electronic means would give rise to government efforts to silence its critics. The government did not charge anyone with libel or defamation.
during the year, but officials were pursuing damages from a 2016 case against a pro-opposition radio station for spreading public fear and alarm.

**Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 55 percent of citizens used the internet in 2016.

**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. However, various civil society groups reported the police continued to disrupt peaceful protests.

**c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://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 laws do not provide for the granting of asylum or refugee status; each case is addressed on an individual basis. The government has not established a system for providing protection to refugees. There were few refugees or asylum seekers residing within the country.

**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 2015 voters returned the ruling United Labor Party to office, giving it eight of the 15 elected seats in the unicameral House of Assembly (which also includes six appointed senators). The opposition New Democratic Party maintained its seven seats. International observers from the Caribbean Community and the Organization of American States declared the elections generally free and fair.

**Participation of Women and Minorities:** No laws limit participation of women and/or 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, but the government did not implement the law effectively, and officials at times engaged in corrupt practices with impunity. There were isolated reports of government corruption during the year.

**Corruption:** Allegations of political handouts and other forms of low-level corruption continued to plague both parties. The government stated there was no need to have a national anticorruption agency. The law provides the Office of the Director of Public Prosecutions with the authority to prosecute the following offenses related to official corruption: extortion by public officers, public officers receiving property to show favor, false claims by officials, abuse of office, and false certification by public officers.

**Financial Disclosure:** There are no financial disclosure laws for public officials.

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

A domestic human rights group, the Saint Vincent and the Grenadines Human Rights Association (SVGHRA), generally operated without government restriction, investigating and publishing its findings on human rights cases. The government held various meetings with civil society, and they tended to include the SVGHRA.
The government was minimally receptive to their views, however, and attempted to limit their active participation in those meetings.

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

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal, and the government generally enforced the law when victims came forward. Sentences for rape begin at 10 years’ imprisonment. Authorities referred allegations of rape or any abuse against women to the police. Police were generally responsive to these complaints. Police and human rights groups reported that perpetrators commonly made payoffs to victims of rape or sexual assault in exchange for victims’ not pressing charges.

Civil society groups reported that rape and violence against women remained a serious and pervasive problem. The Division of Gender Affairs in the Ministry of National Mobilization offered different programs to assist women and children. The ministry maintained a crisis center for survivors of domestic violence.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although authorities could prosecute such behavior under other laws. Local human rights groups and women’s organizations considered enforcement ineffective.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: Women enjoy the same legal rights to family, nationality, and inheritance as men. Women received an equitable share of property following separation or divorce. The law requires equal pay for equal work, and authorities generally enforced it.

Children

Birth Registration: Citizenship is derived by birth within the country’s territory or from either of one’s parents. There was universal birth registration, usually within a few days of a child’s birth.
Child Abuse: The law provides a legal framework for the protection of children, including within domestic violence laws. The Family Services Division of the social development ministry monitored and protected the welfare of children. The division referred all reports of child abuse to the police for action and provided assistance in cases where children applied for protection orders with the family court. Reports of unlawful sexual intercourse with children under age 15 remained a problem, and these reports were in some cases linked to transactional sex with minors. There were several cases before the court. Government and nongovernmental organization (NGO) interlocutors indicated that child abuse, including neglect and physical, sexual, and emotional abuse, and incest were significant problems.

Early and Forced Marriage: The legal minimum age for marriage is 18. Parental consent is required for underage marriage.

Sexual Exploitation of Children: Some male and female teenagers engaged in prostitution and transactional sex. The minimum age of consensual sex is 16. The penalty for causing prostitution of a woman 15 or older is 14 years’ imprisonment. The penalty for causing prostitution of a girl under 15 is seven years. The law prohibits statutory rape with special provisions for those less than 13 years of age. NGO and government sources reported that some mothers might pressure their daughters to have sexual relations with older men as a way to supplement family income. The law prohibits child pornography. Government officials conducted sensitization workshops in the community and schools to address the problem.


Anti-Semitism

There was no organized Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.
Persons with Disabilities

The law prohibits discrimination against persons with physical and sensory, mental, and intellectual disabilities, and the government generally observed these prohibitions. The law does not mandate access to buildings for persons with disabilities, and access for such persons generally was difficult. NGOs reported that government funding for organizations supporting persons with disabilities was insufficient to meet the needs of persons with disabilities. NGOs reported subtle discrimination in hiring practices throughout the workforce but noted the government’s strong attempt to recruit and hire persons with disabilities through programs such as the Youth Employment Service.

Education was provided until age 21 for persons with disabilities, and the government partially supported a separate school for persons with disabilities. Persons with disabilities also could attend public schools. A separate rehabilitation center treated an average of five persons daily. The Ministry of National Mobilization, Social Development, NGO Relations, Family, Gender Affairs, and Persons with Disabilities is responsible for assisting persons with disabilities. The government conducted sensitization workshops for the community and employers aimed at reducing discrimination against persons with disabilities.

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

Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison, although these laws were rarely enforced. No laws prohibit discrimination against a person based on sexual orientation or gender identity.

Anecdotal evidence suggested there was societal discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, although local observers believed such attitudes of intolerance were slowly improving. Members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.

HIV and AIDS Social Stigma
Anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS, especially in employment. The government provided monthly financial assistance to persons with HIV/AIDS. Seventeen NGOs worked on AIDS-related issues. The SVGHRA, which served as coordinator for these NGOs, reported that funding continued to be a problem since each organization must find its own funding sources.

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 unions of their choice, bargain collectively, and conduct legal strikes, and such strikes occurred during the year. The government enforces and recognizes the right to collective bargaining and to association in the private sector.

The law prohibits antiunion discrimination and dismissal for engaging in union activities. Although it does not require reinstatement of workers fired for union activity, a court may order reinstatement.

The law does not require employers to recognize a particular union as an exclusive bargaining agent. The law provides that if both parties consent to arbitration, the minister of labor can appoint an arbitration committee to hear the matter. The law provides for establishment of an arbitration tribunal and a board of inquiry in connection with trade disputes and allows provision for the settlement of such disputes. The tribunal was not operational during the year.

Authorities formed arbitration panels, which included tripartite representation from government, businesses, and unions, on an ad hoc basis when labor disputes occurred.

Workers providing services deemed essential (defined as electricity, water, hospital, and police) are prohibited from striking unless they provide at least a 14-day notice to the authorities. Some of the sectors defined as strategic exceeded the International Labor Organization’s standard for essential services.

The government generally enforced labor laws effectively. Government penalties of up to 5,000 Eastern Caribbean Dollars (XCD) ($1,850) generally were sufficient to deter violations.
Freedom of association and the right to collective bargaining were generally respected.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, and the government reported no forced labor investigations, prosecutions, or convictions during the year. The government reported the effort to investigate forced labor violations functioned well and that additional staff would complement ongoing efforts. Penalties against forced labor carry punishments of up to 20 years’ imprisonment with fines. These penalties are commensurate with serious crimes and were sufficient to deter violations. Despite the absence of forced labor investigations, anecdotal evidence indicated that a small number of persons—including minors—were vulnerable to forced labor in underground economic activities in the drug trade and prostitution.

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum working age at 14. Compulsory education ends at age 16. The law prohibits children and youth from working between the hours of 10 p.m. and 7 a.m. Children under 18 may not work for more than 12 hours a day.

The government did not effectively enforce applicable law regarding child labor. The Department of Labor, a unit of the Ministry of National Reconciliation in the Public Service, Labor, Information, and Ecclesiastical Affairs, did not conduct any inspections specifically related to child labor during the year; instead, the government relies on general labor inspections to identify any child labor violations. There were seven labor officers in the labor inspectorate with responsibility for monitoring all labor issues and complaints. The department reported no complaints related to child labor. Covered under its trafficking-in-persons legislation, penalties for child labor could result in 20 years’ imprisonment and were sufficient to deter violations.

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

Labor laws and regulations prohibit discrimination based on sex or disability, but no laws prohibit discrimination against a person based on race, religion, political opinion, national origin, social origin, age, or language. Whether the constitutional provision covers sexual orientation and/or gender identity, or HIV-positive status is a matter of interpretation untested in court. The government does not effectively enforce applicable laws prohibiting employment discrimination.

e. Acceptable Conditions of Work

Minimum wages, updated during the year, varied by sector and type of work. In agriculture the minimum wage for workers provided shelter was $40 XCD ($14.81) per day or $36 XCD ($13.33) if shelter was not provided. For industrial workers it was $42 XCD ($15.55) per day.

The law prescribes hours of work according to category, such as industrial employees (40 hours per week), professionals (44 hours per week), and agricultural workers (30 to 40 hours per week). The law provides that workers receive time and a half for hours worked more than the standard workweek. There was a prohibition against excessive or compulsory overtime, which authorities effectively enforced.

The law provides workers with paid holiday leave. The number of days of entitlement varied according to occupation.

Legislation concerning occupational safety and health was outdated. Workers have the right to remove themselves from unsafe work environments without jeopardizing their employment, but authorities did not effectively enforce this right.

Although the government reported that the system of inspections worked well, civil society organizations reported that enforcement of regulations was ineffective because the government lacked enough inspectors. Department of Labor inspectors conducted regular wage and workplace safety inspections. The Ministry of Agriculture conducted inspections and worksite visits in the agriculture sector related to occupational safety and health. The Department of Labor stated that it did not have the legal authority to impose fines for violations but conducted follow-up inspections to assess if the shortfalls had been addressed. Workers who receive less than the minimum wage can file a claim with labor inspectors, who
investigate and, if warranted, refer the matter to arbitration. The department received very few complaints concerning minimum wage violations but received complaints regarding wrongful dismissal. Department officials indicated that workplace violations were rare, since most employers adhered to the minimum labor standards. The department offered voluntary labor dispute mediation and advised employers and employees of their labor rights through a weekly radio program.
TAB 5
SAINT VINCENT AND THE GRENADES 2016 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Saint Vincent and the Grenadines is a multiparty, parliamentary democracy. Government control lies with the prime minister and his cabinet. In December 2015 Vincentians returned Prime Minister Ralph Gonsalves to office for a fourth term. International observers assessed the election as generally free and fair.

Civilian authorities maintained effective control over the security forces.

The most serious human rights problems were gender-based violence, censorship, and isolated use of excessive force by police.

Other human rights problems included official corruption; lack of government transparency; discrimination; child abuse; and laws that discriminate against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

There were no reported instances during the year of the government investigating or prosecuting officials who committed abuses, and there was not a widespread perception of impunity for security force members. Government procedures exist to investigate violations, but few reports of violations were made.

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 politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
The constitution and law prohibit such practices; however, the nongovernmental organization (NGO) St. Vincent and the Grenadines Human Rights Association (SVGHRA) reported that police used excessive force during the 2015 election season. Incidents of such conduct decreased or ceased altogether after the elections, although various civil society groups reported that the police continued to disrupt ongoing peaceful protests (see section 2.b., Freedom of Peaceful Assembly and Association).

**Prison and Detention Center Conditions**

Prison conditions were generally adequate, although they varied depending on the facility.

**Physical Conditions:** Her Majesty’s Prison, which operated at full capacity, continued to be a very cramped facility, housed in an old building in the city center. Key problems included the inability to segregate prisoners who misbehave, gang activity, and contraband, including cell phones and drugs. The facility housed seven women, who were held separately from the men.

Living conditions in the newer Belle Isle facility represented a significant improvement over Her Majesty’s Prison. Belle Isle held an additional 225 prisoners and was not fully occupied. Authorities reported 36 prisoners between the ages of 16 and 21 who were held with adult prisoners. Authorities reported 13 prisoners as HIV positive, 10 of whom were receiving antiretroviral treatment, although medical care was available to all HIV-positive prisoners. Prisoners had access to food and potable water. The government reported accommodations for prisoners with disabilities.

The antiquated and unhygienic Fort Charlotte Prison for female prisoners closed in 2015. The female prisoners were moved to Her Majesty’s Prison and occupied the second floor of one of its buildings.

Conditions were inadequate for juvenile offenders. Authorities held the 36 offenders between the ages of 16 and 21 years of age with adult convicted prisoners. There were no inmates under 16, but civil society organizations reported that, as of August, 11 offenders under the age of 16 were being detained at a police station.

**Administration:** Recordkeeping on prisoners was adequate. Courts often released nonviolent offenders on bond instead of sentencing them to prison terms. The
conditions of the bond required good behavior on the part of the offender to avoid serving time in prison. Each convict could have one visitor per week. There were no limitations on visitors for pretrial detainees. While there was no official prison ombudsman, a prison board composed of a magistrate and a justice of the peace visited both prisons bimonthly. During the visits prisoners with complaints could speak directly to the board. In addition prisoners could file complaints by writing the court registrar.

Independent Monitoring: In addition to the prison board, the government permitted prison visits by independent human rights observers, and such visits took place during the year.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The Royal Saint Vincent and the Grenadines Police is the only security force in the country and is responsible for maintaining national security. Its forces include the Coast Guard, Special Services Unit, Rapid Response Unit, Drug Squad, and the Anti-Trafficking Unit. The police force reports to the minister of national security, a portfolio held by the prime minister. The Criminal Investigations Department investigated all police killings and referred them to coroner’s inquests.

Civilian authorities maintained effective control over the police, and the government has effective mechanisms to investigate and punish abuse and corruption. Citizens alleging police abuse could file complaints with the Complaint Department within the police force or an independent, government-operated oversight committee tasked with monitoring police activity and hearing public complaints against police misconduct. If a complaint is deemed to have merit, the Office of the Director of Public Prosecutions (DPP) files charges. The government did not provide any public information about the disposition of such complaints, any disciplinary charges, or other actions taken. There were no verified reports of impunity involving security forces during the year, and no police officers were suspended or dismissed for inappropriate conduct.

Arrest Procedures and Treatment of Detainees
The law requires judicial authority to issue arrest warrants. Police apprehended persons openly. Detainees may seek judicial determinations of their status after 48 hours if not already provided. The bail system was generally effective. Authorities generally allowed detainees prompt access to a lawyer. For indigent detainees accused of a capital offense, the state provides a lawyer. For other crimes the state does not provide a lawyer, and defendants represent themselves in court.

**Detainee’s Ability to Challenge Lawfulness of Detention before a Court:** Persons arrested or detained, regardless of whether on criminal or other grounds, are entitled to challenge the legal basis or arbitrary nature of their detention in court and obtain prompt release. They can also file a separate civil complaint in order to seek compensation if found to have been unlawfully detained.

**e. Denial of Fair Public Trial**

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

**Trial Procedures**

The law provides for fair public trials, and an independent judiciary generally enforced this right. The court appoints attorneys only for indigent defendants charged with a capital offense. Defendants are presumed innocent until proven guilty, may be present at the trial, are informed promptly and in detail of the charges, may confront and question witnesses, and have access to relevant government-held evidence once a case reaches the trial stage. Defendants had access to interpretation as necessary from the moment they were charged through all appeals. Defendants may also present their own witnesses and evidence. Although lengthy delays were reported prior to preliminary inquiries, government sources reported compliance with Court of Appeals guidelines, which require a preliminary hearing to be held within nine months of detention. There were approximately 20 detained defendants awaiting trial for more than two years. More than half of those cases were delayed pending psychiatric evaluations. Witnesses and victims sometimes refused to testify because they feared retaliation, which negatively affected prosecution of crimes. Defendants may appeal verdicts and penalties.

**Political Prisoners and Detainees**
There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent, impartial judiciary in civil matters, where one can bring lawsuits seeking damages for a human rights violation. Individuals may appeal adverse domestic decisions to regional human rights bodies.

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 Speech and Press

The constitution and law provide for freedom of speech and press, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and press.

Press and Media Freedoms: Independent media were active and expressed a wide variety of views without restriction.

Violence and Harassment: Media reported harassment and physical abuse by police forces prior to the December 2015 election, but there have been no reports of such conduct since the election.

Censorship or Content Restrictions: Civil society continued to report concerns about voicing criticism of the government for fear of facing libel charges.

Libel/Slander Laws: On August 12, the government enacted the Cybercrime Act, which established criminal penalties, including imprisonment, for various offenses including libel by electronic communication, cyberbullying, and illegal acquisition of data. Freedom of speech organizations harshly criticized the law as being inconsistent with international freedom of speech norms. Civil society also expressed concerns that the prohibition on libel by electronic means would give
rise to government efforts to silence its critics; however, the government did not charge anyone with libel or defamation during the year.

**Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 52 percent of citizens used the internet in 2015, the latest data available.

**Academic Freedom and Cultural Events**

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

**b. Freedom of Peaceful Assembly and Association**

**Freedom of Assembly**

According to civil society reporting, police interfered on several occasions with a group of protesters who established themselves in front of the electoral office following the December 2015 elections. The police reportedly harassed the protesters, seized their property, and arrested several, charging them with minor infractions. According to the government, all police intervention occurred in the lawful enforcement of laws or regulations, including a law that prohibits protests within 200 yards of any government building.

**Freedom of Association**

The law provides for the freedom of association, and the government generally respected this right.

**c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

**d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**
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 laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. There were no refugees or asylum seekers residing within the country.

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 December 2015 voters returned the ruling United Labor Party to office, giving it eight of the 15 elected seats in the unicameral House of Assembly (which also includes six appointed senators). The opposition New Democratic Party maintained its seven seats. International observers from the Caribbean Community and the Organization of American States declared the elections generally free and fair.

Participation of Women and Minorities: Women had equal rights to participate in political life. A woman senator held one of the 21 seats in the House of Assembly. Two women, the parliamentary secretary and the attorney general, held cabinet-level positions.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but the government did not implement the law effectively, and officials at times engaged in corrupt practices with impunity. There were isolated reports of government corruption during the year.

Corruption: Allegations of political handouts and other forms of low-level corruption in the time leading up to the 2015 election continued to plague both parties. The government stated there was no need to have a national anticorruption agency. The law provides the DPP with the authority to prosecute the following offenses related to official corruption: extortion by public officers, public officers
receiving property to show favor, false claims by officials, abuse of office, and false certification by public officers.

Financial Disclosure:  There are no financial disclosure laws for public officials.

Public Access to Information:  The law provides for public access to information. Human rights organizations assisted individuals in obtaining information, but considered the mechanism for gaining access deficient. There was no specific timeline for the relevant authority to disclose or respond, and only a narrow list of exceptions outlining the grounds for nondisclosure exists. There are no criminal or administrative sanctions for not providing a response and no appeal mechanism for review of a disclosure denial. Public outreach activities via radio call-in shows encouraged use of the access process. In 2007 parliament approved the Freedom of Information Act. Because the regulations pertaining to this act have never been adopted, the act has never been implemented.

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

There are no restrictions on international human rights groups. A domestic human rights group, the SVGHRA, generally operated without government restriction, investigating and publishing its findings on human rights cases. The government held various meetings with civil society, and they tended to include the SVGHRA. The government was minimally receptive to their views, however, and attempted to limit their active participation in those meetings.

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

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal, and the government generally enforced the law when victims came forward. Sentences for rape begin at 10 years imprisonment and depend on the magnitude of the offense and the age of the victim. Judges rarely imposed the maximum penalty of life imprisonment. Authorities referred allegations of rape or any abuse against women to the police. Police were generally responsive to these complaints, but fear of reprisal may have deterred some victims from seeking assistance. Police and human rights groups reported that perpetrators commonly made payoffs to victims of rape or sexual assault in exchange for victims not pressing charges.
Although no special unit is devoted to these types of crimes, authorities had specially trained some police officers to handle them.

Civil society groups reported that rape and violence against women remained a serious and pervasive problem. The law does not criminalize domestic violence specifically, but it provides protection for survivors. Authorities could bring charges in cases involving domestic violence under assault, battery, or other similar laws, but police were often reluctant to follow up on domestic violence cases. As a result, perpetrators of such crimes against women often enjoyed impunity. The Division of Gender Affairs in the Ministry of National Mobilization offered different programs to assist women and children. The Ministry of National Mobilization’s crisis center for survivors of domestic violence, however, was reportedly not operational.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although authorities could prosecute such behavior under other laws. Local human rights groups and women’s organizations considered enforcement ineffective.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have access to the information and means to do so, free from discrimination, coercion, or violence.

Discrimination: Women enjoy the same legal rights to family, nationality, and inheritance as men; although in practice many women were marginalized due to financial dependence. Women received an equitable share of property following separation or divorce. The law requires equal pay for equal work, and authorities generally enforced it.

Children

Birth Registration: Citizenship is derived by birth within the country’s territory or from either of one’s parents. There was universal birth registration, usually within a few days of a child’s birth.

Child Abuse: The law provides a limited legal framework for the protection of children. The Family Services Division of the social development ministry monitored and protected the welfare of children. The division referred all reports of child abuse to the police for action and provided assistance in cases where children applied for protection orders with the family court. Reports of unlawful
sexual intercourse with children under age 15 remained a problem, and these reports were in some/many cases linked to transactional sex with minors. Cases of sexual violence against children were often difficult to prosecute, since witnesses were reluctant to testify, and discussion of these types of abuse could be considered taboo. Government and NGO interlocutors indicated that child abuse, including neglect and physical, sexual, and emotional abuse, and incest were significant problems, although statistics were not available.

**Early and Forced Marriage:** The legal minimum age for marriage is 18. Parental consent is required for underage marriage.

**Sexual Exploitation of Children:** Some male and female teenagers engaged in prostitution and transactional sex. The minimum age of consensual sex is 16. The penalty for causing prostitution of a woman 15 or older is 14 years imprisonment. The penalty for causing prostitution of a girl under 15 is seven years. The law prohibits statutory rape with special provisions for those less than 13 years of age. The penalty for statutory rape of a girl over 13 but less than 16 is five years imprisonment; for girls under age 13, it is life imprisonment. NGO and government sources reported that some mothers of girls might pressure their children to have sexual relations with older men as a way to supplement family income. The law does not specifically prohibit child pornography.

**International Child Abductions:** The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State’s *Annual Report on International Parental Child Abduction* at [travel.state.gov/content/childabduction/en/legal/compliance.html](travel.state.gov/content/childabduction/en/legal/compliance.html).

**Anti-Semitism**

There was no organized Jewish community, and there were no reports of anti-Semitic acts.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**
The law prohibits discrimination against persons with physical and sensory, mental, and intellectual disabilities in employment, access to health care, the judicial system, or the provision of other state services and the government generally observed these prohibitions. The law does not mandate access to buildings for persons with disabilities, and access for such persons generally was difficult. NGOs reported that government funding for organizations supporting persons with disabilities was insufficient to meet the needs of persons with disabilities. NGOs reported subtle discrimination in hiring practices throughout the workforce but noted the government’s strong attempt to recruit and hire people with disabilities through programs such as the Youth Employment Service.

Education was provided until age 21 for persons with disabilities, and the government partially supported a separate school for persons with disabilities. Persons with disabilities also could attend public schools. A separate rehabilitation center treated an average of five persons daily. The Ministry of National Mobilization, Social Development, NGO Relations, Family, Gender Affairs, and Persons with Disabilities is responsible for assisting persons with disabilities.

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

Consensual same-sex conduct between adults is illegal under indecency statutes, and some sexual activity between adult men is also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison, although these laws were rarely enforced. No laws prohibit discrimination against a person on the basis of sexual orientation or gender identity.

Anecdotal evidence suggested there was social discrimination against LGBTI persons, although local observers believed such attitudes of intolerance were slowly improving. Members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.

**HIV and AIDS Social Stigma**

Although no statistics were available, anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS, especially in employment. Seventeen NGOs worked on AIDS-related issues. The SVGHRA, which served as coordinator for these NGOs, reported that funding continued to be an issue as each organization must find its own funding sources.
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 unions of their choice, bargain collectively, and conduct legal strikes, and such strikes occurred during the year. The law prohibits antiunion discrimination and dismissal for engaging in union activities. Although it does not require reinstatement of workers fired for union activity, a court may order reinstatement.

The law does not require employers to recognize a particular union as an exclusive bargaining agent. The law provides that if both parties consent to arbitration, the minister of labor can appoint an arbitration committee to hear the matter. The law provides for establishment of an arbitration tribunal and a board of inquiry in connection with trade disputes and allows provision for the settlement of such disputes. Authorities formed arbitration panels, which included tripartite representation from government, businesses, and unions, on an ad hoc basis when labor disputes occurred.

Workers providing services deemed essential (defined as electricity, water, hospital, and police) are prohibited from striking unless they provide at least a 14-day notice to the authorities. Some of the sectors defined as strategic exceed the International Labor Organization standard for essential services.

The government generally enforced labor laws effectively. Government penalties of up to $5,000 Eastern Caribbean Dollars (XCD) ($1,850) generally were sufficient to deter violations.

Freedom of association and the right to collective bargaining were generally respected in practice.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor; however, the government reported no forced labor investigations, prosecutions, or convictions during the year. The government reported the effort to investigate forced labor violations functioned well and that additional staff would complement ongoing efforts. Penalties against forced labor carry punishments of up to 20 years’ imprisonment with fines. These penalties are commensurate with serious crimes.
and were sufficient to deter violations. Despite the absence of forced labor investigations, anecdotal evidence indicated that a small number of persons--including minors--were vulnerable to forced labor in underground economic activities in the drug trade and prostitution.

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum working age at 14. Compulsory education ends at age 16. The law does not place any restrictions on the number of hours children under 18 may work, and there are no prohibitions against those under 18 working in hazardous industries or environments.

The government did not effectively enforce applicable law regarding child labor. The Department of Labor, a unit of the Ministry of National Reconciliation in the Public Service, Labor, Information, and Ecclesiastical Affairs, did not conduct any inspections specifically related to child labor during the year; instead, the government relies on general labor inspections to identify any child labor violations. There were seven labor officers in the labor inspectorate with responsibility for monitoring all labor issues and complaints. The department reported no complaints related to child labor. Covered under its trafficking-in-persons legislation, penalties for child labor could result in 20 years imprisonment and were sufficient to deter violations.

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

Labor laws and regulations prohibit discrimination on the basis of sex or disability, but no laws prohibit discrimination against a person on the basis of race, religion, political opinion, national origin, social origin, age, language. Whether the constitutional provision covers sexual orientation and/or gender identity, or HIV-positive status is a matter of interpretation and had not been tested in court. The government does not effectively enforce applicable laws prohibiting employment discrimination.
e. Acceptable Conditions of Work

Minimum wages, last updated in 2008, varied by sector and type of work. In agriculture the minimum wage for workers provided shelter was $32 XCD ($11.85) per day or $56 XCD ($20.75) if shelter was not provided. For industrial workers it was $40 XCD ($14.80) per day. In August 2015 the cabinet established a “wages council,” to review the minimum wage. It consisted of representatives from the government, business, and workers across a broad swath of sectors. Although the council has met and conducted an investigation, it has yet to make any pronouncements or recommendations. Most workers earned more than the minimum wage. There is no official poverty income level.

The law prescribes hours of work according to category, such as industrial employees (40 hours per week), professionals (44 hours per week), and agricultural workers (30 to 40 hours per week). The law provides that workers receive time and a half for hours worked over the standard workweek. There was a prohibition against excessive or compulsory overtime, which authorities effectively enforced.

The law provides workers with paid holiday leave. The number of days of entitlement varied according to occupation.

Legislation concerning occupational safety and health was outdated. Workers have the right to remove themselves from unsafe work environments without jeopardizing their employment, but authorities did not effectively enforce this right.

Although the government reported that the system of inspections worked well, civil society organizations reported that enforcement of regulations was ineffective because the government lacked enough inspectors. Department of Labor inspectors conducted regular wage and workplace safety inspections. The Ministry of Agriculture conducted inspections and worksite visits in the agriculture sector related to occupational safety and health. The Department of Labor stated that it did not have the legal authority to impose fines for violations but conducted follow-up inspections to assess if the shortfalls had been addressed. Workers who receive less than the minimum wage can file a claim with labor inspectors, who investigate and, if warranted, refer the matter to arbitration. The department received very few complaints concerning minimum wage violations but received complaints regarding wrongful dismissal. Department officials indicated that workplace violations were rare, since most employers adhered to the minimum labor standards. The department offered voluntary labor dispute mediation and
advised employers and employees of their labor rights through a weekly radio program.
TAB 6
SAINT VINCENT AND THE GRENADINES 2015 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Saint Vincent and the Grenadines is a multiparty, parliamentary democracy. Government control lies with the prime minister and his cabinet. On December 9, Vincentians returned Prime Minister Ralph Gonsalves to office for a fourth term. International observers assessed the election as peaceful and successful. Civilian authorities maintained effective control over the security forces.

The most serious human rights problems were gender-based violence and police impunity.

Other human rights problems included official corruption; lack of government transparency; discrimination; child abuse; and laws that discriminate against lesbian, gay, bisexual, transgender, and intersex persons.

Government procedures exist to investigate violations, but few reports of violations were made.

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

a. Arbitrary or Unlawful Deprivation of Life

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

On rare occasions police officers shot and killed persons encountered in the line of duty. On October 3, police shot and killed an assailant who had opened fire in a public venue.

In June 2014 an on-duty police officer shot and killed a man. In April a coroner’s jury found no evidence of criminal wrongdoing by the officer.

Authorities held a coroner’s inquest to address a 2012 incident in which police shot and killed three Venezuelan men after the Vincentian Coast Guard intercepted their vessel. The coroner adjourned the inquest and issued summonses for witnesses from Venezuela. As of October authorities had received no response to either the
service of the summonses or the availability of the witnesses, and the inquest remained open at year’s end.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices; however, the nongovernmental organization (NGO) St. Vincent and the Grenadines Human Rights Association (SVGHRA) reported that police had used excessive force in the past. While no such instances were identified at year’s end, the SVGHRA reported that police conduct worsened in the past year.

Citizens alleging police abuse can file complaints with the Complaint Department within the police force or an independent government oversight committee. If a complaint is deemed to have merit, the Office of the Director of Public Prosecutions (DPP) files charges. The government does not normally provide any public information about the disposition of such complaints, any disciplinary charges, or other actions taken.

Prison and Detention Center Conditions

Physical Conditions: The SVGHRA reported prison problems such as endemic violence, understaffing, underpaid guards, uncontrolled weapons and drugs, increasing incidence of HIV/AIDS, and unhygienic conditions. The SVGHRA alleged that guards routinely beat prisoners to extract information regarding escapes, violence, and crime committed in the prison. Key problems included the inability to house juveniles in a separate facility and prison officer complicity in procuring contraband for prisoners.

Conditions were inadequate for juvenile offenders. Authorities held young offenders (16 to 21 years of age), 10 percent of the total male prison population, with adult convicted prisoners.

Administration: Courts often released nonviolent offenders on bond instead of sentencing them to prison terms. The conditions of the bond required good behavior on the part of the offender to avoid serving time in prison. While there
was no official prison ombudsman, a prison board composed of a magistrate and a justice of the peace visited both prisons bimonthly. During the visits prisoners with complaints could speak directly to the board. In addition prisoners could file complaints by writing the court registrar.

Independent Monitoring: In addition to the prison board, the government permitted prison visits by independent human rights observers, and such visits took place during the year. Visits by a local nonprofit organization providing counseling services to prisoners took place weekly.

Improvements: The antiquated and unhygienic Fort Charlotte Prison for female prisoners closed during the year, and the female prisoners were moved to Her Majesty’s Prison.

d. Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The Royal Saint Vincent and the Grenadines Police is the only security force in the country and is responsible for maintaining national security. Its forces include the Coast Guard, Special Services Unit, Rapid Response Unit, Drug Squad, and the Anti-Trafficking Unit. The police force reports to the minister of national security, a portfolio held by the prime minister. The Criminal Investigations Department investigated all police killings and referred them to coroner’s inquests.

Civilian authorities maintained effective control over the police, and the government has effective mechanisms to investigate and punish abuse and corruption. The government operated an oversight committee to monitor police activity and hear public complaints against police misconduct. The SVGHRA stated that police officers who supported the incumbent political administration were more likely to be promoted to positions of power within the police force.

Arrest Procedures and Treatment of Detainees

The law requires judicial authority to issue arrest warrants. Police apprehended persons openly, and detainees may seek judicial determinations of their status after 48 hours if not already provided. The bail system was generally effective.
Authorities generally allowed detainees prompt access to a lawyer. For indigent detainees accused of a capital offense, the state provides a lawyer. For other crimes the state does not provide a lawyer, and defendants represent themselves in court.

e. Denial of Fair Public Trial

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

**Trial Procedures**

The law provides for fair, public trials, and an independent judiciary generally enforced this right. The High Court used juries for criminal matters, but the civil court or magistrate’s courts did not use them. The court usually appoints attorneys only for indigent defendants charged with a capital offense. Defendants are presumed innocent until proven guilty, are informed promptly and in detail of the charges, may confront and question witnesses, and have access to relevant government-held evidence once a case reaches the trial stage. Defendants may also present their own witnesses and evidence. Lengthy delays often preceded preliminary inquiries for serious crimes. Witnesses sometimes refused to testify because they feared retaliation, which negatively affected prosecution of crimes. Defendants may appeal verdicts and penalties.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

There is an independent, impartial judiciary in civil matters, where one can bring lawsuits seeking damages for a human rights violation.

**f. 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 Speech and Press

The constitution and law provide for freedom of speech and press, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and press.

**Freedom of Speech and Expression:** While the independent media were active and expressed a wide variety of views without restriction, there continued to be accounts of the government impeding media criticism by monitoring political meetings, threatening to shut down programming that criticized the government, and withholding advertisement revenue from media outlets the government found distasteful.

In October the media reported the government used the investigative Special Branch of the police force to monitor levels of participation in a labor strike. The commissioner of police participated in a political rally in support of the incumbent government.

**Violence and Harassment:** Independent media reported harassment by political party members and citizens pressuring the media to identify their political persuasion. According to journalists this pressure was heightened in anticipation of the December 9 elections.

**Libel/Slander Laws:** In 2013 authorities arrested opposition Senator Vynette Frederick and charged her with perjury, shortly after a magistrate dismissed less serious false swearing charges stemming from a defamation suit she had filed against Prime Minister Gonsalves. The perjury charges related to the same incident. Frederick appealed the case in May and in June requested adjournment to a later date.

**Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 56 percent of citizens used the internet in 2014, the latest data available.
Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

The law provides for the freedoms of 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/.


The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government was prepared to cooperate with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in assisting refugees and other persons of concern.

Protection of Refugees

Access to Asylum: The country’s laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. There were no refugees or asylum seekers residing within the country.

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 based on universal and equal suffrage, and citizens exercised that ability.

Elections and Political Participation

Recent Elections: On December 9, voters returned the ruling United Labor Party to office, giving it eight of the 15 elected seats in the unicameral House of
Assembly (which also includes six appointed senators). The opposition New Democratic Party (NDP) maintained its seven seats. While the NDP leader claimed many irregularities took place in at least one constituency, preliminary findings by international observers from the Caribbean Community and the Organization of American States (OAS) declared the elections peaceful and successful and that the results reflected the will of the people. The OAS recommended the government improve gender equity in elective politics and voter education, ensure voter lists were accurate, and establish an independent electoral management body.

Section 4. Corruption and Lack of Transparency in Government

Rumors of high-level corruption persisted, but there were no cases during the year to substantiate these claims. The law provides criminal penalties for official corruption.

**Corruption:** Allegations of political handouts and other forms of low-level corruption in the time leading up to the 2010 election continued to plague both parties ahead of anticipated upcoming elections. Such bribes were historically a part of the country’s political culture. The government stated there was no need to have a national anticorruption agency. The law provides the DPP with the authority to prosecute the following offenses related to official corruption: extortion by public officers, public officers receiving property to show favor, false claims by officials, abuse of office, and false certification by public officers.

In October 2014 officials fined Tamara Gibson-Marks, former registrar of the High Court, $10,500 Eastern Caribbean Dollars (XCD) ($3,900), after she pleaded guilty to charges of theft and abuse of authority while serving in public office. The DPP dropped a third corruption charge related to false certification by public officers after Gibson-Marks plead guilty to the other two charges.

Members of the public called for the resignation of the commissioner of police when he attended a political rally in plain clothes and showed support for the prime minister’s party. The media and the public questioned his ability to perform official duties objectively when he was expressing a political view so publicly. The individual was a political appointee whose mandatory retirement was extended so he could continue to serve as commissioner of police.

**Financial Disclosure:** There are no financial disclosure laws for public officials.
Public Access to Information: The law provides for public access to information. Human rights organizations considered the mechanism for gaining access deficient and assisted individuals in obtaining information. There was a narrow list of exceptions outlining the grounds for nondisclosure but no specific timeline for the relevant authority to disclose or respond. There are no criminal or administrative sanctions for not providing a response, and there is no appeal mechanism for review of a disclosure denial. There were public outreach activities via radio call-in shows encouraging use of the access process.

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

There were no restrictions on international human rights groups. A domestic human rights group, the SVGHRA, generally operated without government restriction, investigating and publishing its findings on human rights cases. The government was somewhat receptive to its views, but cooperation was limited.

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

The law provides for equal treatment regardless of race, sex, national origin, political opinion, and religion. The government generally enforced this provision. Persons who are not citizens may not receive full protections under the constitution.

Women

Rape and Domestic Violence: Rape, including spousal rape, is illegal, and the government generally enforced the law when victims came forward. Sentences for rape begin at 10 years’ imprisonment and depend on the magnitude of the offense and the age of the victim. Judges rarely imposed the maximum penalty of life imprisonment. Authorities referred allegations of rape or any abuse against women to the police. Police were generally responsive to these complaints, but fear of reprisal may have deterred some victims from seeking assistance. Police and human rights groups reported that perpetrators commonly made payoffs to victims of rape or sexual assault in exchange for victims not pressing charges. Although no special unit is devoted to these types of crimes, authorities had specially trained some officers to handle them.

Civil society groups reported that rape and violence against women remained a serious and pervasive problem. The law does not criminalize domestic violence
specifically, but it provides protection for victims. Authorities could bring charges in cases involving domestic violence under assault, battery, or other similar laws, but police were often reluctant to follow up on domestic violence cases. As a result, perpetrators of such crimes against women often enjoyed impunity. The Division of Gender Affairs offered different programs to assist women and children. Counseling was available through a church-run organization. The Ministry of National Mobilization operated a crisis center for survivors of domestic violence; however, the shelter was reported to be unstaffed and access for victims was limited.

**Sexual Harassment**: The law does not specifically prohibit sexual harassment, although authorities could prosecute it under other laws, which local human rights groups and women’s organizations considered ineffective.

**Reproductive Rights**: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have access to the information and means to do so, free from discrimination, coercion, or violence.

**Discrimination**: Women enjoy the same legal rights to family, nationality, and inheritance as men, although in practice many women were marginalized due to financial dependence. Women received an equitable share of property following separation or divorce. The law requires equal pay for equal work, and authorities generally enforced it.

**Children**

**Birth Registration**: Citizenship is derived by birth within the country’s territory or from either of one’s parents. There was universal birth registration, usually within a few days of a child’s birth.

**Child Abuse**: The law provides a limited legal framework for the protection of children. The Family Services Division of the social development ministry monitored and protected the welfare of children. The division referred all reports of child abuse to the police for action and provided assistance in cases where children applied for protection orders with the family court. Reports of unlawful sexual intercourse with children under 15 remained a problem, and these reports were linked to transactional sex with minors. Such cases were often difficult to prosecute, since witnesses were reluctant to testify and discussion of these types of abuse could be considered taboo. Despite these challenges, the DPP successfully
prosecuted a number of cases. The government enacted legislation in 2013 to provide special protections for child witnesses, including a protective order preventing the defendant from personally cross-examining the victim, providing evidence from a remote location, and video-recorded testimony. As of October it was too early to determine whether this legislation improved the judicial process for child victims and their families pursuing criminal prosecution because it had not been tested. Government and NGO interlocutors indicated that child abuse, including neglect and physical, sexual, and emotional abuse, and incest were significant problems, although statistics were not available.

Early and Forced Marriage: The legal minimum age for marriage is 18, and parental consent was required for underage marriage.

Sexual Exploitation of Children: Some male and female teenagers engaged in prostitution and transactional sex. The minimum age of consensual sex is 16. The penalty for causing prostitution of a woman 15 or older is 14 years’ imprisonment. The penalty for causing prostitution of a girl under 15 is seven years. The law prohibits statutory rape with special provisions for those less than 13 years of age. The penalty for statutory rape of a girl over 13 but less than 16 is five years imprisonment; for girls under age 13, it is life imprisonment. NGO and government sources reported that some mothers of girls might pressure their children to have sexual relations with older men as a way to supplement family income. The law does not specifically prohibit child pornography.


Anti-Semitism

There was no organized Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities
The law prohibits discrimination against persons with physical and sensory, mental and intellectual disabilities in employment, access to health care, and the provision of other state services and the government generally observed these prohibitions. The law does not mandate access to buildings for persons with disabilities and access for such persons generally was difficult. NGOs reported that government funding for organizations supporting people with disabilities was insufficient to meet disabled people’s needs. While the law prohibits discrimination against persons with disabilities in employment, NGOs reported subtle discrimination in hiring practices throughout the workforce but noted the government’s strong attempt to recruit and hire people with disabilities through programs such as the Youth Employment Service.

Education was provided until age 21 for persons with disabilities, and the government partially supported a separate school for persons with disabilities. Persons with disabilities also could attend public schools. A separate rehabilitation center treated an average of five persons daily. The Ministry of National Mobilization, Social Development, NGO Relations, Family, Gender Affairs, and Persons with Disabilities is responsible for assisting persons with disabilities.

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

Consensual same-sex conduct is illegal under indecency statutes, and some sexual activity between men is also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse acts carry a maximum penalty of 10 years in prison, although these laws were rarely enforced. No laws prohibit discrimination against a person on the basis of sexual orientation or gender identity.

Anecdotal evidence suggested there was social discrimination against lesbian, gay, bisexual, transgender, and intersex persons, although local observers believed such attitudes of intolerance were slowly improving. Members of professional and business classes were more inclined to conceal their sexual orientation.

**HIV and AIDS Social Stigma**

HIV infection rates existed in less than 1 percent of the population, according to the National AIDS Program. Although no statistics were available, anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS, especially in employment. Approximately a dozen NGOs were
working on AIDS-related issues, but funding difficulties led to cutbacks in these services.

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 unions of their choice, bargain collectively, and conduct legal strikes, and such strikes occurred during the year. The law prohibits antiunion discrimination and dismissal for engaging in union activities. Although it does not require reinstatement of workers fired for union activity, a court may and often did order reinstatement.

The law does not require employers to recognize a particular union as an exclusive bargaining agent. The law provides that if both parties consent to arbitration, the minister of labor can appoint an arbitration committee from the private sector to hear the matter. The law provides for establishment of an arbitration tribunal and a board of inquiry in connection with trade disputes and allows provision for the settlement of such disputes. Authorities formed arbitration panels, which included tripartite representation from government, businesses, and unions, on an ad hoc basis when labor disputes occurred.

