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INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION AGAINST LGBT (LESBIAN, BISEXUAL, GAY, AND TRANSGENDER) PERSONS IN TRINIDAD & TOBAGO, IN SUPPORT OF AN APPLICATION FOR ASYLUM

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<td>GOVERNMENT SOURCES</td>
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<td>1.</td>
<td>Trinidad and Tobago Immigration Act (Chap. 18:01) § 8, available at <a href="http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/18.01.pdf">http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/18.01.pdf</a></td>
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<td>“8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens… is prohibited, namely—</td>
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<td>(e) prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes; (Pg. 13)</td>
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<td>(f) persons who are reasonably suspected of attempting to bring into Trinidad and Tobago or of procuring prostitutes or other persons for the purpose of prostitution or homosexual or other immoral purposes;” (Pg. 13)</td>
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<td>The law does not specifically prohibit discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. There were reports of harassment and threats against LGBTI persons, but victims tended to avoid media attention… (Pg. 10)</td>
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<td>The law decriminalizes sexual exploration between minors who are close in age but specifically retains language criminalizing the same activity among same-sex minors. (Pg. 10)</td>
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   - Immigration laws also bar the entry of “homosexuals” into the country… (Pg. 14)
   - The law identifying classes of persons protected from discrimination does not prohibit discrimination based on sexual orientation or gender identity. (Pg. 14)
   - The 2012 Children Act decriminalizes sexual exploration between minors who are close in age but specifically retains language criminalizing the same activity among same-sex minors. Other laws exclude same-sex partners from their protections. (Pg. 14)


   - The law identifying classes of persons protected from discrimination does not prohibit discrimination based on sexual orientation. (Pg. 15)
   - The 2012 Children Act decriminalizes sexual exploration between minors close in age but specifically retains language criminalizing the same activity among same-sex minors. (Pg. 15)
   - Other laws exclude same-sex partners from their protections. (Pg. 15)
   - …the law criminalizes consensual same-sex sexual activity, providing penalties of up to 25 years’ imprisonment… (Pg. 14)
   - Immigration laws also bar the entry of “homosexuals” into the country… (Pg. 14)


   - “In submissions to the Trinidad and Tobago Constitution Reform Commission in 2013, [the Coalition for Inclusion of Sexual Orientation (CAISO)] and the Silver Lining Foundation outlined cases of homophobic discrimination of youth within the education system…Cases included LGBT youth being subjected to name-
calling and verbal abuse by schoolmates; teacher-led gossiping or bullying; physical assaults by stoning; suggested ‘reparative therapy’ by school officials to boys exhibiting ‘homosexual tendencies’; and ‘a daily pattern of harassment from schoolmates.’” (Pg. 2)

- According to sources, sexual minorities have been victims of violence in Trinidad and Tobago…Sources indicate that the country’s Constitution Reform Commission acknowledged that there is a ‘high level of violence and abuse’ against LGBT people…According to the Silver Lining Foundation, LGBT people have faced bullying, physical assaults, verbal assaults and abuse in their homes, schools and by the general public in Trinidad and Tobago.” (Pg. 2)

- “Sources report that an openly gay 26 year-old man was stabbed several times in June 2014 by a group of men…The US Department of State’s Country Reports on Human Rights Practices for 2014 reports that media identified the attack as a hate crime.” (Pg. 2-3)

- “Daily Express quoted a representative of CAISO in 2011 as reporting that a young LGBT man was severely beaten by his family and that LGBT men have also been ‘gang-raped.’” (Pg. 3)

- “Amnesty International (AI) reports on the failure of Trinidad and Tobago to confront the issue of violence against LGBTI people and refers to the Constitution Reform Commission’s failure to produce recommendations on achieving equality and preventing discrimination, despite acknowledging the high level of violence and abuse against LGBTI people in the country.” (Pg. 3)

- “Sources indicate that Prime Minister Kamla Persad-Bissessar stated that it would not be possible to decriminalize homosexuality or grant rights to LGBT people because public opinion is too divided on the issue.” (Pg. 2)

- “The Executive Director of CAISO stated that records of enforcement of the provisions against same-sex sexual activity, including arrests, prosecutions and sentences, are ‘not easily available,’ but noted that CAISO has documented ‘arbitrary arrests and harassment of gay and transgender persons’ by the police.” (Pg. 4)

- “. . . LGBT victims have been subjected to ‘extreme reluctance or hostility by police, including name-calling’. . . Other sources report that sexual minorities who have been victims of violence are hesitant to report incidents to police out of fear of negative response by police and court officials, such as harassment . . . or ridicule.” (Pg. 5)
### Inter-Governmental Sources

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<td>“Since discrimination based on sexual orientation remained prevalent, the Netherlands highlighted the need to improve the fulfilment of rights of LGBTI persons.” (Pg. 7)</td>
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<td>“Norway was also worried about continued stigma and discrimination against LGBTI-persons, as well as people living with HIV.” (Pg. 7)</td>
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<td>“The United States of America . . . was also concerned about violence and discrimination against women and about the lack of respect for the human rights of LGBTI persons.” (Pg. 10)</td>
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<td>“Australia also remained concerned that violence and discrimination against LGBTI persons had not been addressed through legislative and policy instruments.” (Pg. 10)</td>
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<td>“The Equal Opportunity Act, 2000 does not explicitly ban discrimination based on sexual orientation, gender or HIV status. The lack of legal protection supports an environment of stigma and discrimination against persons perceived to be HIV positive and towards members of the LGBT community limiting uptake of essential public health services.” (Pg. 7)</td>
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<td>“Civil society &amp; stakeholders have reported that the LGBT community is sometimes subject to forced marriages and corrective rapes.” (Pg. 8)</td>
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<td>“In 2007, several men in Trinidad and Tobago who were seeking sexual partners on a popular internet site fell victim to a pattern of crimes. In the worst instances they were kidnapped, tortured, robbed, gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) was able to document a number of these assaults by interviewing victims. Only one of these victims has pursued police action, and none of the rape victims who were interviewed had sought medical attention.” (Pg. 109)</td>
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• “Further, the IACHR has been informed that several courts in the Commonwealth countries of the Caribbean have accepted a “same-sex sexual advance defense” either as a partial defense resulting in a conviction for a lesser offense, for example, reducing a crime from murder to manslaughter, or as a full defense leading to acquittal, for example, cases in which homicide was deemed ‘justified.’ The IACHR has received reports of cases of violence against LGBT persons in which such defenses led to mitigation or acquittal in Barbados, Dominica, Jamaica, the Bahamas and Trinidad and Tobago.” (Pg. 253)

• “In these countries, a finding of justifiable homicide is a full defense to murder that leads to acquittal, and justifiable homicide includes a homicide committed to prevent ‘a forcible and atrocious crime,’ which includes a non-violent same-sex sexual advance. Mitigation of a crime is the result of the judge or jury accepting a partial defense to murder, finding that the defendant lost his or her self-control as a result of provocation by the victim’s actions or words. According to a recent study of these cases in the Commonwealth Caribbean, the defense of provocation has been raised in homicide cases ‘where...(2) the defendant killed the deceased and argued that the killing was a response to a ‘homosexual advance’ by the deceased [Trinidad and Tobago, 2002]...’” (Pg. 254)


• “Of greater concern, ‘the need for a definitive debate' is repeatedly framed by Government and political parties as a need for debate and assent of a majority of citizens as to whether members of the LGBT community should enjoy human rights and their protection. Most recently, in August 2015, this was articulated by the then Prime Minister as: ‘Our position is...that that is not a decision that could be made by us or the Cabinet sitting. It is a matter that requires tremendous...stakeholder consultations to arrive at the consensus view...Gay rights...with the greatest of respect is not my decision to make, but is one that will require full consultation with the national population.’” (Pg. 4)

• “Notwithstanding the review, the immigration law provisions with respect to homosexuals, persons living off their earnings, persons reasonably suspected of coming to the state for the purposes of living off the earnings of homosexuals or of attempting to bring persons into the state for homosexual purposes, and persons who practise, assist in the practice or share in the avails of homosexualism, remain on the books. They have been challenged in the
Caribbean Court of Justice under the freedom of movement provisions of the Revised Treaty of Chaguaramus of the Caribbean Community. Despite conflicting testimony at times, the acting Chief Immigration Officer told the court that Trinidad & Tobago would not apply the law, in breach of the Treaty, to CARICOM nationals. Counsel for the state, however, told the Court the state had no plans to repeal the legislation, but saw an interest in keeping it, and twice made reference to its role with regard to terrorists from other states.” (Pg. 5)

- “Legislation introduced in Parliament in 2011 to include HIV/AIDS status in the protections of the Equal Opportunity Act lapsed in June 2012 without being brought to the floor for debate, and was never reintroduced…In March 2015, after repeated requests ‘since 2007’ to ‘Parliament, the Attorney General, and the Chief Parliamentary Counsel…to offer input on behalf of the citizens’ they ‘represent in improving the Equal Opportunity Act’, and ‘[i]n June of 2013’ writing ‘the state urging an IACHR hearing on some of the issues’, without a response, HIV, sexual orientation and other NGOs requested a hearing at the InterAmerican Commission on Human Rights (IACHR) to, among other goals…engage in dialogue with the state on adding HIV status and sexual orientation to equal opportunity legislation. The state failed to appear.” (Pg. 6)

NONGOVERNMENTAL SOURCES


- “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. (Pg. 16)
In 2016 The Silver Lining Foundation conducted a baseline survey to assess the prevalence of school violence and bullying across 20 secondary schools in Trinidad and Tobago. The survey examined bullying trends from indictors including: …LGBT students’ experiences.” (Pg. 6)

“If bullying based on Sexual Orientation and Gender Expression are combined, they total 28%, taking the lead as the most common basis for teasing and harassment. Students identified the following as common insults: Homophobic slurs: battyboy, bullerman, faggot, ‘you so gay’ or ‘You like boys awa?’” (Pg. 23)

“24% of students indicated that they had been pushed or hit at least once over the preceding 3-month period (prior to taking the survey)…Apart from being physically assaulted, 40% of respondents indicated that their belongings were interfered with, either stolen or damaged, over the three month period…” (Pg.23)

“Reflecting on the comments most commonly heard in schools, we see a prevalence of attacks based on physical appearance, sexual orientation and gender expression. Most heard on a daily basis are comments related to boys being too feminine.” (Pg.33)

“Students engage in gender-policing that often targets LGBT students who do not properly exhibit the dominant and expected gender traits.” (Pg. 34)

“…64.71% of LGBT students responded that they ‘Never’ or ‘Rarely’ reported their bullying experiences to a teacher or principal.” (Pg. 45)

“Fearing that bullying experiences would become worse after reporting to a parent/ adult caregiver was the predominant concern…with…36.96% of LGBT students citing this reason as a main deterrent from ‘talking to parents/adult caregivers.’ This demonstrates that even if students want to tell their parents and are supported by their parents, the treatment of violence in school is so inadequate that their fear of repercussions overpowers their desires to report and receive help.” (Pg. 47)

- “Violence and discrimination towards LGBTI people remained a concern in El Salvador, Guyana, Honduras, Trinidad and Tobago, and Venezuela.” (Pg. 32)
- “Local civil society groups continued to receive reports of violence and discrimination towards LGBTI people. Some LGBTI people did not report these crimes or seek access to justice, for fear of further victimization from law enforcement officials or exposure of their sexual orientation or gender identity.” (Pg. 365)
- “Some youths reported being pushed out of their homes or experiencing domestic violence due to discrimination based on their sexual orientation or gender identity. Social services and shelters were not equipped to respond to the needs of homeless LGBTI people, according to local NGOs.” (Pg. 365)
- “Parliament failed to act on a 2014 recommendation from the Equal Opportunities Commission that ‘sexual orientation’ be included as a protected ground in the Equal Opportunities Act.” (Pg. 365)


- “LGBTI people (particularly in low income, larger households) get put out of family homes because of their sexuality or gender expression. Sometimes this follows domestic violence. Poverty among young LGBTI persons is also fuelled by low school achievement due to bullying, unaddressed workplace harassment that drives them out of employment, and challenges being hired, with no recourse to the law if denied a job or fired because of their gender expression or sexual orientation.” (Pg. 1)
- “Low-income LGBTI persons have few housing options of any nature. Public shelters are dangerous for gay men and trans persons, who avoid them. Domestic violence shelters have refused to accept lesbian and bisexual victims of family violence, or subjected them to harassment and religious proselytizing. Landlords are unwilling to rent to LGBTI people, either out of personal prejudice or pressure from tenants, and are legally able to refuse to do so or to evict tenants on that ground when they discover their sexual orientation or gender identity. Young people especially end up in housing where they are sexually vulnerable, or engage in transactional sex for shelter, heightening their risk for HIV. Some turn to street sex work. Others find affordable housing only in neighbourhoods where crime,
violence and homophobia are high and become opportunistic targets for criminals. Even in “safer” neighbourhoods, the threat of bias violence and low-level bullying and harassment by neighbours and on the street endure, and they fear reporting it either because the cost of the related stigma outweighs any justice, or because police dismiss or ridicule them.” (Pg. 1-2)

- “Young LGBTI people end up on the street where trans young people in particular are then targeted for police harassment and arrest using colonial vagrancy laws (Section 45(c) of the Summary Offences Act criminalizes being in a public place and being unable to give a good account of oneself). In several cases of these arrests, media are alerted to the appearance of trans women and cross-dressing men, who are paraded through the courthouse and their pictures, names, addresses and clothing details salaciously published.” (Pg. 2)

MEDIA SOURCES


- “Another man, who spoke to the Express under the condition of anonymity, said Young was homosexual. Young had an argument at a bar with someone from the ‘trainline’ who did not approve of the homosexual lifestyle, the Express was told. ‘Glen did not mess with anyone. . . . It was not a robbery, it was personal. Three years have passed and the information is coming out. The guy that put down the work had a falling-out with Glen by the bar. They were drinking by St Margaret’s Junction. The issue arrive with a personal talk...homosexual talk, and the guy was opposed to homosexuals. He was the only one who had a problem with him. When Glen was buried, he (the suspect) laughed and said ‘one more gone’ the man told the Express.” (Pg. 2-3)

- “They (killers) took nothing. They shoot him in the head as he tried to raise up. All the blood drained through and into the boards. One shot to the head. He didn’t stand a chance at all,’ said Hamlet.” (Pg. 2)

- “Young’s sister, Sheila Hamlet, said she turned over to police the bullet that killed her brother. ‘That was it. The police never came back here. Nothing ever came of that after,’ she said. ‘When the police left that day Glen was killed, that was it. No one was ever arrested. They never even came to us for any form of a follow-up,’ said her husband.” (Pg. 3)
| 15. | **BC Pires, Raymond Choo Kong, Bent, Trinidad and Tobago Newsday (July 19, 2019)**, available at https://newsday.co.tt/2019/07/19/raymond-choo-kong-bent/  |
|      | • “What breaks our hearts this week is not that Raymond Choo Kong, one of our great actors, was murdered; it is that we do not need the passage of ten months, ten years or ten lifetimes to know what we already know today: that he will have died for nothing.” (Pg. 3) |
|      | • “Our newspapers know something our police do not: that there is a serial killer stalking gay men. Police put their noses in the air to declare they don’t have statistics about the murders of homosexuals because they don’t judge anybody; what would be, in a real country, a clear hate crime becomes, in Trinidad, proof that the police force is not homophobic! You could die laughing.” (Pg. 3) |

|      | • “On teen dads, Richards noted in some quarters if one didn’t have a child by 21, one might be labelled ‘gay’ and it was a neighbourhood block badge of pride if a teen expressed his masculinity by becoming a father.” (Pg. 2) |

|      | • “There are 27 laws in this country which result in discrimination against homosexuality. Attorney General Faris Al - said this yesterday during a press conference at his office.” (Pg. 1) |

|      | • “On the topic of human rights regarding to the LGBTQI community, the council disagrees that there was any legitimacy to the demand of the LGBTQI community for human rights, since scientifically and biblically, no such gender categories exist.”” (Pg. 2) |
|      | • “Where the Church’s relationship with the LGBTQI community is concerned, the council feels that given that the highest rate of HIV/AIDS infections is among the MSM [(men who have sex with men)] community, the government may do better to educate the population on the medical dangers of this behaviour and discourage it. In fact, the rate of infection among that community is an
indicator that there is a high rate of hypersexuality among members of that group, suggesting that LGBTQI behavior is a manifestation of underlying psychoses. The U.S. National Institute of Health supports that assertion. According to ncbi.nlm.nih.gov, “Sexual addictions are behavioural addictions.” (Pg. 3)


- “‘The solidarity [at the LGBTQIA Pride Parade] is nice but people who do not support the LGBTQIA plus community here tend to be very violent about it so it is scary,’ said Hirst, who is currently seeking asylum in Canada.” (Pg. 3)

- “While Hirst told the Sunday Guardian she understands her mother’s grief in what she might perceive as losing a daughter, she had a strong message to send to parents of trans-children. ‘You can have two choices, a dead daughter or son lost to suicide or hate crimes, or you can accept them and help them through it.’” (Pg. 3)


- “According to reports made to the police, at about 10 pm on Thursday, the victim was awaiting transportation near St Mary’s Anglican School, Eastern Road, Tacarigua when he was approached by two men armed with guns. One of the men said to him ‘we do not want no faggot in Trinidad so we robbing you.’” (Pg. 1-2)

- “A 21-year-old El Dorado man was held up at gunpoint on Thursday night by two men who accused him of being gay and relieved him of a gold-plated chain valued $300.” (Pg. 1)

- “Employees spiked the drink of a boss whom they did not wish to report to because he was a homosexual. A homosexual took his brother and sister to court because of the hostility and violence they directed towards him”

- “LGBT youth are more subject to bullying from their peers. These were among the findings from researchers Samantha Rattan, who conducted interviews with survivors of gender-based violence (GBV); perpetrators; and Renelle White, who interviewed members of the lesbian-gay/bisexual/transgender (LGBT) community.”


- “So concerned was Jones about the vandalism, he declined to reveal to Sunday Newsday the venue of a celebration which members of the community were hosting on Friday night.” (Pg. 2)

- ‘We don’t want a Pulse night club event happening there,’ Jones said, alluding to the murders of 49 party-goers at the gay Florida club in June 2016.” (Pg. 2-3)

- “‘With emotions running so high, we have to be cognisant of the security for all of us.’” (Pg. 3)

- “Jones knows only too well the venomous, violent attacks to which members of the LGBTQI are subjected. He has lived it. ‘Growing up in TT, I suffered tremendous homophobic abuse,’ he said. ‘Even when I walked down the steps of the High Court, people were shouting offensive terms at me.’” (Pg. 3)
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<td>• Outspoken Reverend Victor Gill says despite the court’s ruling on the unconstitutionality of this country’s buggery laws, his position has not changed and is warning that the ruling can have serious repercussions, including massive social unrest similar to that which led to the 1990 attempted coup. (Pg. 2)</td>
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<td>• “Responding to critics who placed him indirectly responsible for the eviction of gay men by landlords and relatives, Gill said this was merely the reaction of a society opposed to homosexuality.” (Pg. 2)</td>
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<td>• “Citing the 1990 insurrection, Gill predicted similar action from the public in response to the buggery laws’ ruling. ‘This decision will have major fallout. There will be a spillover. It’s not something that I am advocating, but in 1990, the Jamaat al-Muslimeen felt the government at the time was being unjust, and it led to anarchy. The Jamaat has already expressed their objection to the removing the buggery law and so have we (Christians), 95 per cent of the population do not want this.’” (Pg. 2)</td>
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<td>• “The three men, social worker Luke Sinette confirmed yesterday, were evicted for being gay. Among them, one young man who was asked to leave his family home because he embarrassed them because he was seen at the rally. Another man was accosted and taunted as he arrived at his rented apartment and a third was told by his landlord that after his display at the rally he had to leave.” (Pg. 1-2)</td>
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- “Two members of the LGBTQI community were yesterday attacked outside the Hall of Justice, Port-of-Spain, just as Justice Devindra Rampersad was set to give his ruling on Jason Jones’ challenge to T&T’s buggery laws. The first incident took place on the steps of the Hall of Justice with Cherisse Berkeley, who was shoved, spat upon and cursed by a supporter of the Jamaat-Al-Muslimeen group, while scores of flag-bearing LGBTQI people were awaiting Rampersad’s judgement.” (Pg. 1)

- “Berkeley, who also revealed she was raped at the age of 17 by someone she trusted, said she was trying to decide when to press charges. ‘I was raped by the individual, who kept insisting that he wanted to make me straight.’” (Pg. 1)


- “[Dillian] Johnson was shot outside his home on 3 December and arrived in the UK on 29 December [2017, where he is seeking asylum]. He says he fears for his life if he returns to his home country and believes he was the victim of a targeted hit. ‘I fear being murdered for my sexuality if I go back,’ Johnson said. ‘My relationship with [the chief justice] has been highly publicized.’” (Pg. 2)

- “Johnson has complained that police have failed to bring his attacker or attackers to justice. He is being assisted in the UK by the human rights campaigner Peter Tatchell, who said there was ‘public hostility and great stigma attached to homosexuality’ in Trinidad and Tobago. (Pg. 2)

- “[S]ix gay men were murdered in the first five months of 2017, according to rights campaigners.” (Pg. 2)

- “The police came to me and took reports,’ he said. ‘They did nothing to find the perpetrators.’ Asked to comment, the chief of the anti-corruption investigative bureau, William Nurse, said: ‘I have no interest in speaking with the press, foreign or local.’” (Pg. 4)
27. Adult & Workplace Bullying on the Rise: The Victims Speak Out, Trinidad and Tobago Guardian (Feb. 27, 2018), available at http://digital.guardian.co.tt/?iid=158038&crd=0&searchKey=workplace%20bullying#folio=28

- 44 year-old Kerwyn Jordan was forced to seek counseling and even used anti-depressant medication for years because of the bullying and harassment he experienced for his sexual orientation…He said his first outright incident of bullying occurred when he lived in Petit Bourg. He told us, he was about to go shopping but was returning home to collect something that he forgot when he was attacked. ‘A group of boys ganged up on me, they began beating, cuff, kick. I called out to the lady in the shop for help, she watched me and closed up the shop. A friend who lived close by was seeing what was happening, I called out to him to call the police or help and he just stood there staring. So I took the beating. They dispersed after. I called the police, they said they had no vehicle. I went to the San Juan Police Station reported it, nothing came of it. When I got back home later I contacted a family friend who referred me to officers from the Belmont Police Station. They eventually came, pulled out the guys, and warned them to not interfere with me again…But that was not the only time Kerwyn was bullied because of his sexuality. He said in Diego Martin it was ‘torture’ being constantly heckled by residents. One time he was even beaten with a cutlass. The emotional pain, he said paled in comparison to the physical assaults.”

- “Deyone ‘Milly’ Guiseppi [a transgender woman] fled this country five years ago after being bullied, harassed and victimized for her sexual orientation…” (Pg. 1)

- “Things…became problematic when she got a new boss who was also a pastor. ‘He started to harass me about how I chose to express myself in the way I dressed and I was even given a document highlighting the dress code for men and women,’ she said…. ‘The harassment was becoming continuous and I really didn’t want to go to work anymore.’” (Pg. 2)

- “Guiseppi approached the Equal Opportunity Commission (EOC) and filed a complaint about victimization…However, according to the EOC Act, people who claim to be discriminated against on the basis of sexual orientation have no recourse. The act prohibits discrimination against individuals on seven grounds…but sexual orientation is expressly excluded from protection…. ‘The EOC told me they couldn’t help me because gender in T&T is limited to being male or female.’” (Pg. 2)


- “While many people look to the start of the new year in anticipation of new beginnings, T&T’s lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community continues to be faced with troubling issues”, Friends For Life (FFL) said. The group, which has offered friendship, support and counselling to LGBTQI persons in the country for the past 20 years, published an advertisement yesterday highlighting the findings of a research project it held between May to September.”

- “A steering committee was established with five members of the LGBTQI community who guided development of research questions, methodology and analysis of the data with two university-based researchers providing technical support during the process. The study used a combination of methods to collect data including an online survey and journaling by ten LGBTQI individuals. FFL said: ‘The findings showed that the LGBTQI in Trinidad and Tobago experience many forms of human rights violations, including denial to the right to security
of person, discrimination in accessing and maintaining economic and social rights such as employment, education, health and housing, and experiences of trauma from emotional and physical abuse perpetrated by both community and family members.”

- “All of the survey’s respondents said they, or persons close to them, were victims of violence on at least one occasion, including being raped, robbed and physically abused.”

- “Apart from this violence the LGBTQI community also faces difficulties when it comes to housing, FFL said. ‘The policies of the Government of Trinidad and Tobago is silent on the LGBTQI access to low-cost or government subsidized housing. However, there seems to be an institutionalised barrier since the study’s findings show that it is significantly more difficult for same-sex couples to submit and have an approval since the process privileges married heterosexual couples.’ ‘Also, there is no protection from landlords’ discrimination against LGBTQI who attempt to rent or are renting,’ the group said.”

- “FFL said the study moves beyond anecdotal evidence to show patterns of structural and cultural barriers which continue to plague LGBTQI’s enjoyment of rights and protections in T&T.”


- For several months up to the time of her death, Sasha Fierce, aka Keon Allister Patterson, worked towards educating the local LGBTQI community about HIV/AIDS…One person who knew her said Fierce was previously a sex worker and felt strongly about HIV prevention and management, as she knew the risk of her former occupation…She said many members of their key population had no support from their family, or if they did, they and their family were ostracised so they ended up on the street. Also, if people noticed that they were different or found out they had HIV, no one wanted to employ them.” (Pg. 2)

- Agreeing with Fierce’s co-worker [Luke Sinnette, a social worker with the LGBTQI organization Friends for Life], …said many trans-women had limited employment opportunities, and sex work ended up being one of the few options available to them…” (Pg. 3-4)

- “Chief Justice Ivor Archie yesterday said he had no doubt that the recent murder of transgender woman Sasha Fierce was a hate crime. Fierce, whose given name is Keon Allister Patterson, was killed at Nelson Mandela Park, St Clair, on Tuesday night. Police found her body with several gunshot wounds in a pile of rubbish.” (Pg. 2)

- “Speaking at the launch of the Human Rights Development Trinidad and Tobago … Archie said discrimination against people’s sexual orientation or how they self-identify was no secret in the Caribbean. He said the country needed to have a conversation about discrimination but society sorely lacked forums and safe spaces to hold such discussions…He added that, in all the talks about human rights and freedoms, ‘In Trinidad and Tobago simply alerting one’s right to be and express oneself can come at a terribly high price.’” (Pg. 2)


- “However, Patterson’s closest friends and loved ones are afraid to mourn her death publicly, worried that if they express their regret in the open, they will be targeted by bigots and homophobic people.” (Pg. 2)

- “Members of the LGBTQI community continue to express grief over the death of trans woman Keon Allister Patterson, also known as Sasha Fierce, after she was killed at Nelson Mandela Park, St Clair, on Tuesday night.” (Pg. 2)
- “The lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community is a vulnerable one. Its members are generally not well-liked, they may not have family support, and the police often dismiss their claims of discrimination or abuse, sometimes ignoring serious cases simply because an LGBTQI person is involved. One police officer, a corporal, who is also gay, expressed his suspicions that a person or people were targeting members of the LGBTQI community for robbery and murder…To his knowledge, he said there had been at least five gay men who were killed this year alone: three were Guyanese, one a Jamaican, and one a Trinidadian.” (Pg. 1-2)

- “The officer said a homophobic attitude has been alive and well for decades throughout the Trinidad and Tobago Police Service. He said officers, especially male officers, did not want gay people around them as if they were afraid being gay was “catching” or a gay man may be attracted to them. He said he knew of several instances in which gay men were told to leave the police station even before they could make a report, possibly sending them to their deaths. Even if a report was taken, he said many times there was victim blaming or shaming so that the victim was reluctant to report any crimes against them. Other times, he said the police simply ignored the cases, refusing to investigate them because an LGBTQI person was involved. ‘Why do you think so many gay murders go unsolved?’ he asked.” (Pg. 2)

- “Not wanting to reveal too many details, he recalled a crime that was committed about three years ago in which two men arranged to meet in person after speaking to each other on a gay dating site. ‘That was an easy case to solve because everything was online,’ he said. ‘But from the time the police heard it was linked to that (LGBTQI), that was it.’ He said the attitude of officers affected him personally as a gay friend of his was murdered last year. Because of numerous eye witness accounts in that instance, a suspect was identified, but he said the police never even brought the person in for questioning.” (Pg. 2-3)

- “On Friday a coalition of feminist and LGBTQI groups in Trinidad and Tobago launched a safety and self-defence campaign in response to a recent wave of anti-LGBTQI threats and violence…Since January at least three gay men have been murdered, crimes which the coalition says the police have not thoroughly investigated.” (Pg. 1)

- “Nearly 300 religious officials from the Caribbean and Guyana have urged the U.S. to no longer promote LGBT and intersex rights abroad. The 289 ministers who are from the Bahamas, St. Maarten, St. Vincent and the Grenadines, Trinidad and Tobago and Guyana made the request in a letter they sent to President Trump on Jan. 31.” (Pg. 1)


- “In Latin America, the life expectancy of transgender women is 35 years old, according to the Inter-American Commission on Human Rights. Across the Caribbean the lives of transgender women are affected by criminalizing laws, stigma, marginalization and terrifying violence by state and non-state actors.” (Pg. 1)

- “[E]xtreme violence is not the only human rights abuse transgender women face. Many transgender women continue to die, not from lack of medical options, but due to intense stigma and discrimination that drives them away from health care services. . .In many Caribbean countries, transgender women often die instead of accessing stigmatizing healthcare services and treatment for HIV and AIDS.” (Pg. 2)

- “Cuba is the only country in the Caribbean where gender reassignment treatment is permitted, but there is little publicly available information on how accessible the treatment is. In Puerto Rico, the Governor issued instructions in August 2015 allowing for gender to be changed on driving licenses, but as in the rest of the Caribbean, there are no provisions for changing gender in other identity documents.” (Pg. 3)
Cecily Asson, ‘Miss’ Wants a Gun, Trinidad and Tobago Newsday (March 15, 2016), available at http://archives.newsday.co.tt/2016/03/15/miss-wants-a-gun/

- “A teacher at the prestigious Naparima College in San Fernando, is under fire, for a rant against homosexuality, going as far as wanting a gun to deal with such persons and other problems in the world. The teacher is said to have made initial comments on the issue during morning assembly at the school on Thursday last and subsequently in a classroom session, in which she suggested dealing with homosexuals and other issues if given the gun. Referring to the parents of a student who had openly professed to being gay, the teacher reportedly said: ‘He has two parents, who should not be parents. They are both screw-ups, they are atheists, they do not believe in God.’ ‘You see me,’ she is said to have continued, ‘Give me a gun and I will fix all the problems in the world, both of them (parents) first, then their offspring. Do not tell me there is no God,’ she added while noting that persons with such beliefs should keep it to themselves.” (Pg. 1)

- “The audio recording of which the teacher’s voice has been identified, as the one addressing a classroom session, has gone viral on social media…Yesterday, a senior official at the school confirmed the incident, telling Newsday that a report was being prepared to be passed to the Ministry of Education.” (Pg. 1)
TAB 1
IMMIGRATION ACT

CHAPTER 18:01

Act
41 of 1969
Amended by
7 of 1974
24 of 1978
47 of 1980
*19 of 1988
†16 of 1990 (by implication)
37 of 1995
2 of 2005
†14 of 2005 (by implication)
† 1 of 2016

*See Note on page 2.
†See Note on page 3.

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Note on Subsidiary Legislation which have been omitted

The Classes of Undesirable Immigrants Order 1953 (GN 177/1953 as amended), the Immigration Detention Places Regulations (1950 Ed. Vol. VIII page 801) and the Notice fixing Overtime rates for Launch Crews (RG 13.1.1921, as amended) made under the Immigration (Restriction) Ordinance, Ch. 20. No. 2 (1950 Ed.) (now repealed) continue in force by virtue of section 29(3) of the Interpretation Act (Ch. 3:01), but they have not been published as they are out of date and will soon be revoked or replaced.

Similarly, Orders made under section 4 of the repealed Ordinance declaring specified persons to be undesirable immigrants have not been published since they are of a personal nature.

N.B. See the Current Edition of Consolidated Index of Acts and Subsidiary Legislation for references to the above Subsidiary Legislation.

Note on Act No. 19 of 1988

Section 38 of the Trinidad and Tobago Free Zones Act, 1988 (Act No. 19 of 1988) provides as follows:

38. (1) A person who is a foreign national or Commonwealth citizen employed by the Company or by an approved enterprise established in any free zone shall not, by virtue only of such employment, be exempt from the Immigration Act, but the Minister responsible for the administration of that Act shall, in considering applications by or on behalf of such a person, have regard to the need to facilitate the operations of the free zone.

(2) Where a person referred to in subsection (1) is employed by an approved enterprise, he and that enterprise shall be exempt from such
provisions of the Immigration Act as authorise or require the payment or imposition of fees in relation to the grant of a work permit to him.

Ch. 58:02. *(3) The Aliens (Landholding) Act shall not apply with respect to an investment in an approved enterprise established in a free zone or the holding of an interest in land in a free zone.”.

(*See Note on Act No. 16 of 1990).

Note on Act No. 16 of 1990

Act No. 16 of 1990 (Foreign Investment Act, 1990) repealed the Aliens (Landholding) Act, Ch. 58:02. Accordingly, section 38 (3) of Act No. 19 of 1988 should be read in the light of this repeal.

Note on Act No. 14 of 2005

See Section 5 of Act No. 14 of 2005 with respect to entry into, residence in, and departure from Trinidad and Tobago.

Note on Delegation of Functions

See the following Notices:

(a) GN 287/1986 (From Minister to Chief Immigration Officer);
(b) LN 52/1988 (From Minister to Minister in the Ministry of National Security and Citizenship).

Note on Act No. 1 of 2016

Amendments made to the Immigration Regulations by Act No. 1 of 2016 took effect from 1st January 2016.
CHAPTER 18:01

IMMIGRATION ACT

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2. Interpretation.

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SCHEDULE.
CHAPTER 18:01

IMMIGRATION ACT

An Act respecting the admission of persons into Trinidad and Tobago.

[1ST JULY 1976]

1. This Act may be cited as the Immigration Act.

PRELIMINARY

2. In this Act—

“admission” means the coming into Trinidad and Tobago from a port outside Trinidad and Tobago of citizens and residents of Trinidad and Tobago and includes entry of permitted entrants and other persons under this Act;

“Chief Immigration Officer” means the person so appointed for the purposes of this Act and includes a person to whom the Chief Immigration Officer delegates any of his powers, duties or functions;

“citizen of Trinidad and Tobago” means a person who is a citizen of Trinidad and Tobago by virtue of the Constitution or the Citizenship of the Republic of Trinidad and Tobago Act;

“deportation” means the removal under this Act of a person from any place in Trinidad and Tobago to the place whence he came or to the country of his nationality or citizenship or to the country of his birth or to such other country as may be approved by the Minister under this Act, as the case may be;

“deportation order” means an order requiring the person in respect of whom it is made to leave and remain outside of Trinidad and Tobago;

“entry” means the lawful coming into Trinidad and Tobago from a port outside Trinidad and Tobago of permitted entrants and other persons under this Act;

“former Constitution” means the Trinidad and Tobago Constitution set out in the Second Schedule to the Trinidad and Tobago (Constitution) Order-in-Council, 1962;
Ch. 20, No. 2. (1980 Ed.).

“former Ordinance” means the Immigration (Restriction) Ordinance (repealed by this Act);

“immigrant” means a person who seeks admission into Trinidad and Tobago for permanent residence or who is within Trinidad and Tobago as a permanent resident;

“immigration station” means any place designated by the Minister for the examination, treatment or detention of persons for any purpose under this Act, and includes immigration quarters at ports of entry;

“master” means the person in immediate charge or control of a vessel;

“medical officer” means a person authorised or recognised by the Minister as a medical officer for the purposes of this Act;

“member of a crew” means any person, including a master, who is employed on board or belongs to the staff or crew of a vessel;

“Member State” has the same meaning assigned to it in the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM) including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July 2001;

“Minister” means the Minister responsible for immigration;

“national” means a person who—

(a) is a citizen of a Member State; or
(b) has a connection with a Member State of a kind which entitles the person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such Member State for the purposes of the laws thereof relating to immigration;

“owner” includes the agent of the owner of a vessel or the charterer or consignee of a vessel;

“permit” means a permit authorising any person to enter Trinidad and Tobago issued by the Minister under section 10;

“permitted entrant” means any person permitted to enter under the provisions of section 9;
“place of detention” means a Prison, a Police Station or any place approved by the Minister;
“port of entry” means any place in Trinidad and Tobago prescribed for the examination of persons under this Act;
“prohibited class” means any of the classes of persons designated in section 8;
“resident” means a person referred to in section 5(1);
“ship” includes every boat and craft of any kind for travel or transport other than by air;
“Special Inquiry Officer” means a person described in section 13(1);
“transportation company” includes the agents of any such company carrying on business in Trinidad and Tobago;
“vessel” means any ship, aircraft or other means of travel by sea or air.

PART I

ADMISSION OF PERSONS INTO TRINIDAD AND TOBAGO

3. Except as permitted under this Act, no person may be admitted into Trinidad and Tobago as an immigrant or being within Trinidad and Tobago remain therein as an immigrant.

ENTITLEMENT OF CITIZENS AND RESIDENTS TO COME INTO TRINIDAD AND TOBAGO

4. (1) A citizen of Trinidad and Tobago has the right to be admitted into Trinidad and Tobago.

(2) A resident who is not a citizen of Trinidad and Tobago, so long as he continues to be a resident, has the right to be admitted into Trinidad and Tobago.