Workers providing services deemed essential (defined as electricity, water, hospital, and police) are prohibited from striking unless they provide at least a 14-day notice to the authorities. Some of the sectors defined as strategic exceed the International Labor Organization standard for essential services.

The government generally enforced labor laws effectively. Government penalties of up to $5,000 Eastern Caribbean Dollars (XCD) ($1,850) generally were sufficient to deter violations.

Freedom of association and the right to collective bargaining were generally respected in practice. The government used special branch police to track which workers participated in an October teachers’ strike.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor; however, the government reported no forced labor investigations, prosecutions, or convictions during the year. The government recognized there were not enough inspectors to
carry out the full extent of their assigned duties. Penalties against forced labor carry punishments of up to 20 years’ imprisonment with fines. These penalties are commensurate with serious crimes and were sufficient to deter violations. Despite the absence of forced labor investigations, anecdotal evidence indicated that a small number of persons--including minors--were vulnerable to forced labor in underground economic activities in the drug trade and prostitution.

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum working age at 14. Compulsory education ends at age 16. The law does not place any restrictions on the number of hours children under 18 may work, and there are no prohibitions against those under 18 working in hazardous industries or environments.

The government did not effectively enforce applicable law regarding child labor. The Department of Labor did not conduct any inspections specifically related to child labor during the year. There were seven labor officers in the labor inspectorate with responsibility for monitoring all labor issues and complaints. The department reported no complaints related to child labor. Covered under its trafficking-in-persons legislation, penalties for child labor could result in 20 years’ imprisonment and were sufficient to deter violations.

There were anecdotal reports of child labor in marijuana production; on family-owned banana plantations, particularly during harvest time; and in family-owned cottage industries. There were also reports of commercial sexual exploitation of children (see section 6, Children).

See the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings.

d. Discrimination with Respect to Employment or Occupation

Labor laws and regulations prohibit discrimination regarding sex and disability, but no laws prohibit discrimination against a person on the basis of race, religion, political opinion, national origin, social origin, age, language. Whether the constitutional provision covers sexual orientation and/or gender identity, or HIV-positive status is a matter of interpretation and had not been tested in court.
e. Acceptable Conditions of Work

Minimum wages, last updated in 2008, varied by sector and type of work. In agriculture the minimum wage for workers provided shelter was $32 XCD ($11.85) per day or $56 XCD ($20.75) if shelter was not provided. For industrial workers it was $40 XCD ($14.80) per day. In August the government established a council to evaluate the minimum wage. Most workers earned more than the minimum wage. There is no official poverty income level.

The law prescribes hours of work according to category, such as industrial employees (40 hours per week), professionals (44 hours per week), and agricultural workers (30 to 40 hours per week). The law provides that workers receive time-and-a-half for hours worked over the standard workweek. There was a prohibition against excessive or compulsory overtime, which authorities effectively enforced.

The law provides workers with paid holiday leave. The number of days of entitlement varied according to occupation.

Legislation concerning occupational safety and health was outdated. Workers have the right to remove themselves from unsafe work environments without jeopardizing their employment, but authorities did not effectively enforce this right in practice.

Enforcement of regulations was ineffective. Department of Labor inspectors conducted regular wage and workplace safety inspections. The Ministry of Agriculture conducted inspections and worksite visits in the agriculture sector related to occupational safety and health. The Department of Labor stated that it did not have the legal authority to impose fines for violations but conducted follow-up inspections to assess if the shortfalls had been addressed. Workers who receive less than the minimum wage can file a claim with labor inspectors, who investigate and, if warranted, refer the matter to arbitration. The department received very few complaints concerning minimum wage violations but received complaints regarding wrongful dismissal. Department officials indicated that workplace violations were rare, since most employers adhered to the minimum labor standards. The department offered voluntary labor dispute mediation and advised employers and employees of their labor rights through a weekly radio program.
Committee on the Rights of the Child

Concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines*

I. Introduction

1. The Committee considered the combined second and third periodic reports of Saint Vincent and the Grenadines (CRC/C/VCT/2-3) at its 2181st and 2182nd meetings (see CRC/C/SR.2181 and 2182), held on 26 and 27 January 2017, and adopted the present concluding observations at its 2193rd meeting, held on 3 February 2017.

2. The Committee welcomes the submission of the combined second and third periodic reports of the State party, which allowed for a better understanding of the situation of children’s rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level delegation of the State party.

II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the progress achieved by the State party in various areas, including the ratification of or accession to international instruments, in particular the accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2005 and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2011, as well as the adoption and amendment of a number of new legislative acts and institutional and policy measures related to children’s rights since its last review, including the proclamation of the Status of Children Act (2011) and the Children (Care and Adoption) Act (2010). The Committee also welcomes the establishment of the National Child Rights Committee and the improvements made to the birth registration system, which now allows for timely and universal birth registration. It commends the State party for having maintained its basic services at a constant level and for having reduced poverty despite the impact of the global economic crisis and a series of natural disasters.

* Adopted by the Committee at its seventy-fourth session (16 January-3 February 2017).

GE.17-03999(E)
III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44 (6))

The Committee’s previous recommendations

4. The Committee recommends that the State party take all measures necessary to address the recommendations made in 2002 (CRC/C/15/Add.184) that have not yet been implemented or that have not been sufficiently well implemented, in particular those related to independent monitoring (para. 9 (c)), data collection (para. 14), the definition of the child (para. 18), discrimination (para. 20), the best interests of the child (para. 23), respect for the views of the child (para. 25), ill-treatment and other forms of violence (para. 29), the family environment (para. 31), abuse and neglect (para. 39), adolescent health (para. 41), economic exploitation (para. 45), the illicit use of drugs and other substances (para. 51) and the administration of juvenile justice (para. 53).

Legislation

5. The Committee notes that some progress has been made to harmonize the State party’s legislation with the Convention, including through the proclamation of the Children (Care and Adoption) Act (2010) in 2015. However, it is concerned that the process has been slow and that several key pieces of legislation relevant to children, including the Status of Children Act (2011), are not yet fully in line with the Convention.

6. The Committee recommends that the State party expedite the process of fully harmonizing its legislation with the Convention, in close consultation with children and civil society organizations, and that, in doing so, it seek technical assistance from the United Nations Children’s Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights.

Comprehensive policy and strategy

7. The Committee welcomes the adoption in 2016 of the national policy framework for the protection of children but is concerned that the framework does not promote the rights of the child.

8. The Committee recommends that the State party expedite the development of a national policy for promoting the rights of the child.

Coordination

9. The Committee notes that the National Child Rights Committee was reformed in 2016 so as to provide regulatory oversight of the implementation of the Convention. However, it is not clear whether that body has a clear mandate and sufficient authority to coordinate the implementation of the Convention across different government ministries.

10. The Committee recommends that the State party strengthen its coordination efforts to implement the Convention, including through a coordination body with a clear mandate and sufficient technical, human and financial resources to operate effectively.

Allocation of resources

11. The Committee notes that in 2015 the State party adopted a performance budgeting structure that made it possible to disaggregate budgetary allocations for child development and protection. Nevertheless, it is concerned that:

(a) The budget lines relating to the areas of child development and protection are insufficiently disaggregated;

(b) Measures to ensure the allocation of funds for the development and protection of children in vulnerable situations, even in situations of crisis, are lacking.
12. With reference to its general comment No. 19 (2016) on public budgeting for the realization of children’s rights, the Committee recommends that the State party set up a budgeting process that includes a child rights perspective, that specifies clear allocations to children in all relevant sectors and agencies and that includes specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for the implementation of the Convention, including by:

(a) Setting performance targets linking child-related programme goals to budget allocations and actual expenditures, to allow for monitoring of the outcomes and of the impact on children, including those in vulnerable situations;

(b) Developing detailed budget lines and codes for all planned, enacted, revised and actual expenditures that directly affect children;

(c) Ensuring transparent and participatory budgeting through public dialogue, especially with children;

(d) Defining budgetary lines for children in disadvantaged or vulnerable situations who may require affirmative social measures and ensuring that those lines are maintained even in situations of economic crisis, natural disaster or other emergency;

(e) Seek technical assistance from UNICEF in that regard.

Data collection

13. The Committee reiterates its previous concluding observations (see CRC/C/15/Add.184, para. 14) and urges the State party to:

(a) Establish an effective mechanism for the systematic collection of disaggregated quantitative and qualitative data incorporating all the areas covered by the Convention and covering all children below the age of 18 years;

(b) Make use of indicators and data in the formulation of policies and programmes for the effective implementation of the Convention;

(c) Seek technical assistance from UNICEF, among others.

Independent monitoring

14. The Committee notes that the National Child Rights Committee can receive complaints from children with regard to violations of their rights. Nevertheless, it is concerned that the structure of that Committee does not guarantee its independence when carrying out monitoring activities.

15. The Committee recommends that the State party establish an independent structure, in line with its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child and in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor children’s rights, to receive complaints of violations of children’s rights and to address them in a child-sensitive manner.

Children’s rights and the business sector

16. The Committee is concerned at the lack of regulations and procedures to protect children from exploitation in the tourism sector.

17. In the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, the Committee recommends that the State party examine and adapt its legislative framework to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party’s territory, especially in the tourism sector, in relation to the sale and sexual and labour exploitation of and trafficking in children.
B. Definition of the child (art. 1)

18. The Committee is seriously concerned that the age of marriage under the Marriage Act (1926) is 15 years for girls and 16 years for boys.

19. The Committee urges the State party to expeditiously take measures to amend the Marriage Act (1926) to raise the minimum age of marriage to 18 years for girls and boys, as part of the ongoing process of harmonizing national legislation with the Convention.

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

20. The Committee notes that the Status of Children Act (2011) eliminated provisions discriminating against children born out of wedlock in matters of inheritance. However, it is concerned that the legislation of the State party does not fully reflect the provisions of article 2 of the Convention. It is also concerned about reports of discrimination against the following groups of children:

(a) Children with disabilities, including children with intellectual and psychosocial disabilities;

(b) Children living with or affected by HIV/AIDS.

21. The Committee recommends that the State party:

(a) Amend its legislation to ensure that it corresponds fully with the provisions of article 2 of the Convention and to ensure the full implementation of non-discriminatory provisions;

(b) Adopt legislation to ensure the provision of the services necessary for the realization of substantive equality for and the protection of the rights of children with all types of disabilities, such as physical, sensory, intellectual and psychosocial disabilities, including the provision of reasonable accommodation so that they can lead an autonomous life in the community and access inclusive education;

(c) Conduct awareness-raising campaigns directed at children and adolescents, the general public and professionals working with children to provide accurate information on HIV/AIDS and to eliminate stigma and discrimination against children living with or affected by HIV/AIDS.

22. The Committee is also concerned at de jure and de facto discrimination against lesbian, gay and bisexual children, in particular the criminalization of consensual same-sex conduct between men under the Criminal Code (1990), which may penalize boys above 16 years of age for same-sex sexual activity. It is also concerned about the perception, reflected in policies and practices, that lesbian, gay and bisexual children have a psychosocial disorder.

23. The Committee recommends that the State party repeal the legal provisions criminalizing same-sex conduct between males above 16 years of age, that it raise public awareness of the equality of and the importance of not discriminating against lesbian, gay and bisexual people and that it fully respect the diversity of children’s sexual orientation.

Best interests of the child

24. The Committee welcomes the explicit recognition in the Children (Care and Adoption) Act (2010) of the right of the child to have his or her best interests taken as a primary consideration and the commitment made by the delegation during the dialogue to harmonize all relevant national legislation with the Convention during 2017. However, it remains concerned that the term used in other pieces of legislation is “welfare of the child”, which does not fully correspond with the best interests of the child, and that children’s right
to having their best interests taken as a primary consideration is not fully implemented in decisions affecting them, including in the areas of education and health.

25. In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party:

   (a) Expedite the inclusion of that right in all relevant legislation, as part of the ongoing harmonization process;

   (b) Consistently interpret and apply that right in all legislative, administrative and judicial proceedings and decisions, as well as in all policies, programmes and projects that are relevant to and have an impact on children, including in the areas of education and health;

   (c) Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving them due weight as a primary consideration.

Right to life, survival and development

26. The Committee is deeply concerned that the law allows children who are 16 and 17 years old to be sentenced to death.

27. The Committee urges the State party to amend the Criminal Code to explicitly prohibit the sentencing of persons under 18 years of age to the death penalty.

Respect for the views of the child

28. The Committee notes with appreciation that the Children (Care and Adoption) Act (2010) explicitly includes the right of children to express their views. The Committee also notes that, during the dialogue, the delegation said that the National Youth Parliament programme would be implemented. However, it is concerned that:

   (a) There are no procedures or protocols in place to ensure respect for the views of the child in administrative and judicial proceedings;

   (b) There is no structure or programme to ensure that children are involved in regular and systematic consultations in public decision-making.

29. With reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:

   (a) Fully inform all children of their rights under the Convention with a view to allowing them to express their views and facilitating their informed decision-making;

   (b) Ensure that children’s views are given due consideration in courts, schools, relevant administrative and other processes concerning children and in the home through, inter alia, the adoption of appropriate legislation, the training of professionals working with and for children, and the development of operational procedures or protocols for such professionals to ensure respect for the views of children in administrative and judicial proceedings;

   (c) Allocate sufficient technical, human and financial resources to the effective functioning of the National Youth Parliament programme and ensure that the outcome of the programme is systematically fed into public decision-making;

   (d) Ensure the inclusive participation of children in the National Youth Parliament, including of children living outside Saint Vincent, children with disabilities and children affected by HIV/AIDS.
D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Torture and other cruel, inhuman or degrading treatment or punishment

30. The Committee remains concerned about complaints by children of being subjected to police brutality.

31. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals on ending all forms of violence against children, the Committee urges the State party to:

   (a) Prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment by the police against children;
   
   (b) Ensure the availability of complaint mechanisms;
   
   (c) Prosecute alleged perpetrators and punish those convicted;
   
   (d) Provide effective remedies and necessary support to child victims.

Corporal punishment

32. The Committee remains deeply concerned that corporal punishment is legally permitted and widely practised in all settings.

33. With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

   (a) Explicitly prohibit, through legislative and administrative provisions, the use of corporal punishment in all settings, namely in schools, childcare institutions, including early childhood care institutions, alternative care settings, in the home and in the administration of justice;

   (b) Raise the awareness of parents, professionals working with children and the public in general to the harm caused by corporal punishment and promote positive, non-violent and participatory forms of child-rearing and discipline;

   (c) Seek technical assistance from UNICEF in that regard, including on the child-friendly school programme.

Abuse and neglect

34. The Committee is concerned at:

   (a) The persistently high prevalence of child abuse, including neglect and physical, sexual and emotional abuse and incest in the State party;

   (b) The low rate of prosecution and conviction for the crime of sexual abuse of children, including incest.

35. With reference to its general comment No. 13 and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, the Committee recommends that the State party:

   (a) Expedite the adoption of the child abuse protocols dealing with the reporting of, response to and treatment of child abuse and neglect;

   (b) Continue awareness-raising and education programmes, including campaigns, and encourage community-based programmes aimed at preventing and addressing domestic violence, child abuse and neglect, including by involving former victims, volunteers and community members and providing them with training and support;

   (c) Ensure the availability and accessibility of complaints mechanisms;
(d) Proactively investigate cases of violence against children, in particular the sexual abuse of children, including incest, prosecute perpetrators and, if convicted, punish them with appropriate sanctions;

(e) Ensure the allocation of adequate human, technical and financial resources to the Directorate of Family Service and the Family Court necessary for the effective implementation and adjudication of the laws relevant to the prevention of and protection from child abuse and neglect, in particular the Children (Care and Adoption) Act (2010);

(f) Ensure that all professionals and staff working with and for children are provided with the necessary training, and provide systematic training to judges, prosecutors, the police and other law enforcement officers on how to prevent and monitor domestic violence, child abuse and neglect, and to receive, investigate and prosecute complaints about such violence in a child- and gender-sensitive manner;

(g) Provide child victims of violence, abuse and neglect and their families with effective remedies and the necessary support, including recovery and social reintegration assistance;

(h) Continue seeking technical assistance from UNICEF in this regard.

Sexual exploitation

36. The Committee is concerned that:

(a) Child prostitution is frequently justified by families and child victims themselves as a mechanism for coping with poverty;

(b) There are no standards and procedures for prohibiting child pornography;

(c) Legal defence arguments based on the belief that the victim was over 15 years of age result in impunity for the perpetrators of sexual offences.

37. The Committee recommends that the State party:

(a) Develop an effective and comprehensive policy for preventing the sexual exploitation of children, including through child pornography, and for promoting the recovery and social reintegration of child victims, taking into consideration the root causes that place children at risk of such exploitation;

(b) Abolish the provision of the Criminal Code allowing for legal defence arguments to be based on the belief that the victim is over 15 years of age;

(c) Conduct awareness-raising and education programmes, including campaigns, aimed at preventing and responding to the sexual exploitation of children, targeting parents, children and community members.

E. Family environment and alternative care (arts. 5, 9-11, 18 (1) and (2), 20-21, 25 and 27 (4))

Family environment

38. The Committee is concerned:

(a) That many families are headed by single mothers, that fathers often fail to provide maintenance and other support and that there is no effective mechanism for the recovery of child maintenance payments in States other than those that are members of the Caribbean Community (CARICOM);

(b) That the Maintenance Act obliges parents to provide maintenance for their children only until they are 16 years of age;

(c) That many children are left in the care of family members or other persons by parents migrating abroad.
The Committee recommends that the State party:

(a) Strengthen its efforts to secure child maintenance payments in adequate amounts and extend the obligation of parents to make such payments for children up to the age of 18 years;

(b) Undertake a comprehensive study on all the ways in which the migration of parents affects children left behind in the country and the role of child protection and social protection systems in providing services for children affected by migration;

(c) Take all measures necessary to ensure the recovery of maintenance payments from abroad, including from States not members of CARICOM, by entering into bilateral agreements with those States where most migrant workers from Saint Vincent and the Grenadines are employed;


The Committee is concerned that there are not enough social workers and other human resources for the implementation of the newly proclaimed Children (Care and Adoption) Act (2010).

The Committee recommends that the State party take measures to secure a sufficient number of social workers and other personnel for the full and effective implementation of the Children (Care and Adoption) Act (2010).

The Committee recommends that the State party consider ratifying the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

The Committee is concerned:

(a) That limited information and data on children with disabilities are available and that the general public is not sufficiently aware of the existence of children with disabilities and of their rights, which may undermine efforts to identify disabilities early on and to intervene in a timely and effective manner;

(b) That children with disabilities are not included, as a matter of policy, into regular classes in regular schools, that many of them remain out of school and that an insufficient number of teachers have the skills needed to provide an inclusive education;

(c) That children with disabilities do not have access to public transport and public buildings owing to the existence of physical barriers;

(d) That the Immigration (Restriction) Act uses derogatory terminology in respect of persons with disabilities and that foreign children with disabilities may be denied entry into the State party on the ground of their disabilities, including in cases of family reunification.
With reference to its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to:

(a) Adopt a human rights-based approach to disability;

(b) Set up a comprehensive strategy for the inclusion of children with disabilities, including those with physical, sensory, intellectual and psychosocial disabilities;

(c) Collect disaggregated data on children with disabilities;

(d) Develop an efficient system for detecting disability at an early stage, in order to provide the support and the services necessary for the fullest possible social integration and individual development of children with disabilities;

(e) Ensure that laws, policies and programmes, including the education development plan, prioritize inclusive education over the placement of children in specialized institutions and classes;

(f) Train and raise the awareness of all teachers and other professionals on inclusive education and encourage the hiring of teachers with disabilities;

(g) Ensure that children with disabilities have access to public transportation and public buildings, including all schools and hospitals;

(h) Revise the Immigration (Restriction) Act to eliminate derogatory terminology on persons with disabilities and abolish the denial of entry into the State party on the ground of disability;

(i) Undertake awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children.

Adolescent health

The Committee is concerned about:

(a) The high rate of pregnancy and HIV infection among adolescents;

(b) The fact that, as a result of social attitudes and cultural norms, adolescents have limited access to contraceptives;

(c) The existence of restrictive laws and practices on abortion that lead adolescent girls to resort to unsafe, clandestine, abortions, which in turn results in increased morbidity.

With reference to its general comments No. 4 (2003) on adolescent health and development in the context of the Convention and No. 20 (2016) on the implementation of the rights of the child during adolescence, the Committee recommends that the State party:

(a) Adopt a comprehensive gender-sensitive sexual and reproductive health policy for adolescents in which it is recognized that unequal access by adolescents to such information, commodities and services amounts to discrimination;

(b) Provide free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person, paying special attention to preventing early pregnancy and sexually transmitted infections;

(c) Ensure that sexual and reproductive health education is part of the mandatory school curriculum and is directed at adolescent girls and boys;

(d) Provide adolescents with easy access to contraceptives;

(e) Ensure that adolescents have access to confidential HIV testing and counselling services and to evidence-based HIV prevention and treatment programmes provided by trained personnel who fully respect the rights of adolescents to privacy and non-discrimination;
(f) Continue its efforts to make health professionals more aware of the right to health of adolescents and build their capacity to deliver adolescent-responsive and non-discriminatory health services;

(g) Decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to safeguarding the best interests of pregnant adolescents and ensure that their views are always heard and given due consideration in abortion-related decisions.

Drug and substance abuse

47. The Committee is concerned that drug and substance abuse and related violence remain a problem in the society. It is further concerned that:

(a) There is insufficient support for children who abuse substances;

(b) Children who use illicit drugs and substances are subject to excessively punitive and repressive measures.

48. With reference to its general comments No. 4 and No. 20, the Committee recommends that the State party:

(a) Intensify its programmes on child substance abuse to ensure children’s access to adequate support for prevention, treatment, consultation, rehabilitation and social reintegration;

(b) Consider alternatives to punitive or repressive drug control policies in relation to adolescents.

Nutrition

49. The Committee notes that child undernutrition in the State party is declining. However, it is concerned that a large number of children in the State party face food insecurity. It is also concerned about the high rate of obesity among children and the lack of information on breastfeeding.

50. The Committee recommends that the State party:

(a) Continue its efforts to reduce child malnutrition, including child overnutrition, and child food insecurity, including through its Zero Hunger initiative;

(b) Collect information on breastfeeding; develop a national programme for the protection, promotion and support of the decision to breastfeed exclusively for a minimum of six months; fully implement the International Code of Marketing of Breast-milk Substitutes; provide appropriate support to mothers and babies through counselling in hospitals, clinics and the community at large; implement the baby-friendly hospital initiative throughout the country; and raise awareness of the importance of breastfeeding among families and the general public and on the role they can play in supporting breastfeeding through comprehensive campaigns;

(c) Ensure the active participation of children in developing, implementing and monitoring policies and plans on food and nutrition security;

(d) Seek technical assistance from UNICEF and the Food and Agriculture Organization of the United Nations in that regard.

Impact of climate change on the rights of the child

51. Noting that the State party is prone to natural disasters, and drawing attention to target 1.5 of the Sustainable Development Goals on building the resilience of the poor and those in vulnerable situations by 2030 so as to reduce their vulnerability to extreme climate-related events, economic, social and environmental shocks and disasters, the Committee recommends that the State party:

(a) Identify, including through the collection of disaggregated data, the types of risks children would face in the event of a variety of natural disasters;
(b) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies or programmes addressing the issues of climate change and disaster risk management;

(c) Seek bilateral, multilateral, regional and international cooperation in the areas of disaster risk reduction, mitigation and adaptation to the effects of climate change.

Standard of living
52. The Committee notes the reduction of poverty and the improved level of basic social services in the State party, despite the impact of the global economic crisis and of a series of natural disasters. However, it is concerned that:

(a) Child poverty remains a major challenge in the State party, in particular in rural areas;

(b) The data necessary for understanding the situation and causes of child poverty remain scarce.

53. Drawing attention to target 1.2 of the Sustainable Development Goals, on reducing by 2030 at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions, the Committee recommends that the State party:

(a) Collect comprehensive and disaggregated data on child poverty and actively utilize such data in policymaking and in monitoring the implementation of policies and programmes relevant to poverty reduction;

(b) Actively consult with and involve children, including those living in and at risk of poverty and those living in rural areas, as well as their families, in developing, evaluating and monitoring the implementation of policies and programmes relevant to poverty reduction, social protection and development, in order to ensure that such policies and programmes effectively respond to the needs of children living in poverty;

(c) Consider developing a national strategy or action plan on poverty reduction and development that specifically addresses the realization of the rights of all children, in particular those living in rural areas.

G. Education, leisure and cultural activities (arts. 28-31)

Education, including vocational training and guidance
54. The Committee welcomes the substantial efforts made under the “education revolution”, including the proclamation of the Education Act (2006) in 2015, which established universal access to primary and secondary education for children between 5 and 16 years of age, and the provision of early childhood education and care to the majority of children between 3 and 5 years of age. However, the Committee is concerned that:

(a) The hidden costs of education, such as those linked to books and specialized services, are undermining access to education, including compulsory education, by children living in poverty;

(b) Girls drop out of school or choose an alternative education owing to pregnancy;

(c) Many children are not equipped to access gainful work or to enrol themselves for higher education after they have completed their primary and secondary education owing to the low quality of education and the inability of primary and secondary education to adapt to the needs of changing societies and communities.

55. In the light of its general comment No. 1 (2001) on the aims of education, and taking note of targets 4.1 and 4.2 of the Sustainable Development Goals, the Committee recommends that the State party:
(a) Take measures to reduce the burden on vulnerable families caused by the hidden costs of their children’s education;

(b) Strengthen efforts to keep pregnant girls in the mainstream school system and reintegrate pregnant girls and young mothers into the mainstream school system by providing support services such as appropriate sexual and reproductive health services, counselling in parenting skills and adequate childcare facilities;

(c) Improve the quality of education at all levels, including through a review of the curriculum and continuous training opportunities for teaching staff, in order to make education relevant to children’s social, cultural, environmental and economic context and to their present and future needs and to equip all children with essential life skills.

Rest, leisure, recreation and cultural and artistic activities
56. With reference to its general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, the Committee recommends that the State party promote cultural activities through extracurricular and other cultural programmes in the community for children, as well as occasions to enjoy cultural practices and arts of diverse ethnic groups, in particular those living outside of Saint Vincent, and make available safe public places in which all children can play.

H. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)

Asylum-seeking and refugee children
57. The Committee notes the State party’s cooperation with the Office of the United Nations High Commissioner for Refugees on the temporary acceptance of asylum seekers and refugees, as well as on Caribbean-level responses to the mixed migration flow. The Committee also notes that there is no official record of refugee children in the State party. However, it is concerned that the State party has not adopted national asylum and refugee legislation nor an effective refugee status determination mechanism and treats asylum seekers and refugees as migrants.

58. The Committee recommends that the State party adopt national legislation and procedures on asylum and refugee status in line with the 1951 Convention relating to the Status of Refugees, which the State party ratified.

Economic exploitation, including child labour
59. The Committee welcomes the ratification of the Minimum Age Convention, 1973 (No. 138), of the International Labour Organization by the State party on 25 July 2006. However, the Committee is concerned that:

(a) There is a lack of data on child labour;

(b) The legal minimum age for admission to employment is set at 14 years, which is below the age of completion of compulsory schooling (16 years);

(c) Some children reportedly engage in hazardous work, including in the agricultural sector, the commercial sex industry and the illicit trade in drugs;

(d) There is no legal prohibition on the employment of children below 18 years of age in hazardous work, except for certain night work in industry.

60. The Committee recommends that the State party:

(a) Undertake a survey to assess the scope and nature of child labour in all sectors;
(b) As part of the ongoing process of harmonizing national law with the Convention, raise the minimum age for employment or work to 16 years, in order to harmonize it with the age of completion of compulsory schooling;

(c) Enact or amend legislation to prohibit the employment in hazardous work of children below 18 years of age and to determine the types of work that are hazardous and that are to be prohibited for children under 18 years of age;

(d) Seek technical assistance from the International Programme on the Elimination of Child Labour of the International Labour Office in that regard.

Children in street situations

61. The Committee recommends that the State party:

(a) Update the study conducted in 2008 and regularly collect disaggregated data on children in street situations, and, based on the outcome of the study and the data collected, develop a national strategy for recovering and reintegrating children in street situations, for providing support to families of such children and their communities and for preventing children from living and working in the street;

(b) Take all measures necessary to ensure that children in street situations are provided with care, adequate food, clothing, health care and educational opportunities;

(c) Ensure that interventions made for and that the support provided to children in street situations, including reintegration with family or placement in alternative care, are provided with full respect for the child’s best interests and giving due weight to their autonomous views in accordance with their age and maturity.

Sale, trafficking and abduction

62. The Committee welcomes the national anti-trafficking action plan. However, it is concerned that:

(a) The State party remains a country of origin, transit and destination for trafficking in persons, including children, for the purpose of sexual exploitation and forced labour, primarily in agriculture;

(b) The implementation of the Prevention of Trafficking in Persons Act (2011) and the corresponding national plan have been weak, resulting in very few victims of trafficking being identified and very few perpetrators of trafficking being investigated, prosecuted and convicted;

(c) The protection and specialized services for child victims of trafficking anticipated in the Act have not yet been provided;

(d) Reportedly, foreign victims of trafficking have not been rigorously protected, as envisaged in the Act, against deportation to countries where they face hardship or retribution.

63. The Committee recommends that the State party:

(a) Strengthen the effective implementation of the Prevention of Trafficking in Persons Act (2011), in particular by ensuring that victims are identified and perpetrators are held accountable;

(b) Ensure effective provision of referral and other services to child victims, including by developing detailed guidelines on the protection of child victims, raising awareness and building the capacity of immigration and law enforcement officials, social workers, labour inspectors, members of the judiciary and civil society organizations;

(c) Apply the principle of non-refoulement to countries where foreign victims face hardship or retribution, and provide child victims of trafficking with the opportunity to apply for asylum and enjoy the corresponding rights and services.
Administration of juvenile justice

64. The Committee notes that laws on the administration of juvenile justice are currently being revised and that such revision is expected to be completed in 2018. The Committee is nonetheless concerned that:

(a) The age of criminal responsibility, fixed at 8 years of age, remains extremely low and children who are 16 and 17 years old are treated as adults in the criminal justice system;

(b) Children who are 16 and 17 years old can be sentenced to an indeterminate period of detention at “Her Majesty’s pleasure” under section 24 (2) of the current Criminal Code, although it was clarified during the dialogue that this is no longer the case;

(c) The Corporal Punishment of Juveniles Act has not been amended and allows the caning of children who have been found guilty of a crime;

(d) There is no legal provision to guarantee that the deprivation of liberty of children is used only as a measure of last resort and for the shortest possible period of time, and children are detained in the same detention facilities as adults in an inappropriate condition;

(e) Children in conflict with the law who live outside Saint Vincent have less access to the juvenile justice system than those in Saint Vincent, as the Juvenile Court, an entity of the Family Court, is based in Saint Vincent and only occasionally goes to other islands;

(f) There is no public legal assistance for children in conflict with the law, leaving children from disadvantaged backgrounds without such support;

(g) The restorative judicial measures for children have not been put in place;

(h) Children in need of protection are in some cases housed in the same detention facilities as children in conflict with the law.

65. In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards through the ongoing harmonization process. In particular, the Committee urges the State party to:

(a) Facilitate the adoption by Parliament of the Child Justice Bill (a model bill of the Organization of Eastern Caribbean States), which defines children as persons under 18 years of age and sets the minimum age for criminal responsibility at 12 years;

(b) Enact legislation explicitly prohibiting life imprisonment without release or parole and corporal punishment as a sentence for any offence committed while the offender was under 18 years of age and regularly review the sentences imposed on children under 18 years of age for early release;

(c) Ensure that detention is used as a measure of last resort and for the shortest possible period of time and that the provision allowing for such a measure to be taken is reviewed on a regular basis with a view to withdrawing it, and promote alternative measures to detention, such as diversion, probation, mediation, counselling and community service, wherever possible;

(d) In cases where detention is unavoidable, ensure that the children are not detained together with adults and that detention conditions are compliant with international standards, including with regard to access to education and health services;

(e) Improve access to juvenile justice outside of Saint Vincent, including through training magistrates on other islands on juvenile justice;

(f) Provide qualified and independent legal aid to children in conflict with the law at an early stage and throughout the legal proceedings;

(g) Introduce restorative justice measures for children;
(b) Ensure that children in need of protection are not housed together with children in conflict with the law.

I. Ratification of the Optional Protocol to the Convention on a communications procedure

66. The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify the Optional Protocol to the Convention on a communications procedure.

J. Ratification of international human rights instruments

67. The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography, the reports of which are both overdue as of January 2017.

K. Cooperation with regional bodies

68. The Committee recommends that the State party cooperate with the Organization of American States (OAS) and CARICOM on the implementation of the Convention and other human rights instruments, both in the State party and in other OAS and CARICOM member States.

IV. Implementation and reporting

A. Follow-up and dissemination

69. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined second and third periodic reports, the written replies to the list of issues and the present concluding observations be made widely available in the languages of the country.

B. Next report

70. The Committee invites the State party to submit its combined third to sixth periodic reports by 24 May 2022 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee’s harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.

71. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.
TAB 8
UNEDITED VERSION

Human Rights Council
Working Group on the Universal Periodic Review
Twenty-fifth session
Geneva, 2-13 May 2016

Draft report of the Working Group on the Universal Periodic Review*

Saint Vincent and the Grenadines

* The annex to the present report is circulated as received
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approach will be tabled for Parliament soon and seeks to provide ample diversion and detention modalities using restorative practices.

15. Saint Vincent and the Grenadines also continue to strengthen its national policy framework on gender based violence. There is an ongoing Anti-violence Campaign that commenced in 2014, which focuses on increasing awareness of gender-based violence issues to children and communities. To strengthen support for advancing the cause for an anti-violence campaign, a Victims' Support Program was established to provide psychosocial and socio-economic support to victims.

16. The country continues also to implement forward-looking policies aimed at improving and ensuring an adequate standard of living for all as articulated in the National Report. Saint Vincent and the Grenadines continues to support education and health, including sexual reproductive services.

17. The country continues also to strive to achieve zero hunger and zero undernourishment.

18. Despite the fiscal challenges inherent in the devastating effects of floods and storms over the past 5 years as well as the worldwide economic crisis, Saint Vincent and the Grenadines refuses to allow anything to slow its march towards doing the best that it can in the circumstances to ensure that all of its citizens enjoy their fundamental rights and freedoms; live in a fair and just society; and realize increased social and economic development.

B. Interactive dialogue and responses by the State under review

19. During the interactive dialogue, 46 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report. All written statements of the delegations, to be checked against delivery on the United Nations Webcast archives, are posted on the extranet of the Human Rights Council when available.

20. The (Venezuela (Bolivarian Republic of)) recognized that Saint Vincent and the Grenadines had made progress in the incorporation of the gender perspective in health, education, agriculture and social services.

21. Algeria welcomed the improvements achieved since the first review in the fields of domestic violence and discrimination against women, and measures to ensure access for persons with special needs to the mainstream educational system.

22. Argentina praised Saint Vincent and the Grenadines for progress made in the fight against domestic violence. It recalled that the last time a person was sentenced to death in the islands was in 1993.

23. Australia commended Saint Vincent and the Grenadines for acceding to a range of international human rights instruments and the opening of the Belle Isle prison. It remained concerned by the conditions at the old prison in Kingstown. Australia regretted that that violence and discrimination against LGBTI persons had not been addressed appropriately.

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3 Available on the UPR extranet at https://extranet.ohchr.org/sites/upr/Sessions/25session/StVincentandtheGrenadines/Pages/default.aspx
24. The Bahamas considered noteworthy the efforts toward ensuring the right to education; the enactment of domestic violence legislation; the inclusion of human rights training in the curriculum of the police force; the construction of a new correctional facility conforming to the Mandela Rules and the priority accorded to poverty eradication.


26. Brazil praised Saint Vincent and the Grenadines for efforts to protect foreigners and citizens from human trafficking and sexual exploitation and the training of police, migration and labour officials on this matter. Brazil encouraged the formally abolition of the death penalty.

27. Canada commended Saint Vincent and the Grenadines on its passing of the Domestic Violence Act in 2015 and encouraged the country to implement its provisions fully and promptly.

28. Chile welcomed the adoption of the domestic violence and the care and adoption of children acts, the implementation of the poverty reduction plan and human rights training for public officials. Chile also noted the steps taken to establish a mechanism for reporting and monitoring.

29. Colombia stressed the commitment of Saint Vincent and the Grenadines to advance in the implementation of the recommendations received during the first cycle, in particular the measures taken in the area of the rights of children and the national plan of action on gender-based violence.

30. Congo noted that the islands were not yet Party to optional protocols to ICESCR, CEDAW and CRC. Congo considered that the international community should provide technical assistance to the country in the area of human rights.

31. Costa Rica was concerned by the absence of an independent electoral body, the underrepresentation of women in elected positions and the delay on reporting to treaty bodies. Costa Rica asked if the possibility of abolishing the death penalty from the national legislation in the near future existed.

32. Cuba commended Saint Vincent and the Grenadines for passing legislation to address violence against women and for its housing policy. It recognized the challenges faced by Small Islands Developing States and considered it necessary for the international community to provide any assistance that the country would request.

33. Denmark recognized progress made by Saint Vincent and the Grenadines in the protection and promotion of human rights since its first review. It encouraged the country to take advantage of the expertise provided by the Treaty Bodies, through an increased focus on reporting to the relevant committees.

34. Ecuador recognized the priority given to the eradication of poverty. It welcomed efforts for the implementation of a National Action Plan to fight gender violence that provided greater guarantees to grant interim measures for the protection of victims.

35. Egypt commended the strategy to eliminate discrimination against women, the adoption of the law to combat domestic violence and efforts to facilitate schooling at the primary and secondary levels. Egypt encouraged Saint Vincent and the Grenadines to foster the human rights legislative framework.

36. France welcomed the engagement of Saint Vincent and the Grenadines in the area of human rights and invited the authorities to continue its reforms in order to ensure full respect of human rights in the country.
37. Germany commended Saint Vincent and the Grenadines for its achievements, in particular with regard to the strengthening of the protection of the rights of women and children and encouraged it to continue to invest in those areas.

38. Ghana noted the adoption of the Domestic Violence Act and a national action plan to end gender-based violence as well as the establishment of the National Committee of the Rights of the Child. It remained however concerned about reports of violence against women and girls.

39. Greece noted progress achieved in the field of domestic violence, including the adoption of the Domestic Violence Act which broadened the definition of domestic violence and strengthened the child protection mechanisms.

40. Guatemala noted with satisfaction the adoption of the new law on domestic violence but remained concerned that the legislation did not criminalize sexual harassment in all spheres. It indicated that steps should be taken to adopt legislation to fully ensure the principle of gender equality.

41. Haiti noted progress made in the reduction of gender-based violence, the improvement of detention conditions and in ensuring access to adequate housing.

42. Honduras noted the adoption of the Domestic Violence Act, as well in achieving universal access to primary and secondary education and efforts to guarantee cultural diversity and the protection of cultural heritages.

43. Responding to comments, the delegation indicated that it wished to acknowledge first the development assistance the country has received from Cuba and Venezuela. It referred in particular to assistance from Cuba in the area of healthcare. Cuba has helped the country with the construction of a hospital, has loaned them doctors and nurses, provided training and ophthalmic services. Both Cuba and Venezuela have also been major contributors to the construction of the soon-to-be opened international airport, and both have contributed to the success of their education revolution.

44. While thanking delegations for their comments and recommendations made so far, the delegation wished to address some of the issues raised.

45. With respect to same-sex relationships, the delegation indicated that these provisions have existed for long time and that the precepts underlying them have overwhelming public support in their Christian society, which adopts Judeo-Christian values in the Caribbean context. The delegation however acknowledged that changes in these values are occurring particularly among sections of the young people, largely as a consequence of influences from outside. This matter therefore is always under review. We must appreciate however all these national sensitivities within the context of the existing value system. It is important however to note that there has been no incidence of imprisonment. To conclude, there is currently no public or legislative appetite to revise any of the laws that prohibit sexual activities between consenting adults.

46. Referring to comments made by one delegation on the need to implement legislation to protect LGBTI persons against violence, the delegation reiterated that every citizen in Saint Vincent and the Grenadines is afforded protection against violence. The Constitution and existing criminal laws ensure this.

47. With respect to the judicial inroads into the death penalty and the moratorium on the death penalty that was recommended, the delegation indicated that it would be hard to support a moratorium at this time. The Constitution enshrines the constitutionality and legitimacy of the death penalty within the Vincentian context. It is a sentence whose legality has been affirmed, reaffirmed and recognised by countless appellate courts over the years, up to and including Britain’s Judicial Committee of the Privy Council. It is supported
TAB 9
Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines*

1. The Committee considered the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines (CEDAW/C/VCT/4-8) at its 1323rd and 1324th meetings, on 20 July 2015 (see CEDAW/C/SR.1323 and 1324). The Committee’s list of issues and questions is contained in CEDAW/C/VCT/Q/4-8/Add.1 and the responses of Saint Vincent and the Grenadines are contained in CEDAW/C/VCT/Q/4-8/Add.2.

A. Introduction

2. The Committee appreciates that the State party submitted its combined fourth to eighth periodic reports, albeit with a protracted delay. It also appreciates the State party’s written replies to the list of issues and questions raised by the pre-sessional working group and welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its delegation, which was represented by the Director of the Social Development Department within the Ministry of National Mobilization, Social Development, Family, Gender Affairs, Persons with Disabilities and Youth, Merissa Finch Burke, and also included a consultant. The Committee appreciates the constructive dialogue that took place between the delegation and the Committee, while noting that some questions were not fully answered.

B. Positive aspects

4. The Committee welcomes the progress achieved since its consideration in 1997 of the State party’s combined initial to third periodic reports (CEDAW/C/STV/1-3 and Add.1) in undertaking legislative reforms, in particular the adoption of the following legislation:

* Adopted by the Committee at its sixty-first session (6-24 July 2015).
(a) Domestic Violence Act of 2015, which prohibits domestic violence and provides enhanced protection for women and girls;
(b) Employment of Women, Young Persons and Children Act of 2009;
(c) Protection of Employment Act of 2004, which specifically prohibits an employer from terminating the services of an employee on various grounds, including sex, marital status, pregnancy, reasonable absence from work due to family emergencies or responsibilities or absence from work during maternity leave.

5. The Committee welcomes the adoption in 2015 of a national action plan on gender-based violence, which provides for a comprehensive policy framework to prevent and combat gender-based violence in the State party.

6. The Committee welcomes the fact that, in the period since the consideration of the previous reports, the State party has ratified or acceded to the following instruments:
   (a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2011;
   (b) United Nations Convention against Transnational Organized Crime and the Protocols thereto, in 2010;
   (c) Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2010;
   (d) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2010;
   (e) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2005;
   (g) Rome Statute of the International Criminal Court, in 2002;
   (h) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2001.

C. Principal areas of concern and recommendations

House of Assembly

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites the House of Assembly, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

Status of the Convention

8. The Committee is concerned that, although it was ratified in 1981, the Convention has not yet been fully incorporated into the national legal order by
means of separate national legislation or court judgements, so that it can be applied directly in the national courts.

9. **The Committee calls upon the State party to proceed without delay with the full incorporation of the Convention into its national legal order.**

**Constitutional framework and discriminatory laws**

10. The Committee acknowledges that article 13 of the Constitution (1979) prohibits discrimination on the basis of sex, but is concerned that there is no specific provision establishing that men and women have equal rights and notes with regret that the 2009 Constitution bill, which included provisions for equal rights and the same legal status for women and men as well as the prohibition of discrimination on the basis of sex, was rejected by a referendum held on 25 November 2009. The Committee notes with concern the absence of a definition of discrimination against women in line with that of the Convention as well as of the principle of equality of women and men in the State party’s legislation. It is further concerned that there is no law on gender equality or comprehensive anti-discriminatory legislation that would incorporate the principle of equality of women and men and define and prohibit all forms of discrimination on the grounds of sex or gender, including direct and indirect discrimination in the public and private spheres, in line with articles 1 and 2 of the Convention.

11. **The Committee recommends that the State party adopt, without delay, new legislation that fully incorporates the principle of equality of women and men as well as a definition and prohibition of discrimination on the basis of sex and gender in the public and private spheres, in line with articles 1 and 2 of the Convention.**

12. The Committee notes with satisfaction that the State party has adopted some anti-discriminatory legislation, but notes with concern that sex-discriminatory provisions continue to exist in its legislation, including in the Criminal Code, the Marriage Act, the Employment of Women, Young Persons and Children Act and the Citizenship Act (1984).

13. **Recalling its previous recommendation (see A/52/38/Rev.1, para. 142), the Committee recommends that the State party review its existing legislation by adopting a clear time frame and targets in relation to the law reform process and amend or repeal all discriminatory provisions, including in the laws mentioned above, to ensure their compatibility with the principle of equality and non-discrimination as enshrined in the Convention.**

**National machinery for the advancement of women**

14. The Committee regards as positive the fact that the Gender Affairs Division, which has been reoriented to focus on gender mainstreaming and gender policy development in all State departments, is currently seeking to promote gender mainstreaming across all government sectors and is collaborating with the Ministry of Finance and Economic Planning to design and implement a gender-responsive budgeting approach to facilitate the process. The Committee notes that the Division is responsible for the development of a multisectoral national gender policy, but is concerned about the low ranking of the national machinery for the advancement of
women in the institutional structure of the State party and the scarce human, technical and financial resources allocated to it.

15. **The Committee recommends that the State party:**

   (a) **Strengthen the authority and visibility of the Gender Affairs Division in the State party’s institutional structure and provide it with adequate human, financial and technical resources to coordinate and work effectively for the integration of a gender perspective into all policies and programmes across all sectors and levels of government;**

   (b) **Consolidate the gender mainstreaming activities by establishing a multisectoral national gender policy without delay and set up a timeline for rolling out the policy;**

   (c) **Implement a gender-responsive-budgeting approach.**

**Temporary special measures**

16. The Committee notes that the State party, in its replies to the list of issues and questions, enumerated legislative and administrative measures to improve the situation of women and girls in various sectors, but that the measures do not correspond to temporary special measures as called for under article 4 (1) of the Convention and as further elaborated in the Committee’s general recommendation No. 25 on the subject. This suggests that there remains a lack of understanding on the part of the State party as to the concept of temporary special measures and their use for promoting de facto equality. In that context, the Committee regrets the statement in the State party’s report that “no quotas have been instituted for the inclusion of women in public office or in other areas”.

17. **The Committee recommends that the State party familiarize all relevant State officials and policymakers with the concept and use of temporary special measures and adopt and implement such measures to promote substantive equality of women and men, in accordance with article 4 (1) of the Convention and the Committee’s general recommendation No. 25, in all areas of the Convention in which women are underrepresented or disadvantaged. Such measures could include, for example, gender quotas for political parties’ electoral lists.**

**Stereotypes and harmful practices**

18. The Committee acknowledges the importance in daily life of the culture and traditions of the State party and notes that gender sensitivity training and awareness-raising activities have been conducted in schools and through radio programmes and workshops to reach out to communities. The Committee is nevertheless concerned at the persistence of discriminatory stereotypes, negative traditional values and patriarchal attitudes regarding the roles and responsibilities of women and men in society and in the family that overemphasize women’s roles as mothers and housewives, thereby preventing them from actively participating in all areas of political and economic life covered by the Convention.

19. **The Committee recommends that the State party:**

   (a) **Put in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against**
women. The strategy should include education and awareness-raising campaigns targeting women and men at all levels of society, including community and religious leaders, and focus particular attention on recognizing the value and dignity of women and their empowerment to participate in decision-making processes in the community and in society at large. Civil society organizations and the mass media should be engaged in the implementation of the strategy;

(b) Adequately integrate the principles of non-discrimination and equality of women and men into educational policies, the national core curriculum and related documents, as well as into basic and continuing education for teachers and health-care professionals and other service providers;

(c) Use innovative measures that target children and parents to strengthen their understanding of the principle of equality of women and men and work through the educational system, both formal and informal, as well as with the mass media, to enhance positive and non-stereotypical portrayals of women;

(d) Monitor and review all measures taken to regularly assess their impact and take appropriate remedial action.

Violence against women

20. The Committee welcomes the adoption in April 2015 of the Domestic Violence Act, which broadens the definition of domestic violence by including not only physical violence but also sexual, psychological and economic violence. The Committee also notes with appreciation the adoption in 2015 of an interministerial national action plan on gender-based violence. However, the Committee notes:

(a) That a violation of the Domestic Violence Act is only a civil offence and that only the breach of a protection or occupation order is considered a criminal offence; in addition, the measures in place to enforce such orders are weak and the penalties applied to breaches of the orders are lenient;

(b) That no provisions in the Criminal Code and/or the Domestic Violence Act explicitly criminalize marital rape;

(c) That women in same-sex relationships are excluded from the categories of persons who can apply for protection under the Domestic Violence Act, as acknowledged by the State party;

(d) That a financial burden is imposed on victims by the need to file affidavits, requiring the services of a lawyer, which is not provided for by the Domestic Violence Act;

(e) That the legal definition of rape is narrow, given that it does not cover invasive acts such as penetration with other body parts or objects. Such acts currently fall under the offence of indecent assault in the Criminal Code and carry much lighter penalties;

(f) That police attitudes sometimes actively discourage women who are victims of violence from pursuing their complaint, given that law enforcement officers treat them with contempt and hostility;
(g) That data disaggregated by sex, age, type of offence and relationship between the perpetrator and the victim are lacking on all the forms of violence covered by the Domestic Violence Act.

21. The Committee urges the State party:

(a) To amend the Criminal Code and/or the Domestic Violence Act to criminalize all acts of domestic violence covered by the Act and explicitly criminalize marital rape;

(b) To ensure that no woman is excluded from seeking and obtaining protection under the Domestic Violence Act on the basis of the type of relationship in which she is engaged;

(c) To ensure that women who are victims of violence and who wish to apply for protection under the Domestic Violence Act are not denied access to protection because of financial and administrative obstacles;

(d) To widen the definition of rape to include other forms of penetration, or establish new offences to cover such conduct, and to consider using the Caribbean Community model legislation on sexual harassment to do so;

(e) To provide sufficient technical, human and financial resources for the effective implementation of the Domestic Violence Act and the National Action Plan on Gender-based Violence and enhance cooperation with civil society organizations and other relevant stakeholders in that regard;

(f) To develop protocols to support response, management and referral relating to domestic violence cases and provide continuous training to the judiciary and law enforcement officers on gender-sensitive procedures to deal with women who are victims of violence;

(g) To encourage women to report incidents of sexual and domestic violence by destigmatizing victims and raising awareness about the grave and serious nature of such acts;

(h) To develop protocols for the collection of information by the police, justice officials and health workers on domestic and other types of violence against women to systematize and institutionalize the collection, analysis and dissemination of comprehensive data on domestic violence that are disaggregated by age, sex, nationality, ethnic group, type of violence and relationship between the perpetrator and the victim.

Trafficking and exploitation of prostitution

22. The Committee notes the positive steps taken by the State party to tackle trafficking in human beings, in particular women and girls, including the enactment in 2011 of an act on the prevention of trafficking in persons, the establishment of an anti-trafficking in persons unit within the police and the creation of a crisis centre for victims. The Committee is concerned, however, about reports of cases of sexual abuse of children in the family by persons who pay the family to be silent and not report the incidents; this leads to sexual exploitation of children, in particular girls, and effectively places them in a situation of forced prostitution. The Committee notes with concern that only three cases of human trafficking were investigated in 2014 and five in 2013, none of which resulted in prosecution. Furthermore, the
Committee is concerned about the lack of alternative employment opportunities for women and girls who wish to leave prostitution.

23. The Committee recommends that the State party:

   (a) Strengthen measures to prevent and respond effectively to incidents of transnational and internal trafficking for sexual abuse and exploitation, especially of girls under 18 years of age, including through awareness-raising initiatives, the prosecution and punishment of offenders and the establishment of specific support and rehabilitation programmes for victims;

   (b) Systematically gather and analyse sex-disaggregated data and information on trafficking and sexual exploitation, including exploitation of children in the family by outsiders and sex tourism;

   (c) Strengthen measures aimed at tackling the root causes of trafficking of women and girls, such as poverty and high unemployment, which may also drive them into prostitution;

   (d) Enhance support services for victims of trafficking and sexual exploitation, including alternative employment opportunities, to facilitate the reintegration into society of women and girls who wish to leave prostitution.

Participation in political and public life

24. The Committee notes that women currently constitute 40 per cent of the workforce in civil service institutions and that high-level public positions, including Attorney General, Accountant General, Clerk of the House of Assembly, Registrar of the Supreme Court and President of the Family Court, are held by women and that 50 per cent of the judges of the High Court and 50 per cent of magistrates are women. The Committee remains concerned, however, about the stark underrepresentation of women at the highest levels of decision-making, noting that they represent only 13 per cent of parliamentarians and 9.1 per cent of ministers. The Committee is concerned that no quota system has been introduced to promote the participation of women in political and public life as a result of the rejection by referendum in 2009 of the proposal to include in the Constitution a section that would have provided for the introduction of a quota of 30 per cent of women candidates on electoral lists of political parties. It is also concerned that the measures taken by the State party to support women candidates for elected positions remain insufficient and that there are no targeted training and mentoring programmes on leadership and negotiation skills for such women. The Committee is further concerned about the barriers faced by women who seek public office, including negative cultural attitudes and gender stereotypes.

25. The Committee recommends that the State party:

   (a) Adopt, as a matter of priority, targeted measures, including training, capacity-building, gender-sensitive recruitment and temporary special measures, to increase the percentage of women in appointed senior positions, the Government, the public service and the foreign service, in line with the Committee’s general recommendation No. 23 on women in political and public life;
(b) Amend the electoral law to allow for reserving at least 30 per cent of parliamentary seats for women, in line with article 4 (1) of the Convention and the Committee’s general recommendations Nos. 23 and 25;

(c) Provide training for women, including in the Grenadines, on leadership skills, campaigning and constituency-building to prepare them as candidates and for positions in political life and the various areas of public administration;

(d) Conduct awareness-raising campaigns for politicians, journalists, teachers and community leaders, especially men, to enhance the understanding that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the full implementation of the Convention;

(e) Address cultural barriers that prevent women from moving into decision-making positions and ensure equal representation of women and men in such positions.

Nationality

26. The Committee notes with satisfaction that, under the law of the State party, women have the same rights as men to acquire, change or retain nationality. It also acknowledges that legislative provisions extend the same rights to women and men to pass on their nationality to their children and provide for dual citizenship for both sexes equally. The Committee is concerned, however, about information stating that a married woman’s ability to pass her nationality on to her husband is subject to the discretion of the responsible government minister, who can refuse such transmission of nationality “on reasonable grounds”.

27. The Committee recommends that the State party amend its relevant legislation to grant women citizens equal rights with men regarding the transmission of their nationality to their foreign spouses.

Education

28. The Committee commends the State party for achieving universal access to primary and secondary education. It also welcomes the development of a health and family life education curriculum and a programme aimed at enabling pregnant adolescent girls to pursue their education through the provision of day-care services, payment of school fees and books as well as transportation (“Teen Mothers Returning to School” programme). However, the Committee notes with concern:

(a) The high rate of teenage pregnancy (nearly 50 per cent of women/girls give birth for the first time between 15 and 19 years of age), which results in high dropout rates, in addition to the lack of information on whether the Health and Family Life Education Curriculum is offered in an age-appropriate manner at all levels of education and includes a gender perspective and education on responsible sexual behaviour;

(b) The limited coverage and the lack of public awareness of the programme designed to facilitate the return of adolescent mothers to school and the lack of sex-disaggregated data to carry out an impact assessment;
(c) The lack of a comprehensive and integrated strategy to address ideological and structural barriers that discourage girls from participating in non-traditional academic and technical-vocational subjects.

29. The Committee recommends that the State party:

(a) Consider means of reducing unwanted teenage pregnancies by continuing to promote education in sexual and reproductive health and rights and responsible sexual behaviour for girls and boys, ensuring that it is age appropriate and offered at all levels of education;

(b) Strengthen efforts to retain girls in school and facilitate the reintegration of pregnant girls and young mothers into school by providing support services, such as counselling in parenting skills, appropriate sexual and reproductive health services and adequate childcare facilities, as well as by extending the coverage and increasing the accessibility and availability of the “Teen Mothers Returning to School” programme;

(c) Eliminate traditional stereotypes and structural barriers that may deter girls from enrolling in traditionally male fields of study, such as science and technology, and step up efforts to provide girls with career counselling on non-traditional career paths and alternatives outside formal education, including non-stereotypical vocational training.

Employment

30. The Committee acknowledges the adoption of legislative and other measures by the State party to eliminate discrimination against women in the field of employment and ensure that women and men have equal access to the labour market, including by establishing early childhood facilities at the community level and improving public transportation. The Committee notes, however, that in 2013 the labour force participation rate was 55.7 per cent for women and 78.4 per cent for men. While noting the efforts by the State party to increase female participation in non-traditional sectors of the economy, the Committee remains concerned about the clear horizontal segregation of the labour market and the concentration of women in low-income occupational categories.

31. The Committee recommends that the State party:

(a) Systematically collect sex-disaggregated data on labour market participation and analyse and develop effective responses to the continuing lack of correlation between the high level of education attained by women and their low level of engagement in the workforce;

(b) Adopt and implement policies, with time-bound targets and indicators, to reverse cultural patterns and transform traditional gender stereotypes and norms of sex-appropriate roles in the society transmitted through schooling and parenting in order to eliminate occupational segregation and achieve substantive equality of women and men in the labour market, including in traditionally male fields, through intensified technical and vocational training for women in those areas.

32. The Committee notes with concern that the Equal Pay Act is not in conformity with the principle of equal remuneration for men and women for work of equal value.
33. The Committee recommends that the State party amend section 3 (1) of the Equal Pay Act to ensure equal remuneration for women and men for work of equal value.

34. The Committee is concerned about information provided by the State party that there is anecdotal evidence that some women who seek employment are requested to provide sexual favours in exchange for being hired. It is also concerned that the existing national legislation does not cover all aspects of sexual harassment and that the Domestic Violence Act addresses harassment only in the private sphere, thereby failing to address the scope of sexual harassment in the workplace.

35. The Committee recommends that the State party adopt legislation that specifically criminalizes sexual harassment in all settings, including in the workplace, and covers both soliciting sexual favours for advancement and working environments hostile to women.

Health

36. The Committee notes with appreciation the awareness-raising activities carried out by the National Family Planning Coordinator in secondary schools, technical institutions and the Community College to address issues such as responsible sexual behaviour, adolescent pregnancy, family planning services, including contraceptives, and sexually transmitted diseases. The Committee nevertheless remains concerned about information that traditional attitudes and cultural norms hamper access to contraceptives, including emergency contraceptives, because clinic nurses frequently consider that it is not appropriate for schoolgirls to be sexually active and either refuse to supply contraceptives or inform their mothers about their sexual activity.

37. In line with article 12 of the Convention and its general recommendation No. 24 on women and health, the Committee recommends that the State party:

(a) Ensure free and adequate access to sexual and reproductive health services, in particular to modern contraceptive methods, for all women and girls, including those living on the outer islands, and strengthen age-appropriate school-based education on sexual and reproductive health and rights for adolescent girls and boys through the Health and Family Life Education Curriculum;

(b) Review policies and protocols governing the provision of sexual and reproductive health services to women and girls and ensure their effective implementation by developing and conducting awareness-raising and training programmes for health-care providers with a view to addressing traditional attitudes and overcoming cultural barriers that constrain access to family planning services, including contraceptives;

(c) Provide free and confidential family planning services at the community level, including in the Grenadines, and educate women and girls and men and boys on responsible sexual behaviour and the prevention of early and unwanted pregnancy and sexually transmitted diseases.

38. The Committee notes that abortion is illegal except in cases of rape, incest, risk to the life or physical or mental health of the pregnant woman or severe foetal impairment, as stipulated in section 149 of the Criminal Code. The Committee
remains concerned, however, at information indicating that, in practice, abortion is not available to victims of rape or incest, nor to women whose life is threatened by the pregnancy. It also notes with concern the information that a proper medical procedure is extremely expensive and therefore not an option for many women, who resort to backstreet abortions. It further notes with concern that official data show that the maternal mortality ratio is 48 births per 100,000 live births, reportedly owing in part to unsafe abortions in the State party.

39. The Committee recommends that the State party remove penalties imposed on women who undergo abortion and ensure that section 149 of the Criminal Code is properly implemented to guarantee access to legal and safe abortion in cases of rape, incest, risk to the life or health of the pregnant woman or severe foetal impairment, in line with the Committee’s general recommendation No. 24 on women and health, and ensure that women and girls have confidential access to adequate post-abortion care, including in cases of backstreet abortions.

Rural women

40. While welcoming the efforts of the State party to reduce rural poverty by carrying out development and microcredit projects and improving the delivery of basic social services to remote communities, the Committee notes with concern that rural women, including those in isolated communities, which includes indigenous women, are disproportionately affected by poverty, unemployment and gender-based violence. Rural women have limited access to health care, education, skills development and training opportunities and to justice and legal aid and have low rates of participation in decision-making. The Committee is also concerned about the high prevalence of female-headed households that also suffer from undue disadvantage and lack of social protection. The Committee is further concerned that rural women are particularly vulnerable to the effects of natural disasters, such as floods, hurricanes and volcanoes, as evidenced by the cases of Hurricane Ivan (2004), Hurricane Tomas (2010) and Tropical Storm Lili (2002), as well as the impact of climate change.

41. The Committee recommends that the State party:

(a) Strengthen programmes to address gender-based violence, poverty and unemployment among rural women, in particular those in isolated communities and those that head households, and ensure that they have improved access to health care, social services and the justice system, with targeted programmes for women who suffer multiple discrimination owing to old age and disability, including through greater access to social safety nets;

(b) Consider extending social protection schemes, including conditional cash transfers, targeting all vulnerable female-headed households;

(c) Ensure that the development and implementation of policies and programmes on disaster preparedness, response to natural disasters and impacts of climate change, as well as other emergencies, are based on a comprehensive gender analysis and mainstream the concerns of women, especially those of rural women, and include them in the design and management of such programmes.
Family relations and marriage

42. The Committee welcomes the adoption of national legislation that protects the rights of children born out of wedlock, but remains concerned about cultural attitudes and power imbalances within family relations that lead to discriminatory attitudes towards women and girls. The Committee is also concerned that women in de facto unions continue to be disadvantaged before the law, given that they do not enjoy the right to property acquired during the union or financial support from their partners. The Committee further notes with concern the existence of disparities between the child maintenance awards made by the courts to the children of unmarried mothers and those of married mothers.

43. The Committee recommends that the State party:

(a) Strengthen its efforts to eliminate stereotypical attitudes regarding the roles of women and men in the family through awareness-raising campaigns;

(b) Expedite efforts to undertake reforms, including legislative reforms, with a view to protecting the property rights of women upon the termination of de facto unions and giving them the right to financial support in case of need, in line with general recommendation No. 29 on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution);

(c) Strengthen its efforts to secure child maintenance payments in adequate amounts, ensuring also that there are no disparities between those accorded to the children of married and unmarried mothers;


44. The Committee is concerned that the Marriage Act set the minimum legal age for marriage at 15 years for girls and 16 years for boys.

45. The Committee urges the State party to expeditiously amend the Marriage Act to raise the minimum age of marriage to 18 years for girls and boys, in accordance with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices.

Data collection and analysis

46. The Committee is concerned at the general lack of data disaggregated by sex, age, race, ethnicity, geographical location and socioeconomic background in the areas covered by the Convention, which are necessary to assess the situation of women for informed and targeted policymaking and to systematically monitor and evaluate progress achieved towards the realization of substantive equality of women in all areas covered by the Convention.

47. The Committee calls upon the State party to implement systems of collection, analysis and dissemination of data disaggregated by sex, age, disability, race, ethnicity, geographic location and socioeconomic background and to use measurable indicators to assess trends in the situation of women and the progress achieved in the realization of substantive equality of women in all areas covered by the Convention. In that regard, it draws the State party's
attention to the Committee’s general recommendation No. 9 on statistical data concerning the situation of women and encourages it to develop gender-sensitive indicators that could be used in the formulation, implementation, monitoring, evaluation and, when necessary, review of gender equality policies.

Optional Protocol and amendment to article 20 (1) of the Convention

48. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

49. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

50. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

51. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests that the present concluding observations be disseminated in a timely manner, in the official language of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, the House of Assembly and the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers’ associations, trade unions, human rights and women’s organizations, universities, research institutions and the media. It recommends that the present concluding observations be disseminated in an appropriate form at the local community level to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the Convention, the Optional Protocol thereto and relevant jurisprudence, in addition to the Committee’s general recommendations, to all stakeholders.

Technical assistance

52. The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in that respect.
Ratification of other treaties

53. The Committee notes that the adherence of the State party to the nine major international human rights instruments would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.

Follow-up to the concluding observations

54. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 17 and 21 (d), (e), (g) and (h) above.

Preparation of the next report

55. The Committee invites the State party to submit its ninth periodic report in July 2019.

56. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I).

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1 The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.
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STATE-SPONSORED HOMOPHOBIA

2019
13th Edition

LUCAS RAMÓN MENDOS
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6. **THE WORLD AT A GLANCE (overview chart)**
marginalised sectors, tending to their basic needs and constructing a social fabric that pivots itself to the defence of the interests of their religion, whilst at the same time demonising alternative expressions, principally in gender and sexuality. However, its influence is not confined to the attention of these sectors, it is clear that its interest is directed to governance, and more and more they interfere in the electoral processes and lobby for their inclusion in the three branches of government of each country.

It is not unusual that Mexico, being one of the countries with the oldest tradition of state secularism, today has a distinctly evangelical party (PES) and its new president is publicly assumed as a Christian who has initiated a “moral renewal of the country” in his work program.90

The other countries of the region have gone through period of profound violence, where the presence of Christian forces is not absent.91 The government of Nicaragua has established a strong alliance with the Catholic Church to indefinitely keep itself in power, and at the same time initiated a ferocious persecution against dissidents, among them women and LGBT populations. Honduras and El Salvador are being desolated by gangs which stem from maras, with the defence of a patriarchal model where sexual and gender dissent has no place.92

Guatemala, confronts a condition of mixed violence where police repression and delinquency appear to be united against the population, but where conservative forces propel an initiative on the protection of life and the family. This implies grave setbacks and limitation on the advancement of the rights of women and LGBT persons.93

In this geopolitical panorama, the struggle for human rights – in particular for LGBT people – appears uncertain. Even so, the work of organisations has not stopped, they seem to be stronger, despite many times facing great risks to their lives or the need to migrate for their protection. As it is, the LGBT people of these countries today represent an important challenge for Mexico and Costa Rica in regard to migrants and in response to their requests for asylum.94

The Situation in the Spanish-Speaking and French-Speaking Caribbean95

By Darío Arias,96 Manuel Vázquez Seijido97 and Francisco Rodríguez Cruz.98

The level of acceptance towards sexual and gender diversity in the Dominican society99 is not reflected in the meagre legal progress achieved in the Dominican Republic.100 Although lobbying by religious and fundamentalist groups has prevented the enactment of inclusive laws,101 the explicit inclusion of the LGBTI population in the non-discrimination chapter of the National Human Rights Plan in December 2018 is one of the achievements resulting from the work of local organizations.102

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90 “Partido Encuentro Social (PES”), Animal Político, 9 September 2014.
93 See, in general, IACHR, Situation of human rights in Guatemala (2017) and, in particular: paras. 121 a 124, 210, 30 a 385.
95 The authors would like to thank Sergio Tomás Rodríguez, Argentine activist, and Michaël Cousin, French activist, for their collaboration.
96 Darío Arias is ILGALAC Co-Secretary general. See full mini-bio above.
97 Manuel Vázquez Seijido is Deputy Director of CENESEX and member of the regional board of ILGALAC.
98 Francisco Rodríguez Cruz, journalist and gay activist of the Humanity for Cuban Diversity Network.
100 The authors are especially grateful to human rights activist and defender Devis Ventura of the Dominican Republic for the information about the context and situation of the country.
In Cuba, the most significant achievement was the popular consultation and the referendum on a new Constitution that replaced the definition of marriage between men and women with a neutral wording, using the term “spouses”. The new constitutional text also includes the right of every person to found a family in various ways, overcomes old conceptions with regard to a couple’s “reproductive purposes” and explicitly proscribes discrimination based on sexual orientation and gender identity.

During the debate, different forces opposing these rights emerged, especially Protestant denominations and homophobic groups. Consequently, for the Constitution to translate into effective rights, a new Family Code will have to be enacted within two years and it will have to be submitted to popular consultation and referendum.

Finally, the situation in the Francophone Caribbean is of grave concern. In Haiti, violence against LGBTI people has been on the rise and several regressive bills have been introduced in the Senate, such as the prohibition of same-sex marriage, or the ban against public demonstrations advocating for the rights of LGBTI people. Additionally, LGBTI people might be included among the categories of people who could be denied a “certificate of good reputation”, a document that is required in many job applications. However, effective activism prevented these initiatives to advance in the Legislature’s lower house.

### A Slow, but Significant Journey – Recent Developments in the Caribbean Region

**By Westmin R.A. James and Luciën D. Govaard.**

The Caribbean region consists of sovereign nations and dependent territories (France, UK, USA and Holland); islands and continental areas in the Caribbean Sea and in Central and South America. According to recent estimates, home to over forty-four (44) million people. The Caribbean is rich in diversity; English, Spanish, French and Dutch are among its official languages and in addition to native indigenous populations, its people are primarily descendants of Africans, Asians and Europeans. Recent developments in Belize, Trinidad and Tobago, Guyana, Bermuda and Suriname are of particular interest when outlining SOGIE legal and social advances in this region.

Although “homosexuality” in and of itself is not a crime, laws criminalize same-sex sexual conduct between consenting adults. Among them are Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines. Punishments for buggery range from ten (10) years in Jamaica, Belize, Grenada and St. Lucia, Dominica, St. Kitts & Nevis (with or without hard labour) fifteen (15) years in Antigua and Barbuda if committed, and life imprisonment in Barbados and Guyana.

The act of “buggery” was defined in Antigua & Barbuda, Dominica and Trinidad and Tobago as anal intercourse by: “a male person with a male person” or “a male person with a female person”. In St. Lucia buggery is limited to anal intercourse by a male person with another male person while in Jamaica buggery covered anal intercourse either with mankind or with any animal. In Barbados, St. Kitts and Nevis, St. Vincent and the Grenadines where buggery was not legislatively defined, the courts have interpreted it to include anal or oral intercourse by a man with a man or woman; or vaginal intercourse by either a man or a woman with an animal. In Grenada and Belize, ‘unnatural’ connection’, or ‘carnal knowledge against the order of nature’ have been interpreted by the courts to include anal intercourse between consenting adults male or female, but also includes any ‘non-natural’ sexual intercourse between any

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103 The authors thank the CENESEX Community Social Network activists for providing information about the context and the situation in the country.
107 The authors are especially grateful to activist Charlot Jeudy, President of Kouraj, for the information Shared on the situation of LGBTI people in Haiti.
109 Westmin R. A. James is a Lecturer in Law and Deputy Dean at the University of the West Indies Cave Hill Campus.
110 Luciën D. Govaard is the chair of the Caribbean forum for Liberation and Acceptance of Genders and Sexualities and Vice-Chair for the PANCAP Policy and Strategy Working Group on Stigma and Discrimination.
112 *R v Wiseman* (1718) Fortes Rep 91; *R v Bourne* (1952) 36 Cr App R 135.
two people, heterosexual couples included, regardless of the orifice(s) used.113

In Antigua and Barbuda, Barbados and Trinidad and Tobago there is also the offence of serious indecency, while in Dominica, St. Lucia, St. Vincent and Grenadines the offence is gross indecency. Guyana and Jamaica have the offence of gross indecency, but only when committed between two male persons. The act of “gross indecency” or “serious indecency” is an act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire. It was also an offence under the laws of Guyana, “being 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 2018 High Court of Trinidad and Tobago ruling in Jason Jones v AG of Trinidad and Tobago114 established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. The High Court of Trinidad and Tobago following a similar case of Caleb Orozco v The AG of Belize115 from Belize held that buggery law breached the constitutional rights of the gay men to equality, privacy and freedom of thought and expression. These decisions will no doubt have an impact on the law in the wider Caribbean jurisdictions. The Court later ordered that the law be modified so it no longer applies to consensual sexual acts between adults in private.116 In 2018, the Caribbean Court of Justice (CCJ)117 evaluated the cross-dressing law in McEwan et al v AG of Guyana,118 brought by four trans women who were arrested and convicted. The CCJ concluded that the law was unconstitutionally vague and resulted in transgender and gender non-conforming persons being treated unfavourably because of their gender expression and gender identity.119

Ongoing cases pertaining to SOGIE are currently being litigated in Bermuda and Suriname. In Bermuda, the Court of Appeal upheld the Supreme Court’s ruling that revoked parts of Civil Partnership law that prevented same-sex couples’ marriage,120 while in Simson v. Suriname,121 the official registry of a trans woman’s sex change, following gender affirmative surgery—a case won at first instance—is being appealed by the Government of Suriname.

In its Advisory Opinion, OC-24/17, the Inter-American Court of Human Rights addressed issues concerning gender identity, same-sex relationships, and the rights of LGBTI persons.122 This Advisory Opinion applies to Barbados, Dominican Republic, Suriname and Haiti.123 While many welcomed this development, it is still relatively early to outline its impact on Caribbean societies.

113 Supreme Court of Belize, Claim No. 668 of 2010, 10 August 2016.
114 Supreme Court of Trinidad and Tobago, Jason Jones vs Attorney General of Trinidad & Tobago and others, H.C.720/2017. CV.2017-00720, 4 April 2018.
115 Ibid.
116 The British Overseas Territories repealed their anti-sodomy laws in 2000. For more information, see section on legality of same-sex sexual acts in the Global Overview section of this report.
117 The CCJ is the highest court of appeal for Guyana, Belize, Barbados and Dominica.
118 Caribbean Court of Justice (CCJ), McEwan et al v AG of Guyana [2018] CCJ 30(AJ).
120 AG v Ferguson et al; The AG is considering appealing to the Privy Council
122 For more information on the Court’s Advisory opinion see the essay wrote by Lucía Belén Araque in International Law section of this report.
123 These are the only countries in the Caribbean that have ratified the American Convention on Human Rights.
SAINT VINCENT AND THE GRENADINES

Provisions in force

- **Criminal Code (1990)**

  **Buggery**

  **Section 146.**
  Any person who:
  
  (a) commits buggery with any other person; [...] 
  
  (c) permits any person to commit buggery with him or her;

  is guilty of an offence and liable to imprisonment for ten years.

  **Gross indecency**

  **Section 148.**
  Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.

Human rights situation

In 2010, Prime Minister Ralph Gonsalves, made disparaging comments about opposition Senator Vynnette Frederick, suggesting she was a lesbian. Based on those remarks, she brought a claim against the Prime Minister on the basis that those comments had negatively impacted her performance at the elections.¹ In 2015, Frederick called for the country to discuss the issues of same-sex relationships, and added that she was well positioned to lead the discussion because of her perceived sexuality.²

In 2015, a gay author from St Vincent published a book after he moved to Canada, based on his personal experiences of anti-gay violence and prejudice while growing up.³

This echoes the findings in the 2017 US Department of State Human Rights Report that there remains social discrimination against LGBTI persons. Although local observers believed such attitudes of intolerance were slowly improving, members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.⁴

More recently, a 2018 Human Rights Watch report found many instances of violence and discrimination, often committed by the police or family members.⁵

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¹ "Frederick’s complaints against Gonsalves contains info from separate meetings", iWitness News, 1 December 2011.
³ Dinah Zeidin, “Why gay author from St Vincent only came out in Canada”, Xtra, 26 November 2015.
**Statements by public officials**

In September 2018, the Prime Minister Ralph Gonsalves said that while it was wrong for transgender women to "shock people’s sensibilities and sensitivities", but also it was also wrong to assault them after two transgender women were beaten in Calliaqua. While he observed that same-sex intimacy remains criminalised, he said, "I don’t know of anybody who has been prosecuted for homosexual conduct whether male or female". He added that he was not making a case for decriminalisation, but for an "intelligent conversation on whether it should be decriminalised.

**National Human Rights Institution**

Saint Vincent and the Grenadines does not have a National Human Rights Institution in accordance with the Paris Principles.

**UN voting record**

In 2011, 2014 and 2016 Saint Vincent and the Grenadines was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Saint Vincent and The Grenadines voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Saint Vincent and the Grenadines abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

At its 1st cycle UPR in May 2011, the State rejected 11 recommendations to lift discriminatory laws and practices, including the repeal of Section 146 (in line with the Human Rights Committee Concluding Observations in 2008). In response, the State said that its current legislation was supported by society and there was no call to repeal it, "[in] the context of the moral, societal and cultural make-up of the State". This vein, Saint Vincent and the Grenadines compared its own legal situation to that of the United Kingdom arguing that it had taken "hundreds of years" for the UK to repeal similar legislation, and "the harsh nature of the sentences imposed under British law," comparing them to the "relatively short period of time that Saint Vincent and the Grenadines has been an independent state, and the less punitive sanctions involved".

In its 2nd cycle UPR, Saint Vincent and the Grenadines once again rejected all SOGI-related recommendations. During the interactive dialogue, the delegation indicated that criminalising provisions "had existed for a long time and that the precepts underlying them had overwhelming public support in the country’s Christian society espousing Judaeo-Christian values in the Caribbean context". However, changes in those values were acknowledged as "occurring, particularly among sections of young people". The delegation went on to stress that "there had been no imprisonments" based on the criminalising provisions, but at the same time, as it did in its 1st cycle, insisted on the fact that there was "no public or legislative appetite to revise any of [these] laws".

Saint Vincent and the Grenadines’ next URP starts in May 2021.

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6 "St Vincent: Man says he killed preacher during same-sex encounter", iWitness News, 20 August 2018.
7 "Unacceptable to beat up gays – PM Gonsalves", Searchlight, 7 September 2018.
8 Ibid.
10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Treaty Bodies
In 2015, the Committee on the Elimination of Discrimination Against Women noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified. 14

In 2017, the Committee on the Rights of the Child expressed concern regarding the criminalisation of consensual same-sex conduct between men, which may penalise boys above 16 years of age and perpetuate the notion that LGBT children have a psychosocial disorder. 15 It urged the State to decriminalise consensual same-sex conduct and raise public awareness of the equality of and the importance of not discriminating against LGBT people, and to fully respect the diversity of children’s sexual orientation. 16

Organisation of American States (OAS)
As a member of the General Assembly of the Organisation of American States (OAS), Saint Vincent and the Grenadines has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008). 17 In 2013, Saint Vincent and the Grenadines, along with Dominica and San Kitts and Nevis, inserted a footnote stating that the delegations of these three countries were “unable to join consensus on the approval of this resolution” (fn. 2). The Government further stated that “the term ‘gender expression’ is one that is not thoroughly defined internationally or that has international acceptance” and suggested that the discourse at the OAS “should be confined only to language which has been recognized or approved by the United Nations”. In 2016, Saint Vincent and the Grenadines withdrew from the list of countries inserting footnotes. Further, at the OAS General Assembly in June 2016, Minister of Economic Planning and Sustainable Development of Saint Vincent and the Grenadines, Camilo Gonsalves, described the Orlando shooting as a “tragic and heinous event” and said that his country offered its “support in ridding the world of hate and the tools of hate”. 18

However, despite these positive sentiments, in 2017 and 2018, Saint Vincent and Grenadines again inserted a limiting footnote in the section on the human rights and prevention of discrimination and violence against LGBTI people. 19

54 Concluding observations on the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines, CEDAW/C/VCT/CO/4-8, 28 July 2015.
55 Concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines, CRC/C/VCT/CO/2-3, 13 March 2017, para. 22.
56 Id., para. 23.
57 “Rapporteurship on the Rights of LGBTI Persons: Links” IACHR Website.
58 “Media Center: Press Releases: E-074/16”, OAS Website.
59 OAS General Assembly, “Promotion and protection of human rights”, AG/RES. 2908 (XLVII-O/17), 21 June 2017, footnote 10; OAS General Assembly, “Promotion and protection of human rights”, AG/RES. 2928 (XLVIII-O/18), 5 June 2018, footnote 11. “... the equality of all human beings as enshrined in its Constitution. It is necessary to underscore that some of the terms in this resolution are not defined in the domestic laws of Saint Vincent and the Grenadines or internationally. Accordingly, Saint Vincent and the Grenadines dissociates itself from those terms that are incompatible with and contrary to its national laws, reserving its rights to interpret the terms of this resolution.”
TAB 12
Recognition of the Rights of LGBTI Persons
Three years on from the launch of the report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the levels of physical, psychological, and sexual violence toward this community remain constant. However, there has also been significant progress toward protecting, recognizing, and guaranteeing their rights in various countries in the region. These changes have been taking place through legislative processes, legal decisions, and public policy-making and have led to greater recognition of LGTBI people’s rights by advancing the agenda of equality and nondiscrimination so as to ensure that these people can live their lives free of the risk of violence, terror, and poverty. The bodies of dismembered dolls that represented this violence on the cover of the previous report are featured once again on this cover, but this time they are reconstructed and intertwined in a show of solidarity and support that celebrates the progress that has been made. All the same, the image is just a sketch and some parts have been left unfinished, which symbolizes the ground still to be covered on the road to true equality.

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CHAPTER 4

PERSISTENT CHALLENGES TO THE RECOGNITION OF THE RIGHTS OF LGBTI PERSONS IN THE REGION
PERSISTENT CHALLENGES TO THE RECOGNITION OF THE RIGHTS OF LGBTI PERSONS IN THE REGION

239. In this report, the Inter-American Commission has identified important developments made by the American States in recognizing the rights of LGBTI persons. In this regard, the Inter-American Court recently noted that “consensus exists among several countries in the region that measures must be taken to combat this scourge [violence and discrimination against LGBTI persons]” in fact “most of the OAS Member States have voluntarily accepted recommendations to confront violence and discrimination based on sexual orientation and gender identity”.346

240. Despite these developments, however, the Commission considers that, on this occasion, it is also appropriate to refer to the obvious threats of regression in relation to the recognition of the rights of LGBTI persons observed in the region. These challenges include, among others, the persistence of violence against LGBTI persons in the continent; the existence of criminalization of sexual orientations, identities and non-regulatory gender expressions in several states of the continent; the recent adoption of laws and other state measures contrary to the principle of equality and non-discrimination; disinformation campaigns and initiatives that proliferate stigma and stereotypes against LGBTI persons, such as the so called “gender ideology”; and the expansion of groups and movements against the recognition of the rights of LGBTI persons, in society and at the level of State Powers.

241. In its Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the IACHR criticized the 11 OAS Member States, all from the Caribbean, that maintain laws that criminalize consensual sexual relations between adults of the same sex in private, and that also affect trans persons and persons not conforming to gender, namely: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia; Saint Vincent and the Grenadines, and Trinidad and Tobago.347 The IACHR recalls that the perpetuation of such laws generates a

347 IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 61.
culture of hostility, discrimination, and serious violations against LGBTI persons. The Commission regrets that, despite the recommendations made in this report, all of these norms remain in force in these States, in violation of their international obligations regarding the right to equality and non-discrimination.

242. In this regard, the State of Belize informed the Commission that on August 10, 2016, the Belize Supreme Court found the domestic law on “sodomy” unconstitutional in the Case of Caleb Orozco v. The Attorney General of Belize et al. in relation to consensual relations between adults in private. The Supreme Court’s decision found that the impact of the law on Mr. Orozco - a gay man - was disproportionate because of the profound related stigmatization and violated his constitutional right to dignity, and that the constitutional prohibition against discrimination on the basis of “sex” also includes discrimination on the basis of “sexual orientation”. However, the Government of Belize and the Catholic Church have reportedly appealed this decision to the Caribbean Court of Justice, and a final decision on the case is pending.348

243. Likewise, with respect to Trinidad and Tobago, the IACHR received information that the High Court of Justice ruled that Sections 13 and 16 of the Sexual Offences Act, concerning the offense of committing sodomy, are “unconstitutional, unlawful, void, invalid and without effect to the extent that these laws criminalize any act constituting sexual conduct between consenting adults in the framework of the Jones v. Trinidad and Tobago case, and confirmed by the High Court of Justice.349

244. Similarly, the Commission has noted the decision on the case Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) v The Attorney General of Guyana of the Caribbean Court of Justice (CCJ), the jurisdictional body of member countries of the Caribbean Community (CARICOM), which declared unconstitutional Section 153 (1) (XLVII) of the Summary Jurisdiction (Offences), Chapter 8:02, of Guyana, which criminalized the use of clothing socially attributed to another gender (cross-dressing).350 This decision guarantees an important step towards the recognition of gender identity and expression in the country, complying with the international

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348 Belize. Response to the Consultation Questionnaire. The State reported that hearings on the case are scheduled to take place starting March 2018. The Supreme Court’s decision, 2016.
349 IACHR, Press Release No. 088/18, “IACHR Welcomes Decision to Decriminalize Consensual Sexual Relations between Same Sex Adults in Trinidad and Tobago”, April 23, 2018.
recommendation regarding the duty of States to repeal legal provisions that criminalize the various forms of sexual orientation and gender identity.