5. (1) The following persons not being citizens of Trinidad and Tobago are residents of Trinidad and Tobago:

(a) a person who was entitled under the former Constitution to be registered as a citizen;

(b) a person to whom permission has been granted by the Minister under section 6 to become a resident;
(c) a person other than a person described in paragraph (a) or (b) who immediately before the commencement of this Act (that is, 1st July 1976) was deemed to be a person belonging to Trinidad and Tobago by virtue of section 2(2) of the former Ordinance;

(d) a person who applies for and is granted permission to become a resident under section 50(1);

(e) the child of a person who is a citizen of Trinidad and Tobago or who by virtue of this section is a resident provided that such child is a minor or is dependent on and living with his parents;

(f) such other persons on whom the Minister may confer the status of a resident.

(2) For the purposes of subsection (1)(b) and (d), no period shall be counted towards the acquisition of resident status during which a person—

(a) is confined in or is an inmate of any prison or hospital for mental diseases;

(b) remains in Trinidad and Tobago after the making of a deportation order against him and prior to the execution of such order or his voluntarily leaving Trinidad and Tobago, unless an appeal against such order is allowed; or

(c) is in Trinidad and Tobago under a permit.

(3) For the purposes of subsection (1)(f) the Minister may in his discretion, confer the status of a resident on any person he considers fit.

6. (1) Subject to this Act and the Regulations, persons who come within the following classes may on application in the prescribed form, be granted permission by the Minister if he thinks fit, to become residents, that is to say:

(a) a permitted entrant who—

(i) by reason of his education, occupational qualifications, personal history, employment record, training, skills or

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other special qualifications has established or is likely to be able to establish himself successfully in Trinidad and Tobago in a profession, trade, self-operating business or agricultural enterprise and who has sufficient means of support to maintain himself and his immediate family in Trinidad and Tobago; and

(ii) has been continuously resident in Trinidad and Tobago for five years or such shorter period (not being less than twelve months) as the Minister may in the special circumstances of any particular case accept;

(b) a person who is the parent or grandparent of either a citizen or resident of Trinidad and Tobago, residing in Trinidad and Tobago, if such citizen or resident is willing and able to provide care and maintenance for that person;

(c) the spouse of a citizen or resident of Trinidad and Tobago; and

(d) a person who has ceased to be a citizen of Trinidad and Tobago by reason of his voluntary acquisition of citizenship of another country.

(2) In determining the suitability of an applicant for the grant of resident status under this section, the Minister shall be satisfied, inter alia, that the applicant—

(a) had entered the country legally;

(b) is not in a prohibited class; and

(c) is of good character as evidenced by a police certificate of good character.

7. (1) Subject to subsection (6), resident status is lost by a person—

(a) who voluntarily resides outside Trinidad and Tobago for a continuous period of one year, unless he obtains from the Minister a certificate in the prescribed form exempting him from the provisions of this paragraph; or

(b) who was entitled under the former Constitution to be registered as a citizen of Trinidad and Tobago, if he has resided outside Trinidad and Tobago for a continuous period of two years immediately preceding the commencement of this Act, unless within a period of six months from that date he obtains from the Minister a certificate in the prescribed form exempting him from the provisions of this paragraph.

(2) Where the Minister is satisfied that a person has been—

(a) engaged in activities detrimental to the security of Trinidad and Tobago; or

(b) an habitual criminal,

that person shall be deemed to have lost the status of resident at the commencement of his engagement in such activities or at the time of his becoming an habitual criminal.

(3) For the purposes of subsection (2)(b) an habitual criminal is a person who—

(a) is not less than thirty years of age;

(b) has been convicted of an indictable offence punishable with imprisonment for two years or more and has been convicted on at least three previous occasions since the age of seventeen years of offences similarly punishable; and

(c) was on at least two of these occasions sentenced to imprisonment, or has at least on one occasion been sentenced to be detained at the Youth Training Centre or any other similar Institution.

(4) The Minister, where he has reasonable grounds for suspecting that a resident—

(a) has given false or misleading information in his application for residence; or

(b) is a person referred to in section 8(1)(e), (f), (k), (l), (m), (o) or (q),

may issue a written declaration under his hand stating that the resident has lost his resident status from the date specified in the declaration, and the Minister may make a deportation order against that person.

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(5) Any period during which a permitted entrant is in Trinidad and Tobago that is less than the period required for the acquisition of resident status under section 6(1)(a)(iii) that might otherwise be counted by a person towards the acquisition of such status in accordance with Regulations made under this Act is lost upon the making of a deportation order against him, unless an appeal against such order is allowed.

(6) In no case shall residence out of Trinidad and Tobago for the purpose of serving in the public service or diplomatic or other service of Trinidad and Tobago, cause loss of resident status.

PROHIBITED CLASSES

8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely—

(a) persons who are idiots, imbeciles, feeble-minded persons, persons suffering from dementia and insane persons, and who are likely to be a charge on public funds;

(b) persons afflicted with any infectious or dangerous infectious disease;

(c) persons who are dumb, blind or otherwise physically defective, or physically handicapped, which might endanger their ability to earn a livelihood, or render them likely to become charges on public funds;

(d) persons who have been convicted of or admit having committed any crime, which if committed in Trinidad and Tobago would be punishable with imprisonment for one or more years;

(e) prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes;

(f) persons who are reasonably suspected of attempting to bring into Trinidad and Tobago or of procuring prostitutes or other persons for the
purpose of prostitution or homosexual or other immoral purposes;

(g) habitual beggars or vagrants;

(h) persons who are likely to become charges on public funds;

(i) persons who are chronic alcoholics;

(j) persons who are addicted to the use of any drug;

(k) persons who are engaged or at any time have been engaged or are suspected on reasonable grounds of being likely to engage in any unlawful giving, using, inducing other persons to use, distributing, selling, offering or exposing for sale, buying, trading or trafficking in any drug;

(l) persons who are or have been at any time before or after the commencement of this Act advocates of the overthrow by force or violence of the established Government of Trinidad and Tobago or any other country, or of all forms of law, or who advocate the abolition of organised Government, or who advocate the assassination of public officials or who advocate or teach the unlawful destruction of property or who are or have been members of or affiliated to any organisation which entertains and preaches any of the doctrines and practices specified in this paragraph;

(m) persons concerning whom there are reasonable grounds for believing they are likely to engage in espionage, sabotage or any other subversive activity of any kind directed against Trinidad and Tobago or detrimental to the security of Trinidad and Tobago;

(n) persons, not included in any other prohibited class, who are certified by a medical officer as being mentally or physically abnormal to such a degree as to impair seriously their ability to earn a living;

(o) persons who have been reasonably suspected of engaging in treasonable activities against
Trinidad and Tobago or of assisting enemies in time of war;

(p) persons who cannot or do not fulfil or comply with any of the conditions or requirements of this Act or the Regulations or any orders lawfully made or given under this Act or the Regulations;

(q) any person who from information or advice which in the opinion of the Minister is reliable information or advice is likely to be an undesirable inhabitant of, or visitor to Trinidad and Tobago.

(2) The Minister may authorise in writing under his hand or under the hand of a person designated by him, entry into Trinidad and Tobago of persons passing through Trinidad and Tobago under guard to another country.

(3) In this section—

"drug" means any substance included in the Schedule to the Narcotics Control Ordinance, or anything that contains any substance included in that Schedule, and includes any hallucinogenic drug or any drug producing hallucinations if misused;

"infectious diseases" and "dangerous infectious diseases" have the meanings respectively assigned to them by section 2 of the Public Health Ordinance.

PERMITTED ENTRANTS

9. (1) An immigration officer may allow to enter Trinidad and Tobago on such conditions and for such periods as may be fit and proper in any particular case, the following persons or classes of persons, as the case may be:

(a) persons who are diplomatic or consular officers or representatives or officials duly accredited, of any country, or of the United Nations or any of its agencies or of any inter-governmental organisation in which Trinidad and Tobago participates, coming to Trinidad and Tobago to carry out their official duties or passing through in transit, or members of the suites or families of such persons;

Ch. 12. No. 4.  (1950 Ed.).

27 of 1961.


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(b) members of any naval, army or air forces who come to Trinidad and Tobago for training or otherwise in connection with the defence and security interests of Trinidad and Tobago, or under the provisions of any treaty or agreement between Trinidad and Tobago and another country and whose entry into Trinidad and Tobago is approved by the Minister, together with such members of their families or suites as may be approved;

(c) tourists or visitors;

(d) persons passing through Trinidad and Tobago to another country;

(e) clergymen, priests or members of a religious order entering Trinidad and Tobago or who, having entered, are in Trinidad and Tobago in connection with the carrying out of their religious duties in accordance with regulations made in that behalf;

(f) students entering Trinidad and Tobago for the purpose of attending, and who having entered Trinidad and Tobago are in actual attendance at, a university or college authorised by statute or charter to confer degrees;

(g) persons who have been accepted as students by an educational or training establishment recognised by the Permanent Secretary to the Minister, or the Chief Immigration Officer, and who, after entering Trinidad and Tobago are in actual attendance at such educational or training establishment;

(h) members of crews entering Trinidad and Tobago or who, having entered are in Trinidad and Tobago for shore leave or some other legitimate and temporary purpose; and

(i) persons entering Trinidad and Tobago for the purpose of engaging in a legitimate profession, trade or occupation.

(1A) Notwithstanding subsection (1), and subject to such requirements as may be prescribed by Regulations made by the
Minister under section 44, an immigration officer shall allow to enter Trinidad and Tobago—

(a) a national of a Member State who is seeking to exercise in Trinidad and Tobago any of the rights or privileges conferred on him by the Immigration (Caribbean Community Skilled Nationals) Act;  

(b) the spouse and immediate dependent members of the family of the national to whom paragraph (a) applies for the duration of the permission given the national under the Immigration (Caribbean Community Skilled Nationals) Act.  

(1B) Notwithstanding subsection (1), and subject to such requirements as may be prescribed by Regulations made by the Minister under section 44, an immigration officer shall allow to enter Trinidad and Tobago—

(a) a national of a Member State who is seeking to exercise in Trinidad and Tobago the right of establishment or the right to provide a service conferred on him by the Caribbean Community (Movement of Factors) Act;  

(b) subject to the provisions of the Caribbean Community (Movement of Factors) Act, the spouse and immediate dependent family members of the above-mentioned national establishing an economic enterprise; or  

(c) subject to the Caribbean Community (Movement of Factors) Act, the managerial, technical and supervisory staff of an economic enterprise of the national.  

(2) Subject to this Act, an immigration officer shall issue to a person who has been allowed to enter Trinidad and Tobago under subsection (1) [other than a person mentioned in paragraph (a) or (b) thereof], a certificate which shall be expressed to be in force for a specified period and subject to such terms and conditions as may be mentioned therein.  

(3) Every person who has a certificate under subsection (2) to enter Trinidad and Tobago and who wishes to remain for a longer period than that previously granted or to have the conditions attaching to his entry varied, shall, notwithstanding that he is already in Trinidad and Tobago, submit to an examination under the
provisions of this Act, and the immigration officer may extend or limit the period of his stay, vary the conditions attaching to his entry, or otherwise deal with him as if he were a person seeking entry into Trinidad and Tobago for the first time.

(4) Where a permitted entrant is in the opinion of the Minister a person described in section 8(1)(k), (l), (m) or (n), or a person who—

(a) practises, assists in the practice of or shares in the avails of prostitution or homosexuality;
(b) has been convicted of an offence and sentenced to a term of imprisonment for one or more years;
(c) has become an inmate of any prison or reformatory;
(d) was a member of a prohibited class at the time of his admission to Trinidad and Tobago;
(e) has, since his admission to Trinidad and Tobago, become a person who would, if he were applying for admission to Trinidad and Tobago, be refused admission by reason of his being a member of a prohibited class other than the prohibited classes described in section 8(1)(a), (b), (c) and (p);
(f) was admitted or deemed to have been admitted to Trinidad and Tobago under subsection (1) and remains therein after the expiration of the certificate issued to him under subsection (2) or under section 50(2);
(g) has escaped from lawful custody or detention under this Act;
(h) came into Trinidad and Tobago or remains therein with a false or improperly issued passport, visa or other document pertaining to his admission or by reason of any false or misleading information, force, stealth or fraudulent or improper means, whether exercised by himself or by any other person;
(i) returns to or remains in Trinidad and Tobago contrary to the provisions of this Act after a deportation order has been made against him or otherwise;
(j) came into Trinidad and Tobago as a member of a crew and, without the approval of an immigration officer or beyond the period approved by such officer, remains in Trinidad and Tobago after the departure of the vessel on which he came into Trinidad and Tobago;

(k) has, since he came into Trinidad and Tobago broken any of the terms and conditions of the certificate issued to him under subsection (2),

the Minister may at any time declare that such person has ceased to be a permitted entrant and such person shall thereupon cease to be a permitted entrant.

(5) The Minister may make a deportation order against any person referred to in subsection (4) or section 50(5), subject [as regards a person referred to in section 50(5)] to the provisions of section 31(3), and such person shall have no right of appeal and shall be deported as soon as possible.

ENTRY UNDER PERMIT

10. (1) The Minister may issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.

(2) A permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force such permit stays the execution of any deportation order that may have been made against the person concerned.

(3) Subject to subsection (4) and without prejudice to the generality of his powers under this section, the Minister may issue a permit to the following persons to enter Trinidad and Tobago or being in Trinidad and Tobago to remain therein, that is to say:

(a) persons such as are described in section 8(1) (a) or (b) if satisfied that such persons are—
   (i) unlikely to become charges on public funds; or
   (ii) members of a family in Trinidad and Tobago and the family of such persons
have given satisfactory security against their becoming charges on public funds, and that, except in the case of persons described in section 8(1)(a) in respect of whom as is mentioned in paragraph (ii) satisfactory security is given, the Minister responsible for Health has agreed to their treatment and care at any health resort, hospital, sanatorium, asylum or other place or institution in Trinidad and Tobago;

(b) persons such as are described in section 8(1)(i) if satisfied that such persons have ceased to be members of or associated with such organisations, groups or bodies and that the entry of such persons would not be detrimental to the security of Trinidad and Tobago.

(4) The Minister may attach to the entry or remaining in Trinidad and Tobago of such persons such terms and conditions as he may think fit, and if any person to whom a permit has been granted under subsection (3), contravenes any such term or condition, the Minister may cancel such permit.

(5) The Minister may, at any time in writing, extend, vary or cancel a permit.

(6) The Minister may, upon the cancellation or expiration of a permit, make a deportation order respecting the person concerned and such person shall have no right of appeal from the deportation order and shall be deported as soon as practicable.

11. Nothing in this Part shall be construed as conferring any right to be or to remain in Trinidad and Tobago on any person who—

(a) either before or after the commencement of this Act has come into Trinidad and Tobago otherwise than in accordance with the former Ordinance or this Act, as the case may be; or

(b) is at the commencement of this Act a prohibited immigrant within the meaning of the former Ordinance,

and the Minister may make a deportation order against such
person and such person shall have no right of appeal therefrom and shall be deported as soon as possible.

PART II
ADMINISTRATION
IMMIGRATION OFFICERS

12. (1) For the purposes of this Act an immigration officer is a person appointed as such in manner authorised by law.

(2) Every immigration officer has the authority and powers of a constable to enforce any provision of this Act, the Regulations or any Order lawfully made under this Act or the Regulations relating to the arrest, detention or deportation of any person.

(3) For the purposes of subsection (2), every immigration officer may, in cases of emergency, employ such temporary assistants as he considers necessary to enable him to carry out his duties under this Act and the Regulations and such temporary assistants shall, during their employment, have the authority and powers referred to in subsection (2), but no such employment shall continue for a period exceeding forty-eight hours unless approved by the Minister.

(4) Every immigration officer has authority to administer oaths and take evidence under oath or by affirmation in any matter arising under this Act.

(5) An immigration officer shall not disclose directly or indirectly, to any person except—

(a) the Minister or a person authorised by him to be privy to the information; or

(b) a member of the Immigration Department, any information obtained by virtue of any provision of this Act.

(6) For the purpose of exercising his powers and carrying out his duties under this Act, an immigration officer may—

(a) without a search warrant, enter upon and search any vessel in Trinidad and Tobago;
(b) question, within the scope of his functions under this Act, any person who desires to enter or leave Trinidad and Tobago or who he believes is in Trinidad and Tobago otherwise than in accordance with the provisions of this Act.

13. (1) Immigration officers in charge of a port of entry are Special Inquiry Officers and the Minister may nominate such other immigration officers as he considers necessary to act as Special Inquiry Officers.

(2) A Special Inquiry Officer has authority to inquire into and determine whether any person shall be admitted into Trinidad and Tobago or allowed to remain in Trinidad and Tobago or shall be deported and for the purpose of the exercise of such authority has all the powers and may do any of the things mentioned in the Schedule.

(3) Any person aggrieved by the decision of a Special Inquiry Officer may within twenty-four hours appeal to the Minister on the prescribed form and subject to sections 30 and 31 the decision of the Minister shall be final and conclusive and shall not be questioned in any Court of law.

14. (1) The Minister may issue a warrant for the arrest of any person in respect of whom an examination or inquiry is to be held or a deportation order has been made under this Act, and may order the release of any such person.

(2) The Minister, the Chief Immigration Officer or a Special Inquiry Officer, may make an Order for the detention of or direct the detention of any such person.

(3) Where the person concerned is an inmate of a reformatory or prison, the Minister may, instead of issuing a warrant or order under subsection (1) or (2), issue an Order to the Commissioner of Prisons or other person in charge thereof commanding him, at the expiration of the sentence or term of imprisonment awarded to such person or at the expiration of his sentence or term of imprisonment as reduced by the operation of law, to detain such person and deliver him to an immigration officer to take into custody and cause him to be detained as the warrant may direct.
(4) A warrant or Order made or a direction given under this section is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may, under this Act, receive and execute it, to arrest and take into custody or cause the detention of the person concerned, as the case may be.

15. Every police officer and every immigration officer may, without the issue of a warrant, order or direction for arrest or detention, arrest and detain for an inquiry or for deportation, any person who upon reasonable grounds is suspected of being a person referred to in section 9(4) or section 22(1)(j), and the Chief Immigration Officer may order the release of any such person.

16. Any person in respect of whom an inquiry is to be held, or an examination under section 18 has been deferred under section 20, or a deportation or rejection order has been made may be detained pending inquiry, examination, appeal or deportation at an immigration station or other place satisfactory to the Minister.

17. (1) Subject to any order or direction to the contrary by the Minister, a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions, respecting the time and place at which he will report for examination, inquiry, deportation or rejection on payment of a security deposit or other conditions, as may be satisfactory, to the Chief Immigration Officer.

(2) Where a person fails to comply with any of the conditions under which he is released from custody or detention he may without warrant be retaken into custody forthwith and any security deposit made as a condition of his release shall be forfeited and shall form part of the general revenue.