245. The IACHR emphasizes that the Yogyakarta +10 Principles state that, “[e]veryone has the right to be free from criminalization and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.” Therefore, bearing in mind that none of the Caribbean States referred to above has reformed or annulled their discriminatory legislation to date, the IACHR reiterates its recommendation that laws criminalizing consensual sex between adults of the same sex, laws against “grave indecency” and “serious indecency”, and legislation criminalizing the use of clothing traditionally assigned to another gender be amended and repealed. In the meantime, these States should impose an explicit and formal moratorium on their application.

246. The IACHR is also concerned about the expansion of LGBTI anti-rights sectors within the State Powers, which translates into the adoption of laws and other State measures contrary to the principle of equality and non-discrimination. With regard to discriminatory legislation, it is worth referring once again to the issue of egalitarian marriage, which has led to a considerable mobilization of both pro-rights and anti-rights groups in the region.

247. For example, the State of Bolivia reported that “to date there has been an express violation of Act No. 603” (Code of Families and Family Procedure) of November 19, 2014, given that its Article 168 (b) states that “marriage is null and void: if it was not entered into between a woman and a man”. In El Salvador, three articles of the Constitution were amended in 2015 to expressly prohibit marriage between same-sex couples and to provide that marriage is only permitted between a man and a woman “born as such”. The constitutional reform also prohibits adoption by same-sex couples and the recognition of marriages between such couples celebrated abroad. The State of Honduras informed the IACHR that, through Legislative Decree No. 176-2004 (October 28, 2004), the Constitution of the Republic of Honduras was amended to prohibit marriage between and the adoption by same-sex couples of children of the same sex.

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351 Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics (only available in English) 2017. Principle 33 (The Right to Freedom from Criminalization and Sanction). See also paragraphs A - H of Principle 33, which contain additional obligations.

352 See, in the same vein, IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 85.

353 Bolivia. Response to the Consultation Questionnaire.

The State of Panama reported that Article 35 of the Code of Private International Law (Law No. 61 of October 7, 2015), expressly prohibited marriage between individuals of the same sex. In the Dominican Republic, a new Constitution was promulgated in 2010 that included, in article 55, the prohibition of same-sex marriage, and defined the family as based on the fundamental relationship between a man and a woman. Finally, in August 2017, Haiti’s Senate approved a legislative proposal to ban same-sex marriage, as well as to impose criminal sanctions and fines. According to the information received, the proposal is still pending final approval by Haiti’s Chamber of Deputies.

Several States have explicitly recognized the progress of these anti-rights sectors. The State of Costa Rica, for example, pointed out that “the lack of development of formal laws in this area [LGBTI] is the result of the strengthening, in recent years, of the most conservative sectors in Costa Rican society and their impact on national policy and state structures, hindering or obstructing the development of rights in both the legislative and jurisdictional spheres.”

For its part, the Office of the Human Rights Procurator of Guatemala indicated that “one of the main obstacles to the deconstruction of discrimination are the prejudices that have been generated against the LGBTI population. According to the Attorney General’s Office, Congress deputies of the Republic of Guatemala presented, in April 2017, initiative No. 5272 (“Law for the Protection of Life and the Family”) which, in their opinion, “contravenes international conventions and treaties on human rights ratified by the State, as well as international instruments and standards on the issues of sexual diversity, sexual orientation, gender identity, gender expression established in the Yogyakarta Principles; [and] promotes discrimination and hatred towards any sector, especially against people of sexual diversity.”

The State of Peru referred, for example, to the reaction of the Peruvian Congress to the “National Plan against Gender Violence 2016-2021”, launched by the Executive, which explained that gender violence also includes violence against lesbians, gays and bisexuals. However, according to information provided by the State, this “was not a standard legitimized by the Congress of the Republic when it discussed the constitutionality of the

355 Honduras. Response to the Consultation Questionnaire.
356 Panama. Response to the Consultation Questionnaire.
358 KOURAJ (Haiti). Response to the Consultation Questionnaire.
359 Costa Rica. Response to the Consultation Questionnaire.
360 Human Rights Ombudsperson (Guatemala). Response to the Consultation Questionnaire.
amendments made to the Criminal Code to combat gender-based violence. As a result, the amendments made by the Executive to the Criminal Code punishing hate crimes and discrimination based on sexual orientation or gender identity were repealed because of the views of Congress that gender violence only includes violence against women.\textsuperscript{361}

251. With respect to the State of Brazil, the Commission was informed during an ex officio hearing that the terms “gender identity” and “sexual orientation” have been removed from the document “Common National Curriculum Basis” (Base Nacional Comum Curricular), while conservative political and religious sectors are leading an initiative called “Schools without Party” (Escolasem partido), promoting draft laws aimed at prohibiting certain subjects in the educational sphere, including gender and sexual orientation, under the slogan that the initiative is aimed at discouraging ideological (political, religious or moral) indoctrination on the part of teachers.\textsuperscript{362}

252. The IACHR also notes with concern several setbacks observed in the United States since 2017. For example, the letter issued by the U.S. Department of Education and the U.S. Department of Justice on February 22, 2017, on the withdrawal and rescission of the guidelines on trans students in the letter that had been issued by these same agencies on May 13, 2016, addressed to all schools receiving federal funds at the national level. In a press release, the IACHR stated that “with this new measure, the government of the United States is withdrawing important federal protections that ensured non-discrimination, inclusion, acceptance, and full recognition of gender identity in the school environment for trans and gender-nonconforming students”.\textsuperscript{363} Also, according to available information, in August 2017 the president issued a memorandum to the Department of Defense prohibiting trans persons from openly serving in the Armed Forces, as well as imposing restrictions on the right to specialized health for trans persons paid for by the Armed Forces.\textsuperscript{364} The IACHR notes that the U.S. Court of Appeals for the Ninth Circuit stayed this executive decision.\textsuperscript{365} However, the government

\textsuperscript{361} Peru. Response to the Consultation Questionnaire.
\textsuperscript{362} IACHR, Hearing “Human Rights and Free, Plural, and Uncensored Education in Brazil: The Proposed Exclusion of a Gender Identity and Sexual Orientation Perspective in the National Curriculum Base”, May 25, 2017 (162nd Session), Buenos Aires, Argentina. The IACHR notes that this initiative was the subject of a joint statement by the Special Rapporteur on the Human Right to Education, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the UN Special Rapporteur on Freedom of Religion and Belief.
\textsuperscript{364} Time, President Trump Has Taken a Key Step to Implement His Transgender Military Ban, August 25, 2017.
\textsuperscript{365} See Lambda Legal, Karnoski v. Trump, Stay Decision, July 18, 2018.
announced new measures to reduce the number of trans persons in the armed forces and to assign them gender-stigmatizing roles.  

253. The Commission also notes with concern the proliferation of disinformation campaigns and demonstrations promoted by sectors opposed to the recognition of the rights of LGBTI persons throughout the continent. In this regard, the attention of the IACHR is drawn to the fact that, on many occasions, such acts are carried out as a reaction to the adoption of measures for the recognition of the rights of the LGBTI population.

254. The State of Peru, for example, informed the IACHR that after the adoption of the aforementioned “National Curriculum for Regular Basic Education”, groups such as “Con mis hijos no te metas” (Don’t mess with my children) have been hindering its implementation, positioning themselves against the gender approach, and “arguing that they intend to ‘homosexualize’ their children through what they have called ‘the gender ideology’. The media campaigns that this group has carried out in public spaces have had a great impact on the population, as they have had the economic and logistical support of the evangelical churches.”

255. According to the information received, in the State of Bolivia, following the adoption of the aforementioned Gender Identity Act, the Catholic and Evangelical Churches took various national actions against it. One of the most forceful was a march, with the participation of more than 200,000 people, convened by the “Platform of Life and Family” on June 22, 2016, in the city of Santa Cruz de la Sierra, with the purpose of demanding the repeal of Law No. 807, alleging an interference of the “gender ideology”. The organizers of the march pointed out to the press that, “we are fighting against a system that seeks to destroy the family and society. That system has a name and surname and is called ‘gender ideology’, and it has attempted to strike a blow against the family with the approval, without prior consultation, of the misleading Gender Identity Law. This is a sign of what may come if we are not vigilant in stopping the progress of this colonizing ideology”. The IACHR has also referred supra to the Abstract Unconstitutionality Action filed against the Gender Identity Law by Congressmen from parties supported by conservative religious sectors, as well as to the result thereof.


368 CDC – Capacitación y Derechos Ciudadanos (Bolivia). Response to the Consultation Questionnaire.

256. With respect to Colombia, the IACHR was informed of reactions to the approval of the aforementioned Law No. 1620 of 2013, which creates the National School Coexistence System. According to the information, “another factor that explains the low compliance with Law 1620 of 2013 is pressure from conservative political and religious groups. In July 2016, debates and marches in opposition to the Law were held in several cities. Subsequently, the Minister of Education was summoned to a debate of political control in Congress for the publication of textbooks to combat discrimination on the grounds of sexual orientation and gender identity in schools. Such reactions would have resulted in the resignation of the then Minister of Education and, as reported, the new minister assured that gender equity and programs to prevent and eradicate discrimination would not be a priority.

257. Likewise, in Paraguay, the Commission took note of the September 2017 decision of the Minister of Education to remove existing gender equality materials that were disseminated through the Ministry of Education’s website. In the same sense, in October of the same year, through Resolution No. 29664 of the Ministry of Education and Science, “the dissemination and use of printed materials as digital materials referring to the theory or ‘ideology of gender’ in the institutions dependent on the Ministry of Education” was prohibited. On this occasion, the Commission expressed concern that the gender perspective is pejoratively referred to as “gender ideology”, and considered that the measures adopted prohibiting teaching with a gender perspective, correspond to “a limited and stereotyped interpretation of the concept of family, which fails to recognize existing Inter-American standards on the subject and arbitrarily excludes diverse families, such as those formed by same-sex couples, who deserve equal protection under the American Convention”.

258. The Commission refers to the reaction in Costa Rica to the request for Advisory Opinion OC-24 presented by the State before the Inter-American Court, regarding gender identity and the rights of same-sex couples. In fact, the IACHR observes that, following the announcement of the decision on the request for an advisory opinion, held between November 13 and 24, 2017, during the 120th Regular Session of the Court, in San José, Costa Rica, a massive mobilization was organized by the Catholic Church and the

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370 Colombia Diversa (Colombia). Response to the Consultation Questionnaire.
371 See El Espectador, “New Minister of Education says that gender equality is not a priority”, November 11, 2016.
evangelicals of Costa Rica. According to available information, on December 3, 2017, this religious march “in defense of the family” promoted hate messages towards people of diverse sexual orientation and gender identity, and the rejection of “gender ideology”, same-sex marriage, and sex education classes promoted by the Ministry of Education of that country.
HIV/AIDS AND HUMAN RIGHTS IN THE CARIBBEAN:
SITUATIONAL ANALYSIS

Submitted to the Pan Caribbean Partnership Against HIV/AIDS (PANCAP)
CARICOM Secretariat
Guyana

Vivian A. Gray
Legal Reform Consultant
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September 30, 2018
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<tbody>
<tr>
<td>ABA/ROLI</td>
<td>American Bar Association Rule of Law Initiative</td>
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<tr>
<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<td>ARSH</td>
<td>Adolescent Sexual and Reproductive Health</td>
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<td>ARV</td>
<td>Antiretroviral</td>
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<td>BCC</td>
<td>Behavior Change Communication</td>
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<td>CARICOM</td>
<td>Caribbean Community and Common Market</td>
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<td>CARIFORUM</td>
<td>The Caribbean Forum</td>
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<tr>
<td>CBO</td>
<td>Community-based organization</td>
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<td>CCJ</td>
<td>Caribbean Court of Justice</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRN+</td>
<td>Caribbean Regional Network of People Living with HIV and AIDS</td>
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<td>CRSF</td>
<td>Caribbean Regional Strategic Framework on HIV and AIDS</td>
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<tr>
<td>CSO</td>
<td>Civil society organization</td>
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<tr>
<td>CSW</td>
<td>Commercial Sex Worker</td>
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<td>CVC</td>
<td>Caribbean Vulnerable Communities Coalition</td>
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<td>ECLAC</td>
<td>Economic Commission for Latin America and the Caribbean</td>
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<tr>
<td>FBO</td>
<td>Faith-based organization</td>
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<tr>
<td>GIPA</td>
<td>Greater Involvement of People Living with AIDS</td>
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<tr>
<td>HFLE</td>
<td>Health and Family Life Education (curriculum)</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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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of all Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICPD</td>
<td>International Conference on Population and Development</td>
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<td>IDLO</td>
<td>International Development Law Organization</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>IOM</td>
<td>International Organization on Migration</td>
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<tr>
<td>JN+</td>
<td>Jamaican Network of Seropositives</td>
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<td>JFJ</td>
<td>Jamaicans for Justice</td>
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<tr>
<td>KP</td>
<td>Key Populations</td>
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<tr>
<td>LGBT</td>
<td>Lesbian, gay, bisexual and transgender</td>
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<td>LRIDA</td>
<td>Labour Relations and Industrial Disputes Act</td>
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<tr>
<td>MARP</td>
<td>Most at-risk populations</td>
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<tr>
<td>MDG</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MOH</td>
<td>Ministry of Health</td>
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<tr>
<td>MSM</td>
<td>Men who have sex with men</td>
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<tr>
<td>NCPI</td>
<td>National Commitments and Policies Instrument</td>
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<td>NGO</td>
<td>Nongovernmental organization</td>
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<td>NSP</td>
<td>National HIV/AIDS Strategic Plan</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>OAS</td>
<td>Organization 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>OVC</td>
<td>Orphans and Vulnerable Children</td>
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<tr>
<td>PANCAP</td>
<td>Pan Caribbean Partnership Against HIV and AIDS</td>
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<tr>
<td>PLHIV</td>
<td>People living with HIV and AIDS</td>
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<tr>
<td>PMTCT</td>
<td>Prevention of mother to child transmission</td>
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<tr>
<td>PrEP</td>
<td>Pre-exposure Prophylaxis</td>
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<tr>
<td>PSWG</td>
<td>Policy and Strategy Working Group on Stigma and Discrimination</td>
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<tr>
<td>SASOD</td>
<td>Society Against Sexual Orientation Discrimination</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goals</td>
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<tr>
<td>SRH</td>
<td>Sexual and Reproductive Health</td>
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<tr>
<td>STI</td>
<td>Sexually Transmitted Infections</td>
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<tr>
<td>TG</td>
<td>Transgender</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAIDS</td>
<td>United Nations Joint Programme on AIDS</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<tr>
<td>UNGASS</td>
<td>United Nations General Assembly Special Session on HIV/AIDS</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office of Drug Control</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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<tr>
<td>U-RAP</td>
<td>Faculty of Law Rights Advocacy Project, University of the West Indies</td>
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<tr>
<td>USAID</td>
<td>US Agency for International Development</td>
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<tr>
<td>UWI</td>
<td>University of the West Indies</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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**EXECUTIVE SUMMARY**

**HIV IN THE CARIBBEAN – A SUMMARY**

UNAIDS reports\(^1\) that the HIV epidemic in the Caribbean has been stable over the last decade with a reported prevalence of 1.3% and an estimated 310,000 people living with the disease at the end of 2016. Five countries in the Caribbean accounted for the majority (92%) of infections. These are Haiti (48%), Dominican Republic (22%), Jamaica (10%), Cuba (8%) and Trinidad and Tobago (4%). More than half (52%) of Caribbean people living with HIV were on treatment in 2016, an increase of approximately 24% from 2010. Although HIV prevalence in the general population is generally low, prevalence among key affected populations, such as men who have sex with men (MSM) and sex workers is particularly high. Young people in the Caribbean are also disproportionately vulnerable to HIV.

Governments of the Caribbean region recognize that stigma and discrimination and social and economic conditions tend to increase vulnerability and risk factors and have articulated strategic actions in their respective National HIV Strategies to deal with these issues. At the regional level, efforts are underway, under the leadership of PANCAP, to implement the Caribbean Regional Strategic Framework (CRSF) on HIV and AIDS. The reformation of laws and policies, that conflict with general human rights standards and which tend to impede access to prevention, treatment and care interventions by vulnerable and at-risk individuals and groups, is one of the priorities of the CRSF.

**POSITIVE DEVELOPMENTS IN THE REGION**

1. **Strong Civil Society Activism:** Human Rights Defenders and Civil Society Organizations (CSOs) in the Caribbean have, for the most part, taken the lead in championing and promoting the rights of people living with HIV (PLHIV), LGBT persons and persons in other vulnerable groups. Their actions have led to a wide scale exposure of human rights violations across the Caribbean region and, in at least three cases, have contributed to “judicial amendment”\(^2\) of certain laws that affect the LGBT community. In July 2018, the Inter-American Commission on Human Rights (IACHR) ruled that the petition filed by Gareth Henry and Simone Edwards of Jamaica, challenging Jamaican law that discriminate against LGBT people and alleging State violation of its obligations under the American Convention on Human Rights, was admissible\(^3\). The case will now proceed to analysis of the merits.

   In 2016, Maurice Tomlinson initiated action in the Jamaican Constitutional Court challenging the buggery provisions of the Offences Against the Person Act. In 2010, SASOD of Guyana played a leading role in having the Supreme Court of Guyana pronounce on the legality of legislative provisions, which prohibit wearing attire of the opposite sex, in public. Also, for the most part, it is Civil Society Organizations and Human Rights Defenders that have led the way in educating and sensitizing representatives of the State (including the police and judicial officers), about the interconnectedness between concepts of justice, fairness, human rights and the rights of the

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\(^2\) In Belize, see Caleb Orozco v AG of Belize Claim No. 668 of 2010, unreported, (Supreme Court of Belize, 10 August 2016).

\(^3\) In Trinidad and Tobago, see Jason Jones v. Attorney General for Trinidad and Tobago, Unreported. Claim CV2017-00720 (12 April 2018)

3 However, the Commission found the allegations regarding state violation of obligations under the American Declaration to be inadmissible.
marginalized. It is also CSOs that have taken the lead in providing safe spaces and supportive services for PLHIV, LGBT individuals and other vulnerable groups.

2. Other positive developments, at the regional level, in relation to human rights include:
   
   2.1. Establishment of the Policy and Strategy Working Group on Stigma and Discrimination (PSWG) to oversee and coordinate regional and local HIV-related human rights initiatives.
   
   2.2. Establishment of PANCAP’s Justice for All program which establishes human rights as a priority of the regional response through a Pan Caribbean Declaration and Roadmap.
   
   2.3. National consultations, with targeted parliamentarians, faith leaders, youth, civil society leaders and private sector, and commitments from these groups to participate in the process of championing human rights.
   
   2.4. PANCAP’s Global Fund grant to carry out initiatives aimed at the removal of barriers that impede access to HIV and Sexual and Reproductive Health services for key populations, through September 2019.
   
   2.5. CVC Global Fund grant to carry out activities aimed at improving legal and policy environments for access to health and justice services for key populations.
   
   2.6. Successful judicial outcomes in constitutional challenges to the Offences Against the Person Act in Belize and the Sexual Offences Act in Trinidad and Tobago, in which the High Courts of Belize and Trinidad and Tobago have held that the provisions in these statutes which criminalized sexual intimacy between men, was in breach of various rights guaranteed by the Constitutions.

In addition, there are four (4) very recent positive developments in the region with regard to PLHIV and other vulnerable groups’ ability to access redress for violations of and abuse of rights:

1. **The Jamaica National HIV Redress System:** Through this redress mechanism, Jamaica Network of Seropositives (JN+) acts as a complaints handling bureau. The system is partnership-driven: JN+ receives and transmits complaints to relevant partner agencies; follows-up on behalf of complainants; and ensures that complaints to the various ministries, departments and agencies of government are being addressed. The respective “redress entities” are agencies of the State that have internal complaints, discipline and sanction mechanisms. These agencies include the Ministry of Labour, in relation to employment issues; the Office of the Public Defender for mal-administration in government; the Dispute Resolution Foundation for mediation and alternative dispute resolution; and non-governmental organizations engaged in human rights advocacy and strategic litigation, such as Jamaicans for Justice (JFJ). The complaints handling process is supported by a recently established (2017) program by CVC for the training and deployment of Community Paralegals.

2. **The UWI Rights Advocacy Project (U-RAP), Faculty of Law, University of the West Indies, Barbados:** U-RAP was established in 2009 by three pioneering Attorneys-at-Law (including the esteemed Tracy Robinson and Dr. Christopher Arif Balkan), who also happened to be public law teachers at The University of the West Indies. The initiative was established as an outreach activity aimed at promoting social justice and human rights through strategic litigation, socio-legal research and legal education. Among the recent strategic litigation undertaken by U-RAP is the provision of legal assistance advice and representation in the “Cross-Dressing for an Improper Purpose Case”: **Quincy McEwan et al vs. Attorney General of Guyana.**
3. **A Caribbean-wide panel of Attorneys who provide pro bono legal advice, assistance and representation:** Under U-RAP, a Caribbean-wide panel of Attorneys, all duly qualified at the respective country level, has been established. Members of the panel commit their time and expertise to reviewing allegations of human rights violations; undertaking strategic litigation; and providing advice to civil society organisations, at no cost to the receiving party.

4. **Training and Deployment of Community Paralegals:** Since 2017, the Caribbean Vulnerable Communities Coalition (CVC) has been helping non-governmental organizations, engaged in human rights advocacy and strategic litigation - such as SASOD in Guyana and Jamaicans for Justice - to train and deploy laypersons in communities as Community Paralegals. Once trained, these Community Paralegals act as the first point of contact for individuals seeking redress for human rights violations. The Community Paralegals perform a “triage” function by helping complainants to understand which legal process or “redress entity” can assist them with resolving the issue/s they face.

Despite these successes, this review has found that, across the Caribbean, there still exists domestic laws, policies, and practices that adversely affect the rights of PLHIV and vulnerable individuals in: accessing essential services; benefiting from equal access to public goods and services; and accessing justice. Most abuse of rights are grounded in the belief by members of the dominant socio-cultural group, that the individual concerned is engaged in behaviour that is unacceptable or morally wrong. Such beliefs tend to be reinforced by certain legislation, which reflect biblical principles, and create a permissive legal framework in which the abuse of rights goes un-redressed. In this context, law, policy and unpunished professional misconduct, by those charged with delivering public goods and services to those who are already most vulnerable to abuse, tend to reinforce these negative norms and social constructs of moral conduct.
KEY FINDINGS AND RECOMMENDATIONS FOR PANCAP

Factors contributing to human rights violations across the region

From the reports reviewed and the interviews conducted, violations of human rights across the region appear to be because of four (4) main factors:

(1) Structural issues, such as resource constraints; hours of operation; layout and organization of public health facilities increase the likelihood of “information leaks” which fuel fear and distrust of the public health system.

(2) A permissive legal and policy framework, which allows stigma, discrimination and abuse to thrive.

(3) Professional misconduct and neglect of professional duties by public officers within public health institutions.

(4) Professional misconduct by police officers who either, through ignorance or a willful disregard, fail to uphold public order laws when PLHIV and LGBT persons face physical violence, abuse, intimidation and threats in public spaces which could result in a breach of the peace.

Findings and Recommendations across key areas

The main findings and recommendations to improve access to essential services, to address issues of violence and harassment faced by LGBT individuals and PLHIV in public spaces, and to address the issues of professional misconduct within public health facilities are as follows:

STIGMA, DISCRIMINATION AND SOCIAL EXCLUSION

1. PLHIV and LGBT persons are subjected to physical violence, verbal abuse harassment and intimidation in public spaces, discrimination in employment, and discrimination against relatives.

2. Abuse of rights is most prevalent in public health institutions and in public spaces. Stakeholders indicated that there are still systematic violations of the rights of persons living with HIV and marginalized groups, primarily in healthcare settings, in public spaces, in their communities and even in their homes.

3. There are no laws which specifically target HIV-related hate speech, abuse and harassment, although legislation exists across the region which makes it an offence for a wide variety of behaviours including: using threatening, abusive, insulting, obscene, or profane language which may provoke a breach of the peace. Legislation in Trinidad and Tobago makes it an offence to insult, humiliate or intimidate another person in public where the action is motivated by race, gender, ethnicity or religion and the actions of the offender are done with the intention of inciting racial, gender or religious hatred. However, sexual orientation, health status or disabilities are not included.

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4 See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)
4. Across the Caribbean, legislation exists that criminalizes at-risk behaviors of key populations. These include male-to-male homosexuality, sex work, sex among adolescents, and substance use. Legislation and Regulations governing prisons also affect access by prisoners to commodities such as condoms.

5. The definition of communicable diseases under Public Health Acts and Quarantine Acts, which could result in quarantine, isolation or segregation, is broadly stated. The natural and ordinary meaning of the words include HIV/AIDS. Although there have been no instances of isolation or segregation of PLHIV, the law would provide a valid defense for any misguided conduct resulting in isolation, segregation and quarantine of persons because of their HIV status. A distinction should therefore be made in law, to make it clear that even if HIV is a communicable disease, it does not fall into the sub-category of contagious diseases and therefore the quarantine measures stipulated in the Acts, would not apply to HIV/AIDS.
ACCESS TO ESSENTIAL SERVICES

Factor 1: Public Education and Access to Information

Key Findings

1.1. There is a lack of dedicated, age-appropriate services for most-at-risk adolescents and young people.

1.2. Generally, there is an absence of comprehensive sexual and reproductive health information in the school curricula.

1.3. Health professionals do not receive mandatory training in issues related to human rights, unconscious bias and diversity before qualification.

1.4. Training in issues related to human rights, unconscious bias and diversity issues is not a mandatory requirement for continuing medical education or licensure of medical practitioners and health professionals.

1.5. Auxiliary workers at health facilities are not generally included in human rights and diversity training.

1.6. There is a lack of specific measures for the disabled, indigenous and ethnic groups and persons who are speech, hearing or visually-impaired.

1.7. There is a lack of specific measures for undocumented migrants.

1.8. There is a lack of privacy in accessing services. This deters persons in the key populations from using public services.

Priority Recommendations

(a) Regulatory Bodies: Provide technical and financial assistance to national authorities and their respective regulatory bodies, such as Medical Councils, to make training in human rights, diversity, conscious and unconscious bias, mandatory courses for continuing professional education and for relicensure.

(b) Auxiliary staff: Provide technical and financial assistance to national authorities to train auxiliary staff at public health facilities in human rights and to build their capacity to traverse issues such as diversity, confidentiality, conscious and unconscious bias in relation to PLHIV and other vulnerable groups.

(c) Use of sign language: Provide technical and financial assistance to national authorities to train persons at public health facilities in sign language. This will ensure that there are personnel on staff who can communicate with persons who are speech or hearing impaired.

(d) Policy guidelines for prisons: Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons, jails to define a minimum package of services and service delivery protocols for incarcerated persons generally, and transgender persons in particular.

Factor 2: HIV Prevention
Key Findings
2.1 There is an absence of specific prevention strategies for incarcerated persons.
2.2 There is an absence of specific prevention strategies for the disabled, indigenous peoples and ethnic groups.
2.3 There is need for capacity building on gender identity and measures to improve health providers’ knowledge about the physical and emotional health needs of transgender people.
2.4 Age of consent laws affect access to prevention interventions by most-at-risk adolescents.
2.5 PrEP is not widely used as a prevention measure among groups of persons at high risk.

Priority Recommendations
(a) **Flexible working hours**: Provide assistance to civil society testing facilities and government testing facilities to establish flexible working hours to reach key populations.
(b) **PrEP**: Provide technical assistance to national authorities to rollout PrEP to key populations and other at-risk individuals, such as partners in sero-discordant relationships, as an additional prevention intervention.
(c) **Advocacy for law reform**: Provide technical assistance to civil society organizations to undertake advocacy for law reform, aimed at lowering the age at which young people can access sexual and reproductive health services including obtaining an HIV test without the consent of a parent or guardian.
(d) **Use of Braille and sign language**: Provide financial and technical assistance to national authorities to make HIV information, education and prevention programs available in braille, accompanied by sign language or other forms that are suitable for persons who are visually impaired or speech and hearing impaired.
(e) **Gender-responsive prevention strategies**: Provide technical assistance to national authorities to develop gender-responsive prevention strategies that meet the specific needs of transgender persons.

Factor 3: Testing, Counselling and Referral

Key Findings
3.1. Inflexible hours of operation: Government-owned facilities do not normally offer services with flexible hours for HIV testing that will enable key populations to be tested at times that are more convenient for them.
3.2. Limited use of self-testing: Only Trinidad and Tobago and Jamaica appear to have this type of test available.
3.3. Not all countries have specific legal frameworks governing testing by persons who are not medically trained.
3.4. Access to testing by sexually active persons below the age of 18 years is restricted in all countries.
3.5. Testing of prisoners upon admission and release is authorized by legislation, which pre-date the advent of HIV and AIDS.

Recommendations:
(a) **Self-administered HIV testing**: Provide technical and financial assistance to national authorities to rollout self-administered HIV testing. This could be rolled out initially in any or all the five territories with the highest HIV burden.

**Factor 4: Treatment**

**Key Findings**

4.1. Violations of confidentiality, lack of anonymity, the location of treatment sites, disrespectful behavior, abuse, dehumanized care, a hostile attitude among healthcare workers, and the use of insensitive language, all deter persons from using health facilities.

4.2. Failure of healthcare professionals to follow established regulations or protocols.

4.3. Prejudice or moralizing in healthcare facilities: Stakeholders indicated that when they visit health facilities (especially young persons and persons in the LGBT community) they are subjected to lectures that morally judge their behaviors and practices.

4.4. Members of key populations are rarely aware about rights, local regulations and complaints mechanisms, in the public health sector, which constitute a barrier to exercising their rights.

4.5. Government-owned facilities do not normally offer services with flexible hours that enable key populations to get treatment and care at times that are more convenient for them.

4.6. Not all States have adopted the WHO’s recommended antiretroviral therapy initiation threshold.

4.7. There is a lack of specialized services and service providers for key populations, e.g. transgender women, except, perhaps in the case of Barbados.

**Priority recommendations**

(a) **Mobile treatment services**: Provide technical support to national authorities to implement mobile treatment services and strategically locate services where the key populations are concentrated or in places that they frequent.

(b) **Flexible hours for key populations**: Provide technical and financial assistance to national authorities and civil society organizations to enable flexible program hours with regular and reliable services tailored to key populations.

(c) **Complaint and Grievance mechanisms**: Provide technical assistance to national health authorities to widely disseminate information on the complaint and grievance mechanisms, available inside and outside the health center, especially among key populations, to inform them about their rights and the remedies available to them when those rights are violated.

(d) **Specialized services for trans-persons**: Governments are encouraged to use existing guidance such as implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions (the “TRANSIT”) to scale up specialized services for trans-persons.

**Factor 5: Social Protection and Material Assistance**

**Key Findings**
5.1. While existing social protection schemes address some aspects of social protection (such as access to social services for education, health and nutrition), there are gaps in relation to social insurance and labour market policies (especially HIV-related employment protection). Other gaps include: (i) access to benefits such as parental leave; (ii) survivor benefits for persons involved in same-sex relationships and; (iii) assistance to address the housing needs of LGBT persons and PLHIV who may not be able to afford housing in particular neighborhoods due to violence.

5.2. Standardized means tests to determine eligibility for social assistance focus on issues such as educational level, access to electricity, family structure and possession of durable goods. However, other specific social or legal barriers, which PLHIV and members of key populations such as LGBT and youth face, are not taken into account. For example, LGBT persons who are unable to live in low-rent communities - due to high levels of threats, intimidation and violence, may not qualify for social assistance under current social protection schemes - cannot affordable housing in other, more accommodating communities where the rent is considerable higher. Underemployment of LGBT persons, youth and persons who live in certain rural communities, due to stigma and discrimination, does not appear to be a factor that features in social protection assistance.

5.3. Data from the 2017 NCPI indicates that seven countries reported fear of stigma and discrimination as barriers to accessing social protection. These countries include: Bahamas, Barbados, Dominica, Dominican Republic, Haiti, Jamaica, and Saint Lucia. The data also shows that, in Dominica and Haiti, high out-of-pocket expenses are barriers to accessing social protection.

5.4. Absence of general anti-discriminatory laws that prohibit termination of employment based on HIV-status.

5.5. Life insurance and medical insurance policies are not usually available to people with HIV.

Priority recommendations

(a) Social Security Admissions: Provide technical assistance to national authorities to undertake actuarial reviews, assessments and capacity building for social security administrations to tailor their programmes to meet the needs of those who are most vulnerable. This will help countries better understand their HIV and social protection landscapes, and strengthen their capacities for planning and implementing robust HIV-sensitive social protection programmes. This would help deepen and extend the coverage of social protection programmes to people living with, at risk of or affected by HIV. The assessments would also assist countries to generate strategic information to help understand how to finance social protection programmes sustainably. Relevant costs for increasing the HIV sensitivity of social protection programmes would be obtained from the assessments.

(b) Educational Programmes for self-employed persons: Provide technical assistance to national authorities to roll out educational programmes, for persons in the informal economy and self-employed persons, to increase their knowledge of how they can participate in national insurance schemes, either as self-employed persons or as voluntary contributors.
Factor 6: Protection of Privacy and Confidentiality

Key Findings

6.1. The Constitutional right to privacy may not be enforceable in all States and not all States have substantive privacy laws.

6.2. Professional misconduct via regulatory agencies may provide an alternative form of redress, for breach of the right to privacy.

Priority Recommendation:

(a) **New practices**: Provide technical assistance to national authorities to adopt a practice, like that adopted in Barbados, through the Draft HIV and related Health Information Confidentiality Policy and Contract.

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**EQUALITY OF PLHIV IN PUBLIC AND PRIVATE LIFE**

Factor 7: Participation in political, social and cultural life

Key Findings

7.1. Abuse of rights and violence is prevalent in public spaces.

7.2. There are no laws, which specifically target hate speech, abuse and harassment, but in Trinidad and Tobago, there is legislation that deals with inciting religions, racial or gender-based hatred in a public space. The Trinidad and Tobago legislation is limited in that “offensive behaviour” based on sexual orientation or health status is not covered.

7.3. Caribbean public order laws may be used to provide protection against verbal abuse and violence but there is no evidence that the police are using these laws to protect PLHIV and LGBT individuals from abuse and community violence.

Priority Recommendations

(a) **Obtaining a Fiat**: Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat\(^5\) to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granting the fiat would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.

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\(^5\) “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.
(b) **Guidebook for prosecutors and police officers**: Provide technical-legal and financial assistance to national authorities, to work with prosecuting authorities, to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons, under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

**Factor 8: Family, Sexual and Reproductive Life**

**Key Findings**

8.1. There is limited access to sexual and reproductive health services for disabled youth.

8.2. A woman’s right to safe pregnancy and childbirth may be affected by the fact that abortion is illegal in almost every State.
Priority Recommendations

(a) **Age of consent legislation:** Provide technical-legal assistance to national authorities to amend age of consent legislation. This will ensure that the age, at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines (to be included in the amended legislation) and gives medical practitioners discretion to assess a person’s capacity to consent.

(b) **Sexual Offences Legislation:** Provide technical-legal assistance to national authorities to amend sexual offences legislation to provide good faith immunity against criminal prosecution for aiding, abetting or facilitating offences, to medical practitioners, guidance counsellors, outreach workers and social workers, persons who provide information, advice and other services to at-risk, sexually active adolescents, when the person in question is acting for the purpose of protecting the child from sexually transmitted infections, pregnancy or emotional harm.

Factor 9: Education and Training

Key Findings

9.1. Very few States have general anti-discrimination laws with anti-discrimination provisions guaranteeing education.

9.2. There is no framework to ensure continued education for pregnant girls and teen mothers in public educational institutions, except for two States – Jamaica and Guyana.

9.3. The classification of HIV as a notifiable disease and its inclusion in Notifiable Diseases Regulations without distinction from contagions could result in HIV positive individuals being excluded from schools.

Priority Recommendation

(a) **Pregnant schoolgirls:** Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measure will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measure should include approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

Factor 10: Employment

Key Findings

10.1. PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice.

10.2. Most Caribbean States have labour law provisions that can provide redress, if employment is terminated based on HIV status.

10.3. While HIV & AIDS is recognized as a protected ground against discrimination, in employment, in some countries, the same is not the case for sexual orientation and gender identity.
10.4. Except perhaps in Trinidad and Tobago, job applicants and persons in pre-employment situations do not have the benefit of antidiscrimination protections or the unfair treatment provisions in employment legislation.

**Priority Recommendations**

(a) **Civil society advocacy:** Provide support to civil society organizations at the national level to advocate for: the enactment of anti-discrimination legislation; and legislation which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.

(b) **Employment legislation:** Provide technical assistance to national authorities to amend employment legislation or adopt new legislation, like Barbados’ draft Employment (Prevention of Discrimination) Bill, which cover areas such as the prevention of discrimination in job creation, recruiting and prevention of discrimination in employment. The Bill also imposes an obligation on employers to make reasonable adjustments for the accommodation of persons with disabilities. It also creates a prohibition against testing for medical conditions. The Bill seeks to protect persons from discrimination related to employment based on: race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.

(c) **Employment legislation (non-discrimination provisions):** Provide technical assistance to national authorities to revise national employment legislation or adopt legislation, which reflects the non-discrimination provisions in Part III of the Trinidad and Tobago Equal Opportunities Act.

**Factor 11: Public and Private Housing**

11.1. There is an absence of National Housing Strategies or Action Plans to implement International Covenant on Economic, Social and Cultural Rights (ICESCR) Obligations and ensure access to Housing and Legal Security of Tenure.

**Factor 12: Entry, Stay and Residence**

12.1. Eight Countries in the Caribbean have no HIV specific restriction on entry or stay. These are: Antigua and Barbuda, Barbados, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, and Trinidad and Tobago.

**Factor 13: Criminalization of HIV transmission**

13.1. Saint Lucia, Belize and the Bahamas all have laws that criminalize transmission of HIV. The other territories have general criminal law provisions under which intentional and perhaps reckless transmission of HIV could be prosecuted.

**KEY POPULATIONS**

**Factor 14: Women**
Key Findings

14.1. Except for Guyana and Jamaica, there is an absence of a clear, appropriate re-entry policy and/or measures for pregnant schoolgirls that allows them to remain in formal education, sit exams and return to school after giving birth.

14.2. Disadvantaged groups of women, including: rural; Maroon and indigenous women; women with disabilities; and lesbian, bisexual, transgender and intersex women, continue to experience intersecting forms of discrimination, domestic abuse and violations of their human rights.

14.3. Although there is equal pay legislation, there are no monitoring institutions to ensure that women receive equal remuneration for work of equal value.

Priority Recommendations:
(a) **Re-Entry guidelines for pregnant schoolgirls**: Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

(b) **Equal Pay**: Provide technical-legal assistance to Ministries of Labour, Chambers of Commerce and Business Associations across the region to develop a practice guide for ensuring that women and men get equal pay for work having equal value, as distinct from similar work.

Factor 15: Children and Youth

Key Findings

15.1. Marriage legislation permits early marriage at or below 16 years of age in some countries.

15.2. Some groups of children, in particular children with disabilities, children living in poverty, children of migrant parents and informally adopted children, suffer from discriminatory attitudes and disparities in accessing basic services.

15.3. Except for Guyana and Jamaica, there is an absence of re-entry policies, enabling adolescent mothers to return to school after pregnancy.

15.4. There is a lack of access to sexual and reproductive health information and services, including modern contraception methods, by adolescent girls, and thus a high rate of teenage pregnancies, abortions, and transmission of HIV.

15.5. For children with disabilities, there is a lack of access to adequate health care and to public spaces because of architectural barriers. For example, many public buildings such as schools, government buildings, churches, shops and police stations do not have ramps.

Recommendations:
(a) **Re-Entry guidelines for pregnant schoolgirls**: Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes,
that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

(b) **Rights of disadvantaged groups of children**: Provide technical-legal assistance to national authorities to effectively implement laws to ensure access to basic services and effective remedies, in case of violation of the rights of disadvantaged groups of children, including rural, Maroon and indigenous children and children with disabilities.

(c) **Age of consent**: Provide technical-legal assistance to national authorities to amend age of consent legislation, so that the age at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines. These guidelines should be included in the amended legislation so that it gives medical practitioners discretion to assess a person’s capacity to consent.

**Factor 16: People who use drugs**

**Key Findings**

Injecting drug users do not constitute a significant population in terms of HIV prevalence. However, there is a link between other substance uses and HIV prevalence. Most National HIV strategies have identified people who use drugs as key populations. The drug of choice has been identified primarily as either marijuana or crack/cocaine. The framework for services for drug users in the Caribbean is predominantly abstinence-based. Harm reduction does not appear to be an integral part of the national HIV response.

**Factor 17: Adults engaged in sex work**

**Key Findings**

17.1. Except for Belize, Suriname and the Dominican Republic, sex work in the Caribbean is an illegal activity.

17.2. There is limited reach and social security protections for workers in the informal economy and those in non-standard forms of employment.

**Recommendations:**

(a) **Decriminalization of sex work**: Support civil society organizations to advocate for decriminalization of sex work as an important step to prevent sexual and labour exploitation of sex workers.

(b) **Public order laws**: Provide technical-legal assistance to national authorities to amend public order laws and sexual offences legislation, to provide immunity to medical practitioners, guidance counsellors, outreach workers and social workers (persons who provide information, advice and other services to sex workers at places where they may engage in activities contrary to public order laws and other laws), against criminal prosecution for aiding, abetting or facilitating offences, once it is shown that the person/s in question is/are acting for the purposes of protecting the sex worker from sexually transmitted infection.
Factor 18: Transgender Persons and MSM

Key Findings

18.1. Nine Caribbean States continue to criminalize same sex activity among males:

- **Antigua and Barbuda**: Sexual Offences Act 1995, Section 12(1)
- **Barbados**: Sexual Offences Act, Section 9
- **Dominica**: Sexual offences Act 1998, Section 16
- **Grenada**: Criminal Code, Section 431
- **Guyana**: Criminal Law (Offences) Act 1893, section 352, 353, 354
- **Jamaica**: Offences Against the Persons Act, Sections 76, 77, 79
- **Saint Kitts and Nevis**: Offences against the Person Ordinance, chapter 56 of the Revised Laws 1961, section 56
- **Saint Lucia**: Criminal Code, Section 133
- **Saint Vincent and the Grenadines**: Criminal Code, Sections 146 and 148

18.2. Sexual orientation is not a protected ground against discrimination in Caribbean constitutions.

Priority Recommendation:

(a) **Strategic litigation**: Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment,” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of LGBT persons or any other group.

Factor 19: People under State Custody

Key Findings: There are key barriers that prevent prison inmates from enjoying the same standard of health, as persons not incarcerated. These barriers include the absence of regulations, laws and administrative guidelines for how to address the needs of transgender prison inmates, who are housed according to their birth sex. In addition, outdated laws prevent access to condoms as a preventative measure.

Recommendations:

(a) **Treatment of prisoners**: Provide technical assistance to national authorities to develop standard minimum rules for the treatment of prisoners, to include protocols for: health care assessment, healthy food, provision of necessities, sexual abuse, self-harm and suicide prevention, protection of vulnerable prisoners, health care, personal dignity, grievances and access to courts.

(b) **Incarcerated transgender persons**: Develop policy guidelines for jails and prisons for transgender persons: Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails to define a minimum package of services and service delivery protocols for incarcerated transgender persons.

ACCESS TO JUSTICE
Factor 20: Legal Protections

Key Findings

20.1. There is a lack of law enforcement investigation and barriers in reporting crime, especially by LGBT persons.

20.2. Some Caribbean constitutions explicitly exclude access to justice for human rights violations, where the constitutional challenge relates to laws that existed before independence or before a specified date, and which affect those vulnerable to HIV.

20.3. Except for Trinidad and Tobago, there is an absence of national human rights institutions with a comprehensive mandate, but even the Equal Opportunities Commission of Trinidad and Tobago, is limited by its Statute and does have a mandate in relation to all forms of inequality and discrimination.

Recommendations

(a) **Obtaining a fiat**: Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat\(^6\) to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granting the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.

(b) **National human rights institutions**: Provide technical assistance to national authorities to conduct the relevant assessments to determine the best way to use existing institutions such as offices of Ombudsmen and Public Defenders, as national human rights institutions, by extending their mandate.

Factor 21: Legal Literacy

Key Findings: Legal literacy is scarcely developed among members of the key populations in the region who, in general, also lack access to effective legal aid.

Recommendation:

(a) **Legal literacy materials**: Support production and dissemination of easy-to-understand, population-specific legal literacy materials focusing on HIV & AIDS and legal rights (e.g., brochures, directories of legal services, practice and training manuals, bench books for judges, and student texts) in both the English-speaking and non-English-speaking Caribbean territories.

Factor 22: Access to Redress

Key Findings

\(^6\) “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.
22.1. Broad-based anti-discrimination laws are mostly absent from Caribbean States.
22.2. Fear of being “found out” prevents persons from seeking redress.
22.3. Stigma and discrimination from police, armed forces, and judicial officials act as deterrents to approaching the police and the courts.
22.4. Most States do not have national human rights institutions with a comprehensive mandate.
22.5. Limited use and understanding of the Inter-American Human Rights System.

Recommendations

(a) **Use of the Inter-American Human Rights System:** Provide technical and financial support to Civil Society Organizations to make use of the Inter-American Human Rights System’s ability to issue Precautionary Measures and Provisional Measures.

(b) **Criminal Prosecutions for Misbehavior in Public Office:** Provide technical and financial assistance to civil society organizations to hire an attorney who will pursue criminal prosecutions using the common law offence of misbehavior in public office. The Attorney will need to apply to the Office of the DPP for a fiat to prosecute and issue indictments against public sector employees who neglect PLHIV and LGBT at health facilities and police officers who fail to investigate complaints of human rights violations, discrimination and abuse.

(c) **Civil Litigation for Misfeasance in Public Office:** Provide technical assistance to civil society organizations to undertake strategic civil litigation against public sector employees and police officers for misfeasance in public office.
RECOMMENDATIONS TO IMPROVE THE DESIGN, IMPLEMENTATION AND MONITORING OF HUMAN RIGHTS INTERVENTIONS

Addressing the impact of human rights interventions

One of the principal challenges faced by the consultant in putting this work together is that HIV & AIDS human rights interventions are not designed, implemented and monitored in a way which makes it easy to identify implementation successes, gaps and challenges. To date, human rights-related activities at country level have focused largely on training and advocacy for law and policy reforms. Hardly any measures address the impact of the intervention. Most of the advocacy has been directed at political leaders. There is therefore a gap between the aspirational goals and the actual activities being implemented, with the result being that while there have been lots of activities, there have been few changes.

Results based work plans
To ensure that interventions are designed and implemented in such a way that there is an equal focus on achieving impact or changes at the outcome level, it is recommended that technical assistance be provided to national authorities to develop results and performance frameworks to guide the implementation of future human rights related interventions. The technical assistance should focus on assisting national authorities to design results-based work plans with accompanying performance measurement frameworks and training a cadre of individuals in country to build their capacity to design, implement, monitor and report, using a results-based approach for human rights interventions. See section 8 of this report below and the sample results framework.
b.2. **Anti-discrimination legislation**: Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

b.3. **CARICOM high level discussions**: With a view to ensuring that Heads of government take action towards implementing the above recommendation, PANCAP and Civil Society Organizations should engage and have discussions with the current Minister of the Quasi Cabinet of CARICOM with responsibility for Justice and Governance, Hon. Dean Barrow of Belize and the Current Minister of the Quasi Cabinet of CARICOM, with responsibility for Human Resource Development, Health and HIV & AIDS, Hon. Timothy Harris of Saint Kitts/Nevis,

b.4. **Legal Affairs committee of CARICOM**: Engage the Legal Affairs Committee of CARICOM and lobby for a fixed agenda item regarding the legal, ethical and human rights issues as part of the meetings of the Council for Human and Social Development.

b.5. **Amendment of national regulations**: Provide technical-legal assistance to national authorities to amend national Regulations governing medical practitioners and related professions such as nursing and social work, to include provisions like the Joint Code of Ethics contained in the Regulations made under the Guyana’s *Medical Practitioners Act.*

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**SECTION II: EQUALITY OF PLHIV IN PUBLIC AND PRIVATE LIFE**

The right of all people to equality and inclusion in political, social, and cultural life is particularly significant for PLHIV, HIV & AIDS advocates, and service workers because of the high levels of stigma and discrimination they face in the public and private spheres. Ensuring that PLHIV enjoy freedom of expression, association, and free participation in public affairs is key to addressing misconceptions about HIV & AIDS and protecting the health and dignity of PLHIV and key populations. The importance of these rights for PLHIV is reflected in the principle of greater involvement of people living with or affected by HIV [hereinafter GIPA], which was endorsed at the 1994 Paris AIDS Summit and subsequently reiterated in numerous international standard-setting documents. GIPA recognizes the critical role that PLHIV must play in any public response to the HIV & AIDS epidemic. This, in turn, requires that PLHIV, HIV & AIDS advocates, and service-workers must not be deterred from freely communicating, organizing, or seeking public positions.

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132 International Guidelines 2, Paras. 17-18;
133 UNAIDS, From Principle to Practice: Greater Involvement of People Living with Or Affected By HIV/AIDS (GIPA) (1999)
FACTOR 7: POLITICAL, SOCIAL, AND CULTURAL LIFE

7.1.INTERNATIONAL GUIDELINES

International Guidelines suggest that the right to equality and inclusion engages several distinct human rights: (a) the right to freedom of opinion and expression; (b) the right to political participation; (c) the right to participate in social and cultural life; and (d) the right to freedom of assembly and association. To give effect to these rights, States should ensure that PLHIV, HIV & AIDS activists, and service-workers are unimpeded in their ability to seek, receive, and impart information and ideas of all kinds, are free to participate in public affairs and have equal access to public goods and services. The Guidelines therefore urge States to:

- Extend anti-discrimination laws to areas that are as broad as possible, including transport and other services.
- Ensure that community organizations are able to carry out their activities effectively.
- Decriminalize laws and regulations that restrict the movement or association of members of vulnerable groups.
- Refrain from making HIV & AIDS outreach workers and service workers liable for aiding or abetting criminal offences, when providing information or services to groups engaged in activities proscribed by the criminal law.
- Involve PLHIV in all aspects of the response to HIV.
- Ensure that PLHIV enjoy the right to equal access to any place or service intended for the public, including public transportation.

7.2.APPLICABLE HUMAN RIGHTS

Right to Hold Opinions and Freedom of Expression: Everyone has the right to hold opinions, without interference, and the right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, either orally, in writing, in print, in the form of art, or through any other media. Freedom of expression can be restricted only in circumstances prescribed by the law for the protection of the rights of others, national security, public order, or public health or morals. Right to Political Participation: International law guarantees everyone the equal right to participate in public affairs and the political process, by voting or serving in public office. Right to Participate in Social & Cultural Life: Everyone has the right to take part in cultural life. States are required to respect the freedom indispensable for creative activity. Right to Peaceful Assembly & Association: Everyone has the right to peaceful assembly and association, including the right to join trade unions. These rights can be restricted only in circumstances prescribed by the law, which are necessary in a democratic society, for the protection of the rights of others, national security, or public safety, order, health, or morals.

134 ICCPR art. 19
135 UDHR art. 21; ICCPR art. 25
136 ICESCR art. 15
137 UDHR art. 20; ICCPR arts. 21-22
7.3. SITUATION ACROSS THE CARIBBEAN

“…YOU CAN’T WALK DOWN THE ROAD. I HAVE LOTS OF FRIENDS – GAY, TRANS – EVERYBODY [IS] SCARED… TO WALK…” – INTERVIEW WITH MEL, GUYANA

The Universal Declaration of Human Rights (UDHR)\(^{139}\), which marked an important milestone in the history of human rights, expresses the fundamental human rights, which are inherent to all people. The International Covenant on Civil and Political Rights (ICCPR)\(^{140}\) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^{141}\) both emerged from the UDHR. Article 2 of both the ICCPR and the ICESCR treaties provide that the rights proclaimed, are to be enjoyed “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”\(^{142}\). This provision has been interpreted as assuring non-discrimination based on real or perceived HIV status. The General Committee of the ICESCR has noted that “State parties should ensure that a person’s actual or perceived health status is not a barrier to realizing rights under the Covenant.”\(^{143}\) Further, “…restrictions are discriminatory for example, when HIV status is used as the basis for differential treatment with regard to access to…employment…”\(^{144}\) State parties should therefore “…adopt measures to address widespread stigmatization of persons on the basis of their health status…”\(^{145}\)

7.4. GAPS AND OPPORTUNITIES

(a) Abuse of rights and violence is prevalent in public spaces: Stakeholders indicated that although more persons have accepting attitudes, than perhaps a decade ago, there is still systematic violation of the rights of persons living with HIV and marginalized groups. PLHIV, MSM and Transgender stakeholders report that they experience abuse of rights in public spaces, in their communities and even in their homes. In the community and in public spaces there is stigmatization, verbal abuse, emotional abuse, humiliation and in some instances, physical violence against MSM and transgender persons. In discussions with representatives of the LGBT community, they indicated that members of the community report being harassed and alienated by their family members, relatives, neighbors and friends - “…information travel fast” expressed one interviewee in Antigua. The fear of being rejected by family and friends has led LGBT people and PLHIV to take extreme care in hiding their

\(^{138}\) Interview as reported in Schoenholtz, Gómez-Lugo and Binetti: “TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018), page 56

\(^{139}\) UN General Assembly, “Universal Declaration of Human Rights” 10 December 1948

\(^{140}\) The International Covenant on Civil and Political Rights (ICCPR), 1966

\(^{141}\) The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

\(^{142}\) Ibid, ibid.


\(^{144}\) Ibid.

\(^{145}\) Ibid.
HIV status, their sexuality and to remain silent at home, at work and in public spaces for fear of being “outed” and to avoid further acts of discrimination and abuse. Sexually active young persons (particularly girls) also face stigma and disapproval, judgmental attitudes, and hostility in the delivery of services. As a result, individuals in these groups have difficulty trusting that health care workers will not disclose their sexual practices and behaviors, leading them to delay or avoid seeking healthcare; travel great distances to locations where their identities are unknown; or utilize private-sector health care that can come at a high cost.

In 2017, the Caribbean Vulnerabilities Coalition launched a region-wide incident-reporting database. Participation in the database is open to all non-governmental and governmental organizations but to date, only non-governmental organizations have been using the database. At the time of writing this report, there were 28 non-governmental entities using the database. Data uploaded to the database from the participating organizations between 2016 and 2017 shows the following:

**Table 1: Types of Incidents**

<table>
<thead>
<tr>
<th>Incident Type</th>
<th>2016</th>
<th>2017</th>
<th>2018 - April</th>
<th>Total</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical violence</td>
<td>23</td>
<td>45</td>
<td>34</td>
<td>102</td>
<td>56%</td>
</tr>
<tr>
<td>Breach of confidentiality</td>
<td>2</td>
<td>12</td>
<td>11</td>
<td>25</td>
<td>14%</td>
</tr>
<tr>
<td>Discrimination against relative</td>
<td>3</td>
<td>9</td>
<td>7</td>
<td>19</td>
<td>10%</td>
</tr>
<tr>
<td>Forced to leave job</td>
<td>2</td>
<td>8</td>
<td>5</td>
<td>15</td>
<td>8%</td>
</tr>
<tr>
<td>Not Hired</td>
<td>1</td>
<td>6</td>
<td>2</td>
<td>9</td>
<td>5%</td>
</tr>
<tr>
<td>Denied access to healthcare</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>7</td>
<td>4%</td>
</tr>
<tr>
<td>Not accepted into school</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>2%</td>
</tr>
<tr>
<td>Forced to leave school</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1%</td>
</tr>
<tr>
<td>Forced to leave home/community</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Harassment/verbal abuse</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Denied housing</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
<td>86</td>
<td>63</td>
<td>183</td>
<td>100%</td>
</tr>
</tbody>
</table>
### Table 2: Where incidents take place

<table>
<thead>
<tr>
<th>Incident Type</th>
<th>Church</th>
<th>Community</th>
<th>Gov. Agency</th>
<th>Health Facility</th>
<th>Public</th>
<th>Private</th>
<th>Home</th>
<th>Law Enforcement</th>
<th>Private Business</th>
<th>School</th>
<th>Work</th>
<th>Total</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical violence</td>
<td>1</td>
<td>94</td>
<td>0</td>
<td>5</td>
<td>2</td>
<td>84</td>
<td>27</td>
<td>12</td>
<td>4</td>
<td>18</td>
<td></td>
<td>247</td>
<td>49%</td>
</tr>
<tr>
<td>Breach of confidentiality</td>
<td>0</td>
<td>11</td>
<td>1</td>
<td>22</td>
<td>4</td>
<td>11</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>11</td>
<td></td>
<td>64</td>
<td>13%</td>
</tr>
<tr>
<td>Discrimination against relative</td>
<td>2</td>
<td>19</td>
<td>1</td>
<td>6</td>
<td>1</td>
<td>21</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td></td>
<td>58</td>
<td>11%</td>
</tr>
<tr>
<td>Forced to leave job</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>22</td>
<td></td>
<td>39</td>
<td>8%</td>
</tr>
<tr>
<td>Not Hired</td>
<td>0</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>7</td>
<td></td>
<td>28</td>
<td>6%</td>
</tr>
<tr>
<td>Denied access to healthcare</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>27</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td></td>
<td>42</td>
<td>8%</td>
</tr>
<tr>
<td>Not accepted into school</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td></td>
<td>2</td>
<td>0%</td>
</tr>
<tr>
<td>Forced to leave school</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>7</td>
<td></td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Forced to leave home/community</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Harassment/verbal abuse</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Denied housing</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td>1</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Total** | 3 | 138 | 11 | 62 | 11 | 137 | 29 | 35 | 14 | 67 | 507 | 100

In summary:

- 49% (n=247) of all incidents added to the database between 3-1-2017 and 7-3-2018 were incidents of physical violence. 34% of these occurred in the home while 38% took place in the community.
- 13% of all incidents added to the database between 3-1-2017 and 7-3-2018 were reported as breaches of confidentiality. 34% of these reportedly took place at a public health facility.
- Overall, 27% (n=138) of all reported incidents took place in community. Approximately 64% of these (n=94) were acts of physical violence. An equal number (27%, n=137) of all reported incidents took place at home. Approximately 61% of these (n=84) were acts of physical violence.

(b) *There are no laws which specifically target HIV-related hate speech, abuse and harassment, although legislation exists across the region which makes it an offence for a wide variety of behaviours including using threatening, abusive, insulting, obscene, or profane language which may provoke a breach of the peace.*[^146]

Legislation in Trinidad and Tobago makes it an offence to insult, humiliate or intimidate another person in public where the action is motivated by race, gender, ethnicity or religion and the actions of the offender are done with the intention of inciting racial,

[^146]: See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)
gender or religious hatred. However, sexual orientation, health status or disabilities are not included. Section 7 of the Equal Opportunities Act of Trinidad and Tobago provides:

“7. (1) A person shall not otherwise than in private, do any act which—
(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;
(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and
(c) which is done with the intention of inciting gender, racial or religious hatred.”

(c) Caribbean Public Order Laws provide some measure of protection against verbal abuse and violence but there is no evidence that these laws are being used by the police to protect PLHIV and LGBT individuals from abuse and community violence: Civil Society Stakeholders from Barbados, Trinidad and Tobago, Jamaica and Antigua and Barbuda all indicated that the issue faced by vulnerable groups is perhaps less discrimination and more societal stigma, verbal abuse, unprovoked violence, harassments and threats. Caribbean public order legislation makes it an offence to use any threatening, abusive, insulting, obscene, or profane language, which may provoke a breach of the peace.147 Despite these legislative protections across the Caribbean, interviewees reported that merely walking down the street is likely to provoke a range of abuse from verbal harassment, threats and up to physical violence, with some perpetrators inciting others to join in. Stakeholders were not able to say whether PLHIV and LGBT were aware of these laws or whether any had ever been utilized to deal with community-level abuse and harassment. There was no information on whether the police are aware of these provisions. Stakeholders however report not getting any sort of resolution when complaints are made to the police. Verbal assaults in public places like “kill a batty bwaay” and popular dancehall “anthems” with inflammatory lyrics would arguably fall squarely within these public-order legislative prohibitions against disturbing the peace. Take two examples:

‘Bumbo Red’, the 1990’s Jamaican Dancehall song by Dancehall Artiste Capleton, which is today still popular:

"Bumbo Red! Lick a shot inna a battyman head! Bumbo Red. Lick a shot inna a lesbian head! Bumbo Red! All sodomite dem fi dead, Bumbo Red!”148

Then, there is the ever-popular ‘Head Out’ by Jamaican Dancehall Artiste, Sizzla: “... Head Out, the batty bwaay brain's gonna go spread out.”

The first song incites the shooting of gay and lesbian people in their heads and the second invites some form of violence, which would cause the brain of the victim to “spread out.” It is hard to imagine more worthy candidates for prosecution under the public-order laws, for inviting a breach of the peace.

(d) Although not enforced, there are provisions in Public Health Acts and Quarantine Acts that may be used to justify blatantly discriminatory conduct: In several Caribbean States, legislation exists which, if acted upon, could be used to justify conduct that would otherwise be discriminatory and

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147 See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)
offensive to human rights, including isolation, segregation and quarantine. For example, in Grenada, it is unlawful for anyone suffering from an infectious disease to be employed to work in a bake house. HIV & AIDS is not specifically mentioned in the definition of infectious diseases, but the ordinary meaning of the word “infectious” could be applied to include HIV and AIDS. In addition, under Section 59 of the Public Health Act, the Sanitary Authority has the power to make regulations for the prevention of diseases, which include the isolation, and detention of persons suffering from an infectious disease.

The Grenada Quarantine Act and Regulations 87-100 of the Public Health Regulations also make provisions for isolation and quarantine of persons suspected of suffering from an infectious disease. In Jamaica HIV and AIDS are classified as notifiable diseases under the Public Health (Notifiable Diseases) Order (2003)^149, which is made under Section 2(1) of the Public Health Act of 1985. Classifying HIV & AIDS as notifiable diseases triggers an obligation on a medical practitioner to make a report to the Surveillance Unit of the Ministry of Health. The danger arises from the fact that this classification has the effect of including HIV in the category of illnesses subject to the Quarantine Act and for which segregation is permissible under the Public Health Act.

In relation to education, Rule 31(1) of the Jamaican Education Regulations provide that a student shall be excluded from school during any period in which he is known to be suffering from a communicable disease or infestation. The Regulations also provide that arrangements may be made to enable students who have been suspended or excluded from school for health reasons to sit important examinations in connection with the completion of their education. **There is no evidence of anyone acting upon these Regulations.** The danger is that their existence may one day be called in aid and be used to justify otherwise discriminatory conduct. There is indeed international case law, in particular, jurisprudence of the European Court of Human Rights^150 and the UN Human Rights Committee (Toonen v Australia)^151 which suggests that under certain circumstances the mere existence of legislation, even if not enforced, may justify a natural or legal person to be considered a victim of a violation of his or her rights under an international human rights instrument.

**7.5.** **RECOMMENDATIONS**

Given the frequency of threats, harassment and lack of safety in public spaces for PLHIV and LGBT persons, Caribbean public order laws provide an immediate framework to prevent violence and abuse. These laws also provide a framework for advocacy groups to hold the police and the State accountable when abusive and threatening behaviour occur in a public place, without any redress. These laws also provide objective grounds for showing bias when police fail to act, since the threshold for committing an offence under these laws is quite low: any action that tend to provoke a breach of the peace.**152 Unlike

^150 Norris v Ireland (1991) 13 EHRR 186 [33]  
^152 Breach of the peace is a common law concept which is used to prevent unlawful violence against people or property. It is now widely accepted that the correct definition for breach of the peace is that which was given by the Criminal Division of the English Court of Appeal in R v. Howell (1981), i.e., that the behaviour of the person involved caused the police officer (or private citizen) to believe that (i) a breach of the peace had or would occur. That is to say, the “victim” or Officer reasonably apprehend that there would be violence; and (2) that the behaviour related to harm which was actually done or likely to be done to a person or, in his/her presence, their property. No actual violence needs to occur. Citation: R v. Howell [1982] QB 416; [1981] 3 ALL ER 383.
cases of actual violence, the proof required here is that there was *reasonable apprehension* of violence in the immediate future, because of the actions of the offender. No actual violence need be committed.

(a) Priority Recommendations

a.1. **Obtaining a fiat**: Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat153 to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granted the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.

a.2. **Development of a guidebook**: Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

(b) Other recommendations

b.1. **Human rights training**: Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of LGBT persons by police officers and provide on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.

b.2. **Regional training**: Provide financial support to organize regional training and capacity building sessions for national-level human rights defenders, PLHIV, LGBT persons, law enforcement officers and prosecuting authorities on the critical elements of the Caribbean public order laws.

b.3. **Anti-discrimination legislation**: Provide support to civil society organizations at the national level to advocate for the enactment of anti-discrimination legislation and legislation, which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.

b.4. **Legal assistance**: Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information: The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

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153 "Fiat" is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.
10.1. INTERNATIONAL GUIDELINES

According to International Guidelines and ILO Recommendation, States should:

a) Recognize HIV & AIDS as a workplace issue;

b) Develop a national policy on HIV and the workplace;

c) Effectively prohibit discrimination and stigmatization of workers on the grounds of actual or perceived HIV status by employers, clients, and unions.

d) Ensure that workers are not required to undergo HIV screening, undertake an HIV test, or disclose their HIV status for any purpose (e.g. to access workers’ compensation, benefits, training, or promotion).

10.2. APPLICABLE HUMAN RIGHTS

Right to Work: States recognize the right to work, including the right of everyone to the opportunity to gain his or her living by work, which he or she freely chooses or accepts. To achieve the full realization of the right to work, States are obliged to implement technical and vocational guidance and training programs, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment (UDHR art. 23; ICESCR art. 6).

Right to Just and Favorable Conditions of Work: Everyone has the right to the enjoyment of just and favorable conditions of work, including: 1) fair wages and equal remuneration for work of equal pay, without distinction of any kind; 2) safe and healthy working conditions; 3) equal opportunity for everyone to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence; and 4) rest, leisure, and reasonable limitation of working hours (UDHR art. 23; ICESCR art. 7).

10.3. SITUATION ACROSS THE CARIBBEAN

(a) Caribbean States have taken both a “soft law” and a “hard law” methodology to dealing with HIV & AIDS as a workplace issue: The “soft law” methodology is typified by National Workplace Policies on HIV/AIDS, and National Strategic Plans, which propose interventions to deal with HIV & AIDS as a workplace issue. For example, in the Republic of Trinidad and Tobago, the National Workplace Policy on HIV/AIDS (2017) has, among its objectives178,

“2.3.2 To provide equal access to employment for people living with HIV.”

“2.3.3 To provide equal opportunities for career advancement for people living with HIV.”

“2.3.4 To reduce stigma and discrimination in the workplace against persons living with or affected by HIV.”

In Saint Vincent and the Grenadines, the Statement of Policy in the National Tripartite Workplace Policy on HIV and AIDS (2011), is as follows: “All employers must adopt comprehensive HIV and AIDS workplace programmes which should clearly articulate the policy in relation to HIV and AIDS

178 The National Workplace Policy on HIV/AIDS (2017), the Republic of Trinidad and Tobago, page 16
at the workplace, namely... The provision of a working environment that prevents and prohibits stigma and discrimination against persons known or perceived to be living with HIV, and or affected by HIV and AIDS...”

Jamaica adopted a National HIV/AIDS Workplace Policy in 2012, which, like the policy of its Caribbean neighbours served to encourage non-discrimination regarding PLHIV in the workplace, as well as increasing prevention and training programs in accordance with ILO principles. In addition, all Caribbean States have ratified the ILO’s Discrimination (Employment and Occupation) Convention, 1958 (No. C-111). Article 2 of Convention C-111 provides for the right to equality of opportunity and treatment at Work. Discrimination is defined as “...any distinction, exclusion or preference... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

Caribbean States have also signed the Termination of Employment Convention, 1982 (No. 158). This Convention provides that a dismissal is only validated by a reason “connected with the capacity or conduct of the worker or based on operational requirements.” Further, temporary absences from work due to illness, whether occupationally related or not, does not constitute a valid reason for dismissal. However only Antigua and Barbuda and Saint Lucia have ratified this Convention. Although the provisions of these Conventions do not automatically have the force of law in Caribbean States, it is fair to assume that these Conventions and International Treaties have helped Caribbean States set desirable goals of public policy, as articulated in the various National HIV/AIDS Strategic Plans and National HIV/AIDS Workplace Policies.

(b) PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice: Despite the adoption of workplace policies and programmes, civil society stakeholders indicated that PLHIV and LGBT individuals still encounter prejudice and abusive situations in seeking jobs and within the workplace. These negative encounters, they believe, are directly attributable to their health status, sexual orientation or gender identity. For example, the Jamaican Network of Seropositives is now actively pursuing at least one case reported in 2018 where an individual was forced into resigning from employment, because that individual’s HIV status had...
become known. A 2018 report by the Georgetown Law Human Rights Institute, Georgetown University Law Center, found that in Guyana LGBT individuals have “…difficulties in finding formal employment as a result of discriminatory policies and attitudes.”

(c) Most Caribbean States have labour law provisions that can provide redress, if employment is terminated based on HIV status: Such redress may be either by way of a claim for wrongful termination and/or for unjustified dismissal. For example:

- In Belize, the Labour (Amendment) Act 2005 (No. 3 of 2011) provides, HIV status does not constitute a good and sufficient ground for terminating employment (see Section 42(1)(i)).

- In Jamaica, the Labour Relations and Industrial Disputes Act (LRIDA), provides a remedy for wrongful termination. “Wrongful” includes termination based on discrimination, termination based on retaliation, and termination without good cause when there is a written employment contract. There is also the possibility of an action for “unjustified dismissal”; a dismissal may be unjustified in law, either because of the reason behind it and/or the way in which it was carried out. Given current medical knowledge and evidence, as well as the existence of a National Policy on HIV/AIDS and the National HIV/AIDS Workplace Policy, a good argument can be made that dismissal based on a person’s HIV status would amount to unjustified dismissal. However, there is yet no case before the Industrial Disputes Tribunal to test whether dismissal based on HIV status meets the definition of unjustified dismissal. Furthermore, cases that go before the Industrial Disputes Tribunal must allege either (1) breach of a legal right or (2) that a dispute exists between workers and management in relation to the terms and conditions of employment. In the latter case there would be little difficulty - a contract would exist between the worker and the company and the terms and conditions in dispute may be relatively clear. In the former case however, the complainant would need to establish that the act complained of is a breach of some legal right. In the absence of a constitutional provision on HIV-related discrimination, it remains to be seen if the National HIV Workplace Policy or the National HIV Policy is sufficient to prove the existence of such a legal right.

- In Guyana, although not specific to HIV & AIDS, Section 8 of Termination of Employment and Severance Pay Act provides that dismissal may be unfair if termination occurs due to an employee’s absence from work because of sickness or injury certified by a registered medical practitioner. In this respect, the provision does appear to be wide enough to accommodate HIV-related illnesses, if a medical practitioner certifies the sickness. The Constitution and the Prevention of Discrimination Act (1997) protect individuals from discrimination in employment, training, recruitment and membership of professional bodies and guarantees equal remuneration to men and women who perform work of equal value. The law however does not include sexual orientation, gender identity or gender, as protected classes against discrimination, thus leaving transgender persons and openly homosexual persons without the benefit of a legal remedy.

186 Interview with Redress Officer, Jamaican Network of Seropositives. August 24, 2018.
188 It is not certain the extent to which this “discrimination” extends in law to grounds not specifically set out in the Constitution such as HIV, health status or sexual orientation. Only a legal decision on the matter will be conclusive.
• In Saint Lucia, Section 131 of the Labour Code (2006) makes provisions for unfair dismissal based on sexual orientation (section 131(1)(a) and perception. The perception must be that the employee has or is carrying HIV or AIDS, unless the employee is engaged in work established as putting other persons at risk of contracting HIV or AIDS or unless the inherent requirements of the job permit the removal (Section 131(1)(f)).

• In Barbados, Section 27 of the Employment Right Act (2012) provides that an employee has the right not to be unfairly dismissed by his employer. Under Section 30(1)(v) of the Act, a dismissal would be unfair if the reason offered is that the employer believed that the employee had, or was believed to have HIV or AIDS, or any other life-threatening illness or disease. Regarding discrimination, Barbados also has in draft, the Employment (Prevention of Discrimination) Bill. The Bill refers specifically to the right to work and to just and favourable conditions of work. The draft legislation seeks to protect persons from discrimination related to employment based on race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.

• In Grenada, Section 74 of the Employment Act 1999 prohibits dismissal of an employee unless there is a valid reason for doing so. Although Section 74 does not list HIV and AIDS as protected grounds, it is arguable that in light of policy statements adopted by the government, the National Policy on HIV/AIDS, and the current state of medical knowledge, dismissal based on a person’s HIV status would not be justified. Furthermore, under Section 80, an employee may claim constructive dismissal if he is “forced out of the job.” That is to say, where the employer’s conduct has made it unreasonable to expect the employee to continue his employment.

• In Trinidad and Tobago, Part III of the Equal Opportunity Act of Trinidad and Tobago provides a framework for the prevention of discrimination against job applicants, discrimination against employees and discrimination in vocational training.

10.4. GAPS AND OPPORTUNITIES

(a) While HIV & AIDS is recognized as a protected ground against discrimination in employment in some countries, the same is not the case for sexual orientation and gender identity.

(b) Except perhaps in Trinidad and Tobago, job applicants and persons in pre-employment situations do not have the benefit of anti-discrimination protections or the unfair treatment provisions in employment legislation: International Guidelines recommend that all employment groups should be protected from targeted HIV testing and related discrimination (i.e. job applicants, job seekers, laid off or suspended workers, those in training, interns, apprentices, volunteers and persons in any employment or occupation, regardless of description such as truck drivers, sailors, hospitality and tourist industry workers, armed forces, and uniformed services). However, in most instances, the labour laws of the States reviewed, provide redress only for persons already in a contractual relationship. The laws are also silent on the issue of HIV testing for the purposes of securing employment and there are no legislative protections against employers requiring an applicant to be negative, as an inherent job requirement. For clarity, if a job is based on an inherent requirement, it would not be discriminatory to not offer someone, who fails to meet this requirement, the job. For this reason, in the absence of legislative restrictions against these underhanded practices,
it would not legally be discriminatory, if an employer were to exclude an HIV positive person from a job, using some creative means to show that being HIV negative is an inherent job requirement.

10.5. RECOMMENDATIONS

(a) Priority Recommendations

a.1. Anti-discrimination legislation: Provide support to civil society organizations at the national level to advocate for the enactment of anti-discrimination legislation and legislation, which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.

a.2. Employment legislation: Provide technical assistance to national authorities to amend employment legislation or adopt new legislation like Barbados’ draft Employment (Prevention of Discrimination) Bill, which cover areas such as the prevention of discrimination in job creation, recruiting and prevention of discrimination in employment. The Bill also imposes an obligation on employers to make reasonable adjustments for the accommodation of persons with disabilities. It also creates a prohibition against testing for medical conditions. The Bill seeks to protect persons from discrimination related to employment based on race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.

a.3. National Employment legislation: Provide technical assistance to national authorities to revise national Employment legislation or adopt legislation, which reflects the non-discrimination provisions in Part III of the Trinidad and Tobago Equal Opportunities Act.

(b) Other Recommendations

b.1. Anti-discrimination legislation: Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation, which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

FACTOR 11: PUBLIC AND PRIVATE HOUSING

11.1. INTERNATIONAL GUIDELINES

The UN Committee on Economic, Social, and Cultural Rights has noted that inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates. Consequently, it determined that housing is one of the underlying determinants of health. Therefore, States core obligations, relating to the right to health, include ensuring access to basic shelter, housing, and sanitation. The Committee has stressed that the right to adequate housing applies to everyone. Therefore, enjoyment of this right must not be subject to any form of discrimination.

11.2. APPLICABLE HUMAN RIGHTS

Right to Adequate Housing: The right of everyone to an adequate standard of living includes the right to adequate housing and to the continuous improvement of living conditions (UDHR art. 25;
FACTOR 12: ENTRY, STAY, AND RESIDENCE

12.1. INTERNATIONAL GUIDELINES

The term HIV-related restrictions on entry, stay and residence was adopted in 2008 by UNAIDS to capture travel restrictions where:

1) HIV is a formal and explicit part of the law or regulation;
2) HIV is referred to specifically, apart from other comparable conditions; and
3) Exclusion or deportation occurs because of HIV-positive status only.204

International Guidelines state that restrictions based on HIV status are discriminatory, violate the right to equal protection before the law, and cannot be justified by public health concerns. UNAIDS recommends that HIV testing related to entry and stay in a country only be carried out with informed, voluntary consent; with pre- and post-test counseling; and with strict protection of confidentiality. International law also prohibits the return of a person to a State where there are substantial grounds for believing that the person would face a real risk of torture or other cruel, inhuman, or degrading treatment or punishment. The UN Human Rights Committee has held that return in these circumstances would be in violation of the prohibition against torture and cruel, inhuman or degrading treatment and punishment under ICCPR.205

12.2. APPLICABLE HUMAN RIGHTS

The United Nations Committee on Economic, Social, and Cultural Rights has affirmed the right of migrants to the same health services as nationals of any State.206

12.3. SITUATION ACROSS THE CARIBBEAN

This review considered only laws or policies in Caribbean States with HIV-specific restrictions on entry, stay and residence; that is, where the law or regulation of the country explicitly refers to HIV or AIDS. Based on UNAIDS guidelines, if a country has laws that refer to “contagious” or “transmissible” diseases, that explicitly include HIV in their definition of these diseases, such a law is also considered here.

205 The European Court of Human Rights (ECHR) and the Inter-American Commission on Human Rights have each issued a landmark decision where the principle was used to protect PLHIV from deportation based on human rights. In a landmark 1997 case D v. United Kingdom, ECHR found that a State may, in very exceptional cases, violate prohibition of inhumane treatment if it deports a severely ill person with HIV to a State where adequate treatment is unavailable and where there is no family to care for him or her. It needs to be noted, however, that the “exceptional” standard has since been narrowly interpreted by ECHR. For example, it excludes cases where HIV treatment is, in principle, available in the receiving country and where the disease has not reached a terminal stage. The Inter-American Commission on Human Rights has also used a three-prong threshold test to recommend that the United States refrain from deporting an HIV-positive individual to Jamaica. The test included: 1) extraordinary hardship; 2) availability of medical care in the receiving country; and 3) availability of social services and support, in particular the presence of close relatives. See HUMAN RIGHTS WATCH, RETURNED TO RISK: DEPORTATION OF HIV-POSITIVE MIGRANTS 7-9 (2009).
206 CESCR, GENERAL COMMENT NO. 14 ON THE RIGHT TO HEALTH para. 18.
(a) **Eight Countries in the Caribbean have no HIV-specific restriction on entry or stay:** The following countries have no HIV-related restrictions on entry, stay or residence: Antigua and Barbuda, Barbados, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, and Trinidad and Tobago.

(b) **Two Caribbean States have HIV-specific restrictions on entry, stay and residence:** A 2009 Study by the Joint United Nations Programme on HIV/AIDS (UNAIDS) found that Belize and the Dominican Republic had some form of HIV-specific restriction on entry, stay and residence that is based on positive HIV status. These include those that completely ban entry of HIV-positive people for any reason or length of stay and/or are applied to visa applications for very short stays (e.g. tourist visas) and/or are applied to visa applications for longer stays (visas for residency, immigration, labor migration, asylum or resettlement, study, international employment, and consular service).

(c) **Two Caribbean States – Belize and Trinidad and Tobago - have restrictions on entry, as homosexuals and sex workers who are visitors.** In Trinidad and Tobago, Section 8 of the Immigration Act prohibits entry for homosexuals and in Belize, Section 5 of the Immigration prohibits entry of homosexuals and sex workers. This raises an issue for a key population and the right of a person to enter, stay or reside in a country solely based on sexual orientation. It must be noted that if a legal claim were made, the action would need to be framed at the national level (such as a claim that the legislation has an indirect discriminatory effect, or that it infringes a right to equal protection of the law). However, a claim that the mere existence of the legislation is not in conformity with what is required of the State, by reason of its international obligations, is not likely to succeed without proof of actual prejudice to the claimant.

(d) **Declaration of HIV Status for entry or stay:** Except for those countries that have HIV-specific restrictions, this review found no law, policy or published reports of Caribbean States requiring a declaration of HIV status for entry or stay, resulting, for HIV-positive people, in either a bar to entry/stay or the need for discretionary approval, including through granting waivers. The review also did not find any law, policy or published reports of Caribbean States that deny applications for entry by HIV positive people for short stays for personal, business or professional reasons such as tourism, visiting family and/or friends, meetings, conferences or educational events. There are no reports or laws, which require the States to review to deport people once their HIV-positive status becomes known.

(e) **Some Caribbean States deny employment visas based on HIV status:** Saint Kitts and Nevis, Saint Vincent and the Grenadines, Belize and the Dominican Republic have laws that deny employment visas and/or work permits based on HIV status.

(f) **At least one Caribbean State applies HIV-specific regulations to visitors from high prevalence areas:** Suriname is listed among countries that apply HIV-related entry, stay and residence restrictions.
regulations to nationals from regions with high HIV prevalence.\textsuperscript{210} This Caribbean State requires HIV tests from visitors travelling from Africa, Asia and Eastern Europe.

(g) At least one Caribbean State denies applications to HIV positive students: Saint Kitts and Nevis is listed as one of the countries that denies applications by HIV-positive students\textsuperscript{211}.

12.4. RECOMMENDATIONS

(a) HIV-specific entry restrictions: Provide technical assistance to national authorities with HIV-specific restrictions on entry to repeal such legislation and enact legislation, policies and guidelines that ensures protection from discrimination on the grounds of health status, sexual orientation or gender identity.

(b) Remedies for migrant workers: Provide technical assistance to civil society organizations and national authorities to develop and issue bulletins and guidelines through social media, electronic and print media to inform migrant workers of remedies available to them.

(c) Needs of migrants and mobile populations: Provide technical assistance to national authorities to ensure that the HIV-related needs of migrants and mobile populations are integrated into existing health care programs and HIV responses and to ensure migrants and mobile populations have equitable and sustainable access to comprehensive HIV-related services, as nationals.

(d) Laws protecting rights of migrant workers: Provide technical assistance to national authorities to fully implement existing laws protecting the rights of migrant workers, especially any discrimination against migrant women and children, particularly in the areas of education, housing and access to health care.

\textsuperscript{210} Ibid at 9
\textsuperscript{211} Ibid at 10
FACTOR 13: NON-CRIMINALIZATION OF HIV EXPOSURE AND TRANSMISSION

13.1. INTERNATIONAL GUIDELINES

According to UNAIDS, instead of applying criminal law to HIV exposure and transmission, States should expand programmes which have been proved to reduce the spread of HIV, while protecting human rights of both PLHIV and people who are HIV-negative. Such measures should include addressing HIV-related discrimination, which is necessary to encourage people to disclose their HIV-positive status without the fear of prosecution or other negative consequences. According to experts, there is no data indicating that the broad application of criminal law to HIV exposure and transmission will achieve criminal justice or public health goals (that of preventing HIV transmission), or that the threat of criminal sanctions significantly changes or deters risky behaviors. Experts believe that the relevant criminal provisions are likely to be disproportionately applied to people belonging to ethnic minorities, migrants, and key populations, because these groups are often blamed for transmitting HIV. Consequently, UNAIDS and the UN Special Rapporteur on the Right to Health have urged States to limit criminalization to cases of intentional transmission, and to immediately repeal laws criminalizing unintentional transmission of, or exposure to HIV. Prosecution is justified only in cases that meet all the following criteria: 1) a person knows his or her positive HIV status; 2) the person acts with malicious intent to transmit HIV (i.e., intentionally engages in risky behavior to harm an unknowing partner); and 3) transmission of HIV does, in fact, occur.212 UNAIDS urges States to: 1) ensure that criminal law is not used inappropriately in the context of HIV (e.g., to target or punish people simply because of their HIV-positive status or membership in a particular social group); 2) limit police and prosecutorial discretion in application of criminal law, by clearly and narrowly defining intentional transmission; by stipulating that an accused person’s responsibility for HIV transmission be clearly established beyond a reasonable doubt; and by clearly indicating circumstances that should mitigate against criminal prosecution; and 3) ensure that any application of general criminal law to HIV transmission is consistent with international human rights law.213

13.2. APPLICABLE HUMAN RIGHTS

UNAIDS and experts agree that broad application of criminal law to HIV exposure and unintentional transmission has numerous negative consequences. It:

- Exposes large numbers of people to possible prosecution without them being able to foresee their criminal liability;
- Discourages voluntary HIV testing, since ignorance about one’s status might be seen as the best defense in case of prosecution;
- Places legal responsibility for HIV prevention exclusively on PLHIV, thus undermining the public health message of shared responsibility for safer behaviors;
- Creates a false sense of security because people may wrongly assume that their partners are HIV-negative if they did not disclose their status as required;
- Reinforces the stereotype that PLHIV are immoral and irresponsible;

Deters PLHIV from using health care services;
Increases the risk of violence directed towards affected individuals, particularly women.