EXAMINATION OF PERSONS SEEKING ADMISSION OR ENTRY

18. (1) Every person seeking admission shall first appear before an immigration officer at a port of entry or at such other place as may be designated by an immigration officer in charge of the port of entry for examination as to whether he is or is not admissible.

(2) Every person shall answer truthfully all questions put to him by an immigration officer at an examination and his
failure to do so shall be forthwith reported by the immigration officer to a Special Inquiry Officer and shall be sufficient ground for deportation where so ordered by the Special Inquiry Officer.

(3) Unless the examining immigration officer is of the opinion that it would or may be contrary to a provision of this Act or the Regulations to admit a person examined by him, he shall, after such examination, immediately grant admission to such person.

19. Where so required by the Regulations, a person seeking admission to Trinidad and Tobago or a person referred to in section 8 shall undergo a mental or physical examination or both by a medical officer.

20. (1) Where, in the opinion of the examining immigration officer, a person appearing before him for examination cannot be properly examined by reason of the effects of alcohol, drugs or illness, the immigration officer may cause an examination of such person to be deferred until such time as he may be properly examined or may make an order for his rejection.

(2) A rejection order in the prescribed form or copy thereof shall be served upon the person against whom it is made and upon the owner or master of the vessel by which such person was brought to Trinidad and Tobago.

(3) A rejection order shall cease to be in force or to have effect when the person against whom it was made again appears before an immigration officer and can, in the opinion of such officer, be properly examined by him.

INQUIRIES

21. (1) Where an immigration officer, after examination of a person seeking to enter into Trinidad and Tobago, is of opinion that it would or may be contrary to a provision of this Act or the Regulations to grant admission to such person into Trinidad and Tobago, he may either—

(a) make an order for the rejection of such person; or

(b) cause such person to be detained pending the submission of a report to a Special Inquiry Officer.
(2) A person in respect of whom an order for rejection has been made under subsection (1)(a) who is aggrieved by the making of such order may forthwith give notice of appeal to the immigration officer.

(3) Where a notice of appeal has been given under subsection (2), the immigration officer shall forthwith make arrangements for the appeal to be heard and determined by a Special Inquiry Officer.

(4) Where a notice of appeal has been given under subsection (2), the immigration officer may either—

(a) cause such person to be detained pending the hearing and the determination of such appeal; or

(b) release such person on such terms and conditions as he thinks fit having regard to all the circumstances of the case.

(5) The provisions of section 20(2) and (3) shall apply for the purposes of an order for rejection made against a person under subsection (1)(a).

22. (1) Where he has knowledge thereof, any public officer shall send a written report to the Minister in respect of paragraphs (a) to (c) and to the Chief Immigration Officer in respect of paragraphs (d) to (i), with full particulars concerning—

(a) any person, other than a citizen of Trinidad and Tobago, who engages in, advocates or is a member of, or associated with any organisation, group or body of any kind that engages in or advocates subversion by force or other means of democratic Government, institutions or processes;

(b) any person, other than a citizen of Trinidad and Tobago, who, if in Trinidad and Tobago has, by a Court of competent jurisdiction, been convicted of any offence involving disaffection or disloyalty to the State;

(c) any person, other than a citizen of Trinidad and Tobago, who, if out of Trinidad and Tobago, engages in espionage, sabotage or any activity detrimental to the security of Trinidad and Tobago;
(d) any person, other than a citizen of Trinidad and Tobago, who is convicted of an offence for the violation of section 5 of the Dangerous Drugs Act;

(e) any person who being a resident is alleged to have lost that status by reason of section 7(2)(b) or (4);

(f) any person, who, being a permitted entrant, has been declared by the Minister to have ceased to be such a permitted entrant under section 9(4);

(g) any person other than a citizen or resident of Trinidad and Tobago who has become a charge on public funds;

(h) any person, other than a citizen of Trinidad and Tobago, who counsels, aids, or abets others to remain in the country illegally;

(i) any person other than a citizen of Trinidad and Tobago who either before or after the commencement of this Act came into Trinidad and Tobago at any place other than a port of entry or has eluded examination or inquiry under this Act.

(2) Every person who is found upon an inquiry duly held by a Special Inquiry Officer to be a person described in subsection (1) is subject to deportation.

23. (1) Where a Special Inquiry Officer receives a report under section 18 he may admit such person into Trinidad and Tobago or may cause such person to be detained for immediate inquiry under this Act.

(2) Subject to any Order or direction by the Minister, the Chief Immigration Officer shall, upon receiving a written report under section 22 and where he considers that an inquiry is warranted, cause an inquiry to be held concerning the person respecting whom the report was made.

(3) Where a Special Inquiry Officer receives a report under section 21 with respect to a person seeking admission into Trinidad and Tobago who has been detained he shall hold an inquiry concerning such person.
24. (1) An inquiry by a Special Inquiry Officer shall be separate and apart from the public and in the presence of the person concerned wherever practicable, but the person concerned shall, on request, be entitled to a public hearing.

(2) The person concerned shall be entitled to conduct his case in person or by an Attorney-at-law, or may be assisted in conducting his case at the hearing by any other person with leave of the Special Inquiry Officer (which leave shall not be unreasonably withheld).

(3) The Special Inquiry Officer may, at the hearing, receive and base his decision upon evidence considered credible or trustworthy by him in the circumstances of each case.

(4) Where an inquiry relates to a person seeking admission to Trinidad and Tobago, the burden of proving that he is not prohibited from admission to Trinidad and Tobago rests upon him.

(5) If the respondent in a deportation matter admits the factual allegations in the order to show cause and notice of hearing and is willing to leave Trinidad and Tobago voluntarily and at no expense to the Government of Trinidad and Tobago, he may make verbal application for voluntary departure before the Special Inquiry Officer and if the Special Inquiry Officer is satisfied that the case is genuine he may, instead of making a deportation order against such person issue the prescribed form for his voluntary departure.

25. (1) At the conclusion of the hearing of an inquiry, the Special Inquiry Officer shall give his decision in writing as soon as possible and shall give it in the presence of the person concerned wherever practicable.

(2) Where the Special Inquiry Officer decides that the person concerned is a person to whom section 4 relates, he shall, upon giving his decision, admit or let such person come into Trinidad and Tobago or remain therein, as the case may be.

(3) Where the Special Inquiry Officer decides that the person concerned is a person who—

(a) in the case of a permitted entrant, is not a member of a prohibited class;
(b) in the case of a person other than a citizen of Trinidad and Tobago, or a resident who is in Trinidad and Tobago, is not proven to be a person described in section 8(1)(d), (e), (f), (j), (k), (l), (m) or (o); or

(c) in the case of a resident who is in Trinidad and Tobago is not proven to have lost that status by reason of section 7(1),

he shall, upon giving his decision, subject, in the case of the admission of a person mentioned in paragraph (a), to the provisions of this Act and any directions to the contrary given him by the Minister, admit or let such person come into Trinidad and Tobago or remain therein, as the case may be.

(4) In the case of a person other than a person referred to in subsection (2), the Special Inquiry Officer shall, upon giving an adverse decision make an order for the deportation of such person.

26. An inquiry may be re-opened for the hearing and receiving of additional evidence or testimony by Order of the Minister or at the instance of the Special Inquiry Officer who presided at such inquiry, or by any other Special Inquiry Officer acting upon the directive of the Chief Immigration Officer; and the Special Inquiry Officer concerned may confirm, amend or reverse the decision previously given.

27. (1) No appeal may be taken from a deportation order in respect of any person who is ordered deported as a member of a prohibited class described in section 8(1)(a), (b) or (c) where the decision is based upon a certificate of the examining medical officer, or as a person described in section 8(1)(j) and (k).

(2) Except in the case of a deportation order against persons referred to in section 50(5), an appeal may be taken by the person concerned from a deportation order if the appellant within twenty-four hours serves a notice of appeal in the prescribed form upon an immigration officer or upon the person who served the deportation order.

(3) All appeals from deportation orders may be reviewed and decided upon by the Minister, and subject to
sections 30 and 31, the decision of the Minister shall be final and conclusive and shall not be questioned in any Court of law.

(4) The Minister may—
   (a) consider all matters pertaining to a case under appeal;
   (b) allow or dismiss any appeal; or
   (c) quash a decision of a Special Inquiry Officer that has the effect of bringing a person into a prohibited class and substitute the opinion of the Minister for such decision.

(5) The Minister may in any case where he thinks fit appoint an Advisory Committee consisting of such persons as he considers fit for the purpose of advising him as to the performance of his functions and the exercise of his powers under this section.

(6) The Minister may in any case where he considers it fit to do so, cancel any deportation order whether made by him or not.

PART III

DEPORTATION AND TRANSPORTATION

DEPORTATION

28. A deportation order or copy thereof shall be served upon the person against whom it is made and upon such other persons, and in such manner as may be prescribed.

29. (1) Unless otherwise provided in this Act, a deportation order shall be executed as soon as practicable.

   (2) A deportation order does not become invalid on the ground of any lapse of time between its making and execution, and remains valid after execution unless cancelled by the Minister.

   (3) An appeal against a deportation order shall stay the execution of the order pending the decision thereon.

   (4) A person who has committed an offence against this Act or the Regulations may, notwithstanding the fact that a deportation order has been made against him, be prosecuted and
required to undergo any punishment that may be imposed upon him in respect of such offence before he is deported.

(5) A deportation order that has been made against a person who was at the time of its issue an inmate of any prison or becomes an inmate of such an institution before the order can be executed, shall not be executed until such person has completed the sentence or term of imprisonment awarded or at the expiration of his sentence or term of imprisonment as reduced or remitted by lawful authority.

(6) (a) A person in respect of whom a deportation order is made shall leave Trinidad and Tobago in accordance with the terms of the order, and shall thereafter so long as the order is in force remain out of Trinidad and Tobago.

(b) Any person who contravenes the foregoing provisions of this subsection is guilty of an offence.

(c) Any person who returns to Trinidad and Tobago in contravention of a deportation order may again be deported under the original order.

(7) Subject to subsection (9), a person against whom a deportation order has been issued shall be deported to the place whence he came to Trinidad and Tobago or to the country of which he is a national or citizen or to the country of his birth or to such country as may be approved by the Minister under this Act.

(8) Any person who, having been removed or otherwise lawfully sent out of Trinidad and Tobago, enters or resides in Trinidad and Tobago without the permission in writing of the Minister is liable on summary conviction to a fine of one thousand five hundred dollars and to imprisonment for six months and, in addition to any penalty for such offence, is liable to be removed or again removed, as the case may be, from Trinidad and Tobago.

(9) Unless otherwise directed by the Minister or an immigration officer in charge, a person against whom a deportation order has been made may be requested or allowed to leave Trinidad and Tobago voluntarily, provided he complies with the conditions governing voluntary departure.

(10) Where any person is ordered to be removed from Trinidad and Tobago under the provisions of this Act, the Minister
or Chief Immigration Officer may order such person to be detained in custody for such period as may be necessary for the purpose of making arrangements for his removal, so, however, that any person detained under this subsection who appeals under the provisions of section 21 or section 27 against the order of removal may, in the discretion of the Minister or Chief Immigration Officer, be released pending the determination of his appeal, on such conditions as to furnishing security or otherwise as the Minister or Chief Immigration Officer considers fit.

(11) Subject to the determination of any appeal under section 27, a person who is ordered to be removed from Trinidad and Tobago may be placed aboard a suitable vessel by a police officer or immigration officer, and may be lawfully detained on board such vessel, so long as the vessel is within the territorial limits of Trinidad and Tobago.

(12) Any person who is detained in custody in pursuance of an Order made by the Minister or Chief Immigration Officer under subsection (10) may be so detained in any prison, police station or immigration depot, or in any other place appointed for the purpose by the Minister or Chief Immigration Officer.

30. Subject to section 31(3) no Court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or Order of the Minister, the Chief Immigration Officer, a Special Inquiry Officer or an immigration officer had, made or given under the authority of and in accordance with this Act relating to the detention or deportation of any person, upon any ground whatsoever, unless such person is a citizen of Trinidad and Tobago or is a resident.

31. (1) Subject to the provisions of subsection (2), an appeal shall lie to a Judge of the High Court and thence to the Court of Appeal against any rejection Order or deportation Order of the Minister, a Special Inquiry Officer, or an immigration officer, with respect to a person who claims to be a citizen or resident of Trinidad and Tobago or any declaration as to loss of resident status under section 7(4).
(2) Notwithstanding the provisions of subsection (1), there shall be no appeal by a person referred to in section 8(1)(l), (m), (o), or (q) against a declaration of the Minister under section 7(4).

(3) A person to whom section 50(5) applies may appeal to a Judge of the High Court, whose decision thereon shall be final, on the ground that there is a reasonable excuse for his failure to apply for permission to become a resident in accordance with section 50(1) or, where his application is refused because the Minister considers that such person was not ordinarily resident in Trinidad and Tobago for a period of five years from the commencement of this Act, he may appeal on the ground that he was so ordinarily resident.

(4) Rules of Court may be made by the Rules Committee under section 77 of the Supreme Court of Judicature Act for regulating and prescribing the procedure on appeal from the decision of the person making the rejection order or deportation order or any other matter in respect of which an appeal may lie under this section to a Judge of the High Court and therefrom to the Court of Appeal.

TRANSPORTATION

32. (1) Where a deportation order or rejection order is made against a person, the transportation company that brought him to Trinidad and Tobago shall, when he is deported, pay the costs of deportation or rejection from the port of entry from which he will leave Trinidad and Tobago and shall at its expense convey him or cause him to be conveyed to the place whence he came to Trinidad and Tobago or to the country of which he is a national or citizen or to the country of his birth as directed in the deportation order, rejection order or other order or direction made by the Minister, Chief Immigration Officer, a Special Inquiry Officer or an immigration officer or at the request of the transportation company and, subject to the approval of the Minister, to a country that is acceptable to such person and that is willing to receive him.

(2) Where a person against whom a deportation order has been made is being detained in any place in Trinidad and Tobago, other than the port of entry from which he will leave Trinidad and Tobago, the transportation company that brought him to such place shall, when he is deported, at its expense, convey him or cause him to be conveyed to that port of entry in

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accordance with the direction or order made in that behalf by the Minister, Chief Immigration Officer, a Special Inquiry Officer or an immigration officer.

(3) Notwithstanding anything in this section, where an inquiry is ordered more than five years after the date on which the person concerned was admitted to Trinidad and Tobago or where deportation is ordered due to causes that arose subsequent to admission, the deportation costs shall not be paid by the transportation company concerned.

(4) The Minister may direct that the costs of transportation from Trinidad and Tobago be paid out of moneys appropriated by Parliament in the case of a person—

(a) whose transportation costs are not, under this Act, payable by a transportation company;

(b) who should, in the opinion of the Minister, be assisted in leaving Trinidad and Tobago;

(c) who is, in the opinion of the Minister, unable to defray, without hardship, his own costs of transportation.

33. (1) The transportation company that brought to Trinidad and Tobago a person seeking admission thereto shall pay all costs of his detention.

(2) A transportation company is not required to pay the detention costs of any person who is detained after he has been admitted to Trinidad and Tobago, except in the case of a person described in section 9(4)(j).

34. Every transportation company which by this Act is directed to pay deportation or rejection costs or to carry any person who is ordered, deported or rejected shall at their expense—

(a) detain and guard safely the person concerned until he can be placed on board the vessel on which he is to be carried;

(b) accept on board such vessel, guard safely and transport such person in accordance with the
deportation or rejection order or other order or direction or any regulation issued or made in that behalf; and

(c) treat in a humane manner and feed such person.

35. Where pursuant to section 32, a transportation company is obligated to pay the costs of deportation of a person who is to be deported, it shall be notified thereof and given an opportunity of conveying him or causing him to be conveyed on one of its own vessels or otherwise, but, where the transportation company, after being notified, is not prompt in furnishing transportation or if it is expedient that the deportee leave the country immediately, the Minister may direct that such person be deported by other transportation at the expense of the Government and the obligated transportation company shall, on demand, reimburse the Government for the transportation expenses and any costs of the detention or safeguarding of the deported person incurred while en route or otherwise.

36. (1) A transportation company bringing persons to Trinidad and Tobago shall not, upon the arrival of its vessels in Trinidad and Tobago, allow—

(a) any person to leave the vessel at a place other than a designated port of entry;

(b) any person to leave the vessel until permission has been granted by an immigration officer in charge of the port of entry or by an immigration officer authorised by him.

(2) Any master of a vessel who knowingly suffers any person who arrives in such vessel to land therefrom contrary to the provisions of this Act shall be guilty of an offence.

(3) A person who knowingly and wilfully lands or suffers himself to be landed, or a person who knowingly lands or procures to be landed or who aids or assists in landing another person, contrary to the provisions of this Act is guilty of an offence.

37. (1) Immigration officers may inspect any vessel bringing or taking persons to or from Trinidad and Tobago, examine the persons and their baggage carried by it, examine any
records or documents relating to such persons and take copies of extracts therefrom and may hold and detain such vessel until such inspection and examination are completed.

(2) The master of any vessel leaving the country must report to an immigration officer at a place designated by him immediately prior to departure to enable the immigration officer to examine the crew and passengers.

(3) All passengers and crew seeking to leave Trinidad and Tobago may be required to report to an immigration officer at a place to be determined by him, and to complete an international E/D Card in such form as may be prescribed and submit their travel document and other papers for examination.

38. No vessel bringing persons to Trinidad and Tobago shall be granted clearance if the transportation company operating it or the owner or master thereof has, in the opinion of an immigration officer in charge, committed an offence under this Act, but clearance may be granted in the discretion of the immigration officer in charge, if a sum of money or other security is deposited with him at least equal to the maximum fine that may be imposed for such offence.

39. (1) Where a medical officer is of opinion that a person seeking admission to Trinidad and Tobago is or may be, either pending his admission or pending his deportation where admission has not been granted, suffering from sickness or mental or physical disability or has been in contact with a contagious or infectious disease, such person may, where it is so directed by the Minister, Chief Immigration Officer, an immigration officer in charge of a port of entry or a medical officer, be afforded medical treatment or held for observation or diagnosis, on board the vessel by which he was brought to Trinidad and Tobago or at an immigration station or may be removed to a suitable hospital or other place for treatment, observation or diagnosis as so directed and the cost of treatment, medical attention and maintenance shall be paid by the transportation company that brought such person to Trinidad and Tobago.

(2) The Minister, Chief Immigration Officer or an immigration officer in charge of a port of entry may, where he
considers it advisable for the proper care of such person, direct that a member of his family or other suitable attendant be kept with him during his period of medical attention and treatment, including, in the case of deportation, his journey to the port of entry from which he will leave Trinidad and Tobago, and to his port of destination if this is necessary and the costs thereof shall be paid by the transportation company that brought him to Trinidad and Tobago.