13.3. SITUATION IN THE CARIBBEAN

According to the Global network of People Living with HIV, “Criminalization of HIV” is a phrase that is used to refer to enacting of laws directed at punishing behaviours that may transmit HIV and the application of general laws in a manner that targets those with HIV who may transmit or expose another person to HIV. The following situation exists in the Caribbean in relation to the criminalization of intentional or willful transmission:

(a) In Belize, sections 46.01 and 73.02 of the Criminal Code chapter 101 of the revised edition of Laws 2000 list reckless or willful transmission of HIV or AIDS as a criminal offence.

(b) In The Bahamas, Section 8(2) of the Sexual Offences provides that: “…(2) Any person who knows that he is infected with a virus causing, or known to cause, acquired immune deficiency syndrome (commonly known as "AIDS") and who has sexual intercourse with any other person, with the consent of that other person but without disclosing the fact of the infection to that other person, is guilty of an offence and liable to be detained for a term of five years…”

(c) St Vincent and the Grenadines, Guyana, Barbados, and Suriname and other CARICOM countries do not list such offences. However, in St Vincent and the Grenadines, under section 291 of the Criminal Code cap. 124, any person who unlawfully or negligently does any act which he knows, or has reasons to believe, to be likely to cause the spread of any infectious or contagious disease, is guilty of an offence and liable to imprisonment for one year. It appears that a person who deliberately infects another person with HIV, knowing that he is living with that disease, may be prosecuted under that provision.

(d) In Barbados, section 19 and 26 of the Barbados Offences against the Person act could be used to prosecute persons who, in section 19, “endanger life and safety” and in section 26 “assault another occasioning harm.”

(e) Jamaica does not have HIV-specific criminal law. However, willful HIV transmission can be prosecuted under Section 22 of the Offences against the Person Act 1864.

(f) Trinidad and Tobago has no law that specifically criminalizes HIV transmission, but willful transmission could be prosecuted under various provisions of the Offences Against the Person Act, including Sections 12, 14 and 17. In addition, the Sexual Offences Amendment Act of 2000 inserted a new provision under which civil penalties may be imposed on a person, found to be HIV positive, and on the balance of probabilities, the virus was contracted as a result of the offence committed by the defendant (See Section 34).

(g) In Saint Lucia, Section 140 of the Criminal Code provides: “Transmission of HIV - 140. -(1) Any person who, knowing that he or she suffers from Acquired Immune Deficiency Syndrome commonly known as AIDS intentionally or recklessly infects another person with the human immunodeficiency virus known as HIV, whether through sexual intercourse or any other means by which the disease may be transmitted to another person commits an offence of aggravated sexual assault and is liable

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214 Global Network of People Living with HIV, Criminalization Scan Information Sheet [Accessed on May 12, 2018]
on conviction on indictment to imprisonment for ten years. (2) it is no defense for a person charged with an offence under subsection (1), to prove that the act was committed with the consent of the other person”

(h) In **Grenada, Guyana, St Kitts and Nevis and Dominica**, there is no specific legislation regarding willful transmission.

This review found no laws or regulations that, without more, creates a legal duty to disclose HIV status or laws that criminalizes a failure to disclose HIV status.
TAB 14
“I Have to Leave to Be Me”
Discriminatory Laws against LGBT People in the Eastern Caribbean
“I Have to Leave to Be Me”
Discriminatory Laws against LGBT People in the Eastern Caribbean
Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.


For more information, please visit our website: http://www.hrw.org
“I Have to Leave to Be Me”
Discriminatory Laws against LGBT People in the Eastern Caribbean

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## Glossary

**Biological sex**
The biological classification of bodies as female or male based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

**Bisexual**
The sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Closeted/ being in the closet**
A person who does not acknowledge their sexual orientation to others. People may be completely in the closet (not admitting their sexual orientation to anyone), completely out, or somewhere in between.

**Gay**
A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

**Gender**
The social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers "masculine" or "feminine" conduct.

**Gender-based violence**
Violence directed against a person on the basis of gender or sex. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices, and discriminatory practices based on gender. The term originally described violence against women but is now widely understood to include violence targeting women, transgender persons, and men because of how they experience and express their genders and sexualities.
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<th>Term</th>
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<tr>
<td>Gender identity</td>
<td>A person’s internal, deeply felt sense of being female or male, both, or something other than female and male.</td>
</tr>
<tr>
<td>Gender expression</td>
<td>The external characteristics and behaviors (including such attributes as dress, appearance, mannerisms, speech patterns, and social behavior) that are regarded as typically “masculine” or “feminine” in a particular social context.</td>
</tr>
<tr>
<td>Heterosexual</td>
<td>The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the other sex.</td>
</tr>
<tr>
<td>Homophobia</td>
<td>Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.</td>
</tr>
<tr>
<td>Homosexual</td>
<td>The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.</td>
</tr>
<tr>
<td>Intersex</td>
<td>A person born with reproductive or sexual anatomy that does not seem to fit the typical definitions of “female” or “male.”</td>
</tr>
<tr>
<td>Lesbian</td>
<td>The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.</td>
</tr>
<tr>
<td>LGBT</td>
<td>An acronym for lesbian, gay, bisexual, and transgender; sometimes referred to as “sexual and gender minorities.” In this report, the term LGBT is generally used to refer to individuals who self-identify as either lesbian, gay, bisexual, or transgender.</td>
</tr>
<tr>
<td>LGBTI</td>
<td>Lesbian, gay, bisexual, transgender, and intersex.</td>
</tr>
<tr>
<td>Men who have sex with men (MSM)</td>
<td>Men who have sex with men but who do not necessarily identify as “gay,” “homosexual,” or “bisexual.”</td>
</tr>
</tbody>
</table>
Out
A person who is open about their sexual orientation or gender identity.

To be outing
When a person’s sexual orientation is revealed either deliberately or inadvertently, with or without consent.

Sexual and gender minorities
An all-inclusive term that includes people who identify as lesbian, gay, bisexual or transgender, men who have sex with men, and women who have sex with women.

Sexual orientation
The way a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same sex, a different sex, or both.

Transgender (also trans)
The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender.

Transphobia
Fear of, contempt of, or discrimination against transgender persons, usually based on negative stereotypes.

A note on Caribbean slang: The following common pejorative terms that refer to men who have sex with men appear in the report: antiman, battyman, batty bwoy, buggerer, buller, bullerman, chichiman, fish, shemale.
Map

Prison Sentences for Adults Convicted under Buggery and Gross Indecency Laws

St. Kitts and Nevis
Buggery: up to 10 years
Indecency: 4 years

Antigua and Barbuda
Buggery: 15 years
Indecency: 5 years

Dominica
Buggery: 10 years
Indecency: 5 years

St. Lucia
Buggery: 10 years to life
Indecency: 5 – 10 years

St. Vincent and the Grenadines
Buggery: 10 years
Indecency: 10 years

Barbados
Buggery: life
Indecency: 10 years

Grenada
Buggery: 10 years
Judicial review by supra-national entities, including the Caribbean Court of Justice (CCJ) and the Eastern Caribbean Court, are integral to the sustainability of both regional systems. The Judicial Committee of the Privy Council (JCPC) retains jurisdiction for certain countries of the commonwealth. The Caribbean Court of Justice (CCJ) has original jurisdiction in all matters related to the interpretation of the Treaty of Chaguaramas. It also exercises appellate jurisdiction for commonwealth countries in civil and criminal matters who no longer accept the Judicial Committee of the Privy Council (JCPC) as their appellate court. Barbados, Belize, Dominica, and Guyana have replaced the JCPC’s appellate jurisdiction with that of the CCJ. Cases from the Eastern Caribbean Supreme Court (ECSC) can be appealed to the Judicial Committee of the Privy Council. The ECSC can only accept cases that have already been considered by the high court of a member state, and thus effectively serves as a supreme court for the OECS.

Appendices I-VII to this report include an overview of country specific legal provisions, treaty ratifications, membership of international organizations, and states’ response to recommendations on sexual orientation and gender identity during the Universal Periodic Review (UPR).

**LGBT Activism and Recent Developments in the Region**

Activists and civil society organizations have been working intensely on the ground to transform the difficult daily reality faced by LGBT individuals.

The Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS) has worked for over 18 years to provide LGBTI people in the Caribbean with safe spaces, support services, and stronger communities. Currently based in Trinidad and Tobago, CariFLAGS is composed of several LGBTI NGOs across the Caribbean, including in St. Lucia, Jamaica, Trinidad and Tobago, the Dominican Republic, Belize, Grenada, Guyana, and Suriname.

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CariFLAGS has also worked towards policy and cultural change on sexual and gender diversity in the Caribbean. CariFLAGS has as its main stated purpose to: “build a regional LGBTI movement in the Caribbean by strengthening local leadership and organizations, developing shared strategies for social change, coordinating challenges on LGBT rights issues in the courts, addressing underserved needs and groups, and supporting safe environments at the community level.”

Another civil society group active in the region is the Eastern Caribbean Alliance for Diversity and Equality (ECADE), an umbrella body for human rights groups within the small countries of the Eastern Caribbean, such as Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, and Saint Martin. It serves as a regional hub for the coordination of trainings, strategy meetings, and thematic conferences.

Local and international LGBT organizations have partnered to facilitate LGBTI sensitivity training in the past few years for national police forces in Antigua and Barbuda, Barbados, Grenada, St. Lucia, and St. Kitts and Nevis, allowing for a more collaborative relationship with police enforcement officials. For example, the Royal Barbados Police Force embarked on sensitivity training regarding the LGBTI community with the intention of bringing Barbados closer to its international human rights commitments. Police officers from Antigua and Barbuda have worked with civil society groups to reinforce the principles of community policing, human rights, professionalism, ethics, and their practical application to the LGBTI community. Diversity trainings in St. Lucia, sponsored by Aids Free World and United & Strong, have focused on managerial skills and senior officer training, providing them with guiding principles to employ in police interactions. Facilitators have

gone to some lengths to avoid disputes about morality and religion by focusing instead on HIV prevention and public health.\textsuperscript{37}

Civil society organizations have also used the complaints procedure of the IACHR to tackle the criminalization of same-sex relationships in their home countries. Four years ago, Gareth Henry and Ms Simone Edwards filed a petition with the IACHR challenging Jamaican laws that discriminate against LGBT people. The petitioners allege a number of violations by Jamaica of its legal obligations under the American Convention on Human Rights (ACHR) and the American Declaration on the Rights of Man (Declaration). At the time of writing, the petition was filed and submissions on admissibility by both Parties were finalized, but an admissibility decision by the IACHR was still pending.\textsuperscript{38} The civil society organizations GrenChap and Groundation Grenada filed a petition with the IACHR challenging Grenada’s “unnatural connexion” law. Grenada failed to appear at the hearing. The IACHR urged Grenada to decriminalize same-sex sexual relationships, and in the meantime to issue a de facto moratorium on application of this legislation.\textsuperscript{39}

Local and international civil society organizations and individuals have filed lawsuits as well in their efforts to have discriminatory laws in the Caribbean repealed. In 2015, Jamaican activist Maurice Tomlinson filed a challenge against the governments of Belize and Trinidad and Tobago to overturn laws that on their face seek to prevent gay people from entering their countries. The current immigration laws in Trinidad & Tobago and Belize bar "undesirable" persons from entering—a list that includes homosexuals, prostitutes, and members of other marginalized groups.\textsuperscript{40} The Caribbean Court of Justice ultimately dismissed the ‘gay travel ban’ case, declaring that the laws, while discriminatory in nature, have not been used in practice.\textsuperscript{41} Tomlinson has also brought a fresh challenge to


\textsuperscript{38} Gareth Henry v. Jamaica, see http://www.human dignitytrust.org/pages/OUR%20WORK/Cases/Jamaica.


In 2016 the Belize Supreme Court in the case of \textit{Caleb Orozco et al v AG of Belize} \footnote{43}{Caleb Orozco v AG of Belize Claim No. 668 of 2010 (Supreme Court of Belize, 10\textsuperscript{th} August, 2016)} became the first Commonwealth Caribbean Court to hold that laws that criminalized, \textit{inter alia}, same-sex intimacy were unconstitutional. The court struck down section 53 of the Criminal Code, which outlawed "carnal intercourse against the order of nature" with punishment of up to 10 years in prison, on the grounds that the law went against the claimant’s rights to human dignity, privacy, and freedom of expression. The court declared that the definition of ‘sex’ in the constitution included ‘sexual orientation,’ protected by the principles of equality and non-discrimination. The court reduced the scope of section 53 of the Criminal Code by excluding sexual activity taking place in private between consenting adults.


On January 9, 2018, the Inter-American Court of Human Rights issued Advisory Opinion No. 24\textsuperscript{[1]},\footnote{47}{See: http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf} in response to a request by the state of Costa Rica, made in May of that same year. In its opinion, the Court advised that state parties to the American Convention should recognize all civil rights for same-sex couples, including the right to civil marriage. The court
also advised that states should establish fast, inexpensive and straightforward procedures to ensure legal gender recognition, based solely on the self-perceived identity of a person.

Out of the seven countries considered in this report, only Dominica (1993), Grenada (1978) and Barbados (1982) have ratified the American Convention but neither Grenada nor Dominica recognize the jurisdiction of the Inter-American Court of Human Rights. This means Barbados is the only country which has a treaty obligation to consider the Court’s opinion, although the opinion should have resonance for all governments that seek to respect and protect universal human rights and equal norms.

**Impact on LGBT Individuals**

Buggery and gross or serious indecency laws discriminate against LGBT people and have a negative impact on their lives. A 2008 Human Rights Watch report, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism,” traces the history of sodomy laws in former British colonies. The report outlines the effects of these laws on the lives of people most affected by them:

> These laws invade privacy and create inequality. They relegate people to inferior status because of how they look or who they love. They degrade people’s dignity by declaring their most intimate feelings "unnatural" or illegal. They can be used to discredit enemies and destroy careers and lives. They promote violence and give it impunity. They hand police and others the power to arrest, blackmail, and abuse. They drive people underground to live in invisibility and fear.\(^{48}\)

The report also refutes the claim that these laws originate in values traditional in former colonies, or reflect deep seated national interests, showing instead that these “Made in Britain” laws were imposed by colonial authorities informed by racist stereotypes and colonialist fears of native sexuality. Whether the laws are enforced or not, their very existence places LGBT people in a perilous situation of vulnerability, inequality, and second-class status in every aspect of life.\(^{49}\)

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\(^{48}\) Ibid., p.5.

\(^{49}\) In two cases in which the European Court of Human Rights struck down national sodomy laws—*Dudgeon v UK* (judgment of October 22, 1981, Series A no. 45, para. 41) and *Norris v Ireland* (judgment of October 26, 1988, available at...
Human Rights Watch has published two reports on Jamaica: “Hated to Death” (2004) and “Not Safe at Home” (2014). Both document the negative impact of Jamaica’s anti-LGBT laws, including their role in facilitating discrimination, violence, and barriers to health care.

Recent surveys conducted in Barbados and Trinidad and Tobago have indicated a high level of acceptance for the principle of non-discrimination, including on grounds of sexual orientation, coupled with widespread support for the buggery laws. A survey commissioned by the Joint United Nations Programme on HIV and AIDS (UNAIDS) Caribbean Regional Support Team in Trinidad and Tobago revealed that most respondents were opposed to discrimination based on sexual orientation. Of the 1,176 interviews conducted during October 2013, 78 percent of the respondents said it was not acceptable for people to be treated differently based on sexual orientation. Additionally, 56 percent of respondents said they were either accepting or tolerant of homosexuals.50

Similarly, a survey in Barbados prepared by the Caribbean Development Research Services Inc. (CADRES), showed that 67 percent of respondents were either tolerant or accepting of homosexuals. Most people surveyed, however, thought the buggery laws should be maintained despite “the absence of a clear appreciation of the reasons for the existence of buggery laws.”51

As detailed below and in the following chapter of this report, the continued existence of laws criminalizing LGBT conduct, even if infrequently enforced, creates conditions that facilitate abuses in all seven countries covered here. LGBT residents in the Eastern Caribbean interviewed by Human Rights Watch, described how stigma and discrimination permeate all aspects of life, including health care, education, and even everyday activities like going to movies, shopping, and riding the bus. LGBT individuals said that they were reluctant to report abuses for fear of the laws that prohibit same-sex intimacy.

In the countries included in this report, populations are small and social networks insular. Interviewees said that their close-knit communities made it difficult to come out and find

http://hudoc.echr.coe.int/eng?i=001-57547, para. 38)—the court was clear that although the legislation was not being enforced in either jurisdiction when the cases were brought, the existence of the laws rendered the men potentially liable to prosecution and that “the very existence of this legislation continuously and directly affects [their] private li[ves]...”

50 “A MANDATE TO ACT, Findings from a Poll on Public Attitudes to Sexual and Reproductive Health, Abuse, Violence and Discrimination,” UNAIDS Caribbean, June 1, 2015.

acceptance. They were afraid of the negative consequences of being identified or perceived as LGBT. According to CARICOM's total population estimates for the 2000-2015 period, the populations of the countries included in this report are: 46,398 in St. Kitts and Nevis, 69,393 Dominica, 90,801 Antigua and Barbuda, 110,566 Grenada, 110,255 St. Vincent and the Grenadines, 172,818 St. Lucia and 274,633 in Barbados.

Many interviewees stressed the importance of discretion. Charles, a 24-year-old gay man from Antigua and Barbuda, told Human Rights Watch he would never be openly affectionate in public with another male. He said: “I would never hold hands [with another man]. You couldn’t do that here, because society is just not accepting.”

Peter, a 20-year-old gay man from Dominica, said “It saddens me that I have to sneak out and meet someone and can’t bring anyone home.” He said that it was impossible for him to introduce partners to his family, something his heterosexual friends and siblings do at his age. Other interviewees told Human Rights Watch that for discretion and safety they pursued their intimate relationships “off-island,” that is with visitors from other islands in the region, or from further afield. Nicholas, 20, expressed his feeling of constant fear and uncertainty: “you are not safe... you have to hide who you are. Otherwise they will get physical, shouting things. If two men were holding hands people would attack them.”

A number of popular dancehall songs, many of which originate in Jamaica, contain strong homophobic language and inflammatory lyrics. This music circulates through the islands and is emblematic of the daily stigmatization and denigration of LGBT people. An extreme example is the decades old, but still popular “Bumbo Red,” a 1990 hit song by dancehall artist Capleton: “Lick a shot inna a battyman head! Lick a shot inna a lesbian head! All sodomite dem fi dead, all lesbian dem fi dead”.

A decade later, many popular dancehall songs reiterated the message to kill and maim lesbians and gay men. For example, in 2000, Elephant Man’s “A Nuh Fi Wi Fault,” urged

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\[\text{\textcopyright 2017 Human Rights Watch} \]
listeners to “When yuh hear a Sodomite get raped/but a fi wi fault/it’s wrong/two women gonna hock up inna bed/that’s two Sodomites dat fi dead” (“When you hear a lesbian getting raped/it’s not our fault/it’s wrong/two women in bed/that’s two sodomites who should be dead”), Beenie Man\(^57\) sings, “I’m dreaming of a new Jamaica, come to execute all the gays,” and Babycham and Bounty Killer’s\(^58\) encourages “Bun a fire pon a kuh pon mister fagoty, ears ah ben up and a wince under agony, poop man fi drown a yawd man philosophy” (“burn gay men ‘til they wince in agony, gay men should drown, that’s the yard man’s philosophy”).\(^59\)

Manage, 35, from St. Vincent and the Grenadines, told Human Rights Watch: “On a daily basis, people see me coming and are very loud calling me ‘Battyman, Faggot, Battyman fi dead’ and using aggressive negative slurs towards me in public. Like in Jamaica, the type of music you listen to, when they talk about gays, the music says ‘kill them.’ Music in St. Vincent is anti-gay.”\(^60\)

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\(^60\) Human Rights Watch interview with Sean from St. Vincent and the Grenadines, interviewed in Antigua and Barbuda, February 11, 2017.
II. Findings

Social Context: A Climate of Homophobia

I don’t come out because my work would be jeopardized. There is a lack of visibility.
— Nicholas, St. Kitts and Nevis, February 3, 2017

I’ve had coworkers that didn’t want me to use certain things. People who didn’t want to eat off the same plate, cups...They discriminated against me in my job.
— Augusten, St. Vincent and the Grenadines, February 18, 2017

Exclusion from Family

In the islands of the Eastern Caribbean, family and church are at the cornerstone of social life. In these tightly-knit communities and interconnected social worlds, the fear of rejection by family and community runs deep.

For LGBT people homophobic messages are often first heard at home, and amplified in key social spaces, such as school and church. This leaves young LGBT people with a fear of harassment, rejection, stigmatization, and even physical violence. As the following testimonies show, those who are known to be gay or lesbian, or merely perceived to be, have a realistic fear of becoming social pariahs, alienated by family and community. LGBT people can find themselves treated as scapegoats, blamed for social woes such as poverty and AIDS.

Interviewees recounted in painful details the rejection they experienced at home, and the harassment, discrimination, and intolerance they suffered from relatives, neighbors, and friends.

All interviewees described having been harassed or rejected by family at some point in their lives because they are LGBT or perceived to be. Fear of isolation led people to go to extraordinary lengths to conceal their sexual orientation, including by entering
heterosexual marriages. Some interviewees reported leaving unbearably hostile home environments. Others were thrown out of home, cut off from family support, and left to fend for themselves. Many experienced homelessness, and lived on the margins of society, vulnerable to rape, violence, and disease.

Those who stayed with their abusive families reported emotional distress as they lived under the shadow of potential rejection and the loss of financial and emotional support.

Coming out was fraught with fear of rejection. Peter, a 20-year-old man from Dominica, now regrets coming out because of the negative reaction from his family. He described his home situation in these terms:

[H]omosexuality in Dominica is taboo, nobody asks about it. Families tend to cover it up. Hiding in Dominica is perfecting the art of acting. Coming out was one of the biggest mistakes I made, if I could turn it back I would... I learn to adapt, I have to put on that fake face.65

Florence, a 23-year-old trans woman from Barbados felt compelled to hide her gender identity from her stepfather for fear of being thrown out of her home, although she did confide in her mother:

In the [s]ummer 2010 I confessed to [my] mother that I was attracted to men. My stepdad functioned as dad and was more than extended family. I looked up to him, but his attitudes towards LGBT community let me know that his care to me would be conditional if I told him. He would have kicked me out had I told him anything.66

Arthur, an 18-year-old gay man from St. Kitts and Nevis, recalls how his family tried to suppress any expression of effeminacy, from as early as age six:

I was not the most masculine of boys growing up, being called “anti-man” as a result by them....[Whenever] I did something feminine [they would]

jump on me...Mother was a very homophobic person, she asked me to change the way I talked and walked, I didn’t like it…. She knew [I was gay] and she was in denial [because of] her feeling embarrassed.67

A fear of being shamed or losing face led some families to demand that their LGBT children stay in the closet. Those who chose to be out of the closet faced recurrent threats of violence within their homes. Emily, a 24-year-old trans woman from Antigua, said: “I was threatened by my dad – the first time it happened I was a child, really young. The second time, when I was 16, he found out that I was [LGBT] and told me that he would kill me.”68

Nicholas, a 20-year-old gay man from St. Kitts and Nevis, said: “I was threatened by my own mother, [she told her sons that] if any of us is “anti-man” she would kill us. She grew up in a homophobic family.”69

The fear of being evicted from his family home led Martin, a bisexual 17-year-old man from St. Kitts and Nevis, to stay firmly in the closet. His 12-year-old cross-dressing brother was shunned by family members who refused to talk to him, so Kevin decided it was prudent to keep quiet about his sexual orientation. He was also mindful of the fact that an openly gay friend of his, aged 18, had been beaten up and had bottles thrown at him by family members and villagers.70

Ernest, a 20-year-old gay man from Barbados, suffered a traumatic coming out experience which included physical violence from family members. In 2011 he came out to his mother, who shouted: “how could you like men, that’s nasty, you give up that shit, you’re nasty, you’re nasty!”71 From that day on, she confronted him with passages from the Bible, while encouraging his brothers to beat him. He said:

I think they were trying to beat it out of me, convert me, but this is who I am, I can’t change it... They’d keep on coming and beating me... Bajans [Barbadians] use the bible to justify their actions. I would call the police,

68 Human Rights Watch interview with Emily, Antigua and Barbuda, February 9, 2017.
but because my mother knew the police at that station, if I called, then she
would call them back and then they would not come. I was a voice in the
wilderness and nobody’s paying me any attention.

On one occasion my three uncles beat me up because of being gay. One
was in front, one was on the right and one was on the left, and they beat me
until I spat blood. They cut my face in all directions. I called my grandfather
and he did nothing.

After that my mother put me out. I was on the street for a night. And when
my grandmother heard about it she came for me. I had to sleep on
grandmother’s floor, she gives me food, but doesn’t support me
emotionally. I wish to get away from my family. I have to see my uncles -
who beat me - and my mother almost every day. 72

To avoid stigma and humiliation, and in some cases to spare their families from suffering
the same, LGBT people told Human Rights Watch that both gay men and lesbian women
maintained relationships with the opposite sex, sometimes getting married, while secretly
continuing same-sex relationships.

The desire to belong and be accepted by her family led Sophia, a 35-year-old lesbian from
Barbados, to get married to a man. She said:

[A]t 19 I met a guy and he liked me, and I thought “my family would
appreciate this.” I decided to get married to him and our relationship lasted
for almost 5 years, and that relationship produced one son, he is 14-years-
old now. But I was unhappy. I didn’t want to be with him, after 5 years I
decided to break it off. My family knew I was unhappy – they would rather
have me unhappy with a male than happy with a woman. [They] felt it would
ruin their reputation. 73

After Sophia's decision to separate from her husband, he and her family tried to deny her access to her son. A government agency in charge of child protection ultimately rejected their efforts as groundless. She recalls:

My sons’ dad and my father decided to take away my son. They placed my boy in a government agency in charge of promoting and protecting children’s rights. They took my son there and started questioning him about what type of treatment he received from me, and if mom had any friends that were LGBT persons. They took him and he endured that for three months. Ultimately, the agency decided “We can't remove him from his mom. There are no grounds for us to remove him.” At the time my son was 10 years old.\textsuperscript{74}

Her alienated former husband continued to make negative remarks about her, saying to their son things like: “if you knew what your mom was you would never go back to her.”\textsuperscript{75}

Eviction and homelessness are a staple in the lives of many LGBT individuals. Human Rights Watch interviewed LGBT people who had been forced to move: kicked out of their homes because of the rejection of their family members, driven from home by community members who threatened to kill them, and in some cases violently attacked and forced to seek asylum abroad.

Alfred, a gay 53-year-old man from St. Vincent and the Grenadines, told Human Rights Watch: My mother put me out of my house at age 15—I wasn’t accepted and I struggled on my own.”\textsuperscript{76} He roamed the streets from village to village for most of his teenage years in seek of shelter.

Augusten, a 36-year-old gay man and store clerk from St. Vincent and the Grenadines, told Human Rights Watch: “I was 19 when I started to work for my own dollar, I came out and told my grandmother and my cousins that I was gay. At that time I was actually supporting myself. They called me: ‘buller,’ ‘battyman.’ At age 23 [I started dating men and] let myself

\textsuperscript{74} Human Rights Watch interview with Sophia, Barbados, February 12, 2017.
\textsuperscript{75} Human Rights Watch interview with Sophia, Barbados, February 12, 2017.
\textsuperscript{76} Human Rights Watch interview with Alfred, St. Vincent and the Grenadines, February 18, 2017.
be and then my uncle and I had a dispute. He forced me to move, he told me to leave on a Wednesday. By Thursday I was out of my grandmother’s house.”  

James, a 24-year-old bisexual man from St. Vincent and the Grenadines, said that he was shunned by his family, thrown out of his home, and beaten by his brothers, even as he sought shelter with friends. He said: “At age 16, I was kicked out of the house. My brothers would go to my friends’ houses and told them that if they see me they would kill me... Black and blue eyes, mainly one of them was doing the bashing, taunting, beating and threatening me. I thought my mother knew [but she played ignorant]. I never spoke about it.”

Thomas, a 34-year-old gay man from St. Lucia, described how his mother wavered between acceptance and rejection, allowing him to stay, and then throwing him out. This left him feeling unstable, insecure, and at times desperate and suicidal:

She keeps accepting me to stay and then she throws me out. I’m homeless right now and there is an apartment right across the street and a lady put me up for a week. I tried to commit suicide, because I am not stable. It’s a hard time – I tried hanging myself in a road near town and somebody stopped me, a stranger. I don’t feel safe, so I decide to stay inside most of the time.

Alanis, a 23-year-old trans woman from Dominica, told Human Rights Watch about her ongoing experience with homelessness and violence within her home due to her gender identity:

I currently stay with my mom. I was homeless a lot of the times, staying on the streets like any vagrant. I try to cope with it, it hurts. I can’t gain employment because of who I am. I got a lot of kicks, jump kicks by my sister, for the simplest things – both my sister and father, always for the

78 Human Rights Watch interview with James, St. Vincent and the Grenadines, February 19, 2017.
79 Human Rights Watch interview with Thomas, St. Lucia, February 25, 2017.
simplest things. In terms of my mom, she fractured my arm and slapped me in the face, because of who I am and expressing who I am accordingly.  

Toby, a 38-year-old gay man in St. Lucia, recalled his extreme experience of exclusion and ostracism within the home, which drove him to several suicide attempts:

My father found out [I was gay] when somebody told him. When my mom found out – she didn’t speak to me for two years... I could only use one plate, one spoon, I could not touch anything else, it was like I had some contagious disease, they distanced themselves from me. I spent two years in a house where nobody spoke to me. I had nobody to turn to. I was always alone. I tried to commit suicide five times, for some reason it never worked. I left my house, I couldn’t take it anymore after two years of silent treatment.

Erika, a 23-year-old lesbian from St. Kitts and Nevis, told Human Rights Watch that within her community prejudice runs deep and people openly speculate as to whether her son will be gay because he is being raised by a lesbian. Erika had a traumatic rape experience, compounded by social prejudice. She said people assumed that she had been “turned” lesbian because she was raped by a man. She said: “back home they all think that because I was raped, I am a lesbian; and that I fear men. But personally, that wasn’t it. I was raped. I’m a lesbian. I was like that before. I was always attracted to females.”

Exclusion from Church
Interviewees invariably referred to their countries as “Christian” nations. Certainly, church communities are at the center of social life and are ubiquitous across the islands. Churches play an important role in communal life and social welfare. And Christian communities are influential agents of socialization, shaping social attitudes, and moral codes. (Appendices I-VI include a detailed breakdown of religious affiliation in each island.)

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81 Human Rights Watch interview with Toby, St. Lucia, February 25, 2017.
82 Human Rights Watch interview with Erika from St. Kitts, interviewed in Antigua and Barbuda, February 8, 2017.
Family rejection is often couched in religious terms, leading many interviewees to blame local church rhetoric for the prejudice they encounter within their families and society at large. LGBT people who experienced family rejection on religious grounds said that local pastors reinforced the prejudice that had already alienated them from family members and their communities.

Nicholas, a 20-year-old gay man from St. Kitts and Nevis, reinforced the idea that churches play a significant role in shaping public attitudes towards LGBT people, based on his experience of rejection in his own church community. Nicholas said his church hierarchy perceived him to be too ‘effeminate’ and led pastors to question his ability to take on certain responsibilities in the church choir. He told Human Rights Watch that he received a letter where he was “invited” to take a break from participating in the choir, and soon after taking a trip abroad he was placed on “probation”. Despite his love of the choir, the experience ultimately drove his decision to leave the choir, and the church.

Some individuals have endured extreme situations to stay in their religious communities. Arthur voluntarily submitted to an exorcism ritual conducted by his church pastor in the hope that it would make him straight. His pastor promised to help him “banish the devils” of homosexual desire. It did not work, but Arthur pretended that it did as he was afraid of being outed as gay. He feared being banished from the church “[b]ecause my sexual orientation [did not change after the exorcism]. I could not complain.”

Richard said he avoided participating in certain public activities, including church events, because he is gay. He said: “I was in the church youth. I was very feminine, but I try to hide it...I would just feel strange because of my feminineness.”

Michaela, a 22-year-old artist and lesbian from Grenada, said: “I want the church to do something. The church runs everything. If they become more accepting, like having gay people in the congregation, it would be a step in a better direction.”

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In 2017, the archbishop of the West Indies and Anglican bishop of Barbados, Dr. John Holder, spoke out against violence against LGBT people, stating that every human being must be treated equally. He emphasized to believers that an individual’s sexual orientation does not deny their status as a child of God.  

Statement of the Holy See, Delivered at a UN Side Event in December 2009

In 2009 the Holy See participated in a panel discussion at the UN in New York and delivered the following statement about criminalization of homosexual conduct. The Holy See opposes all grave violations of human rights against homosexual persons and is opposed to discriminatory penal legislation which undermines the inherent dignity of the human person.

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Mr. Moderator,

Thank you for convening this panel discussion and for providing the opportunity to hear some very serious concerns raised this afternoon. My comments are more in the form of a statement rather than a question.

As stated during the debate of the General Assembly last year, the Holy See continues to oppose all grave violations of human rights against homosexual persons, such as the use of the death penalty, torture and other cruel, inhuman and degrading punishment. The Holy See also opposes all forms of violence and unjust discrimination against homosexual persons, including discriminatory penal legislation which undermines the inherent dignity of the human person.

As raised by some of the panellists today, the murder and abuse of homosexual persons are to be confronted on all levels, especially when such violence is perpetrated by the State. While the Holy See's position on the concepts of sexual

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Bullying and Exclusion from School

School bullying is ubiquitous and can affect anyone. But LGBT children are particularly vulnerable to bullying. They experience higher levels of victimization and are at greater risk of being bullied at school.

Interviewees recalled multiple types of bullying and harassment that they encountered at school, and the consequences this had for their safety, sense of belonging, and ability to learn. Interviewees said that teachers were ill-equipped to intervene to stop bullying. And in some cases teachers encouraged verbal harassment, or did little to stop it. Some interviewees recalled that teachers themselves made dismissive or derogatory comments about LGBT people, sometimes passing them off as jokes, sometimes being openly disparaging.

Michaela, a 22-year-old artist and lesbian from Grenada, recalled her teacher’s unwillingness to stop bullying when she was a 16-year old high school student: “when bullying happens, you tell the teachers and they don’t do anything.”

Nicholas, a 20-year-old gay man from St. Kitts and Nevis, found himself and his boyfriend outing on social media when they were both high school students, around age 15. His boyfriend at the time was ousted when his picture was circulated on social media. He described his terror as beyond anything he had ever experienced up until then:

> When I was still in high school and about 15 years old I was dating this guy even though I was in the closet. I had a profile on social media and someone started outing people. My boyfriend was named in the list. I did not know about it until I went to school the next day. The other boys were laughing, calling me names. I got a call during class from my boyfriend. He explained to me what happened, I got sick. The list had exposed 15 guys as gay before it was taken down.

Thereafter, Nicholas says, he was taunted and aggressively harassed for the remainder of his school days.\(^9^0\)

Arthur, an 18-year-old gay man from St. Kitts and Nevis, described in poignant detail his feelings of isolation and loneliness as a result of being bullied. He told Human Rights Watch about being severely bullied in his first year of high school. He was terrified of meeting new people and tried his best to pass as straight. He described his fear as so disturbing that after any given school day, he would return home and go over each thing he could do in a more masculine way. Nonetheless, he recalled being taunted and unable to move around the school. In his third year in high school, he came out to two friends who outed him to other classmates. His fell into a depression. “I just wanted someone to talk to,” he said. The constant disdain shown by his classmates impacted his academic performance: “Before a final exam someone made a homophobic remark to me. I got a zero, I didn’t do the exam. The reason why I didn’t do it was because I was literally reflecting on what I did to cause that comment and what I could have done different, and how to change it.”\(^9^1\)

\(^{90}\) Human Rights Watch interview with Nicholas, St. Kitts, February 3, 2017.

\(^{91}\) Human Rights Watch interview with Arthur, St. Kitts, February 12, 2017.
III. Harassment and Discrimination

Physical Violence, Assaults, and Intimidation

Actual physical and sexual violence, or threats thereof, are part of the fabric of everyday life for many LGBT people. Fifteen out of 41 interviewees reported experiencing physical violence, while nine had more than one experience of physical violence.

The threat of violence keeps many people in the closet, afraid of what might happen if their sexual orientation or gender identity is disclosed. Arthur, 18, told Human Rights Watch that his perception of the violence and his fear of being caught up in it “never stops and it happens almost daily.”92

In the cases documented by Human Rights Watch, the perpetrators were private actors, including complete strangers, neighbors, acquaintances, or intimate partners, who seemed to think they had the moral authority to target LGBT people, without fear of arrest. Perpetrators of violence against LGBT people do so with impunity because they know that their victims are so afraid of stigma and discrimination that they are unlikely to report to the police. Interviewees said they were reluctant to report incidents due to their perception of police inaction and indifference to the crimes against them. Several said they were ridiculed by police or subjected to inappropriate questioning about their sex lives.

Respondents stated that gay men were more susceptible than lesbians to social rejection and physical violence. Amy, a 29-year-old bisexual female security guard from St. Vincent and the Grenadines, told Human Rights Watch: “violence happens more frequently to the gays. They accept more females than males.” She speculated that lesbians showing affection in public titillated dominant male heterosexual fantasies and that this may explain why lesbians are not targeted as often as gays.93 Even as she said this, however, she noted that anti-LGBT discrimination can and does fuel violence against both gays and lesbians.

Sexual violence is also an ongoing risk and reporting makes gay men susceptible to ridicule or further questioning by police officers about their sexual orientation, which

drives their decision to keep silent about it. Bill, a 31-year-old gay man from Antigua and Barbuda, recalled an episode from 2010 that left him with the impression that he had narrowly escaped being raped by an intruder:

At 3 a.m. a man came into my house with a gun while I was sleeping. I heard my bedroom door open, and at first I thought it was my sister. All I saw in the darkness were his boots, a gun, long sleeves, and a mask. I looked up and there was a gunman over me. I was sleeping naked. He told me not to move, he didn’t ask for money. I asked him what he was doing in my house. He replied: “Are you gay?”

I started to get nervous, it was silent for a moment. It took what felt like 60 seconds for him to move the gun away from me and exit my bedroom door.

A year after that I was on a social media dating app where I had my picture up, and someone with a profile with no picture sent me a message that read “I should have taken it from you a year ago.” I immediately knew it was the person who broke into my house. The text continued: “When I come back. I won’t hurt you, you are a good girl. Why act so nough? [acting better than other people].” I started looking outside, scared that he would be back.

Attacks can happen in the streets, at any hour of the day, including in public spaces and at events, such as carnival. Arthur, an 18-year-old from St. Kitts and Nevis, summed up his daily experiences in one sentence: “[When I am] strolling down the street people start yelling out ‘anti-man.’ Suddenly, they [begin to] throw bottles at me.” Similarly, Toby, a 38-year-old gay man from St. Lucia, told Human Rights Watch that he was pelted with stones in 2015 during carnival celebration. And more recently, in April 2016, he and his partner were attacked as they were entering their home one afternoon: “[I knew] it was motivated by us being gay because the term ‘buller’ was used. As we were entering the house, a car pulled out, two persons jumped out….a gun was raised and they tried to pull the trigger, but the

94 Human Rights Watch interview with Bill, Antigua and Barbuda, February 8, 2017.
trigger did not work. I told my boyfriend to run. They stabbed me, several times, the deepest one was below the navel. My boyfriend was also attacked with stones.”

### Random Violence

Charles, a 24-year-old gay man from Antigua and Barbuda told Human Rights Watch about his first and only experience of physical homophobic violence, an episode that occurred in November 2016.

It was about 7 p.m., he had finished work and was walking home with a friend – a trans woman named Emily. They took a shortcut to the main road where they encountered a man on a bicycle who seemed to be following them. The man rode past them, before turning into an alley where he left his bike. He then walked past Charles and Emily and threatened them along the lines of “Batty-men must die” or “you are close to death” – Charles could not hear precisely. Charles and Emily separated and Charles crossed to the other side of the street, where the man followed him. When the man walked passed him again, this time very close, he felt what he described as a sharp pinch and sting. He soon realized that he was bleeding. He had been stabbed. Afraid, Emily had run away and Charles had fled from his assailant, who began to chase him until Charles finally escaped through some bushes and hid.

Charles tried to call people to tell them what was happening. His mother’s phone was off, but he reached his work supervisor and told her what had happened. He then asked people in the vicinity for help, an ambulance was called, and he spent the next three days in hospital. To this day Charles bears a visible scar, about an inch long on the upper-right-hand side of his body.

Charles described his attacker to police officials and explained that he had never seen him before and had no idea who he was. He has not seen him since, but says he would recognize him if he did. Charles had never seen his attacker before the attack. He provided a full description to the police and told officers that the assailant made homophobic insults before he was stabbed. Police took his statement, and clothes as evidence. He is unsure of the progress of the case. He was told to go to the police station to get more information but had not done so when we spoke with him.

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96 Human Rights Watch interview with Toby, St. Lucia, February 25, 2017.
In many cases violence occurs out of the blue, as was the case with Augusten, a 36-year-old gay man and store clerk from St. Vincent and the Grenadines, who blacked out after being attacked by a stranger in public. He said: “I had several instances where people pelted rocks and coconuts at me. One time I was walking home and a gentleman stopped me and slapped [me] in the face because I was gay. I actually blacked out, he caught me unguarded.”

Homophobia permeates every sphere of life for most gay men. Sean, a 35-year-old from St. Vincent and the Grenadines, said:

> In my life, I have been bullied, I have been harassed, maligned, terrorized because I am an openly gay person. So, if I’m somewhere, and a DJ would see me, they would announce it by saying something like “we have a battyman in the house” and put on homophobic music and the people would celebrate and respond to that. One night I was walking home, and there was a group of five guys, one shouted: “Battyman, fi dead” [gays should die] and suddenly they started throwing stones and bricks at me.

Ernest, a 20-year-old gay man from Barbados, said he was violently attacked while swimming:

> Last week, on Saturday I decided to go to the water and swim. Two young teenagers, aged 11 and 13, passed along the coast and suddenly I saw rocks coming down from the hill, they literally threw rocks at me. They knew who I was. They are from my neighborhood, it is a close-knit community.