PART IV

OFFENCES AND PENALTIES

40. Any person who—

(a) comes into Trinidad and Tobago at any place other than a port of entry and fails to report to an immigration officer for examination;

(b) comes into, remains in or attempts to leave Trinidad and Tobago by means of—

(i) a passport that has been tampered with, or a false or improperly issued passport, visa, medical certificate or other document; or

(ii) any other false, misleading or fraudulent method, knowing it to be false, misleading, fraudulent or otherwise improper;

(c) escapes or attempts to escape from lawful custody or detention under this Act;

(d) eludes examination or inquiry under this Act or, having received a summons issued by a Special Inquiry Officer, fails without valid excuse to attend an inquiry or, where required by such summons, to produce any document, book or paper that he has in his possession or under his control relating to the subject matter of the inquiry;

(e) refuses to be sworn, or to affirm or declare, as the case may be, or to answer a question put to him or does not truthfully answer all questions put to him at an examination or inquiry under this Act;
(f) knowingly and wilfully makes any false or misleading statement—
   (i) in a declaration required to be made by an applicant for the issue of a passport or other travel document; or
   (ii) at an examination or inquiry under this Act or in connection with the admission or application for admission of any person to Trinidad and Tobago;

(g) makes a false promise of employment or any false representation by reason of which a person is induced to seek admission to Trinidad and Tobago or is assisted in any attempt to seek admission unlawfully to Trinidad and Tobago or by reason of which his admission is procured;

(h) makes any charge to or receives any fee, recompense or reward from any person to secure or assist in securing the admission to Trinidad and Tobago of any person;

(i) induces, aids or abets or attempts to induce, aid or abet any person to violate a provision of this Act or the Regulations or to commit any offence under this Act or the Regulations; or

(j) comes into, remains in or attempts to leave Trinidad and Tobago by means of a passport or has in his possession a passport that—
   (i) has been tampered with;
   (ii) is fraudulent; or
   (iii) has been fraudulently or improperly issued, whether or not it has been issued to him,

is liable on summary conviction for a first offence to a fine of fifty thousand dollars and to imprisonment for three years, and on any subsequent conviction to a fine of one hundred thousand dollars and to imprisonment for five years.
41. (1) Every person who—

(a) being an immigration officer or any other employee of the Immigration Department makes or issues any false document, certificate, declaration, statement or return touching upon any matter connected with his office or duty or accepts, agrees to accept or induces or assists another person to accept any bribe or other remuneration or benefit with respect to any matter connected with his office or duty or otherwise forsakes his duty;

(b) being an immigration officer or any other employee of the Immigration Department, violates a provision of this Act or the Regulations or commits any offence under this Act or the Regulations or induces, aids or abets or attempts to induce, aid or abet any other person to do so;

(c) gives, offers or promises to give any bribe, recompense or consideration of any kind to or makes any agreement or arrangement with an immigration officer to induce him in any way to forsake his duty or to conceal or connive at any act or thing by which this Act or the Regulations may be violated or an offence committed thereunder;

(d) personates or holds himself out to be an immigration officer or takes or uses any name, title, uniform or description or otherwise acts in any manner that may lead any person wrongly to infer that he is an immigration officer; or

(e) obstructs or impedes an immigration officer in the performance of his duties under this Act or the Regulations,

is liable—

(i) on summary conviction for a first offence to a fine of one thousand dollars and to imprisonment for twelve months, and on
any subsequent summary conviction to a fine of two thousand dollars and to imprisonment for eighteen months; and

(ii) on conviction on indictment for a first offence, to a fine of two thousand dollars and to imprisonment for eighteen months, and on any subsequent conviction on indictment to a fine of four thousand dollars and to imprisonment for two years.

(2) No proceedings by way of indictment for an offence under this section shall be commenced without the fiat of the Director of Public Prosecutions.

42. (1) Any person who contravenes any of the provisions of this Act or the Regulations is guilty of an offence and, where the provisions by or under which the offence is created provides no penalty, is liable on summary conviction for a first offence to a fine of one thousand dollars and to imprisonment for twelve months and on any subsequent summary conviction to a fine of two thousand dollars and to imprisonment for eighteen months.

(2) Notwithstanding the provisions of subsection (1), where a person is charged with committing a breach of the Regulations, the Chief Immigration Officer may impose a fine not exceeding the amount stipulated in subsection (1) for the breach but, in respect of the master or representative of a vessel, the power to impose such fine is exercisable only at the election of such master or representative.

(3) Notwithstanding anything contained in the Regulations, the Chief Immigration Officer may, subject to the approval of the Minister, which approval may be signified by general directions to the Chief Immigration Officer, mitigate or remit any penalty at any time prior to the commencement of proceedings in any Court against any person for an offence under this Act or the Regulations.

(4) The power of the Chief Immigration Officer under subsection (3) to mitigate or remit any penalty shall not be exercised
unless the person charged with committing a breach of the Act or the Regulations, admits the breach in writing in the prescribed form.

43. Proceeding in respect of an offence under this Act or the Regulations that is punishable on summary conviction may be instituted at any time within three years after the offence was committed but not thereafter.

PART V

MISCELLANEOUS

44. (1) The Minister may make Regulations for carrying into effect the purposes and provisions of this Act and, in particular, may make Regulations respecting—

(a) the conditions applicable to the grant of permission to acquire the status of a resident and the manner of making application therefor;

(b) the registration of persons who acquire resident status by virtue of section 5 and the registration and recording on travel documents of the status of a person who is a resident by virtue of section 5(1)(b), (d), (e) or (f);

(c) the registration and recording of persons who are not citizens or residents of Trinidad and Tobago;

(d) the forms of warrants, permits, certificates or other documents prescribed by this Act or the Regulations or issued or used for the purposes of this Act;

(e) medical and other examinations or tests and the prohibiting or limiting of admission of persons who are unable to pass them;

(f) the terms, conditions and requirements with respect to the possession of means of support or of passports, visas or other documents pertaining to admission;

(g) the prohibiting or limiting of admission of persons who are nationals or citizens of a country that
refuses to re-admit any of its nationals or citizens who are ordered deported;

(h) the prohibiting or limiting of admission of persons by reason of unsuitability having regard to the economic, social, industrial, educational, labour, health or other conditions or requirements existing, temporarily or otherwise, in Trinidad and Tobago;

(i) the procedure to be followed upon examination, inquiries and appeals to the Minister under this Act and the duties and obligations of immigration officers and the methods and procedure for carrying out such duties and obligations, whether in Trinidad and Tobago or elsewhere;

(j) prescribing such forms and notices as he considers necessary for the carrying out of this Act;

(k) designating ports of entry and facilities for detention for the purposes of this Act;

(l) the provision, equipping and maintenance of building accommodation or other facilities for the proper detention and examination of persons brought to Trinidad and Tobago, or to be deported from Trinidad and Tobago, on the vessels of transportation companies and also respecting the requirement that such transportation companies pay the costs incurred in detaining persons at detention stations provided by Government;

(m) manifests, bills of health or other records or documents concerning the persons carried by vessels to or from Trinidad and Tobago;

(n) the obligations and duties of transportation companies and members of a crew to safeguard persons on board vessels, to report escape from custody of persons in their custody and to take such other precautions or steps as may be required to prevent such persons from unlawfully coming to Trinidad and Tobago or, in the case of
persons in their custody who are ordered deported or rejected, from failing to leave Trinidad and Tobago;

(o) the obligations and duties of transportation companies to ensure that persons who are carried by them and who are seeking admission into Trinidad and Tobago are—
   (i) outside the prohibited classes; and
   (ii) in possession of the proper medical and travel documents;

(p) arrangements for the procurement of suitable uniforms and insignia to be worn by immigration officers;

(q) the reporting, detention, custody and return of stowaways or other persons who have secreted themselves in or upon a vessel coming to Trinidad and Tobago;

(r) lists or other information concerning the members of a crew, their discharge, transfer or desertion and the obligations and duties of transportation companies respecting the physical and mental fitness of members of a crew and the custody and return of deserters or any other members of a crew who are discharged from or leave the vessel and come into or remain in Trinidad and Tobago contrary to this Act;

(s) the boarding of vessels carrying persons seeking admission into Trinidad and Tobago after such vessels have entered the territorial limits of Trinidad and Tobago and before such persons have left the vessels, and also respecting the granting of clearance to such vessels before departure;

(t) such fees as are required by the Regulations to be paid;

(u) prescribing such matters as are by this Act required to be prescribed.
(2) Regulations made under subsection (1) shall be subject to negative resolution of Parliament.

SECURITY AND LIENS

45. (1) The Minister may at any time require any transportation company that transports or carries, directly or indirectly, persons seeking admission into Trinidad and Tobago to deposit with the Chief Immigration Officer such sum of money or other security as the Minister considers necessary as a guarantee that such transportation company will comply with this Act.

(2) Where a transportation company fails to comply with a provision of this Act or the Regulations, the Minister may order that the whole or any part of the security money deposited by it be forfeited and thereupon such money or part shall be forfeited or may order that proceedings be taken to enforce payment of the whole or part of such other security as may be deposited.

(3) Any security or part thereof deposited under this section may be returned or cancelled, as the case may be, upon order made by the Minister declaring that such security or part is no longer required.

46. (1) Where a member of the crew of a vessel deserts his vessel while in Trinidad and Tobago, or is, for any reason, to be left in Trinidad and Tobago after the departure of his vessel, the immigration officer in charge of the port of entry at which the vessel may be, may require the transportation company operating it or the owner or master thereof to deposit with him such sum of money as he considers necessary as security for the return of such member to the vessel or his deportation or other departure from Trinidad and Tobago.

(2) Where, within three years after the date of the deposit, such member of the crew returns to his vessel, voluntarily leaves Trinidad and Tobago or is deported, the money deposited shall be returned, less any expenses for detention, maintenance, treatment or transportation or otherwise incurred by the Government in respect of him.
(3) Where a member of the crew does not return to his vessel or does not voluntarily leave Trinidad and Tobago or is not deported within three years after the date of the deposit, the Minister may order that the money deposited be forfeited and thereupon it shall be forfeited or may order that it be returned subject to any further security he may prescribe against the expenses that may be incurred by the Government, should such member of the crew be later found in Trinidad and Tobago.

(4) If conclusive proof is established that the deserter has left the country clandestinely, the deposit made on his behalf may be refunded to the transportation company.

47. (1) The immigration officer in charge at a port of entry may require any permitted entrant or group or organisation of permitted entrants arriving at such port to deposit with him such sum of money as he considers necessary as a guarantee or, if he thinks fit, to enter into a bond in the prescribed form that such permitted entrant or group or organisation of permitted entrants will leave Trinidad and Tobago within the time permitted by him as a condition for entry.

(2) Where the permitted entrant or group or organisation of permitted entrants fails to leave Trinidad and Tobago within the time prescribed, the immigration officer in charge may order that the sum of money so deposited be forfeited and thereupon it shall be forfeited and where the person or persons concerned leave Trinidad and Tobago within the prescribed time, the money deposited shall be returned, less any expenses for detention, maintenance, treatment or transportation or otherwise incurred by the Government in respect of such person or persons or any of them.

48. The Minister may authorise his Permanent Secretary or the Chief Immigration Officer to perform and exercise any of the functions that may be required to be performed or exercised by the Minister under this Act, and any such function performed or exercised by the Permanent Secretary or the Chief Immigration Officer under the authority of the Minister, shall be deemed to have been performed or exercised by the Minister.
49. (1) If upon any proceeding under this Act a question arises whether any person is an immigration officer, his own evidence thereof shall be prima facie evidence thereof and every such officer shall be deemed a competent witness upon the trial of any matter arising under this Act.

(2) The contents of all registers, permits, certificates and other documents shall be admissible in evidence in all Courts upon matters coming before the Courts under this Act, and the production of the register or a copy of the relevant portion thereof certified by an officer designated by the Minister for that purpose shall be prima facie proof of the facts recorded therein.

TRANSITORY PROVISION

50. (1) Notwithstanding anything in Part I to the contrary, a person who, upon the commencement of this Act was ordinarily resident in Trinidad and Tobago for a period of five years is entitled to apply to the Minister for permission to become a resident, and the Minister may, if he thinks fit, grant such permission. An application under this subsection shall be made within one year of the commencement of this Act and no later, unless the Minister prescribes some further period, not exceeding three years, within which such application might be made.

(2) Every person other than a person referred to in subsection (1) who has a permit under the former Ordinance to enter Trinidad and Tobago and who wishes to remain for a longer period than that previously granted or to have conditions attaching to his entry varied, shall, within the period of six months or less as is provided in subsection (3), report in person to an immigration officer and shall, notwithstanding that he is already in Trinidad and Tobago, submit to an examination under the provisions of this Act and the Regulations, and an immigration officer may issue him a certificate in accordance with section 9(2), as if he had entered Trinidad and Tobago under section 9(1).

(3) A person who immediately before the commencement of this Act has resided in Trinidad and Tobago for a period of less than five years shall, if he does not already hold a permit that is in

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force by virtue of having been granted under the former Ordinance specifying some lesser period than six months, be deemed to hold a certificate under section 9(2) authorising him to remain in Trinidad and Tobago for a period of six months from the commencement of this Act but no longer, and the provisions of subsection (2) shall apply to such person.

(4) Subsection (3) shall not apply to a person who—
   (a) has unlawfully entered Trinidad and Tobago;
   (b) is at the date of the commencement of this Act a prohibited immigrant within the meaning of the former Ordinance.

(5) Subject to section 31(3) where an application—
   (a) is not made within the period of one year referred to in subsection (1) or such further period as is prescribed thereunder; or
   (b) is refused,

a person shall be deemed to be a permitted entrant for the purposes of this Act, save that such person is liable to be deported, if he fails to obtain from an immigration officer a certificate in accordance with section 9(2), as if he had entered Trinidad and Tobago under section 9(1).

(6) A person who fails to comply with subsections (2) and (3) shall for all the purposes of this Act be deemed not to be a permitted entrant and shall, subject to section 27(2) and to any provisions of this Act with respect to prosecution for offences against this Act, be deported.

(7) Where the Minister refuses an application made by a person under subsection (1), on the ground that he does not consider that such person was ordinarily resident in Trinidad and Tobago for the period required by the said subsection (1), but in no other case, he shall so certify upon giving notice of such refusal.

51. (1) Every deportation order, permit, warrant, order, direction in writing or other document that was issued, made or granted under the laws respecting immigration before the
commencement of this Act and that was valid immediately prior to such commencement, shall be given effect as if issued, made or granted under this Act.

(2) Unless the Minister directs that they be continued and completed under the provisions of the law respecting immigration that were in force before the commencement of this Act, all examinations, investigations, inquiries, appeals and other matters relating to landing, entry or deportation of any person that were commenced pursuant to such laws and are not completed at the date of the commencement of this Act shall be completed pursuant to the provisions of this Act so far as such provisions may be adapted.

(3) The Chief Immigration Officer and every immigration officer appointed in accordance with the immigration laws in force immediately prior to the commencement of this Act, continue to hold the posts to which they were appointed under such laws and are hereby vested with all the powers, functions and responsibilities that are vested in immigration officers by this Act.

52. Where, prior to the commencement of this Act the Minister, the Chief Immigration Officer or a person acting on their behalf purported to grant resident status otherwise than in accordance with the provisions of the former Ordinance, such purported grant shall, save where it would have been unlawful had this Act then been in force, be deemed to have been lawfully and validly made, and no legal proceedings or other action of any kind shall be entertained in respect of or in consequence of such purported grant.
SCHEDULE

POWERS OF SPECIAL INQUIRY OFFICERS

1. Special Inquiry Officers have the power of summoning before them any witnesses, examining such witnesses and requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in any Court of law orally or in writing, and requiring them to produce such documents and things as such officers consider requisite to the full investigation of the matters into which they are appointed to examine, and to punish persons guilty of contempt.

2. Special Inquiry Officers have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in a Magistrate or Justice by the Summary Courts Act.

3. A Special Inquiry Officer may, for the purposes of an inquiry—

   (a) issue a summons set out as Form No. 45 in the First Schedule to the Immigration Regulations to any person requiring him to appear at the time and place mentioned therein, to testify to all matters within his knowledge relating to the subject matter of the inquiry, and to bring with him and produce any document, book or paper that he has in his possession or under his control relating to the subject matter of the inquiry;

   (b) administer oaths and examine any person upon oath, affirmation or otherwise;

   (c) issue commissions or requests to persons to take evidence in Trinidad and Tobago and such persons when so authorised by the Minister, have the same powers as Special Inquiry Officers to take evidence, issue summons, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct the inquiry;

   (d) engage the services of such Attorneys-at-law, interpreters, technicians, or other experts, clerks, stenographers or other persons as he considers necessary for a full and proper inquiry; and

   (e) do all other things necessary to provide a full and proper inquiry.
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ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
2. Interpretation.

EXAMINATION OF ENTRANTS AND ENTRY RECORDS

3. Examination of persons at a port of entry.
4. Entry records.

AUTHORITY TO GO ON BOARD VESSELS

5. Authority to go on board vessels.

MEDICAL AND OTHER EXAMINATION OR TESTS AND THE PROHIBITING OR LIMITING OF ADMISSION OF PERSONS WHO ARE UNABLE TO PASS THEM

6. Examination by medical officer at port of entry.
8. Examination and report.

THE TERMS, CONDITIONS AND REQUIREMENTS WITH RESPECT TO THE POSSESSION OF MEANS OF SUPPORT OR OF PASSPORTS, VISAS OR OTHER DOCUMENTS PERTAINING TO ADMISSION

10. Work permit.

Exemption.
ARRANGEMENT OF REGULATIONS—Continued

REGULATION

11. Travelling Salesmen—licences.
12. Liability of employer for employee.
13. Passports and other travel documents, visas.
13A. International machine readable passports.

DESIGNATION OF PORTS OF ENTRY AND FACILITIES FOR DETENTION FOR THE PURPOSES OF THIS ACT

15. Ports of entry.
16. Arrangements for detainees.

CONDITIONS APPLICABLE TO THE GRANT OF PERMISSION TO ACQUIRE RESIDENT STATUS AND THE MANNER OF MAKING APPLICATION THEREFOR

17. Form of application for status of resident.
18. Refusal of application. Time within which to re-apply.


19. Register of residents.
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INQUIRIES BY SPECIAL INQUIRY OFFICERS AND
APPEALS TO THE MINISTER UNDER THE ACT AND
THE DUTIES AND OBLIGATIONS OF IMMIGRATION
OFFICERS AND THE METHODS AND PROCEDURE FOR
CARRYING OUT SUCH DUTIES AND OBLIGATIONS

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OR DOCUMENTS CONCERNING PERSONS CARRIED
BY VESSELS TO OR FROM TRINIDAD AND TOBAGO

32. Contents of manifest, Bills of Health, etc.

33. Clearance certificate and manifest.

34. Notice of intention of ship to call.
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   immigration officer.

35. Responsibility of transportation company.
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REGULATION

THE REPORTING, DETENTION, CUSTODY AND
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42. Form of notice of appeal to Minister.
43. Form of warrant of arrest.
44. Order for detention and release.
45. Order of the Minister to Commissioner of Prisons, etc.
46. Form of permit to be issued by the Minister under section 10(1) of
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51. Fees for visiting and clearing of ships by immigration officers.
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56. Registration requirements. General.
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FIRST SCHEDULE.
SECOND SCHEDULE.
THIRD SCHEDULE.
FOURTH SCHEDULE.
FIFTH SCHEDULE.
SIXTH SCHEDULE.
SEVENTH SCHEDULE.
EIGHTH SCHEDULE.
IMMIGRATION REGULATIONS

made under section 44

1. These Regulations may be cited as the Immigration Regulations.

2. In these Regulations—
   “Form” means Form in the First Schedule;
   “immigration officer in charge” means the senior immigration officer assigned for duty by the Chief Immigration Officer at a port of entry;
   “passport” means a valid and unexpired formal document or certificate lawfully issued by a State identifying the holder as a citizen or a national thereof;
   “Permanent Secretary” means the Permanent Secretary to the Minister;
   “port of entry” means any of the places designated as ports of entry by regulation 15;
   “work permit” means a permit referred to in regulation 10(1).