Gay men have routinely sought asylum on grounds of the homophobic violence experienced in their home country. Gabriel, a 36-year-old gay man from St. Lucia, sought and was granted asylum in Canada. He told Human Rights Watch: “In late 2009 when I was living in Castries, I could have ended up dead. Because I’m gay it would be swept under

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the rug.” 101 Two interviewees asked Human Rights Watch researchers how they could flee their country and seek asylum in a safer environment.

Michaela, a 22-year-old artist and lesbian from Grenada, told Human Rights Watch that the violence she experienced was perpetrated by complete strangers. She recalled an episode when she went on a beach swimming date with a girlfriend in July 2016. She told Human Rights Watch that they only hugged twice when a man appeared with a harpoon and chased them. She did not report the incident to the police, because in her view: “the police would have the same reaction, except they have guns.” 102

She also described a similar incident that took place a few months later while spending an afternoon on the beach with her girlfriend. They were confronted by a team of construction workers. Michaela said: “They saw two girls too close and they began shaking the fence that divided the beach and the construction site while yelling “Stop your nastiness! Don’t do that to her! We don’t do this in our country!” The men threatened the two women with a solid plank of wood.

Verbal assaults soon escalated to violence. As she recalls:

I’m walking, I don’t hear the group, which is strange because they always shout. But I hear a smash. Then I hear another smash, and I see a glass bottle skitting by me. And so I turn, and another glass bottle just missed my face, and I scream at them and start heading home. I keep watching the group. They threw bottles, all of them beer bottles, one broke right in front of my feet. Then I picked up a bottle and threw it back at them. They said

101 Human Rights Watch interview with Gabriel, St. Lucia, February 24, 2017.
nothing. As soon as I turned around, I [saw] they were throwing stones, too. They were about the size of my fist.

She took refuge with a neighbor who had two dogs for protection, and called the police. They arrived about an hour later and interviewed the young men who were then giggling among themselves. She identified one of the perpetrators who denied that he was involved.

“He told the officer: “It can’t be me, they gotta be mistaken.” In the end, the officers gave them a warning, and said ‘don’t bother her again.’”

It is not only random strangers who perpetrate violence against LGBT people. Transgender women report being particularly vulnerable to intimate partner violence. Emily, a 24-year-old trans woman from Antigua and Barbuda, told Human Rights Watch about her first encounter with a suitor:

He made me take my clothes off and suddenly he started to shout “You bein’ a battyman–I am not gay don’t mess with me!” as he threatened me and told me he was not into “hanky-panky.” I only had my jeans and handbag but no shirt and no bra. I started to run up the road to get away until I couldn’t see him and met up with another trans woman friend of mine. It was a really horrible experience. I thought it would be easy, it is not.

Isabella, a 20-year-old trans woman from Barbados, told Human Rights Watch about an incident in January 2016 when she was struck in her face with a bottle, after an altercation with people from her village. She was hospitalized. She said:

It happened very close [to] the police station. Once I went into the police station for help, I was received by an officer who said “do not let your blood on this desk” [but] he wrote the report for me to take to the hospital. In the hospital, I waited for three hours, gushing blood. Eventually a nurse came...
and wiped my face, the blood had hardened, she cleaned me up, and sent me off.106

Alanis, a 23-year-old a trans woman from Dominica, recalled a series of violent attacks on her between 2009 and 2017. These included several physical attacks which led to head injuries on three occasions. The most extreme form of violence that she experienced was being choked on the street by a stranger after a verbal altercation.107

**Verbal Abuse and Harassment**

Almost all interviewees reported being routinely ridiculed, harassed, threatened, and verbally abused based on their real or perceived sexual orientation or gender identity. Indeed, for many the taunts were so commonplace that they did not deem it worthy of mention to Human Rights Watch researchers. Verbal abuse was so much part of the fabric of everyday life that it went unnoticed and unremarked.

Verbal abuse and harassment can quickly escalate into physical assault. Most interviewees said unless they were physically confronted they typically tried to ignore taunts and insults because physical altercations would ensue if they reacted.

Bill, a 37-year-old office clerk and gay man from St. Vincent and the Grenadines, told Human Rights Watch that he is subject to daily slurs and insults including ‘faggot,’ ‘fish,’ and ‘chichiman.’”108

Gabriel, a 20-year-old a gay man and cosmetologist in Dominica, told Human Rights Watch:

> I received threats of physical violence as a result of my sexual orientation. Persons from my village call me ‘battyman’ in passing. I received a death threat recently, only last week.109

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108 Human Rights Watch interview with Bill, St. Vincent and the Grenadines, February 18, 2017
109 Human Rights Watch interview with Gabriel, Dominica, February 22.
James, a 24-year-old bisexual man from St. Vincent and the Grenadines, recalls the slurs he receives on a daily basis: “They call me names: faggot, pussy, battyman, fish, ‘burn the gays alive.’ When I try to defend myself they throw things…. Strangers verbally assault me every day. I receive threats of physical violence also, almost every day.”

As a gay man, Luke, aged 43, said he experienced daily verbal threats that he will be “cut, shot and burned.” He said that when he has reacted in self-defense, his aggressors have pelted him with stones while calling him “buller man” and “fuzzy hole.”

Richard, a 20-year-old gay man working as an assistant in a civil society organization in St. Lucia, has received written and verbal threats online because of his sexual orientation. He said: “People who message me privately [through social media] send threats. All [of those messages are] negative slurs, saying ‘no gays’ and ‘we will kill you and beat you up.’” He also recalled an incident from 2015 when he was walking alone en route to his office: a hostile group of men followed him, yelling things like “oh battyman, don’t make us beat you there.” On another occasion, he told us, he was walking with his sister when someone yelled “Oh he’s gay, let’s burst his head, stab him, and kill him!”

Toby, a 38-year-old gay man from St. Lucia, experienced several threats of physical violence. One, in particular, shook him: “In 2016 at carnival, people told me that they were going to beat me, shoot me, and kill me.” He told Human Rights Watch that his boyfriend received the same threats while being called “buller, battyman, faggot.”

Alanis, a 23-year-old trans woman from Dominica, said she receives insults almost every day from family and strangers who call her “chichiman, shemale, buller, battyboy, battyman, buggerer, nasty salop.”

Emily, a 24-year-old trans woman from Antigua and Barbuda, described how random strangers take it upon themselves to “discipline” her by confronting her and addressing her as a man. She said “people tear me down – they judge me a lot, they laugh and giggle.

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113 Human Rights Watch interview with Toby, St. Lucia, February 25, 2017.
at me, they scorn me because that is how society is. I've receive threats.” She continued: “Bashing someone is not just stone and bottles, it’s: ‘you think you are a woman, you are a man I will show you how a man is like’ and ‘I'm going to give you something you deserve.’” She underscored her fear that, if the possibility presented itself, most people would throw things at her or beat her up.

Inappropriate Police Response

Most LGBT people interviewed by Human Rights Watch had negative perceptions of the police. They said they expected the police to be biased, unresponsive, and unlikely to investigate crimes against them. In some cases, they feared arrest under laws that criminalized same-sex intimacy. Several interviewees reported that police asked them inappropriate, intrusive questions about their sex lives.

Fourteen people interviewed by Human Rights Watch said that they did not sufficiently trust the police to report incidents to them. Those that did report crimes to the police cited negative experiences including inefficiency, inaction, and in some cases, antipathy that led to secondary victimization.

Some LGBT people said that they relied on individual police officers whom they knew to be sympathetic. Some police officers in some of the countries covered in this report have gone through general human rights training, in line with several UPR recommendations that called on the countries to fight discrimination based on sexual orientation and gender identity and to thoroughly investigate acts of violence motivated by such animus. Several people attributed positive interactions with the police to these trainings.

Some interviewees, particularly those who lived in rural areas, also expressed having positive experiences with police officers who work in local villages. Bill, a gay man from Antigua and Barbuda, said: “The police in my village is much different from the one in St. John’s, there is so much difference, we get to build relationship and they know me.”

115 Human Rights Watch interview with Emily, Antigua and Barbuda, February 9, 2017.
116 See appendices for more information on Universal Periodic Review recommendations to the different states.
118 Human Rights Watch interview with Bill, Antigua and Barbuda, February 8, 2017.
Human rights training and sensitivity training for police on LGBT issues are particularly important in an environment in which commonplace homophobia bolsters a macho culture within the police. Laura, a 45-year-old trans woman from Antigua, said: “It is the culture within the force, they would gain no respect if they are not homophobic, people would think that if they are not homophobic then they are going ‘soft.’”

As noted above, many interviewees told Human Rights Watch that police officers question LGBT individuals in a degrading manner about their sexual orientation, detracting attention from the crimes they are there to report.

Jason, a 40-year-old gay man from Barbados, described to Human Rights Watch past interactions with police officers:

If I say: “this person robbed me,” they would ask me: “were you soliciting them? And did they not pay you? Are you a callboy?”

Be it violence, be it being robbed, you’re questioned about your relationship with the person. Especially if you know the perpetrator. And the questions will go: “what was your role to encourage this?”

When Jason was raped in 2011 and reported it, police were dismissive and he felt he was not being heard. He recalled: “To his day, I don’t know who did it. My assailant left something in the car, I gave it to the police, I didn’t touch it. I left that with them.” Jason said he has not returned to the station to follow up on the case because of the initial police response.

Bill, a 31-year-old gay man from Antigua, was also treated dismissively by police officials when he tried to report a crime in 2010, an incident in which a man broke into his home and threatened him. He said: “Instead of them trying to circle the area to find out who it

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119 Human Rights Watch interview with Laura, Antigua and Barbuda, February 8, 2017.
120 Human Rights Watch interview with Jason, Barbados, February 12, 2017.
was, they were more into questioning about my lifestyle than into what I was telling them –
the crime itself. We are just not taken seriously.”

He told Human Rights Watch about another episode:

I get robbed at gunpoint. I went to one of the police stations close by in the
city, in St. John’s. They took me to drive around the area. The officer
questioned me about my lifestyle. If I were straight, [the questioning] would
not have happened– they don’t look out for homosexuals.

Augusten, a 36-year-old store clerk from St. Vincent and the Grenadines, told Human
Rights Watch that even altercations with friends can lead to random questioning about his
sexual orientation. He said:

I had a dispute with a friend of mine. I went to make a report and the officer
who was taking the record, instead of being a listening aid, he was
disrespectful saying “oh you want a man” – being dismissive. He suggested
that because of my sexual orientation I asked for it.

Most gay people don’t go to the police, they are afraid of being physically
bashed by them. I had experienced passing the police barracks and the
police will turn yelling to me “little miss going there!” In 2013 a police
officer called me a “buller” when he was walking back to town. Today if I
pass the police barracks people will say things.

Sophia, a 35-year-old from Barbados, said police discredited what she said because she
was a lesbian:

In October 2016, my ex-girlfriend took my passport and I went to the police
to get help to take it back. The police officer said “I saw you on Facebook
together, who is the man and who is the woman?” He laughed it off. I felt

122 Human Rights Watch interview with Bill, Antigua and Barbuda, February 8, 2017.
123 Human Rights Watch interview with Bill, Antigua and Barbuda, February 8, 2017.
like we don’t get respect at all. Everything gets down to a sexual act. Who is on top and who is on bottom? I was so disappointed.

For me it doesn’t make sense to report the policeman to the police, it just doesn’t.\textsuperscript{125}

Other interviewees also felt that they were not taken seriously by the police and that this led to police inaction and failure to handle their cases diligently. Emily, a 24-year-old trans woman, said: “I can’t go a day without being interfered with, [but] people think it is a joke. Every time we make reports to the police station, they don’t take it serious. Many times, I have filed complaints and reports. They come, take the statement, and give attackers only a warning. Just to sweet talk us....”\textsuperscript{126}

Alanis from Dominica expressed her frustration and lack of hope in relying on police to properly investigate assaults against her. She said: “I have been making police reports since 2009 officially, they don’t take my reports. [Instead] they make fun of me. I’m not taken serious at all. I never went back.\textsuperscript{127}

Some, frustrated with the lack of police support, expressed a need to take matters into their own hands by fighting back in self-defense against attacks and aggression. Ernest, a 20-year-old gay man from Barbados, told Human Rights Watch that in such cases “you fight, I do not go to the police.”\textsuperscript{128}

### Emotional and Psychological Abuse: Lack of Mental Health Support

Verbal and physical abuse can have serious long-term consequences by instilling in LGBT people feelings of fear, shame, and isolation and lowering their self-esteem. Interviewees told Human Rights Watch that such feelings meant they often experienced depression; many said they had thoughts of suicide or had attempted it.

\begin{itemize}
\item \textsuperscript{125} Human Rights Watch interview with Sophia, Barbados, February 12, 2017.
\item \textsuperscript{126} Human Rights Watch interview with Emily, Antigua and Barbuda, February 9, 2017.
\item \textsuperscript{127} Human Rights Watch interview with Alanis, Barbados, February 20, 2017.
\item \textsuperscript{128} Human Rights Watch interview with Ernest, Barbados, February 11, 2017.
\end{itemize}
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<th>General Country Information</th>
<th></th>
</tr>
</thead>
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<tr>
<td><strong>Population</strong></td>
<td>109,000 (2013)</td>
</tr>
<tr>
<td><strong>Gained Independence</strong></td>
<td>October 27, 1979</td>
</tr>
<tr>
<td><strong>International Relations</strong></td>
<td>Member of the African, Caribbean and Pacific Group of States, Association of Caribbean States, Caribbean Community, Non-Aligned Movement, Organization of Eastern Caribbean States, Organization of American States, United Nations and World Trade Organization.</td>
</tr>
<tr>
<td><strong>Relevant Legislation</strong></td>
<td>Criminal Code, 1990 Edition</td>
</tr>
</tbody>
</table>
| **Section 146 - Buggery**   | “Any person who —
(a) commits buggery with any other person;
(b) commits buggery with an animal; or
(c) permits any person to commit buggery with him or her; is guilty of an offence and liable to imprisonment for ten years.” |
| **Section 148 - Gross Indecency** | “Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.” |

Source: Commonwealth Secretariat and HRW Map of Countries with Anti-LGBT Laws
### Ratification Status for Saint Vincent and the Grenadines

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Ratification Date, Accession(a), Succession(d) Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
<td>August 1, 2001 (a)</td>
</tr>
<tr>
<td>ICCPR - International Covenant on Civil and Political Rights</td>
<td>November 9, 1981 (a)</td>
</tr>
<tr>
<td>CEDAW - Convention on the Elimination of All Forms of Discrimination against Women</td>
<td>August 4, 1981 (a)</td>
</tr>
<tr>
<td>CERD - International Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>November 9, 1981 (a)</td>
</tr>
<tr>
<td>ICESCR - International Covenant on Economic, Social and Cultural Rights</td>
<td>November 9, 1981 (a)</td>
</tr>
<tr>
<td>CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
<td>October 29, 2010 (a)</td>
</tr>
<tr>
<td>CRC - Convention on the Rights of the Child</td>
<td>October 26, 1993</td>
</tr>
<tr>
<td>CRPD - Convention on the Rights of Persons with Disabilities</td>
<td>October 29, 2010 (a)</td>
</tr>
<tr>
<td>ACHR – American Convention on Human Rights</td>
<td>Not ratified</td>
</tr>
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Source: UNOHCR Treaty Body Database by Country
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<tr>
<th>UPR Cycle</th>
<th>SOGI Recommendations</th>
<th>State response</th>
</tr>
</thead>
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<tr>
<td>1st cycle UPR</td>
<td>St. Vincent and the Grenadines received eleven recommendations related to SOGI, all of which called for decriminalization of same-sex sexual relations and non-discrimination.¹⁸³</td>
<td>The government rejected all 11 recommendations, arguing that “in the context of the moral, societal and cultural make-up of the State,” there was no impetus to repeal the discriminatory laws.¹⁸⁴</td>
</tr>
<tr>
<td>May 2011</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd cycle UPR</td>
<td>St. Vincent and the Grenadines received eight recommendations related to SOGI calling for decriminalization and non-discrimination.¹⁸⁵</td>
<td>Again, the government rejected all of the recommendations and argued that the discriminatory laws had public support within the country’s “Christian society,” although some social change was acknowledged particularly among youth. The delegation claimed that no imprisonments had been made under the discriminatory laws.¹⁸⁶</td>
</tr>
<tr>
<td>May 2016</td>
<td></td>
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</tr>
</tbody>
</table>


TAB 15
STATE-SPONSORED HOMOPHOBIA

A WORLD SURVEY OF SEXUAL ORIENTATION LAWS: CRIMINALISATION, PROTECTION AND RECOGNITION

12TH EDITION
MAY 2017

AENGUS CARROLL AND LUCAS RAMÓN MENDOS
ilga.org
This 12th edition of State Sponsored Homophobia report was researched and written by Aengus Carroll and Lucas Ramón Mendos and published by ILGA. It is copyright-free provided you cite both the author and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).


This report is available to download in Word or PDF formats.

Digital versions of the four ILGA maps of LGB legislation in the world are available for print.

State-Sponsored Homophobia and its world maps are published simultaneously in English and Spanish, and will be available in Arabic, Chinese, French and Russian.

Download the maps and reports at http://ilga.org or contact info@ilga.org

**Coordination:** Renato Sabbadini

**Design and typesetting:** Renné Ramos

**Maps:** Eduardo Enoki
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<th>Provisions in law</th>
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<tbody>
<tr>
<td>SWAZILAND</td>
<td>♂</td>
<td>Common law offence</td>
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<tr>
<td>TANZANIA</td>
<td>♂</td>
<td>1945 Penal Code Section 154.</td>
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<td>TUNISIA</td>
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<td>1913 Penal Code Article 230.</td>
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<td>ZIMBABWE</td>
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**AMERICAS (10)**

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<tbody>
<tr>
<td>ANTIGUA AND BARBADUA</td>
<td>♂♀</td>
<td>1995 Sexual Offences Act (Act No. 9), Sections 12, 15.</td>
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<td>BARBADOS</td>
<td>♂♀</td>
<td>1992 Sexual Offences Act, Chapter 154, Sections 9, 12.</td>
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<td>1998 Sexual Offences Act, Sections 14, 16.</td>
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<td>1993 Criminal Code, Section 431.</td>
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<td>GUYANA</td>
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<td>1893 Criminal Law (Offences) Act, Sections 352, 353, 354.</td>
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<td>JAMAICA</td>
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<td>1864 Offences Against the Person Act, Sections 76, 77, 78, 79.</td>
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<td>SAINT KITTS AND NEVIS</td>
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<td>1873 Offences against the Person Act, Sections 56, 57.</td>
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<td>SAINT LUCIA</td>
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<td>2005 Criminal Code, Sections 132, 133.</td>
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<td>TRINIDAD AND TOBAGO</td>
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<td>1986 Sexual Offences Act 1986, as amended by the Sexual Offences (Amendment) Act (No. 31 of 2000), Sections 13, 16.</td>
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**ASIA (23)**

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<td>BHUTAN</td>
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<td>1959 Penal Code Section 213.</td>
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</table>
recommendations. All recommendations to repeal laws criminalising same-sex consensual acts or legislation that may otherwise discriminate against LGBT people were rejected. Only three recommendations (and one in part) were accepted, all of them referring to awareness-raising campaigns and “strengthening the fight” against discrimination based on sexual orientation and gender identity.

As a member of the General Assembly of the Organisation of American States (OAS), Saint Lucia has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008). However, in 2013, Saint Lucia announced it would insert a footnote to that year’s resolution (fn. 7). The following year, Saint Lucia inserted a footnote that reads as follows: “Saint Lucia is unable to join consensus on the approval of this resolution since we are of the view that the term “gender expression” is one that is not thoroughly defined or accepted internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law” (fn. 12). Saint Lucia inserted no footnote in the 2016 resolution (there was no resolution in 2015).

Local human rights organisations called on political parties “to make a full position statement on the issue of LGBT discrimination”, after a video showing the Minister of Tourism using a derogatory word sparked outrage on social media. In fact, in 2015, the interplay of buggery laws and tourism had been the subject of a special report by Telesur.

The 2016 US Department of State Human Rights Report explains that there was widespread social discrimination against LGBTI persons in the deeply conservative Saint Lucian society during 2015, and that the few openly LGBTI persons faced daily verbal harassment. However, very few incidents of violence or abuse appear to have been reported, mainly due to reluctance to report for fear of retribution or reprisal. No progress had been made in the investigation of the killing of Marvin Anthony Augustin, which appears to have been a hate crime. Furthermore, in terms of economic, social and cultural rights, LGBTI persons were denied access to rental homes or were forced to leave rental homes, and were denied jobs or left jobs due to a hostile work environment.

Despite this adverse environment, several courageous activists publicly shared their stories of survival in Saint Lucia (see among others, Jessica St Rose and Donavan Monerville).

SAINT VINCENT AND THE GRENADINES


Section 146

“Any person who —
(a) commits buggery with any other person;
(b) commits buggery with an animal; or
(c) permits any person to commit buggery with him or her;
is guilty of an offence and liable to imprisonment for ten years.”

Section 148

“Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.”

At its 1st cycle UPR in May 2011, the State rejected 11 recommendations to lift discriminatory laws and practices, including the repeal of Section 146 (in line with the Human Rights Committee Concluding Observations in 2008). In response, the State said that its current legislation was supported by society and there was no call to repeal it, “[in] n the context of the moral, societal and cultural make-up of the State”. In this vein, Saint Vincent and the Grenadines compared its own legal situation to that of the United Kingdom arguing that it had taken “hundreds of years” for the UK to repeal similar legislation, and “the harsh nature of the sentences imposed under British law,” comparing them to the “relatively short
period of time that Saint Vincent and the Grenadines has been an independent state, and the less punitive sanctions involved” (para. 29).

In its 2nd cycle UPR, Saint Vincent and the Grenadines once again rejected all SOGI-related recommendations. During the interactive dialogue, the delegation indicated that criminalising provisions “had existed for a long time and that the precepts underlying them had overwhelming public support in the country’s Christian society espousing Judaeo-Christian values in the Caribbean context”. However, changes in those values were acknowledged as “occurring, particularly among sections of young people”. The delegation went on to stress that “there had been no imprisonments” based on the criminalising provisions, but at the same time, as it did in its 1st cycle, insisted on the fact that there was “no public or legislative appetite to revise any of [these] laws” (para. 44).

In 2015, the CEDAW Committee noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.

As a member of the General Assembly of the Organisation of American States (OAS), Saint Vincent and the Grenadines has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008). In 2013, Saint Vincent and the Grenadines, along with Dominica and San Kitts and Nevis, inserted a footnote stating that the delegations of these three countries were “unable to join consensus on the approval of this resolution” (fn. 2). The Government further stated that “the term ‘gender expression’ is one that is not thoroughly defined internationally or that has international acceptance” and suggested that the discourse at the OAS “should be confined only to language which has been recognized or approved by the United Nations”. In 2016, Saint Vincent and the Grenadines withdrew from the list of countries inserting footnotes. Further, at the OAS General Assembly in June 2016, Minister of Economic Planning and Sustainable Development of Saint Vincent and the Grenadines, Camillo Gonsalves, described the Orlando shooting as a “tragic and heinous event” and said that his country offered its “support in ridding the world of hate and the tools of hate”.

In 2015, opposition Senator Vynnette Frederick stated that Saint Vincent needed to discuss the issues of same-sex relationships and that she was well positioned to lead the discussion because of her perceived sexuality. In 2010, Prime Minister Ralph Golsalves, made disparaging comments about her, suggesting she was a lesbian. Based on those remarks, Senator Vynnette Frederick brought a claim against the Prime Minister and stated that those comments had negatively impacted her performance at the elections. The 2015 Kaleidoscope Trust’s report illustrates a socio-political environment that appears to be improving incrementally, as discussions about what impedes full citizenship in a discriminatory environment take place.

The 2016 US Department of State Human Rights Report indicates that anecdotal evidence suggested there was social discrimination against LGBTI persons, although local observers believed such attitudes of intolerance were slowly improving. Still, members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.

TRINIDAD AND TOBAGO

Sexual Offences Act 1986, as amended by the Sexual Offences (Amendment) Act (No. 31 of 2000).

Section 13.

“(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—

(a) if committed by an adult on a minor, for life;
(b) if committed by an adult on another adult, for twenty-five years;
(c) if committed by a minor, for five years.

[BUGGERY]
TAB 16
Criminalization of Human Rights Defenders
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Criminalization of the Work of Human Rights Defenders

2015
www.iachr.org
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improper interference." Furthermore, Principle 18 provides that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions," and Principle 20 establishes that "Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal, or other legal or administrative authority." In turn, the International Bar Association said that "No lawyer shall suffer or be threatened with penal, civil, administrative, economic, or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client's cause." 256

156. In addition, under Article 8 of the American Convention, everyone has the right to legal counsel of his or her own choosing or provided by the State. To ensure an effective and independent defense, lawyers must be certain that their defense work will not be identified with the cause they are defending. Otherwise this will lead them to refrain from undertaking the defense of certain cases, which may also negatively impact the client's right to have the lawyer of his or her choice.

157. States should refrain from reprisals against defense lawyers for the representation or assistance to their client or cause. In particular, the initiation of criminal proceedings against lawyers for the defense of a client can be an illegitimate pressure that may even affect his or her independence and undermine the client's right of defense.

E. The Criminalization of Human Rights Defenders for the Causes they Promote

158. The IACHR has been informed that some States have initiated criminal proceedings against human rights defenders as a result of the causes the defenders promote exercising their right to defend the rights recognized in the UN Declaration on Human Rights Defenders. Such is the case of human rights defenders of LGBT persons, as well as defenders of sexual and reproductive rights.

159. The misuse of criminal law affects the defenders of these rights in particular because in some countries the activities they promote may be prohibited, which exposes them to a greater risk of discrimination and retaliation and generates a deterrent and chilling effect in defending these rights. Additionally, the Commission notes that the initiation of baseless prosecutions in these cases is perceived as retaliation linked to their activities when they confront patriarchal attitudes, stereotypes, preconceptions and prevailing social perceptions, which contributes to perpetuating the marginalization of these groups of defenders, the people they defend and the universalization of these rights.

160. The Commission reiterates that the exercise of the defense of human rights implies the ability to freely and effectively promote and defend any right. Under Article 7 of the UN Declaration on Human Rights Defenders "Everyone has the right,

individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance. In this regard, the activities of defense and promotion of human rights should not be discredited or criminalized in any way, but, on the contrary, States have the duty to respect and guarantee the right of human rights defenders to defend rights providing them with the necessary means to freely conduct their activities.

1. **Misuse of Criminal Offenses to Stigmatize Defenders and Criminalize the Promotion and Protection of the Rights of LGBT Persons**

161. The Commission reiterates that the activities of promotion and protection of human rights must not be criminalized, and States must not prevent human rights defenders from enjoying their human rights or condone their stigmatization because of their work. However, the Commission is aware that some criminal offenses, such as public incitement to crime, condoning crime, and conspiracy, have been used improperly by some States in order to criminalize the promotion and protection of the rights of lesbian, gay, bisexual, and transgender persons (LGBT).

162. In this regard, the Commission has received information which indicates that most of the Caribbean countries still criminalize sexual relations between consenting adults of the same sex. The crimes contemplate penalties ranging from ten years of imprisonment—as is the case in Jamaica, Belize, Grenada, St. Lucia, and Trinidad and Tobago, for example—to life imprisonment in Barbados and Guyana. In the context of public hearings on Guyana; Jamaica and Belize; and Trinidad and Tobago, the IACHR received particularly concerning information regarding the criminalization, discrimination, harassment, and abuses suffered by LGBT persons in those countries. In this respect, the IACHR has expressed concern about the impact of legislation criminalizing consensual sex between adults of the same sex, even if those rules are not applied in practice, with respect to the rights to life, personal integrity, personal liberty, privacy, access to health, access to justice and other services.

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257 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999 Article 7.
259 The IACHR received no information on the criminalization of human rights defenders of intersex persons, hence the acronym "LGBT" will be used instead of "LGBTI."
260 See the laws of Antigua and Barbuda; Barbados (Sexual Offences Act 1992); Belize (Penal Code); Dominica (Sexual Offences Act 1998); Grenada (Penal Code); Guyana (Penal Code); Jamaica (Offences against the Person Act); Saint Kitts and Nevis (Offences against the Person Act); Saint Lucia (Penal Code); Saint Vincent and the Grenadines (Penal Code); and Trinidad and Tobago (Sexual Offences Act 1986). See also, IACHR, Violence against LGBTI Persons (in Spanish only), OAS/Ser.L/V/II.rev.1 Doc. 36. November 12, 2015.
163. Criminalization of same-sex sexual relations affects not only these above-mentioned rights but also that of the right to defend human rights, constituting an obstacle to the groups and organizations that promote and defend the rights of these persons, since in some cases the right of association is prohibited under the argument that the object of these organizations is "illegal." The IACHR has said that those who defend the rights of LGBT persons should not be seen as "self-avowed criminals," as this attribution stigmatizes them, negatively affects their right to defend the rights of LGBT persons, and ultimately lends to or facilitates the criminalization of their work.

164. The Commission observes that restrictions imposed by other laws, outside of the criminal context, also negatively impact the right to defend human rights. For example, Belize and Trinidad and Tobago still have legislation that prohibits gay persons “or persons who have earned a living off of homosexuality” from entering the country. Additionally prohibited in Trinidad and Tobago is the entrance of persons “for homosexual purposes.” Civil society organizations report that these immigration restrictions can have a serious impact on the right of assembly of those who work in defending the rights of LGBT people. As indicated by an advocate for LGBT rights in Trinidad and Tobago, this legislation makes “every meeting that [the organization, CAISO] organizes at its headquarters a potential infringement of the law.”

165. In these countries, LGBT persons are considered as perpetrators of illegal activities and often the organizations that defend their rights are regarded as promoting illegal activities or “immoral behavior.” On this basis, they are exposed to being threatened and persecuted, particularly by police officers, who have allegedly prohibited members of the LGBT community from meeting in certain public places, threatening to arbitrarily detain those who do not comply. As a consequence of this discrimination and stigmatization, this group of human rights defenders lives in constant fear of arrest, which hinders the legitimate exercise of their right to defend rights.

In 2008, in Trinidad and Tobago an organization tried to register under the name of "National Pride: The Society of Trinidad and Tobago against Sexual Orientation Discrimination," which provoked...
the General Registry’s review of the application. This review included an interview in which the explicit exclusion of sexual orientation in the equal opportunities law, among other topics, was discussed. In this regard, one of the members of the organization recalled, “I was also questioned if the purpose of our organization was to promote anything illegal, and we could see a copy of the law of sexual offenses on top of our file.”

166. In addition, the Commission has noted a rise in negative discourse by public officials in different OAS Member States against lesbian, gay, trans, bisexual persons, and against those who defend their rights. These statements and actions by public officials—including some officials in charge of promoting human rights—have the effect of undermining the recognition of the rights of lesbian, gay, trans, bisexual and intersex persons, imperiling them and those who defend their rights, and hindering democratic debate. For example:

Some organizations in Jamaica have reported that they fear their registration would have been or will be denied if they include within their purpose the promotion and protection of the rights of LGBT persons. This is because same-sex sexual conduct is outlawed in the Offences Against the Person Act, and the organization’s

271 IACHR, 153rd Period of Sessions, Hearing on the Misuse of criminal law to criminalize human rights defenders, held at Headquarters on October 31, 2014. Testimony Colin Robinson, CAISO.
273 Jamaica, Offences Against the Person Act, §§ 76-77, 79:

Unnatural Offences

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

Outrages on Decency

79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempt to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.

The Commission further notes that sections 29-33 of the Sexual Offences Act of 2009 requires men convicted of the “abominable crime of buggery” to register as sex offenders.
registration may therefore be viewed as pursuing "immoral purposes." In addition, senior officials have issued statements against organizations that defend and promote the rights of LGBT people. In 2004, the Department of Public Relations of the Police Federation reportedly issued a statement against a report by Human Rights Watch that condemned the homophobia of police and other government officials and threats against defenders of LGBT rights, calling on the Minister of Justice to file sedition charges against the organization and other local groups, for insulting the government and the police forces. Later, in 2009, a member of the Parliament of Jamaica, Ernest Smith, was quoted as saying that "homosexuals in Jamaica were so brazen that they have formed organizations," and he requested a ban on the activities of the organization Jamaica Forum for Lesbians and Gays Bisexual (J-FLAG) stating, "they should be outlawed, how can an organization be formed with the purpose of committing crimes be legitimized?"

167. The Commission has indicated that these statements are intended to deter or hamper the work of human rights defenders. Therefore, it reminds States that public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights. For this reason, the IACHR has urged OAS Member States to contribute decisively to the building of a climate of tolerance and respect in which all people, including lesbian, gay, trans, bisexual persons and those who defend their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.

168. The criminalization of defenders of LGBT persons does not occur only in the context of countries that criminalize consensual sex between persons of the same sex, but it can also be observed in other countries in the region where the defense of the rights of LGBT persons is not well-regarded. In these countries, criminal law

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275 Human Rights Watch, Hated to Death (Nov. 15, 2004). The report issued a series of recommendations, some of which pertain to providing protection for and the ending of State violence and discrimination against “peer educators” and human rights defender organizations working with LGBT persons and persons with HIV/AIDS.


is often misused to curb the development of the activities of promotion and defense.

In 2008, Jorge López Sologaistoa, director of the Organización de Apoyo a una Sexualidad Integral [Organization to Support an Integrated Sexuality] (OASIS), a human rights organization dedicated to the promotion and defense of the rights of LGBTI persons in Guatemala, was arrested and falsely charged with the attempted murder of a sex worker. After Jorge spent eight months under house arrest, the case against him was ruled inadmissible on the basis of insufficient evidence. OASIS interpreted this charge “as a continuation of the persecution that Jorge has suffered as a defender of LGBT rights,” as prior to this incident, Jorge and other members of OASIS suffered threats and harassment due to their work. In fact, in February 2006, the IACHR granted precautionary measures for Jorge and twelve other members of OASIS, following an incident in which four police officers allegedly shot a communications assistant and a client of the organization. Following this attack, Guatemala’s Human Rights Ombudsman found the State responsible for human rights violations against the two victims; however, in 2009 Jorge was arrested and newly charged with criminal acts after denouncing the Public Prosecutor’s Office for irregularities in the case, as it had not yet come to trial. These charges were dropped in September 2009, when the presiding judge found them to be baseless.

2. Misuse of Criminal Law to Criminalize the Promotion and Protection of Sexual and Reproductive Rights

The Commission has learned of cases of criminalization against human rights defenders of sexual and reproductive rights in retaliation for their work, especially for challenging social stereotypes. In this regard, in its 2011 Report, the Commission noted that the criminalization of women human rights defenders who promote therapeutic abortions is a pattern in various countries of the Americas, where abortion is prohibited in all circumstances.

In this sense, the social stigma associated with the work related to sexuality has forced defenders to constantly assess whether or not they can discuss sexual and reproductive rights. According to information received by the IACHR, they are

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280 Peace Brigades International (PBI), Criminalisation of Human Rights Defenders, p. 10.
281 IACHR, Precautionary Measures 2006, para. 29.
faced with incidents of criminalization, they are exposed to physical attacks, and their work is stigmatized, affecting their credibility and preventing them from promoting the protection of other rights. In many cases, the aforementioned stigma leads to self-censorship.\textsuperscript{284}

During its 147th Period of Sessions, the IACHR was informed that in Colombia Monica Roa, then Director of Programs for the organization Women’s Link Worldwide, along with 1280 other women filed a \textit{tutela} action (an action for protection) against the Attorney General and two of his delegates, for the violation of the right to information and the consequent impairment of their sexual and reproductive rights, as a result of the dissemination of false, incomplete and distorted information on sex education, contraception and abortion. Following this action, the Office of the Delegate Attorney for childhood, adolescence and family, Ilva Myriam Hoyos, filed a criminal complaint for defamation against human rights defender Monica Roa. In the conciliation hearing prior to the beginning of the criminal proceedings, Delegate Attorney Hoyos demanded, as a condition for dropping the charges, that Roa retract all criticism of her work as a public servant in the \textit{tutela} action and reproduced in the media.\textsuperscript{285} By means of judgment T-627 of August 10, 2012, the Constitutional Court decided the lawsuit in favor of the 1280 women, and ordered the Attorney General and Delegates to rectify the statements made as public servants for violating the right to information on reproductive matters, and affecting other sexual and reproductive rights. Despite this decision, the criminal proceedings for defamation continued against Monica Roa.\textsuperscript{286}

171. The UN Rapporteur on human rights defenders expressed concern over the difficulties faced by defenders resulting from legislation that aims to protect public morals. In this regard, the Rapporteur indicated that associations promoting sexual and reproductive rights have faced restrictions for having handed out information about abortion and referred women to appropriate medical facilities. As detailed in her report, in many cases, lawsuits have been brought by individuals, organizations, and State actors, claiming that such activities are against the law. The UN Rapporteur noted that such situations have also been observed in countries where sexual and reproductive rights are guaranteed by the national legal system. In this regard, she emphasized that "sexual and reproductive rights

\textsuperscript{284} Women Human Rights Defenders Coalition, Global Report on the Situation of Human Rights Defenders, January 2012, p. 76.
\textsuperscript{285} Women’s Link Worldwide, Avanza denuncia penal de Procuradora Delegada contra Mónica Roa. Fiscalía cita a Audiencia de Conciliación, August 16, 2012.
\textsuperscript{286} IACHR, 147 Period of Sessions, hearing on the status of sexual and reproductive rights in Colombia. See also: Documento de las peticionarias y los peticionarios (Spanish only); American Bar Association’s response to the questionnaire for the preparation of the report on criminalization of human rights defenders through the misuse of criminal law, September 2014.
defenders thus play a significant role in ensuring respect for women’s human rights. Such activities should not be subject to criminal sanctions (...) Judicial harassment against sexual and reproductive rights defenders should not be tolerated, and judges and prosecutors have a key role in this regard.”

Regarding Nicaragua, during its 140th Period of Sessions, the Commission received information on the situation of Ana María Pizarro, Juanita Jiménez, Lorna Norori, Luisa Molina Arguello, Marta María Blandón, Martha Munguía, Mayra Sirias, Violeta Delgado and Yamileth Mejía, nine human rights defenders who were prosecuted in Nicaragua in 2007 for the crime of incitement to commit the crime of abortion and illicit association to commit a crime. According to the information available, the criminal cases were brought because the nine women human rights defenders had accompanied a nine-year-old girl through the process of getting an abortion; the girl was pregnant as a result of being raped. A number of organizations expressed concern over the fact that criminal cases had been brought against the women human rights defenders because of their activities to defend and promote a woman’s human rights. According to the organization’s reports, on March 24, 2011 it was made public that the criminal cases against the nine women had been dismissed.

172. The Commission maintains that the exercise of the right to defend human rights cannot be subjected to geographical restrictions, and implies the possibility to promote and defend freely and effectively any rights whose acceptance is unquestioned; the rights and freedoms contained in the Declaration of Defenders itself; and new rights or components of rights whose formulation is still being discussed.

F. The subjection to Distorted and Unreasonably Lengthy Criminal Proceedings and False Allegations and Accusations Based on Grave Criminal Offenses

173. The Commission has received information verifying that in practice many of the criminal proceedings that are initiated against human rights defenders are slow - or are accelerated – in an unreasonable manner in order to hinder their work at a

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Violence against LGBTI Persons
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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

2015
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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 153rd 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 LGBT 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 arguably stated 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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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. The European Court of Human Rights and the South African Constitutional Court 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.

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.

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 and the European Court of Human Rights that such legislation —

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133 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. 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).


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.

137 IACHR, Press Release No. 147/12 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 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, 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.\textsuperscript{140} 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.\textsuperscript{141} 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.\textsuperscript{142} 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.”\textsuperscript{143} Further, the IACHR notes similar decisions by the Constitutional Court of Ecuador\textsuperscript{144} and the U.S. Supreme Court.\textsuperscript{145}

1. “Buggery” or “sodomy” laws

61. The Inter-American Commission notes that in the Americas there is legislation criminalizing consensual same sex intimacy, as in other regions of the world.\textsuperscript{146} 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,\textsuperscript{147} Chile,\textsuperscript{148} Nicaragua\textsuperscript{149} and Panama\textsuperscript{150} have repealed

\begin{itemize}
  \item \textsuperscript{140} IACHR, Report No. 81/13, Case 12,743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, paras. 113–114.
  \item \textsuperscript{141} IACHR, Report No. 81/13, Case 12,743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, para. 114.
  \item \textsuperscript{142} Constitutional Court of Colombia, Judgment C-507, July 14, 1999, para. 5.11.
  \item \textsuperscript{143} Constitutional Court of South Africa, Case CCT 11/98, \textit{The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others}, October 9, 1998, para. 26. b.
  \item \textsuperscript{144} 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.
  \item \textsuperscript{145} United States Supreme Court, Lawrence v. Texas, 539 U.S. 558 (2003), June 26, 2003.
  \item \textsuperscript{147} 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.
  \item \textsuperscript{148} El Ciudadano, “\textit{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.
  \item \textsuperscript{149} 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.

62. 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.


“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.

[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).


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

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

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. A small number of countries had already made similar amendments previously. In some instances these modifications increased the penalties for such crimes, while in others, the crimes were more clearly defined. The Bahamas is the only country member of the CARICOM that has decriminalized same-sex sexual activity between consenting adults in private. In 1991, the law was amended to decriminalize this activity, 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. 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,” a change which expanded the criminalization of sexual activity. 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. 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.\textsuperscript{166}

64. \textbf{The Commission notes that international human rights bodies have consistently recommended that OAS Member States repeal these types of laws where they still exist.}\textsuperscript{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.\textsuperscript{168}

65. \textbf{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.}\textsuperscript{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,\textsuperscript{170} as well as cultural and societal opposition.\textsuperscript{171} Other States have indicated that this is a sensitive issue that requires consultation at the national level.\textsuperscript{172}

\textsuperscript{166} The Bahamas, Section 107 (4) of the \textit{Penal Code}.


\textsuperscript{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], \textit{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] \textit{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.173

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,174 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.”175 St. Lucia has taken the positive step of condemning violence against persons of “different sexual orientation.”176 Other OAS Member States that still criminalize consensual same-sex intimacy between adult have indicated that they have either attempted to adopt177 or have been successful in adopting measures to protect the rights of LGBT persons. 178

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.”179 Trinidad and Tobago has acknowledged that “effecting change [in]
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.

69. 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

70. 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

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180 Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago, A/HRC/DEC/19/105, March 15, 2012, para. 478 (“the very thinking of the population needed to be changed in order to address these issues adequately”).