EXAMINATION OF ENTRANTS AND ENTRY RECORDS

3. (1) The examination of persons in accordance with section 18 of the Act shall be conducted by an immigration officer on the vessel by which such persons arrived, or at such other place convenient for the purpose as the immigration officer may direct.

(2) Every person referred to in subregulation (1) before being permitted to enter or remain in Trinidad and Tobago, shall, if so required to do by an immigration officer, complete a declaration in the form set out as Form 1, and the immigration officer may require every such person to declare thereto before himself, and shall satisfy himself where he has any doubt, that the signatory thereto is sufficiently educated to understand such declaration; or, if such person is unable to fill in such form, shall question him, through an interpreter if necessary,
and shall himself fill in or cause to be filled in the form of
declaration, and shall thereupon require such person to sign or, in
the case of a person who for any reason is unable to sign to make
his mark on such declaration, which shall be witnessed by an
independent person.

(3) The immigration officer may determine the sequence in
which he will examine persons wishing to enter Trinidad and Tobago.
All such persons shall comply generally with any directions given by
the immigration officer for the observance of such sequence.

(4) The requirement, under subregulation (2), to complete a declaration shall not apply to a citizen or resident of
Trinidad and Tobago.

4. (1) The admission of every person into Trinidad and
Tobago, other than a citizen or resident of Trinidad and Tobago,
shall be recorded by the immigration officer who has conducted the
examination on a card completed in accordance with regulation 3(2)
and, unless such record has been made, a person may be treated as
not having been admitted in accordance with these Regulations.

(2) The passport held by a person admitted to Trinidad
and Tobago shall be stamped to show that he has been admitted,
and in the case of a permitted entrant other than a person referred
to in section 9(1)(a) or (b) of the Act, the period of time allotted
to such entrant to remain in Trinidad and Tobago.

(2A) The passport held by a citizen or resident of Trinidad
and Tobago admitted to Trinidad and Tobago shall be stamped to
show that he has been admitted and the passport so stamped is
deemed to be the record of entry of the citizen or resident.

(3) The Minister may exempt any person or any class of
persons from any or all of the requirements of this Regulation and
may prescribe such further or other requirements or documents in
their stead as he may consider appropriate.

**AUTHORITY TO GO ON BOARD VESSELS**

5. (1) No agent or person acting on behalf of the
transportation company or other person except authorised by law
shall go on board any vessel after such vessel has arrived in Trinidad

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and Tobago or go on board any ship in the territorial waters of Trinidad and Tobago, unless all passengers and crew thereon have been examined or have left such vessel, whichever is the earlier, or shall go into the controlled area of any immigration station unless he is authorised in writing or orally to do so by the Chief Immigration Officer or by the immigration officer in charge.

(2) The Minister may exempt any persons or any class of persons from any or all the requirements of this regulation.

MEDICAL AND OTHER EXAMINATION OR TESTS AND THE PROHIBITING OR LIMITING OF ADMISSION OF PERSONS WHO ARE UNABLE TO PASS THEM

6. (1) The medical officer shall, when necessary and required, be present at the examination of persons entering or seeking to enter or found in Trinidad and Tobago, and shall indicate to the immigration officer in charge, any person who ought, in the opinion of the medical officer, to be medically examined.

(2) The immigration officer in charge may require such medical officer to make a medical examination of any such person, and of any other person entering or found in Trinidad and Tobago, and such person shall submit to a medical examination.

7. Where it appears to an immigration officer that a person seeking to enter Trinidad and Tobago, falls within one of the categories described in section 8(1)(a), (b), (c) or (f) of the Act, he shall cause such person to be examined by the medical officer.

8. The medical examination of any person entering or seeking to enter or found in Trinidad and Tobago, shall take place at such place as may be convenient and as soon as possible after the arrival of such person or after the person is found, and a report as to the result of such examination shall be rendered to the immigration officer in charge, and shall accompany that officer’s record of proceedings furnished to the Chief Immigration Officer, if any such person is found to be within any of the categories specified in regulation 7.
THE TERMS, CONDITIONS AND REQUIREMENTS WITH RESPECT TO THE POSSESSION OF MEANS OF SUPPORT OR OF PASSPORTS, VISAS OR OTHER DOCUMENTS PERTAINING TO ADMISSION

9. (1) An immigration officer may, on granting admission to Trinidad and Tobago of a person, who falls within one of the categories described in section 9(1)(c) to (i) of the Act, require that such person furnish security either in the form of a deposit made with the Comptroller of Accounts or by execution of a bond in the form set out as Form 2 with one or more sureties, in the discretion of the Chief Immigration Officer, and the amount thereof shall be a sum sufficient to cover the cost of the repatriation and other incidental expenses of such person.

(2) Where the security required by subregulation (1) is furnished by way of a deposit, the amount of such deposit shall be refunded—

(a) when the conditions on which the certificate was granted are duly observed, and where, before the expiration or cancellation by the Chief Immigration Officer of the certificate, the person to whom the certificate relates satisfies the Immigration Officer that adequate arrangements have been made for his departure from Trinidad and Tobago; or

(b) where the Minister so directs.

(3) A person who seeks to enter Trinidad and Tobago for a temporary purpose shall, if required by an immigration officer, produce evidence to his satisfaction—

(a) of being in permanent employment elsewhere and of his intention to return to such employment;

(b) of possession of a return ticket by sea or air, or the possession of a sum of money sufficient to enable him to maintain himself and his dependants, if any, during the period of his visit and to provide for his return fare or of its immediate availability;
(c) that he is returnable to his country of origin or
to some other country, at the expiration of his visit to Trinidad and Tobago.

(4) (a) Application may be made by or on behalf of a
person seeking to enter Trinidad and Tobago as a permitted
entrant under section 9 of the Act, to the Chief Immigration
Officer, for a Certificate of Facilitation of Entry and every such
application shall be in the form set out as Form 51.

(b) A Certificate of Facilitation of Entry shall be in
the form set out as Form 52.

(5) Where a person seeking to enter Trinidad and
Tobago falls within one of the categories described in
section 9(1)(f), (g), (h) or (i) of the Act, the immigration officer
may accept as sufficient evidence for the purpose of entry the
fact that such person, not being a person suffering from
infirmity of mind or body or ill-health, is in possession of
means of support, save that in the case of a person falling
within the category described in section 9(1)(i), and subject to
the provisions of regulation 10(1)(c), a valid work permit must
be produced.

(6) (a) Where a person seeking to enter Trinidad and
Tobago falls within the category described in section 9(1)(g) of
the Act, the immigration officer shall not allow such person to
enter Trinidad and Tobago for the purpose of entering any
educational or training establishment in Trinidad and Tobago
unless that person is in possession of a valid student’s permit in
the form set out as Form 43. The holder of a student’s permit shall
comply with the terms and conditions specified in such permit.

(b) A person seeking to enter and remain in
Trinidad and Tobago for the purpose of receiving education or
training at an educational or training establishment by which he
has been accepted as a student, may make application for a
student’s permit in duplicate to the Chief Immigration Officer in
the form set out as Form 34.
(c) The Chief Immigration Officer may, upon being satisfied as to the *bona fides* of the educational or training establishment, issue a student’s permit if—

(i) the person seeking to enter and remain in Trinidad and Tobago has been accepted as a student by such establishment;

(ii) there is adequate accommodation for the student at such establishment;

(iii) no local student has been displaced; and

(iv) the person seeking to enter and remain in Trinidad and Tobago does not belong to a prohibited class.

(d) The Chief Immigration Officer may cancel a student’s permit if the person to whom such permit is issued fails within a reasonable time to enter the educational or training establishment designated in any such permit issued by the Chief Immigration Officer, or having entered such educational or training establishment fails to remain or ceases to be retained as a student therein or fails to comply with any condition endorsed on the permit.

(e) No person shall admit to any educational or training establishment in Trinidad and Tobago any person who is not a citizen of Trinidad and Tobago or a resident, unless that person is in possession of a valid student’s permit issued by the Chief Immigration Officer. A person who admits any such student into an educational or training establishment without there being in force a valid student’s permit in relation to that admittance in contravention of the provisions of this regulation is guilty of an offence.

(f) A person to whom a student’s permit is issued shall keep it in his possession or in the possession of his parent or guardian, and the person in possession of the permit shall produce it to an immigration officer or a public officer on demand or at such place as the immigration officer or the public officer may designate.
(g) A person having in his possession a student’s permit appearing to have been issued under this regulation shall answer all questions put to him by an immigration officer, or a public officer for the purposes of the Act.

(h) Any person is guilty of an offence who—

(i) without reasonable excuse fails or refuses to produce a student’s permit as required by this regulation; or

(ii) refuses to answer any questions put to him.

(7) (a) Subject to this regulation, where a person seeking to enter Trinidad and Tobago falls within a category described in section 9(1)(e) of the Act, the immigration officer shall not allow such person to enter Trinidad and Tobago for the purpose of carrying out his religious duties unless he is in possession of a valid Overseas Missionaries’ permit in the form set out as Form 50. The holder of an Overseas Missionaries’ permit shall comply with the terms and conditions specified in such permit.

(b) Application for a person seeking to enter and remain in Trinidad and Tobago for the purpose of preaching or teaching in a religious institution or establishment shall be made in triplicate to the Minister for an Overseas Missionaries’ permit in the form set out as Form 37 by a religious institution or establishment.

(c) The Minister may issue an Overseas Missionaries’ permit if he is satisfied that—

(i) the person seeking to enter and remain in Trinidad and Tobago has been accepted as a religious worker by a religious institution or establishment recognised as such by the Government of Trinidad and Tobago;

(ii) the person seeking to enter Trinidad and Tobago for the purpose of speaking at any religious gathering proves to the
satisfaction of the Minister that there is in
existence a specific written invitation
from a religious institution or
establishment recognised as such by the
Government of Trinidad and Tobago or
other recognised body or authority.

(d) The Minister may cancel an Overseas
Missionaries’ permit if the person to whom such permit is
issued fails within a reasonable time to commence his work in
the religious institution or establishment designated in any
such permit or having entered such religious institution or
establishment fails to remain or ceases to be retained as a worker
or fails to comply with any condition or conditions endorsed in
the permit.

(e) A person to whom an Overseas Missionaries’
permit is issued shall keep it in his possession, and the person in
possession of the permit shall produce it to any immigration
officer or public officer on demand or at such place as such
immigration officer or public officer may designate.

(f) A person having in his possession an Overseas
Missionaries’ permit appearing to have been issued under this
regulation shall answer all questions put to him by an
immigration officer, or a public officer.

(g) The fees set out in the Eighth Schedule shall be
payable to the Comptroller of Accounts in respect of an Overseas
Missionaries’ permit granted to any person applying under
paragraph 7(b).

(h) This regulation shall not apply to persons
entering Trinidad and Tobago for the purpose of carrying out
religious duties for a period not exceeding thirty days.

(i) A person is guilty of an offence who—

(i) without reasonable excuse fails or refuses
to produce an Overseas Missionaries’
permit as required by this regulation; or

(ii) refuses to answer any questions put to him.
10. (1) Subject to subregulation (14) and to regulation 11, no person other than—

(a) a citizen of Trinidad and Tobago;

(b) a resident of Trinidad and Tobago; or

(c) a person entering Trinidad and Tobago to engage in gainful occupation for one period not exceeding thirty days in every twelve consecutive months,

shall engage in any profession, trade or occupation whether for gain or not in Trinidad and Tobago or be employed in Trinidad and Tobago unless there is in force in relation to him a valid work permit in the form set out as Form 36 and every person so engaged or so employed shall be employed in accordance with the terms and conditions specified in the permit.

(2) No person other than those described in paragraphs (a), (b) and (c) of subregulation (1) shall be employed by any person in Trinidad and Tobago, unless there is in force a valid work permit in relation to that employment, and any person who engages in any occupation or employment in Trinidad and Tobago in contravention of the provisions of these Regulations, or any person who has in his employment in Trinidad and Tobago any person other than those described in paragraphs (a), (b) and (c) of subregulation (1) without a valid work permit issued by the Minister, is guilty of an offence.

(3) Where an employer desires to employ a person who falls outside of paragraphs (a), (b) and (c) of subregulation (1), he shall apply in twelve copies to the Permanent Secretary in the form set out as Form 3.

(3A) An employer who desires to employ a group of persons comprising ten or more persons may submit a group application in the form set out in Form 3A of the First Schedule.

(3B) An application for a work permit under this regulation may be submitted electronically through the internet.

(4) On receipt of the application referred to in subregulation (3) the Minister may if he considers it fit, direct that a work permit be issued to the applicant in respect of the person on whose behalf he had made the application.
(5) Where the Minister directs that a work permit be issued under subregulation (4), a copy thereof shall be transmitted to the Chief Immigration Officer for the purpose of his records.

(6) Where an employer has been granted a work permit he may be required to furnish security to the Chief Immigration Officer in an amount to cover all the expenses of the repatriation of the employee, and any dependants he may bring with him.

(7) Every work permit shall be kept by the person in respect of whom it is issued, and such person shall produce the work permit to an immigration officer or a public officer on demand or within three days of such demand at such place as the immigration officer or public officer may direct.

(8) A person having in his possession a work permit appearing to have been issued under these Regulations shall answer any questions put to him by an immigration officer or a public officer relating to the possession of such permit.

(9) A person is guilty of an offence who—
   (a) without reasonable excuse fails or refuses to produce a work permit as required in subregulation (7); or
   (b) fails without reasonable excuse to answer any questions put to him in connection with the possession thereof.

(10) The Minister may, in any case where he is satisfied that the terms and conditions of a work permit have not been complied with or that the person in respect of whom such work permit has been issued has become a person described in section 81(1)(g) of the Act, vary or cancel such work permit; and on any such variation or cancellation, the Permanent Secretary shall transmit to the holder of such work permit a notice in the form set out as Form 39.

(11) Where an employment is terminated, or upon the expiration of the work permit, an employer shall immediately inform the Permanent Secretary of the termination of the employment.

(12) The employer shall—
   (a) not less than seven days before the arrival or expected arrival in Trinidad and Tobago of any
person in respect of whom a work permit applies, notify the Chief Immigration Officer in writing of the expected arrival of such person;

(b) not less than fourteen days before the date of expiration of the work permit or on termination of the contract of employment, of any person, whichever is the earlier, notify the Chief Immigration Officer of the arrangements made for the repatriation of such person;

(c) where an employee fails to leave Trinidad and Tobago in accordance with the arrangements made for his repatriation, notify the Chief Immigration Officer of the fact within seven days of such failure to leave Trinidad and Tobago.

(13) For the purposes of this regulation and of regulation 11, in the case of a self-employed person or a person whose employer is not carrying on business in Trinidad and Tobago, the application for a work permit may be made on his behalf by an Attorney-at-law practising in Trinidad and Tobago.

*(14) The Minister may by Order exempt from the provisions of this regulation, with or without conditions, persons engaging in any category of profession, trade or occupation.

(15) A national of a Member State seeking to exercise any of his rights conferred by the Immigration (Caribbean Community Skilled Nationals) Act, shall be exempt from the provisions of this regulation.

(16) A national of a Member State seeking to exercise any of his rights conferred by the Caribbean Community (Movement of Factors) Act, shall be exempt from the provisions of this regulation.

11. (1) Without prejudice to any other provision of these Regulations, the provisions of this regulation shall have effect in relation to the engagement by travelling salesmen in legitimate trade or occupation.

*See LN 142/1986.
(2) A travelling salesman shall not enter Trinidad and Tobago unless he is in possession of a work permit issued under regulation 10, and a licence in the form set out as Form 48.

(3) The fees set out in the Fifth Schedule shall be payable to the Comptroller of Accounts in respect of a licence granted to any travelling salesman allowed to enter Trinidad and Tobago to engage in legitimate trade or occupation under section 9(1)(i) of the Act.

(4) A person who—
   (a) buys from, or agrees or attempts to buy from a travelling salesman any goods or services in respect of which the travelling salesman takes or receives or solicits orders in Trinidad and Tobago;
   (b) places or agrees or attempts to place any order with a travelling salesman in respect of any such goods and services as mentioned above,
without proof of the existence of a valid licence under this regulation, is guilty of an offence, save that it shall be a defence to any proceedings against any person in respect of an offence against this regulation to prove that the default occurred without his connivance and was not facilitated by any neglect on his part.

(5) In this regulation "travelling salesman" means a person other than a citizen of Trinidad and Tobago or a resident, entering the country for the purpose of taking or receiving or soliciting orders for goods or services for any business undertaking not carrying on business in Trinidad and Tobago.

*(6) The Minister may by Order, conditionally or otherwise, exempt any travelling salesman from the provisions of this regulation.

12. (1) Where any person who is not a citizen of Trinidad and Tobago or a resident, enters Trinidad and Tobago and at the time of his entry is under a work permit to serve an employer (such person being in this regulation referred to as the

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*See LN 184/1987.
“employee” and the person or company whom he has contracted to serve under the work permit being in this regulation referred to as the “employer”), then—

(a) where during the currency of a work permit or on the normal expiry of any such work permit or its earlier determination by the employer, the employee becomes liable to be treated as a member of the prohibited class under section 8(1)(b) of the Act the employer shall be liable to pay to the Government all expenses incurred by the Government in connection with the maintenance and transport of the employee and his dependants from Trinidad and Tobago (in this regulation referred to as the expenses of the deportation of the employee);

(b) where the employee determines the contract and thereafter becomes liable to be treated as a member of the prohibited class, the following provisions shall have effect:

(i) subject to the provisions of subparagraph (ii) the employer shall, during the period from the time of such determination to the time when such contract is normally due to expire or [subject to the provisions of paragraph (c)] during a period of two months from the date on which he gives notice in writing to the Chief Immigration Officer of the determination of the contract by the employee, whichever period first expires, be liable to pay to the Government the expenses of the deportation of the employee, and his dependants, if any;

(ii) the liability of the employer shall cease and determine if the employee gives new security either—

(A) by a bond of a subsequent employer, to the satisfaction of the Chief Immigration Officer, but only if this is
done with the consent of the employer, conditioned for the payment of the expenses of the deportation of the employee in any case in which the employer would, but for the determination of the contract have been liable under this regulation; or

(B) by complying to the satisfaction of the Chief Immigration Officer, with the requirements of any provision of the regulations made under the Act relating to security to be furnished by persons entering Trinidad and Tobago;

(c) if, during the said period of two months from the date on which the employer gives notice in writing to the Chief Immigration Officer of the determination of the contract by the employee or where such determination takes place less than two months before the contract is due to expire, during the remaining period of the contract, the employee has not given new security in the manner provided by paragraph (b), then at any time during the last seven days of the said period the Chief Immigration Officer may declare the employee to be a member of the prohibited class and the employee shall forthwith be deported from Trinidad and Tobago; and, if notice that the employee has been so declared a member of the prohibited class has been given by the Chief Immigration Officer to the employer within the period during which the employer is liable under paragraph (a), the employer shall pay to the Government all the expenses of the deportation of the employee;

(d) where a subsequent employer has entered into a bond as provided in paragraph (b), he shall be deemed to have assumed all the rights and liabilities of the employer under this regulation, and any reference in this regulation to the employer shall be deemed to apply to such subsequent employer.
(2) The expenses of the deportation of the employee shall be recoverable as a civil debt at the suit of the Chief Immigration Officer.

(3) For the purposes of this regulation and regulation 11 “company” means a body corporate and an unincorporated association including a partnership and a firm.

(4) In respect of persons falling into the category described in regulation 10(1)(c), the provisions of this regulation shall apply.

13. (1) Subject to subregulation (2), every person seeking to enter Trinidad and Tobago shall be in possession of a passport issued by the country of which such person is a subject or citizen.

(2) A person under the age of sixteen years who is included in the passport of some other person may be exempted from the requirements of subregulation (1).

(3) A person who is on a temporary visit shall be in possession of a passport or other travel document, the validity of which extends at least to the duration of his stay in Trinidad and Tobago.

(4) A document other than a passport may be accepted in lieu of a passport if it establishes to the satisfaction of the immigration officer, the identity and nationality of the bearer, and that he can return to the country which he has left to seek to enter Trinidad and Tobago, or that he can gain admission to some other country.

(5) Subject to subregulation (8), the passport or other travel document of every person who seeks to enter Trinidad and Tobago shall carry where required, the visa of a diplomatic or consular officer of Trinidad and Tobago or, where Trinidad and Tobago is not so represented, of a diplomatic or consular officer of the country that acts on behalf of Trinidad and Tobago in the country of issue.

(5A) Notwithstanding regulation 13(5), where a person holds a valid work permit issued under regulation 10 and seeks entry into Trinidad and Tobago that person may be issued with a visa by an immigration officer.

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(6) The visa shall show the reasons for which the holder of the passport or other travel document seeks to enter.

(7) The certificate constituting the visa shall make reference to a number that has been recorded in a register kept for the purpose of recording the grant or issue of visas.

(8) Subregulation (5) shall not apply to—

(a) citizens of Commonwealth countries;

(b) nationals of countries with which Trinidad and Tobago has concluded Visa Abolition Agreements;

(c) passengers in transit by sea or air in the course of a continuous and unbroken journey who are listed to depart by the same ship or aircraft in which they arrived;

(d) persons who are in transit by sea or air and are in possession of valid entry visas to countries of destination and transit visas as required by countries en route to such destination and who hold confirmed bookings to leave Trinidad and Tobago within seven days of their arrival therein.

(9) Notwithstanding the provisions of subregulations (5) and (8), but subject to subregulation (11), the Chief Immigration Officer or the immigration officer in charge at the port of entry may—

(a) on the application, in the form set out as Form 31 of a person described in subregulation 8(d) issue an in-transit pass in the form set out as Form 38 permitting such person to remain in Trinidad and Tobago for a period not exceeding fourteen days;

(b) where the Chief Immigration Officer is satisfied that the holder of an in-transit pass issued under these Regulations has failed to comply with the provisions of the Act and these Regulations or any conditions imposed in respect of the issue of such pass, he may forthwith cancel such pass and the cancellation shall be without prejudice to the taking of any proceedings against any person for an offence against the Act or these Regulations;
(c) give notice of cancellation of an in-transit pass to the holder of such pass in the form set out as Form 47 and it shall be sufficient if such notice is sent by registered post to the last known address of the holder;

Form 42.

(d) on the application in the form set out as Form 42 of a person whose passport does not carry a visa required by these Regulations, if he is satisfied that there is good cause and reason for the failure of such person to present the required visa owing to unforeseen circumstances, grant such person a visa waiver and may attach to the grant of such waiver such terms and conditions as he may consider necessary in the particular case.

(10) Subject to section 9(3) of the Act, a person who has been admitted to Trinidad and Tobago pursuant to the grant of a visa waiver under subregulation (9)(d) shall not remain therein for any period longer than that stipulated in the entry certificate issued to him by the immigration officer and shall comply with any other conditions imposed by the immigration officer.

(11) Nothing contained in subregulation (8) or (9) shall apply or be deemed to apply to the nationals or citizens of the countries set out in the Second Schedule and every such national or citizen shall, notwithstanding anything in these Regulations expressed or implied to the contrary, be in possession of a valid and subsisting visa required by subregulation (5).

(12) No person shall be permitted to enter Trinidad and Tobago for a period exceeding one year, who is not in possession of a medical certificate set out as Form 40 showing that such person has undergone a medical examination sufficient to establish that such person does not fall within one of the classes described in section 8(1)(a), (b), (c), (i) or (j) of the Act, and if at the port of entry the immigration officer should entertain any doubt as to the physical or mental condition of such person, he may refer him for further medical examination, by a medical officer.

(13) The Minister may exempt any person or class of persons from any or all the requirements of this regulation and may direct the substitution of such further or other requirements in determining the admission of any person to Trinidad and Tobago.
(14) The Minister may from time to time by Order amend the Second Schedule.

13A. (1) After 31st December 1993, Trinidad and Tobago passports issued by the Chief Immigration Officer shall be international machine readable passports.

(2) All Trinidad and Tobago passports issued before 1st January 1994 shall expire on 30th June 1995.

(3) Revoked by LN 89/1997.

14. The passing of any medical examination outside of Trinidad and Tobago, or the issue of a visa as provided for in these Regulations shall not be conclusive of the facts therein specified in determining the admissibility of any person to Trinidad and Tobago.

DESIGNATION OF PORTS OF ENTRY AND FACILITIES FOR DETENTION FOR THE PURPOSES OF THIS ACT

15. (1) The places named in the Sixth Schedule are designated ports of entry for the purposes of section 44(k) of the Act.

(2) The Minister may from time to time by Order amend the Sixth Schedule.

16. Subject to regulation 28, when any person is detained for any purpose under these Regulations, the Chief Immigration Officer shall on the direction of the Minister make arrangements for that person’s detention, and any expenses incurred as a result of such arrangements shall be defrayed by the transportation company that brought the person so detained to Trinidad and Tobago.

CONDITIONS APPLICABLE TO THE GRANT OF PERMISSION TO ACQUIRE RESIDENT STATUS AND THE MANNER OF MAKING APPLICATION THEREFOR

17. (1) A permitted entrant who falls within one of the classes set out in section 6 of the Act and who seeks permission to become a resident shall make application in triplicate in the form set out as Form 6.
(2) The application referred to in subregulation (1) shall be addressed to the Permanent Secretary.

18. Where an application for the status of resident has been refused the applicant may re-apply not earlier than one year from the date of the receipt of such refusal or at such other time as directed by the Minister.


19. (1) The Permanent Secretary shall cause to be kept, a register to be known as the Register of Residents with regard to—

(a) permitted entrants who have been granted permission to become residents under section 6(1)(a) of the Act;

(b) parents or grandparents who have been granted permission to become residents under section 6(1)(b) of the Act; and

(c) persons who have been granted permission to become residents by virtue of sections 6(1)(c) and (d) and 50(1) of the Act.

(2) In such register there shall be entered the following particulars:

(a) the full name, address and marital status of the residents;

(b) the date on which the application for the status of resident was granted and the provisions under which the application was granted.

(3) A person to whom the status of resident has been granted shall notify the Permanent Secretary of any change in his marital status and the Permanent Secretary shall cause the necessary alteration to be made in the register of residents.
20. The name of any resident who loses his status under the provisions of the Act shall be removed from the register of residents, and the Permanent Secretary shall cause to be entered opposite the entry relating to such person the reason for the loss of the status of resident; and such entry shall be prima facie evidence that such person has lost the status of resident.

21. A person who is entitled by virtue of section 50(1) of the Act to apply to the Minister for permission to become a resident shall, within the time specified in that section for so doing, present his application in person in the form set out as Form 6 to the Permanent Secretary, who shall, if he is satisfied that such person is so entitled, submit the application to the Minister.

22. A person who is entitled by virtue of section 6(1) of the Act to apply to the Minister for permission to become a resident shall make application to the Permanent Secretary, in the form set out as Form 6, and the Permanent Secretary shall, if he is satisfied that such person is so entitled, submit the application to the Minister.

23. The Permanent Secretary shall on the registration of any person as a resident under regulation 19 deliver to such person either personally or by registered post a certificate under his hand in the form set out as Form 7 and such certificate shall be sufficient proof that such person is a resident.

24. (1) There shall be recorded in a conspicuous place on any passport or other travel document issued to or held by all residents a statement to the effect that such person is a resident and the ground on which he has acquired such status.

(2) For the purposes of subregulation (1) where a person claims to be a resident by virtue of section 5(1)(a), (c), (e) or (f) of the Act the Chief Immigration Officer shall—

(a) satisfy himself as to the genuineness of the claim; and

(b) keep a register of such persons.
25. (1) An inquiry shall be conducted in the presence of the person concerned whenever practicable.

(2) At the commencement of an inquiry where the person concerned is present and is not represented by an Attorney-at-law, or by a relative or friend, the presiding officer shall—

(a) inform the person concerned of his right to retain, instruct and be represented by an Attorney-at-law or by a relative or friend at the inquiry at no expense to the Government of Trinidad and Tobago; and

(b) upon request of the person concerned adjourn the inquiry for such period as in the opinion of the presiding officer is required to permit the said person to retain and instruct an Attorney-at-law or to obtain the services of a relative or friend.

(3) Where a person being examined at an inquiry does not understand or speak the language in which such proceedings are being held, the presiding officer may in his discretion adjourn the hearing and wherever possible obtain an interpreter for the assistance of the said person.

(4) The interpreter referred to in subregulation (3) shall be an individual who is conversant with a language understood by the person being examined at the inquiry and shall be provided without charge to such person.

(5) Where an immigration officer has caused a person seeking admission into Trinidad and Tobago to be detained and has reported him to a Special Inquiry Officer pursuant to section 18 or 21 of the Act, the report so made shall be in the form set out as Form 8.
(6) For the purpose of satisfying the provisions of section 22(1)(g) of the Act with regard to Government institutions, every public officer in charge of any prison, reformatory, hospital or any other institution operated or maintained by public funds, shall forward to the Chief Immigration Officer, the name, date of birth, and other pertinent information in connection with any person who enters the institution at the expense of the Government of Trinidad and Tobago and is a charge on public funds.

(7) Where upon receipt of a report in respect of a person pursuant to section 22 of the Act, the Chief Immigration Officer causes an inquiry to be held concerning that person by a Special Inquiry Officer under section 22(2) of the Act, the direction causing the inquiry shall be in writing and shall set out the provisions of the Act or of these Regulations that have occasioned the Chief Immigration Officer to cause an inquiry to be held.

(8) When the Chief Immigration Officer or an immigration officer refers a case to a Special Inquiry Officer to determine whether a person contravenes the Act or these Regulations, the Special Inquiry Officer shall cause reasonable notice to be given to the person concerned in the form set out as Form 26.

(9) At the commencement of an inquiry where applicable—

(a) the written report referred to in subregulation (5) made in respect of the person; or

(b) the direction referred to in subregulation (7) causing the inquiry to be held,

shall be filed as an exhibit.

(10) At the commencement of an inquiry the presiding officer shall—

(a) read the report and the directions referred to in subregulation (9) where applicable; and

(b) inform the person concerned that the purpose of the inquiry is to determine whether he is a person who may be permitted to enter or remain in Trinidad and Tobago and that in the event a
decision is made at the inquiry that he is not such a person, an order shall be made for his deportation from Trinidad and Tobago.

(11) The presiding officer may from time to time adjourn the inquiry—
   
   (a) at the request of the person concerned or his Attorney-at-law, relative or friend;
   
   (b) for any other reason the presiding officer considers sufficient.

(12) A full written report shall be made of the evidence at the inquiry and shall be signed and certified by the presiding officer and the stenographer.

(13) The presiding officer who makes the deportation order in respect of a person shall forthwith upon making such order—
   
   (a) inform the person as to the provision of the Act or Regulations pursuant to which the Order was made; and
   
   (b) inform the person as to his rights of appeal under the Act, if any.

(14) In this regulation, “presiding officer” means the Special Inquiry Officer conducting the inquiry.

26. (1) A Special Inquiry Officer, having notified a person of his decision in accordance with section 25 of the Act, and having been informed by such person that it is his intention to appeal to the Minister, shall supply such person for completion by him in triplicate with a notice of appeal in the form set out as Form 9A.

(2) A notice of appeal provided for in section 21(2) of the Act shall be in the form set out as Form 9B.

(3) On the receipt of such completed notice of appeal the Special Inquiry Officer shall arrange for the reception of the appellant at the detention depot or at such other place as may be approved by the Minister for his accommodation, pending the determination of his appeal, or should the appellant so request and
on his giving security in the manner provided under these Regulations, the Chief Immigration Officer may issue an order of supervision in the form set out as Form 28 allowing him to remain in Trinidad and Tobago and release him from detention under the terms and conditions prescribed in the order pending the hearing of his appeal.

(4) The Special Inquiry Officer shall place before the Minister a statement of the grounds upon which he has found the appellant ineligible to enter or remain in Trinidad and Tobago and the Minister shall render his decision accordingly.

(5) The Minister may dispose of an appeal in the form set out as Form 32 by—

(a) allowing it;
(b) dismissing it; or
(c) quashing the decision of a Special Inquiry Officer that has the effect of bringing a person into a prohibited class, and substituting his opinion for it.

27. The Minister may order an inquiry re-opened before the Special Inquiry Officer who presided at the inquiry or before some other Special Inquiry Officer for the receiving of any additional evidence or testimony, and the Special Inquiry Officer who presides at the re-opened hearing shall file a copy of the minutes of the re-opened hearing, together with his assessment of such additional evidence or testimony, with the Minister for his consideration in disposing of the appeal.

28. (1) Where the Minister dismisses an appeal against a deportation order pursuant to any provision of the Act, he shall direct that the order be executed as soon as practicable, except that—

(a) in the case of a person who has lost the status of a resident before the making of the deportation order, having regard to all the circumstances of the case; or
(b) in the case of any other person who was not a resident at the time of the making of the order of deportation, having regard to—

(i) the existence of reasonable grounds for believing that if execution of the order is carried out the person concerned will be punished for activities of a political character or will suffer unusual hardship; or

(ii) the existence of compassionate or humanitarian considerations that in the opinion of the Minister warrant the granting of special relief,

the Minister may direct that the execution of the deportation order be stayed, or may quash the order and direct the entry of the person against whom the order was made.

(2) Where, pursuant to subregulation (1)(a) or (b) the Minister directs that execution of a deportation order be stayed, he shall allow the person concerned to come into or remain in Trinidad and Tobago under such terms and conditions as he may prescribe and shall review the case from time to time as he considers necessary or advisable.

(3) The Minister may at any time—

(a) amend the terms and conditions prescribed under subregulation (2) or impose new terms and conditions; or

(b) cancel his direction staying the execution of a deportation order and direct that the order be executed as soon as practicable.

(4) Where the execution of a deportation order has been stayed pursuant to subregulation (1) the Minister may at any time thereafter quash the order and direct the entry of the person against whom the order was made.
29. (1) A person who is being detained pending the hearing and disposition of an appeal under the Act may apply to the Chief Immigration Officer for his release and the Chief Immigration Officer may, notwithstanding anything in the Act, order his release.

(2) A person may be released under subregulation (1)—

(a) upon entering into a recognisance before the Chief Immigration Officer in the form set out as Form 33 and with sufficient sureties in such amount as the Chief Immigration Officer directs;

(b) upon depositing with the Comptroller of Accounts such sum of money as the Chief Immigration Officer directs; or

(c) upon entering into his own recognisance before the Chief Immigration Officer in such amount as the Chief Immigration Officer directs in the form set out as Form 28,

and the recognisance shall prescribe such conditions of release as the Chief Immigration Officer considers advisable, including the time and place at which the person released shall report to the Chief Immigration Officer.

(3) The Minister may at any time—

(a) cancel an order of release under subregulation (2) and direct that the person concerned be returned to custody;

(b) vary the amount of recognisance or deposit; or

(c) vary the conditions of any release ordered.

(4) Where a person released under subregulation (2) fails to comply with any of the conditions under which he was released, the Minister may make an Order, for the arrest and detention of such person and the Minister, in the form set out as Form 54 in the First Schedule, may order the forfeiture of the amount of the recognisance or deposit given or made by him.

(5) Where the Minister orders any forfeiture under subregulation (4) the principal and his sureties become debtors of
the State, each in the amount he has pledged himself to pay and the debt is, subject to subregulation (6), recoverable as a debt due to the State.

(6) Where a deposit has been made by a person against whom an order of forfeiture has been made under subregulation (4), the amount of the deposit shall be paid to the Comptroller of Accounts.

(7) The provisions of this regulation shall be read subject to Rules of Court relating to appeals under the Act.

NOTICE AND HEARING

30. (1) Where an appeal to the Minister lies against a deportation order under the Act the appeal shall be instituted by serving a notice of appeal upon the immigration officer, or upon the person who serves the deportation order under section 27(2) of the Act in the form set out as Form 9A.

(2) The notice of appeal referred to in subregulation (1) shall be served within twenty-four hours of service of the deportation order.

(3) The immigration officer or the person who serves the deportation order, upon being served with a notice of appeal from a deportation order pursuant to the Act or these Regulations, shall forthwith cause the notice of appeal together with the record of the proceedings resulting in the deportation order to be transmitted to the Minister.

(4) Every notice of appeal shall—

(a) contain an address to which all notices and papers in connection with the appeal may be sent to the appellant; and

(b) indicate whether the appellant wishes to make any representation.

(5) (a) The appellant may on appeal to the Minister submit written representations within seven days of the service of the notice of appeal.
(b) The Minister may require that any representations made be verified by affidavit.

(6) The Minister may—
   (a) allow amendments to be made to any written representations; and
   (b) do all other things necessary to provide for the proper disposition of an appeal.

31. (1) If the appeal is dismissed the appellant shall remain in or surrender to the custody of the immigration officer who shall forthwith take such steps as may be required either for his removal from Trinidad and Tobago or for such temporary or conditional residence within Trinidad and Tobago as may be permitted under the Act. Any deposit shall be applied in indemnifying public funds for all costs, charges and expenses incurred in regard to the appellant or his dependents.