185 The following countries outlaw either gross indecency or serious indecency: Antigua and Barbuda; Barbados; Dominica; Guyana; Jamaica; Saint Lucia; Saint Vincent and the Grenadines; and Trinidad and Tobago.

186 “Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanour and liable to imprisonment for two years.” Guyana, Criminal law (Offences) Act, 1893 Chapter 8:01, section 352. The term “gross indecency” is not defined in the legislation.
“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

71. 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
the Commission, police have arbitrarily applied this law in order to “further discrimination” against trans persons.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.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.”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.”196 The Constitutional Court in this case held that the fact that statutory terms are free standing does not 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.”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.”198

193 IACHR, Hearing on Discrimination on the basis of Gender, Race and Sexual Orientation in the Americas, 133rd Period of Sessions, October 23, 2008. Audio and video not available.
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.
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 6 November 2013, p. 26.
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.
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.
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 [the] lives” of LGBT persons.


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

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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."\textsuperscript{214}

78. The IACHR has also received information regarding the impact of criminalization on access to justice.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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."\textsuperscript{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 legitimizes community violence and police brutality directed at affected individuals."\textsuperscript{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."\textsuperscript{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.\textsuperscript{221} Former UN Special


\textsuperscript{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.


\textsuperscript{219}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. 20.


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.\textsuperscript{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.\textsuperscript{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."\textsuperscript{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 plead 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.”\textsuperscript{225}

\textsuperscript{222} 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. 22.


\textsuperscript{224} IACHR, \textit{Juvenile Justice and Human Rights in the Americas}, 2011, para. 121.

\textsuperscript{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

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.

88. 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).

89. 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.

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228 Committee Against Torture, Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention Conclusions And Recommendations Of The Committee Against Torture, Costa Rica, Cat/C/Cri/Co/2, 7 July 2008, para. 11.
230 [Argentina] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note OEA-S/92 dated December 12, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 11; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas Centro de Apoyo a las Identidades Trans, received by IACHR Executive Secretariat on December 20, 2013, p. 8.
231 See for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the Organización de Transsexuales por la Dignidad de la Diversidad, Chile, received by IACHR Executive Secretariat on 25 November 2013. See also, BBC Mundo, “Derechos gais: paradoja colombiana,” September 4, 2008.
without any judicial control, and with highly subjective interpretations about the vague concepts of “social coexistence” or “moral.”

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.

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.

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,
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.

251 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Fundación Silueta X, Ecuador, received by IACHR Executive Secretariat on 27 November 2013, p. 3.
252 Human Rights Observatory for Vulnerable Groups, Trans Siempre Amigas (TRANSSA), and Comunidad de Trans y Trasvestis Trabajadoras Sexuales (COTRAVETD), Discrimination and Violence towards Transgender women in the Dominican Republic, 27 October 2014, p. 3.
255 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. 16.
256 Human Rights Observatory for Vulnerable Groups, Trans Siempre Amigas (TRANSSA), and Comunidad de Trans y Trasvestis Trabajadoras Sexuales (COTRAVETD), Discrimination and violence towards Transgender women in the Dominican Republic, 27 October 2014, p. 2.
Attitudes towards homosexuals in seven Caribbean countries: implications for an effective HIV response

Eduard J. Beck, Kenika Espinosa, Tanisha Ash, Peter Wickham, Christine Barrow, Ernest Massiah, Ben Alli & Cesar Nunez

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Attitudes towards homosexuals in seven Caribbean countries: implications for an effective HIV response

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\textbf{ABSTRACT}

Between 2000 and 2015, the number of people newly infected with HIV in the Caribbean decreased by 76% and HIV-related deaths by 42%. The number of people living with HIV (PLHIV) on antiretroviral therapy (ART) increased from near zero to 50% (44% to 57%) in 2015. In many Caribbean countries communities of men-who-have-sex-with-other-men (MSM) have higher incidence and prevalence of HIV. They are often stigmatized and subjected to both social and institutional discrimination. This study compared attitudes of the general public obtained through public opinion polls 2013–2014 towards homosexuals and willingness to socialize with them in seven Caribbean countries. Informants were asked if they “hate, tolerate or accept” homosexuals and if they would socialize with them. In St. Vincent 53% indicated they “hate” homosexuals, compared with 12% in Suriname; the converse was observed for those who “accept” homosexuals; 63% of St. Vincent informants would not socialize with homosexuals, compared with 25% in Suriname. Findings for the other 5 countries fell within these ranges. Women were more likely to accept and socialize with homosexuals, as were informants with a tertiary education and “passive” religious believers. These groups are less likely to adhere to a culture of “compulsory heterosexuality” or “hyper-masculinity” dominant among Caribbean men. The homophobic views expressed by these cultures result in stigma and discrimination by members of the “general” public towards MSM. This negatively affects the involvement of MSM in successful national HIV responses. Public messaging, communications campaigns and educational measures need to be employed to change the culture of “compulsory heterosexuality” or “hyper-masculinity” that result in stigma and discrimination of homosexuals to improve early access to services by MSM. Repeat use of well performed opinion polls is one method that can be employed to monitor progress over time in “key” and “general” populations.

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Hyper-masculinity; homophobia; stigma & discrimination; structural factors; Caribbean HIV response

\textbf{Introduction}

Between 2000 and 2015, the annual number of people newly infected with HIV in the ten Caribbean countries with the highest burden of HIV decreased by 76% (74% to 77%) from 42,800 (35,400 to 53,400) to 10,400 (8200 to 14,000), while annual HIV-related deaths decreased by 42% (36% to 44%) from 24,800 (17,200 to 34,600) to 14,500 (9,700 to 22,100). The number of PLHIV decreased by 34% (28% to 36%) from 436,100 (335,400 to 549,600) to 285,900 (240,700 to 350,000) (AIDSinfo, 2016) while the percentage of PLHIV on ART increased from near zero to 50% (44% to 57%).

Coverage of prevention of mother-to-child transmission (PMTCT) increased from 10% (9% to 11%) to 69% (62% to 74%) of pregnancies between the years 2000 and 2015. Four of the 10 countries, had PMTCT coverage rates greater than 95% in 2015, while more effective ART regimens have been used since 2010. Successful collaborations between healthcare professionals, policy-makers and civil society members have been important factors contributing towards these achievements (AIDSinfo, 2016).

While 88% of PLHIV reside in four countries – Haiti, Dominican Republic, Jamaica and Cuba – the smaller Caribbean countries also have substantial numbers of PLHIV. For four of the seven countries of this comparative study, the prevalence of PLHIV varied between 1.1%–1.5% (Table 1) (AIDSinfo, 2016). Twenty-five percent of Caribbean MSM were estimated to be living with HIV in 2011 (Beyrer et al., 2012). Few of the smaller Caribbean countries have such information but mode of HIV transmission studies (MOTs) performed in the Caribbean countries with the largest number of PLHIV, indicate that...
in the Dominican Republic and Jamaica 30% of newly infected people were MSM, (UNAIDS, COPRESIDA and DIGECITSS, 2011; UNAIDS, 2014a), compared with 8% in Haiti (Lamarre Georges, 2014) and 3% of Cuban PLHIV were MSM (República de Cuba, 2014). Country stakeholders need to “know their epidemic” and identify communities that are disproportionally affected with HIV to improve the effectiveness and efficiency of biomedical, behavioral or structural interventions. However, for HIV responses to be successful the “general” population also need to be engaged. The norms, mores, views and opinions of the general public comprise part of the structural factors or fabric that are socially embedded (Plummer, 2009) and influence a country’s HIV response. These include norms and opinions on sex, sexuality and punitive laws that affect key and vulnerable populations. Perceived or actual stigma and discrimination affects access to and use of services and stigma occurs at individual, community and societal levels and these sectors interact in a dynamic way (Leslie, 2000).

Across the world MSM are stigmatized and subjected to both social and institutional discrimination (Pew Global Attitudes Project, 2014). Eleven countries in the Caribbean have “buggery/sodomy laws” prohibiting anal sex between men. These laws are part of a British colonial legal heritage and strengthened through local mores, values and socialization. Many MSM fear public exposure and are likely to access appropriate health or social services late in their disease course if at all (McLean et al., 2012; Ayala et al., 2013). The aim of this study was to compare attitudes of the general public towards homosexuals in seven Caribbean countries and whether they were willing to socialize with homosexuals.

### Methods

Attitudes towards and socialization with homosexuals were obtained using public opinion polls in seven Caribbean countries: Trinidad and Tobago (2013); Grenada (2013); Guyana (2013); Belize (2013); St. Lucia (2013); Suriname (2014) and St Vincent (2014). They were performed by the Caribbean Development Research Services Incorporated (CADRES) a regional research organization that has conducted social, economic and political research throughout the Caribbean. Informants were asked to classify themselves in terms of age and sex. Informants were also asked to state their religious

### Table 1. Demographic characteristics of informants polled in countries.

<table>
<thead>
<tr>
<th>Demographic characteristics</th>
<th>St. Vincent (%)</th>
<th>Grenada (%)</th>
<th>Guyana (%)</th>
<th>Trinidad and Tobago (%)</th>
<th>St. Lucia (%)</th>
<th>Belize (%)</th>
<th>Suriname (%)</th>
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</thead>
<tbody>
<tr>
<td>Prevalence of people living</td>
<td></td>
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<td>1.5 (1.4–1.6)</td>
<td>1.2 (1.1–1.3)</td>
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<td>1.5 (1.4–1.7)</td>
<td>1.1 (0.9–1.3)</td>
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<tr>
<td>with HIV in 2015</td>
<td>n = 788</td>
<td>n = 800</td>
<td>n = 1034</td>
<td>n = 1100</td>
<td>n = 785</td>
<td>n = 773</td>
<td>n = 757</td>
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<td>Respondents interviewed</td>
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<td>59</td>
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<td>Passive</td>
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<td>41</td>
<td>42</td>
<td>44</td>
<td>41</td>
<td>56</td>
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</tr>
</tbody>
</table>

Note: N/A = not available.
affiliation. They were then asked whether they considered themselves “an ‘active follower’ of your religion”. The responses were categorized as “Yes, active”, “No, passive” or “Unsure/won’t say.”

Two questionnaires were used. The first focused on attitudes towards homosexuals and was used in Guyana (2013). The instrument was then broadened, while retaining the questions on attitudes towards homosexuals, to include domestic violence, child abuse and sexual reproductive health. This instrument was applied in Trinidad and Tobago (2013), Grenada (2013), Belize (2013), Suriname (2013), St Lucia (2014) and St Vincent (2014). The survey was administered face-to-face by interviewers of the same sex.

Four studies on Attitudes towards Homosexuals preceded and informed the studies that provided the information for this analysis. These were performed in Barbados in 2004 and 2013, Guyana and Trinidad and Tobago in 2013 (Anonymous, 2004; Anonymous, 2013a, 2013b, 2013c). In 2012 representatives from the Guyanese Society Against Sexual Orientation Discrimination (SASOD), Trinidad and Tobago’s Coalition Advocating for Inclusion of Sexual Orientation (CAISO), The United Gays & Lesbians Against AIDS Barbados (UGLAAB), CADRES, University of the West Indies and UNAIDS met in Port of Spain. The 2004 Barbados study was discussed and its methodology refined for the 2013/4 studies. This included the use of specific questions and terms like “hate” “accept” and “tolerate” and “homosexual” that were considered most appropriate for the polls.

One of the authors [EM] spoke with relevant policy-makers of the seven countries to obtain approval to conduct the polls and provided feedback on the results. Participants in a CADRES public opinion poll are told of the nature of the poll and verbal permission to participate is sought. Informants could decline to participate at any stage during the interview or decline to answer specific questions. National samples of between 800 and 1000 informants were generated and each of the polls had a margin of error ±5%. Sample sizes were based on the premise that a 95% confidence level can be achieved with a margin of error ±5%. Sample sizes were based on the premise that a 95% confidence level can be achieved with a margin of error ±5%. Sample sizes were based on the premise that a 95% confidence level can be achieved with a margin of error ±5%.

The polls employed a stratified random sample of each polling division in each constituency of each country with age and sex as primary strata. Interviewers were instructed to adhere to protocols that demanded quotas for both of these demographic variables, and produced sample sizes similarly divided by sex and three age categories: 18–30 years; 31–50 and 51 years and older. To ensure representative geographical coverage, interviewers were assigned areas based on a random selection of polling divisions in each constituency of each country. In each instance, interviewers selected 12, 24, 36 or 48 households in a random manner (one in three) and conducted one face-to-face interview at each of 12, 24, 36 or 48 households. No interviews were conducted in public areas, like bars or among community groups, in order to obtain national views and opinions based on a standard geographical distribution of households.

Respondents could complete the survey form themselves if such a request was made. Potential respondents were informed about the type of questions contained in the survey and their approval was sought prior to proceeding. Participation in the survey was voluntary and respondents were asked all questions. If questions were either irrelevant or respondents either did not know or would not say, respondents could indicate accordingly and that response was recorded.

Informants were asked on their attitude towards homosexuals. The question that was asked in all seven countries was whether the informants “accept, tolerate or hate homosexuals”. Some of the categories and responses were dichotomized including “accept/tolerate” or “hate”. A second question that was asked in all countries except Guyana was whether informants would socialize with a homosexual. Informants were asked if they would “hang-out in public” or “liming” with homosexuals? “Liming” is a Caribbean expression for socializing. Some of the results are presented in terms of percentages with 95% confidence intervals (CIs). The confidence intervals were calculated using recognized formulae (Eberly College of Science, 2016).

Epi-info 7 was used to perform the non-parametric analyses and cross-tabulations to generate $X^2$ values. Univariate and multivariate logistic regressions were performed using IBM Statistics 20 software (IBM, 2012). The dependent variables were “hate” and “accept/tolerate” and the model tested the likelihood to “hate” homosexuals. The variables initially entered into the multivariate model included countries, sex, age categories, religion, employment status, education, race and religious attitude. Backward stepwise selection was used as the procedure for the final model as variables with $p > 0.05$ were eliminated.

Results

The percentage of PLHIV varied between 1.1% and 1.5% for the countries with this information (Table 1). The demographic characteristics of the informants did not differ substantially across the seven countries and the proportion of men and women were similar (Table 1). In St Vincent, Grenada, St. Lucia and Belize fewer self-identified Indians were interviewed and more informants of African descent. Each of the samples was equally distributed across all age-categories, apart from
Guyana and Suriname with more younger informants (Table 1). Educational levels were similarly distributed across countries except for Belize that had the greatest percentage of informants with only primary school and fewer with tertiary education (Table 1). The proportion of self-identified “active” believers was higher than “passive” believers in all countries except Belize and Suriname (Table 1).

**Attitudes towards homosexuality**

The responses from informants whether they “hate”, “tolerate” or “accept” homosexuals varied across countries. Fifty-three percent of respondents in St. Vincent said they “hate” homosexuals compared with 12% in Suriname; the converse was observed for those who said that they “accept” homosexuals. (Figure 1). Women were significantly more accepting or tolerant than men in all countries (Table 2). When stratified by age, younger Guyanese and Trinidadians more likely to “accept/tolerate” (Table 2). These included younger men from Trinidad & Tobago and St. Lucia and younger women from Guyana. No other significant sex and age-group differences were observed. In Trinidad & Tobago and Suriname, “passive” believers “accept/tolerate” significantly more than “active” believers (Table 3).

Based on the multi-variate model, informants from Suriname and Belize were less likely to “hate” compared with those from Guyana and St. Lucia; informants from Grenada, Trinidad & Tobago and St. Vincent were more likely to “hate” homosexuals compared with informants from Guyana (Table 4). Men were more likely to “hate” compared with women as were people with “active” religious beliefs. People with tertiary education were less likely to “hate” (Table 4).

**Socializing with homosexuals**

Informants from all countries except Guyana were asked if they would “hang-out in public” or “lime” with a homosexual. While 25% of the St Vincent informants said that they would, 63% said they would not lime with a homosexual; converse responses were obtained in Suriname (Figure 2). Women were more likely to lime with a homosexual (Table 5), while in St. Vincent, Trinidad & Tobago and St. Lucia younger respondents were more likely than older respondents to lime with homosexuals (Table 5).

Younger women from St. Vincent, Trinidad & Tobago and St. Lucia were more likely to lime with homosexuals compared with older women while only younger men from Trinidad & Tobago more willing to lime with homosexuals. In St. Vincent, Trinidad & Tobago and St. Lucia “passive” believers more likely to lime with a homosexual, but this was not observed in the other three countries (Table 5).

**Attitude and socializing**

Men and women who “accept/tolerate” a homosexual indicated that they “will lime” with them (Table 6).
Table 2. Percentage (number) responses of informants on attitude ("accept/tolerate" vs "hate") by gender and age group.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentages (Number)</th>
<th>Gender</th>
<th>Age Group</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>accept + tolerate</td>
<td>hate</td>
<td></td>
</tr>
<tr>
<td>St. Vincent (N=679)</td>
<td>30% (107)</td>
<td>70% (N=248)</td>
<td></td>
</tr>
<tr>
<td>Grenada (N=644)</td>
<td>48% (160)</td>
<td>52% (N=173)</td>
<td></td>
</tr>
<tr>
<td>Guyana (N=863)</td>
<td>66% (N=266)</td>
<td>34% (N=139)</td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago (N=972)</td>
<td>57% (N=282)</td>
<td>43% (N=209)</td>
<td></td>
</tr>
<tr>
<td>St. Lucia (N=660)</td>
<td>61% (N=198)</td>
<td>39% (N=128)</td>
<td></td>
</tr>
<tr>
<td>Belize (N=647)</td>
<td>75% (N=236)</td>
<td>25% (N=77)</td>
<td></td>
</tr>
<tr>
<td>Suriname (N=691)</td>
<td>82% (N=288)</td>
<td>18% (N=63)</td>
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</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentages (Number)</th>
<th>Gender</th>
<th>Age Group</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>accept + tolerate</td>
<td>hate</td>
<td></td>
</tr>
<tr>
<td>Grenada (N=644)</td>
<td>48% (167)</td>
<td>52% (N=125)</td>
<td></td>
</tr>
<tr>
<td>Guyana (N=863)</td>
<td>74% (N=338)</td>
<td>26% (N=120)</td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago (N=972)</td>
<td>70% (N=339)</td>
<td>30% (N=145)</td>
<td></td>
</tr>
<tr>
<td>St. Lucia (N=660)</td>
<td>80% (N=266)</td>
<td>20% (N=68)</td>
<td></td>
</tr>
<tr>
<td>Suriname (N=691)</td>
<td>86% (N=285)</td>
<td>14% (N=28)</td>
<td></td>
</tr>
</tbody>
</table>

Table 3. Percentage (number) of all responses on attitude ("accept/tolerate" vs "hate") by religious status and country.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentages (Number)</th>
<th>Religious Status</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>accept + tolerate</td>
<td></td>
<td>active</td>
</tr>
<tr>
<td>St. Vincent (N=679)</td>
<td>44% (105)</td>
<td>64% (N=133)</td>
<td></td>
</tr>
<tr>
<td>Grenada (N=644)</td>
<td>34% (110)</td>
<td>45% (N=110)</td>
<td></td>
</tr>
<tr>
<td>Guyana (N=863)</td>
<td>71% (N=260)</td>
<td>29% (N=105)</td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago (N=972)</td>
<td>68% (N=223)</td>
<td>32% (N=103)</td>
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<tr>
<td>St. Lucia (N=660)</td>
<td>67% (N=168)</td>
<td>33% (N=81)</td>
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</tr>
<tr>
<td>Belize (N=647)</td>
<td>81% (N=198)</td>
<td>20% (N=48)</td>
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<tr>
<td>Suriname (N=691)</td>
<td>87% (N=262)</td>
<td>14% (N=41)</td>
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</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentages (Number)</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>accept + tolerate</td>
<td></td>
<td>passive</td>
</tr>
<tr>
<td>St. Vincent (N=679)</td>
<td>38% (112)</td>
<td>62% (N=123)</td>
<td></td>
</tr>
<tr>
<td>Grenada (N=644)</td>
<td>54% (N=124)</td>
<td>45% (N=121)</td>
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</tr>
<tr>
<td>Guyana (N=863)</td>
<td>62% (N=127)</td>
<td>38% (N=122)</td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago (N=972)</td>
<td>56% (N=172)</td>
<td>44% (N=138)</td>
<td></td>
</tr>
<tr>
<td>St. Lucia (N=660)</td>
<td>72% (N=143)</td>
<td>29% (N=57)</td>
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<td>Belize (N=647)</td>
<td>83% (N=138)</td>
<td>17% (N=28)</td>
<td></td>
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<tr>
<td>Suriname (N=691)</td>
<td>87% (N=129)</td>
<td>14% (N=21)</td>
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</tbody>
</table>

For both tables, χ² values and p-values are provided to test the significance of the differences.
However, 24% to 52% of men in Suriname and St. Lucia respectively indicated that while they “accept/tolerate” homosexual, they “will not lime” with them. Women have similar trends but proportions were lower compared with men: 12% in Suriname to 33% in Trinidad & Tobago.

Discussion

The number of informants that indicated that they “hate” homosexuals and their willingness to “lime” with them varied across the countries surveyed. Countries with higher percentages of informants that “hate” homosexuals also had the higher percentage who “will not lime” with them. Suriname and Belize were the countries with the lowest proportion of informants who “hate”, the highest percentage who “accept” homosexuals and they had the highest percentage of “passive” believers. Significant proportions of men and women indicated they “accept/tolerate” homosexuals but “will not lime” with them. Men were more likely to “hate” homosexuals compared with women, especially those without a tertiary education and were “active” believers. Women were more willing to socialize with homosexuals compared with men.

The sample sizes for the Caribbean polls were similar to those used for the polls conducted by the Pew Research Center (Pew Global Attitudes Project, 2014).

Table 4. Multivariate logistic regression model investigating attitude (“hate” vs “accept/tolerate”) as dependent variable with independent variables described Table 1.

<table>
<thead>
<tr>
<th>Variables</th>
<th>B</th>
<th>Odds Ratio</th>
<th>95% Cl for EXP(B)</th>
<th>P-value</th>
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<td></td>
<td>Lower</td>
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</tr>
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<td>Guyana*</td>
<td></td>
<td></td>
<td>0.613</td>
<td>&lt;0.001</td>
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<tr>
<td>Belize</td>
<td>−0.762</td>
<td>0.467</td>
<td>0.355</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>St. Lucia</td>
<td>−0.045</td>
<td>0.956</td>
<td>0.75</td>
<td>1.219</td>
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<tr>
<td>Grenada</td>
<td>0.732</td>
<td>2.079</td>
<td>1.649</td>
<td>2.621</td>
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<td>St. Vincent</td>
<td>1.293</td>
<td>3.645</td>
<td>2.892</td>
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<td>Suriname</td>
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<td>0.341</td>
<td>0.256</td>
<td>0.455</td>
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<td>Trinidad and Tobago</td>
<td>0.268</td>
<td>1.307</td>
<td>1.058</td>
<td>1.615</td>
</tr>
<tr>
<td>Sex</td>
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<td></td>
</tr>
<tr>
<td>Men</td>
<td>0.651</td>
<td>1.918</td>
<td>1.678</td>
<td>2.192</td>
</tr>
<tr>
<td>Education</td>
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<td></td>
<td></td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Tertiary</td>
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<td></td>
<td></td>
</tr>
<tr>
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<td>0.844</td>
<td>2.326</td>
<td>1.894</td>
<td>2.856</td>
</tr>
<tr>
<td>Secondary</td>
<td>0.594</td>
<td>1.811</td>
<td>1.525</td>
<td>2.152</td>
</tr>
<tr>
<td>Post-Secondary</td>
<td>0.271</td>
<td>1.311</td>
<td>1.044</td>
<td>1.647</td>
</tr>
<tr>
<td>Religious status</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Active</td>
<td>0.137</td>
<td>1.147</td>
<td>1.003</td>
<td>1.311</td>
</tr>
<tr>
<td>Constant</td>
<td>−1.72</td>
<td>0.179</td>
<td></td>
<td>&lt;0.001</td>
</tr>
</tbody>
</table>

Note: Variable(s) entered on step 5: Country, Sex, Education, religious status.
*Guyana used as base-line.

Figure 2. Responses by informants to the question “will you or will you not hang-out/lime” with homosexuals in different Caribbean countries.
Table 5. Percentage (number) of all responses on socializing (“will lime” vs “will not lime”) by sex, age-group, religion and country.

<table>
<thead>
<tr>
<th></th>
<th>St. Vincent (N = 679)</th>
<th>Grenada (N = 644)</th>
<th>Trinidad and Tobago (N = 972)</th>
<th>St. Lucia (N = 660)</th>
<th>Belize (N = 647)</th>
<th>Suriname (N = 691)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Will lime</td>
<td>Will not lime</td>
<td>Will lime</td>
<td>Will not lime</td>
<td>Will lime</td>
<td>Will not lime</td>
</tr>
<tr>
<td>Men</td>
<td>18% (N = 64)</td>
<td>82% (N = 295)</td>
<td>30% (N = 100)</td>
<td>70% (N = 234)</td>
<td>31% (N = 153)</td>
<td>69% (N = 345)</td>
</tr>
<tr>
<td>Women</td>
<td>40% (N = 133)</td>
<td>60% (N = 197)</td>
<td>43% (N = 131)</td>
<td>57% (N = 177)</td>
<td>53% (N = 247)</td>
<td>47% (N = 218)</td>
</tr>
<tr>
<td></td>
<td>X^2 = 42.5 p &lt; 0.001</td>
<td>X^2 = 10.5 p = 0.001</td>
<td>X^2 = 48.7 p &lt; 0.0001</td>
<td>X^2 = 33.1 p &lt; 0.0001</td>
<td>X^2 = 26.4 p &lt; 0.0001</td>
<td>X^2 = 25.3 p &lt; 0.0001</td>
</tr>
</tbody>
</table>

Table 6. Percentage (number) responses on attitude (“accept/tolerate” vs “hate”) and socializing (“will lime” vs “will not lime”) by sex and country.

<table>
<thead>
<tr>
<th></th>
<th>St. Vincent (N = 679)</th>
<th>Grenada (N = 644)</th>
<th>Trinidad and Tobago (N = 972)</th>
<th>St. Lucia (N = 660)</th>
<th>Belize (N = 647)</th>
<th>Suriname (N = 691)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>accept + tolerate</td>
<td>hate</td>
<td>accept + tolerate</td>
<td>hate</td>
<td>accept + tolerate</td>
<td>hate</td>
</tr>
<tr>
<td>Men</td>
<td>58% (N = 53)</td>
<td>1% (N = 3)</td>
<td>60% (N = 80)</td>
<td>8% (N = 12)</td>
<td>49% (N = 130)</td>
<td>8% (N = 17)</td>
</tr>
<tr>
<td>Will lime</td>
<td>42% (N = 39)</td>
<td>99% (N = 241)</td>
<td>40% (N = 54)</td>
<td>92% (N = 147)</td>
<td>51% (N = 133)</td>
<td>92% (N = 185)</td>
</tr>
<tr>
<td>X^2 = 149 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
<td>X^2 = 87 p &lt; 0.0001</td>
<td>X^2 = 42 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
<td>X^2 = 87 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
</tr>
<tr>
<td>Women</td>
<td>accept + tolerate</td>
<td>hate</td>
<td>accept + tolerate</td>
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<td>accept + tolerate</td>
<td>hate</td>
</tr>
<tr>
<td>Will lime</td>
<td>73% (N = 100)</td>
<td>9% (N = 14)</td>
<td>68% (N = 106)</td>
<td>12% (N = 14)</td>
<td>67% (N = 207)</td>
<td>24% (N = 32)</td>
</tr>
<tr>
<td>X^2 = 149 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
<td>X^2 = 87 p &lt; 0.0001</td>
<td>X^2 = 42 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
<td>X^2 = 87 p &lt; 0.0001</td>
<td>X^2 = 89 p &lt; 0.0001</td>
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<tr>
<td>Will not lime</td>
<td>27% (N = 37)</td>
<td>91% (N = 142)</td>
<td>32% (N = 49)</td>
<td>88% (N = 101)</td>
<td>33% (N = 104)</td>
<td>76% (N = 100)</td>
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<td>X^2 = 149 p &lt; 0.0001</td>
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Increased sample size might have improved the precision of the study findings, though many of the differences were already found to be statistically significant. In some countries, younger informants were over-represented and older ones under-represented. The polls were performed in a limited number of Caribbean countries, six with a British colonial background and Suriname that has a Dutch colonial background.

That more men “hate” homosexuals may be related to the prevailing Caribbean cultures of “compulsory heterosexuality” (Plummer, 2013) or “hyper-masculinity” (Crichlow, 2004). Within these cultures, men are supposed to have multiple female partners. As some homosexual men in the Caribbean are married as a cover for their relationships with other men, all men who have one steady female partner are suspected of being homosexual and stigmatized for insufficient interest in women; “one-burners” (Plummer, 2013). As summarized by Crichlow (2004) “I found a desperate assurance in my hyper-masculinity through religion, sports, aggressiveness, loudness, having many intimate woman friends, and practicing occupations or trades constructed as “manly” in my family and the community at large”.

Plummer (2005) reminds us that “homophobia is only secondarily and indirectly concerned with sexual practice” and is expressed in a variety of ways. While strong peer-group pressure is a major factor that according to him sustains this culture of “compulsory heterosexuality”, he considers that other factors also operate. These include some religious beliefs or practises, including opposition to the use of condoms, reinforcement of “hyper-masculinity” while some beliefs may deepen sexual stigma and homophobia (Plummer, 2009).

Stigma can be defined as an attribute considered by dominant sections of society to be strongly discrediting (Herek, 2004; McLean et al., 2012; Ayala et al., 2013; Pew Global Attitudes Project, 2014). It develops through rules or sanctions against a perceived deviance, such as same-sex practices, and leads to discrimination within socially defined power situations. Individuals who have experienced stigma are likely to report low levels of access to services (Fay et al., 2011; Sayles, Wong, Kinsler, Martins, & Cunningham, 2009). Some studies have observed strong associations between discrimination, denial of healthcare services, sexuality-based blackmail, and fear of seeking access to healthcare services (McLean et al., 2012; Ayala et al., 2013; Rutledge, Abell, Padmore, & McCann, 2009). The UNAIDS Global AIDS Update 2016, indicated that

the design and delivery of HIV prevention services are limited by a reluctance to reach out to key populations. In many countries, they are pushed to the fringes of society by stigma and the criminalization of same-sex relationships, drug use and, sex work. This marginalization limits their access to HIV services. (UNAIDS, 2016a)

Though not many prosecutions are made on the basis of the “buggery laws”, they remain on the statute books (Gaskins, 2013) and reflect and reinforce a persistent degree of stigmatization and discrimination against these men (Leslie, 2000; Herek, 2004). However, the Chief Justice of Belize recently ruled that such laws “violated the rights to human dignity, privacy, freedom of expression, non-discrimination and equality before the law. The Court’s decision means that consensual, private sex acts between adults—regardless of sex or sexual orientation—are no longer illegal in Belize” (UNAIDS, 2016b).

An appeal against Section 53 is currently in progress and supported by some religious leaders (Parks, 2016). At a recent Caribbean Conference of Faith Leaders some participants, however, indicated that they would no longer support this appeal, while others continue to pursue it. One of the recommendations coming out of the Conference was “noting areas of litigation that may challenge religious values and the responses required to harmonise principles and practices around human rights, human sexuality and human dignity” (PANCAP, 2017). It was agreed to “establish a Regional consultative group working virtually toward the implementation of the recommendations” of the Conference (PANCAP, 2017).

In 2013, the Pew Research Center performed opinion polls on the degree of acceptance of homosexuality in 39 countries excluding the Caribbean. Broad acceptance was observed in North America, the European Union, and much of Latin America, but widespread rejection of homosexuality was observed in predominantly Muslim nations, Africa and parts of Asia and Russia. Acceptance seems particularly widespread in countries where religion is less central in people’s lives. Women were consistently more accepting of homosexuality than men, and younger respondents offered more tolerant views than older ones. In poorer countries, with high levels of religiosity and lower educational systems, few believe homosexuality should be accepted by society (Pew Global Attitudes Project, 2014). In a recent Jamaican poll, 88% of 1087 persons interviewed indicated that homosexuality should not be accepted, 70% did not support equal rights for homosexuals, while 26% indicated that they “hate” them (UNAIDS, 2016c), findings that are in line with past Jamaican polls (Boxill et al., 2011; Boxill et al., 2012).

The Caribbean and Pew Research Centre polls reinforced the utility of opinion polls to assess public opinion on health issues or other policy issues (Public Opinion Polls, 2016). However, to obtain more detailed causal information, in-depth surveys, like the
Demographic and Health Surveys (DHS) (ICF International, 2006), are required to complement these polls. Such surveys can provide greater insights into health-related associations that can form the basis of developing indicators that can be monitored over-time through the use of opinion polls.

To build on the successes achieved to date by the Caribbean HIV response, it is necessary to involve communities that are disproportionately infected and affected by their HIV epidemic. It also requires understanding of the views and opinions of the “general” public regarding these communities. Opinions about sexuality and homosexuality comprise part of the structural factors that influence a country’s response to its HIV epidemic. Based on such understanding, public messaging, communications and educational campaigns can be reshaped and targeted more effectively for the elimination of stigma and discrimination, resulting in a more effective, efficient, equitable and acceptable HIV response. Sexuality, embraces concepts like identity, attraction and behavior (De Cecco & Shively, 1984). As demonstrated by the CARIMIS survey (UNAIDS, 2014b), Caribbean men who have sex with other men vary in terms of their identification from “gay”, “homosexual”, “bisexual” to “straight”. A need therefore exists for the development and implementation of sophisticated educational messages and programs, so that these different men can identify with these messages. Furthermore messages for key-populations should be complemented by producing messages for the wider “general” population as part of a comprehensive HIV response to reduce stigma and discrimination.

Acknowledgement

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Saint Vincent and the Grenadines became independent on October 27, 1979 from the British Government. They comprise an island nation in the Lesser Antilles chain of the Caribbean Sea. The country has a French and British colonial history and is now part of the British Commonwealth of Nations and Caribbean Community (CARICOM). Agriculture, dominated by banana production, is the most important sector of this lower-middle-income economy. Sexual relations in private between
Sexual relations in private between consenting adults of the same sex are prohibited in Saint Vincent and the Grenadines. The 1990 Criminal Code of Saint Vincent and the Grenadines states that "any person who 'commits buggery [anal intercourse] with any other person,' and any person who 'permits any person to commit buggery with him or her,' is 'liable to imprisonment for ten years'. Comments from July 2006 report that public statements have been made that promote discrimination against gays and lesbians for religious reasons. However, although homophobia is still widespread in the country, the general public does not appear to be aggressive toward homosexuals. There are no government programs or non-governmental organizations in place that offer services to the homosexual community (http://www.unhcr.org/refworld/category,COI,,VCT,403dd22310,0.html) of Saint Vincent and the Grenadines.
TAB 20
Jeremy Johnson QC and Peter Laverack instructed on claim to decriminalise homosexuality in St Vincent and the Grenadines

Today, two gay men filed court proceedings to challenge St Vincent and the Grenadines’ “buggery” and “gross indecency” laws, which criminalise homosexuality. Both men, who have been advised by Jeremy Johnson QC and Peter Laverack of 5 Essex Court, assert that their dignity and autonomy are stripped by these laws. They have filed claims with Affidavits stating that they have been exiled from the Caribbean nation due to the severely draconian and damaging effects of these laws.

Javin Johnson, aged 22, successfully claimed asylum in the United Kingdom in 2017 having established that he could not live as a gay man in St Vincent. Sean Macleish, aged 53, is a Vincentian resident in Chicago, Illinois. Macleish has
publicly advocated to the Caribbean nation's Prime Minister for the removal of these laws so that he may return home with his partner, but to no effect.

The two claimants are unknown to each other, having separately decided that now is the time for decriminalisation. They say that these laws violate multiple and overlapping rights in the Constitution, which are there to protect all Vincentians, no matter who they are or who they love.

These court challenges come after Jason Jones' successful challenge (https://5essexcourt.co.uk/resources/news-view/peter-laverack-in-landmark-case-decriminalising-homosexuality-in-trinidad-and-tobago) to Trinidad and Tobago's anti-gay laws, a week after a similar challenge was filed in Dominica, and with other challenges already afoot in Jamaica and Barbados.

The challenges were filed by local lawyers, listing English barristers Jeremy Johnson QC (https://5essexcourt.co.uk/our-people/profile/jeremy-johnson-qc) and Peter Laverack (https://5essexcourt.co.uk/our-people/profile/peter-laverack) of 5 Essex Court, London, as the intended trial advocates. 5 Essex Court was instructed by a team at Hogan Lovells, which includes Charles Brasted, partner, Tom Smith, senior associate, and Iris Karaman, trainee solicitor."
TAB 21
Despite a steady stream of cold rain, members of Montreal's queer community, literati, and representatives of the local St Vincent and the Grenadines Association packed Paragraphe Bookstore on Nov 12 for the launch of Nigel Thomas' new book, *No Safeguards*.

The novel, which was nominated for the Hugh MacLennan Prize for Fiction, chronicles the coming-of-age stories of two brothers born into a fundamentalist Christian family in St Vincent. After their mother moves to Canada to escape the abuse her preacher husband inflicts in the name of religion, the brothers live with their wealthy, intellectual grandmother.

In their teens, they are brought to Montreal to join their mother, where both struggle to adapt and to come to terms with their sexuality.

The novel is narrated by the older brother, Jay, and focuses on how the younger and more vulnerable Paul is impacted by the move. It is the first in a planned trilogy; the two other tomes...
intending to explore the brothers’ love lives as adults.

*No Safeguards* draws on Thomas’ experiences growing up as a gay man in St Vincent, where anal sex is still punished with 10 years imprisonment. An incident recounted in the book, where a gay couple’s house is surrounded, the men beaten, and the home burned to the ground, is drawn from Thomas’ early childhood memories.

“One night I heard a lot of noise, running and shouting,” he recalls. “The next morning I discovered that this was because of a gay chap who had a date in the village. A man had asked him to meet in the banana field . . . When he took off his clothes, other guys came out and began beating him. They chased him through the field . . . until someone came to the rescue.”

According to Thomas, violence was a common occurrence and, as an effeminate boy, he was often its target.

“Effeminacy and homosexuality were considered to be one and the same thing,” he says. “People would literally hit me and say ‘Act like a man,’ or mock my voice and call me names.”

Thomas realized he was gay at age 16 but stayed in the closet. “I was afraid,” he says. “I also did believe that it was sinful. I was raised on the fundamentalist end of Methodism.”

When Thomas came to Canada in 1968 at age 21 he was engaged to marry. However, by the end of 1969, he says he began “exploring gay sex.”

He entered his first longterm relationship in the 1980s, but did not publicly come out until a series of homophobic articles appeared in the Vincentian press in 1994.

“No gay person in St Vincent felt comfortable challenging these horrible ideas — linking us to bestiality and pedophilia. I said, you know what, I better do it,” he says.

Thomas wrote a provocative letter to the offending papers, and his response was published as an article.

“Of course there was virulent feedback. I ended up duelling with the archbishop of the Windward Islands,” he says, referring to a heated debate between himself and high-profile locals that made headlines until 2002.

Thomas was also criticized for his openness by Montreal’s Vincentian community. Following an interview with the *Montreal Gazette* in 2000, where he spoke about black people in the LGBT community, he received angry phone calls.

“Some people said that they would burn my books,” he recalls.

Later in life, Thomas joined the St Vincent and the Grenadines Association of Montreal.

“I joined to claim my space as a gay Vincentian,” he explains. “And to my great astonishment, people were quite happy to have me.”
Although, according to Thomas, the community in Montreal has become more accepting, being gay is still dangerous for most people back home.

Still, there is hope for the future. One bookstore on the island now sells Thomas' books. There is a secret gay association. While local gay activists use pseudonyms, allies openly write and speak about LGBT rights.

“They are glad that I am open because they can cite me verbatim,” Thomas says.
TAB 22
President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington DC 20500
USA

January 31, 2017

Dear President Trump,

We write to you as concerned Christian ministers and churches from the Caribbean region (including The Bahamas) who hope and pray that the United States, under your leadership, will once again cast a light from “The City upon a Hill” of which your American forefathers and President Ronald Reagan so frequently spoke.

Sadly, during recent years, that City has too often cast shadows instead of light. We refer specifically to the policies of the U.S. State Department and other government agencies involved in foreign policy that have undertaken to coerce our countries into accepting a mistaken version of marriage.

It is not only the view of our Christian churches, but the testimony of the recorded history of millennia of civilization, that marriage can only be between a man and a woman. This was certainly a truth embraced by the Founders of your country, who pledged their dedication to “the Laws of Nature and of Nature’s God.” Why should we be forced to believe otherwise?

The centrality of the promotion of same-sex marriage to U.S. foreign policy was reflected in President Barack Obama’s creation of a new State Department position: “Special Envoy for the Human Rights of LGBT Persons.” Not one of us regards any person – homosexual or otherwise – as possessing anything less than the fullness of our inalienable, God-given human rights. But is this what was meant by then-Secretary Hillary Clinton’s announcement that “gay rights are human rights, and human rights are gay rights,” a statement repeated exactly by Secretary John Kerry? She meant something very much different.
The problem should be self-evident. We have our rights by virtue of being human beings, and not by anything else – not our ethnicity, not our religion, not our race, not our tribe, and certainly not our sexual orientation. The promotion of “gay” rights must come at the expense of human rights because the two are immiscible. One is founded on the “Laws of Nature and of Nature’s God” and the other on moral relativism, which eviscerates the very idea of natural rights. If you have one, you cannot have the other. As it is turns out, the Obama administration, among others, has shown this to be so, as so-called “gay rights” are pre-empting human rights, such as freedom of religion, freedom of expression, and freedom of conscience.

In the United States, you have recently seen several of your government agencies using executive orders to foist transgender confusion through the bathroom issue on your public schools by threatening the loss of federal funds. Comply, or be defunded.

Please understand that this same kind of coercion is being used against our countries to force us to fall in line with the entire same-sex agenda. In this letter, there is no room to enumerate the various ways in which this is happening. As Christian ministers and churches, we hope and pray that we and our flocks will always choose to suffer for Jesus Christ rather than comply with a lie. How ironic that it should be the United States that might place us in this position.

We implore you urgently to review this matter, to revoke the relevant executive orders and policies, and thus to restore to “The City upon a Hill” the bright moral beam that once shone from it.

Please accept our heartfelt prayers for your success in making America morally great again.

Respectfully,

[289 signatures from Christian ministers and church leaders in The Bahamas, Guyana, St Maarten, St Vincent, Trinidad and Tobago]