(2) If the appeal is allowed the appellant shall be discharged from custody and shall be relieved from the conditions of any temporary permit issued to him and any moneys posted as security shall be refunded or other security cancelled.

MANIFESTS, BILLS OF HEALTH, OR OTHER RECORDS OR DOCUMENTS CONCERNING PERSONS CARRIED BY VESSELS TO OR FROM TRINIDAD AND TOBAGO

32. (1) The manifest referred to in this regulation shall consist of—
   (a) a list of all passengers;
   (b) cards containing such information with respect to each passenger as may be required in these Regulations; or
   (c) both the list and the cards whenever both are required to be set out in the manifest under these Regulations.

(2) The master of every ship arriving at any port of entry in Trinidad and Tobago from any foreign port shall forthwith after
the arrival of the ship and before examination of the persons deliver
to the immigration officer in charge the following documents:

(a) a General Declaration (Arrival Report) in
quadruPLICATE in the form set out as Form 10;

(b) a crew list in duplicate including supernumeraries
in the form set out as Form 11;

(c) a stowaways list in duplicate in the form set out
as Form 12;

(d) a passenger list in duplicate showing ports of
embarkation in the form set out as Form 13;

(e) an in-transit passenger list in duplicate showing
ports of embarkation and disembarkation in the
form set out as Form 13.

(3) The manifest referred to in subregulation (1) shall be
verified by the master who shall affix his signature thereto at the port
of entry and the certificate of the master shall affirm to the
correctness of the information given therein and the signature or
certificate of the medical officer of the ship (if any) sailing therewith
taken in like manner stating the professional qualifications and
attesting to the correctness, in so far as he can determine by his
personal examination all the information given therein with respect
to the physical and mental condition of each person named therein.

(4) The master shall ensure that each passenger whose
name appears on the ship’s manifest is in possession of his passport
or other valid and unexpired travel document in accordance with
these Regulations and that each such passenger, other than a citizen
or resident of Trinidad and Tobago, delivers to the immigration
officer a completed card in the form set out as Form 1.

(5) The master of an aircraft arriving at a Trinidad and
Tobago airport from a foreign airport shall—

(a) ensure that each passenger is in possession of
his passport or other valid or unexpired
document in accordance with these Regulations
and that each passenger, other than a citizen or
resident of Trinidad and Tobago, delivers to the
immigration officer a completed card in the
form set out as Form 1;

(b) deliver to the immigration officer a list of all the
passengers on the flight; and
(c) deliver to the immigration officer a General Declaration in the form set out as Form 14.

(6) It shall be the responsibility of every transportation company to ensure that each of its passengers seeking to enter and remain in Trinidad and Tobago is—

(a) outside the prohibited classes; and

(b) in possession of the proper medical and travel documents.

(7) The transportation company, master or passenger who fails to comply with the provisions of subregulations (4), (5) and (6) is guilty of an offence.

(8) Where any vessel arrives in Trinidad and Tobago carrying any person from outside Trinidad and Tobago whose destination is also outside Trinidad and Tobago, but who fails to continue his journey in such vessel in circumstances from which it may reasonably be inferred that such person has remained in Trinidad and Tobago without the consent of an immigration officer, the master of such vessel or agent, as the case may be, shall as soon as practicable, notify the nearest immigration officer of the failure of such person to continue his journey, and shall deposit with the Chief Immigration Officer if required by him to do so, such sum of money as may be determined by the Chief Immigration Officer to be used in defraying the costs of the detention and deportation of such person.

(9) The master or agent who fails to comply with the provisions of subregulation (8) is guilty of an offence.

33. (1) The local representative or master of any vessel leaving Trinidad and Tobago for any other country shall apply for a clearance certificate and shall deliver to the immigration officer before departure, a manifest of all passengers in the form set out as Form 13; but the Chief Immigration Officer may in his discretion allow the manifest to be transmitted by a specific date following departure.
(2) The local representative or master of any vessel leaving Trinidad and Tobago may be required to furnish the following documents:

(a) General Declaration (Departure Report) in quadruplicate in the form set out as Form 5; or General Declaration (Outward/Inward) in duplicate in the form set out as Form 14;

(b) manifest of in-transit passengers in duplicate in the form set out as Form 13;

(c) a declaration in the form set out as Form 1 for each passenger embarking.

(3) The local representative or master of any vessel departing from Trinidad and Tobago shall, if so required by the immigration officer in charge at the port of departure give the approximate time that the passengers and crew will be on board and also the approximate time of departure of the vessel in the form set out as Form 16 and cause the crew and passengers to present themselves on the vessel or at a place to be determined by the immigration officer with their passports and other documents required for inspection.

(4) The immigration officer may prohibit departure in the following instances:

(a) by Order of the Minister; or

(b) if any of the travel documents are not valid for travel; or

(c) if there is to the knowledge of the immigration officer a warrant of arrest in force relating to that person.

(5) Any master or representative who fails to comply with any of the requirements duly made under this regulation is guilty of an offence.

(6) Every person intending to disembark in or embark from Trinidad and Tobago, as the case may be, shall if required to
do so by an immigration officer, produce for inspection his passport, visa, document evidencing permission to enter any country or other document of a like nature in his possession.

(7) The master or the medical officer of any vessel or other person referred to in this regulation who—

(a) fails to deliver a manifest or other document required by this regulation; or
(b) fails to state in such document all the information required; or
(c) makes any false statement in such document; or
(d) fails to account for every person whose name appears on such document,
is guilty of an offence with respect to each person to whom any such omission occurs or any such false statement is made.

34. (1) The owner, agent or charterer of a ship intending to come to Trinidad and Tobago from a foreign port shall as early as possible give notice in writing in duplicate to the Chief Immigration Officer in the form set out as Form 15, of the expected date and time of arrival of such ship and shall give particulars in so far as is practicable of all other details required.

(2) Subregulation (1) shall not apply to any of the State’s ships of war or to any ship of war belonging to a friendly foreign nation, or to any pleasure yacht or aircraft or any inter-island sailing vessel provided that it goes to the designated anchorage for such craft.

(3) The Minister may, by Notification declare any place within the limits of any port to be a designated anchorage, either for vessels generally or for vessels of a class specified in the Notification, and the master of a vessel which arrives at a port where a designated anchorage, either for vessels generally or for vessels of a class to which such vessels belong, has been declared shall, subject to any directions given under subregulation (5), forthwith navigate his vessel to such designated anchorage and shall remain there until an immigration officer gives him permission to leave.
(4) No vessel other than a vessel which plies solely between ports in Trinidad and Tobago, shall proceed to any place in Trinidad and Tobago other than a port of entry.

(5) The master of every vessel which arrives in Trinidad and Tobago shall, if so ordered by an immigration officer, anchor or tie up his vessel at such place as may be ordered and shall remain there until an immigration officer gives him permission to leave.

(6) The master of any vessel who, without reasonable cause contravenes any of the foregoing provisions of this regulation or any order made or direction given thereunder is guilty of an offence.

(7) Where a person contravenes a provision of this regulation, that person commits an offence whether or not such contravention is elsewhere expressly declared to constitute an offence.

(8) The Minister may exempt the master of any vessel coming to Trinidad and Tobago or the transportation company operating such vessel from any or all of the requirements of this regulation and may direct such further or other requirements or documents to be taken in their stead as he considers proper.

35. (1) A transportation company is responsible for safeguarding all persons ordered to be delivered to it or to the master of one of its vessels from the time of such delivery.

(2) The Minister may cause to be served on a transportation company that is not liable under the Act for the cost of deportation, the master, charterer or agent thereof a notice in the form set out as Form 35 requiring such company to carry a person ordered to be deported, and upon the service of such notice such company shall become liable for all detention and deportation costs—

(a) if it refuses to take on board or carry a person ordered to be deported following a proper written direction given by the Chief Immigration Officer;
(b) if it fails to guard safely any such person on board its vessels or at such other place where such person may have been detained, until he can be placed on board the vessel on which he is to be deported;

(c) if it does not report forthwith the escape from custody of any person ordered to be deported; or

(d) if it fails to carry the person ordered to be deported to the place in the country of destination of such person designated on the order of deportation or on the written direction of the Chief Immigration Officer.

(3) The master, owner, agent or charterer of a vessel shall, on being required in writing by the Chief Immigration Officer so to do, receive a deportee on board for conveyance to a place specified in the requirement, being a place to which the vessel is bound, and also receive on board, for such time as is required by the Chief Immigration Officer, a person charged with the custody of the deportee.

(4) For the services specified in subregulation (3) there shall be paid such reasonable passage money and other charges as are demanded by the master, owner, agent or charterer, as the case may be.

(5) The Chief Immigration Officer shall not make a requirement under subregulation (3) unless he is satisfied on reasonable grounds that the deportee will be permitted to land at the place specified in the requirement, and it is a defence to a prosecution for a contravention of that subregulation if the defendant proves that, if the requirement had been complied with, the deportee would not have been permitted to land at the place specified in the requirement.

(6) Where a person has been placed on board a vessel for the purpose of deportation from Trinidad and Tobago, the Chief Immigration Officer, or an immigration officer, may at any time
before the vessel’s departure from its last port of call in Trinidad and Tobago, require the master to produce to him the deportee, and the master shall not, without reasonable excuse, fail to comply with the requirement.

THE REPORTING, DETENTION, CUSTODY AND RETURN OF STOWAWAYS OR OTHER PERSONS WHO HAVE SECRETED THEMSELVES IN OR UPON A VESSEL COMING TO TRINIDAD AND TOBAGO

36. (1) The master of any vessel arriving in Trinidad and Tobago from a foreign port shall report immediately on the arrival of the vessel to the immigration officer in charge, the presence of any stowaways on board.

(2) The master of such a vessel shall be responsible for holding any such stowaway on board pending the departure of the vessel from Trinidad and Tobago and shall not permit the stowaway to leave the vessel without the written permission of an immigration officer.

(3) A master of a vessel—

(a) who permits any stowaway to leave such vessel without the written permission of an immigration officer; or

(b) from which a stowaway escapes,
is guilty of an offence with respect to each stowaway.

(4) The master of a vessel from which a stowaway escapes shall report the escape to the immigration officer immediately and such a master who fails so to do is, in addition to any other offence for which he may be liable, guilty of an offence under this paragraph.

(5) A transportation company owning or operating a vessel on which a stowaway is found shall bear the cost of the detention and deportation of such stowaway.

37. (1) The master or agent of a vessel, other than a vessel of the regular armed forces of a Government permitted to call by
the Government of Trinidad and Tobago, arriving in Trinidad and Tobago—

(a) shall, upon the arrival of the vessel at a port of entry have in his possession the passport or identification documents in respect of each member of the crew who is on board the vessel;

(b) shall, upon the arrival of the vessel at a port of entry if so required by an immigration officer, muster the crew in the presence of the officer and produce to the officer the passports or identification documents referred to in paragraph (a);

(c) shall, before the departure of the vessel from a port of entry if so required by an immigration officer, muster the crew in the presence of that officer and produce to him the passports or identification documents referred to in paragraph (a); and

(d) shall not, where required to muster the crew in accordance with paragraph (c) depart with the vessel from the port of entry unless he complies with such requirement.

(2) The master or agent of a vessel, other than a vessel of the regular armed forces of a Government permitted to call by the Government of Trinidad and Tobago, arriving in Trinidad and Tobago from a foreign port shall, immediately before the departure of the vessel from Trinidad and Tobago, report in writing to an immigration officer the name of any member of the crew of the vessel who was on board the vessel at the time of its arrival and has deserted or is absent and shall deliver to the immigration officer any passport or identification documents of that member.

MEMBERS OF A CREW, LIST AND CONTROL

38. (1) Before the departure of any ship, the master or agent of such ship shall deliver to the immigration officer in charge at the port of departure a statement recording any change in crew prior to departure. The crew manifest shall contain a list of the

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names of all persons who are employed on such ship at the time of departure and also the names of those who have been paid off or discharged or who have been left ashore in hospital or who have died and of those who have deserted, and where there has been no such occurrence a notice shall be transmitted by such master or agent to the immigration officer in charge.

(2) Every statement required by this regulation shall be supported by a declaration as to its accuracy by the master of the vessel or by his duly authorised agent.

(3) A transportation company, the agent, the master of the vessel or his duly authorised agent is guilty of an offence—
   (a) in respect of each person for whom no report is made as required by this regulation; or
   (b) whenever such person fails to deliver any one of the statements required by this regulation or to furnish all the information required in every such statement.

(4) No person employed on board a vessel bringing persons to Trinidad and Tobago shall be discharged in Trinidad and Tobago without the consent of an immigration officer, and the master or agent who so discharges such a person is guilty of an offence.

(5) A transportation company, or the agent or master of a vessel arriving in Trinidad and Tobago from any port or place outside of Trinidad and Tobago, who knowingly signs on the articles of the vessel, or engages as an employee on board such vessel or brings to Trinidad and Tobago as a member of a crew, any person, with the intent to permit such person to enter Trinidad and Tobago contrary to the provisions of the Act and of these Regulations, or who represents orally or in a statement or report referred to in this regulation, to an immigration officer that any such person is a bona fide officer or member of the crew, is guilty of an offence.

(6) Before a member of a crew is permitted to enter Trinidad and Tobago for medical treatment or any other purpose,
a transportation company employing such person shall make a
deposit or enter into a bond in the form set out as Form 2 in the
First Schedule in favour of the Comptroller of Accounts, as may
be required by the immigration officer in charge, in such amount
as may be considered by such officer sufficient to cover the
expenses then foreseeable.

(7) A receipt for each person shall be given by the
master of a vessel taking on board persons ordered to be deported
to the immigration officer. The receipt shall be in the form set out
as Form 23.

FORMS, NOTICES, ETC.

39. (1) A deportation order in the form set out as Form 19A
or 19B shall be made in triplicate and one copy shall be served
upon the person ordered deported by delivering such copy to him
personally whenever practicable, and in other instances by
sending it by registered mail to his last known address.

(2) A copy of the deportation order shall be sent to the
transportation company that is obliged to remove or to pay the
costs of deportation of the person ordered deported and such
copy may form part of a notice in the form set out as Form 20.

(3) A transportation company may request once only in
each case that deportation be made to a country other than that
designated in the deportation order or other order made by the
Minister, the Chief Immigration Officer or a Special Inquiry Officer.

40. (1) The application for exemption from the provisions
of section 7(1)(a) of the Act shall be in the form set out as
Form 56.

(2) The certificate referred to in section 7(1) of the Act
shall be in the form set out as Form 21.

(3) The declaration issued by the Minister under section 9(4)
of the Act that a person has ceased to be a permitted entrant shall be in
the form set out as Form 54.
41. The certificate referred to in section 9(2) of the Act shall be applied by a rubber stamp in the form set out as Form 22, and may be varied in the form set out as Form 30.

42. The form in which a person aggrieved by the decision of a Special Inquiry Officer may appeal to the Minister shall be in the form set out as Form 9A.

43. The warrant for the arrest under section 14(1) of the Act of any person in respect of whom an examination or enquiry is to be held or a deportation order has been made shall be in the form set out as Form 24, and the order for release shall be in the form set out as Form 57.

44. The order for detention and the order for release provided for by sections 14(1) and (2) and 15 of the Act shall be in the forms set out as Forms 25 and 57, respectively.

45. An order for the detention and delivery of an inmate of a reformatory or a prison issued to the Commissioner of Prisons or other authority in charge of such person under section 14(3) of the Act shall be in the form set out as Form 41.

46. The permit issued by the Minister under section 10(1) of the Act shall be in the form set out as Form 17.

47. (1) A rejection order made by an examining immigration officer under section 20(1) or 21(1)(a) of the Act shall be in the form set out as Form 29.

(2) The approval of an application from a student’s permit under regulation 9(6)(b) shall be in the form set out as Form 43.

MISCELLANEOUS

48. The notice to an applicant for admission, detained for hearing before a Special Inquiry Officer, and the summons to any witness at such hearing shall be in the forms set out as Forms 44 and 45, respectively.

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49. The decision of a Special Inquiry Officer in a deportation matter to which section 24(5) of the Act applies, shall be in the form set out as Form 46.

50. (1) All immigration officers are required while on immigration duty to be properly attired in the official uniform approved by the Minister.

(2) The Chief Immigration Officer, the Deputy Chief Immigration Officer and the Assistant Chief Immigration Officer are exempt from the provisions of subregulation (1).

(3) The Chief Immigration Officer, the Deputy Chief Immigration Officer, the Assistant Chief Immigration Officer, the Immigration Officer IV and the Immigration Officers in charge of shifts are responsible for exercising supervision in respect of this regulation and for ensuring that it is complied with.

51. (1) Subject to regulation 34(8) the immigration officer shall visit immediately on arrival all ships arriving within a port of entry from any place outside Trinidad and Tobago between the hours of 8.00 a.m. and 4.00 p.m. on weekdays (except Saturdays). If requested by the master or the ship’s agent the immigration officer shall visit ships at any time outside of the above prescribed hours, and on Saturdays, Sundays and public holidays upon payment to the Comptroller of Accounts in accordance with the scale shown in the Third Schedule.

(2) Where an officer is required to perform any services afloat involving the use of a Government launch and outside normal working hours, fees shall be charged with respect to the crew at the prevailing rates in addition to the officers overtime charges and shall be paid to the Comptroller of Accounts.

(3) Where an immigration officer is satisfied with regard to any vessel which has arrived in Trinidad and Tobago that the transportation company operating it or the owner or master thereof does not fall within the provisions of section 38 of the Act, he shall grant clearance by issuing or causing to be issued to the master of the vessel the clearance certificate set out as Form 27, and such certificate shall be valid for a period of twenty-four hours.
(4) Where a vessel leaves Trinidad and Tobago without having applied for and been granted clearance in the manner provided in subregulation (3) and regulation 33(1), the transportation company operating the vessel or the agent of that transportation company is guilty of an offence.

52. Any change in the agency or ownership of a ship shall be reported in writing to the Chief Immigration Officer immediately such change takes place, and in the absence of such report the previous owners shall be held responsible for all charges and any other matters relating thereto.

53. (1) Fees as shown in the Fourth Schedule in respect of the issue of permits and certificates shall be paid to the Comptroller of Accounts.

(2) The fee paid on application for the grant of a work permit shall in no circumstances be refunded.

53A. Fees as shown in the Seventh Schedule in respect of the issue of passports and other travel or entry documents shall be collected by the Chief Immigration Officer.

53B. Notwithstanding regulation 53A, a citizen of Trinidad and Tobago who is sixty years of age or over is exempt from the payment of the fees shown in the Seventh Schedule in respect of the issue of a passport or any other travel or entry document.

54. The Immigration examination signal shall be—

(a) by day, the letter “Q” shown by means of a signal flag; and

(b) by night, two lights coloured Red over White in a vertical line one over the other spaced not more than six feet apart and visible from all parts of the horizon at a distance of not less than one mile.
55. (1) Masters of vessels entering the limits of any harbour in Trinidad and Tobago shall, when required by an immigration officer, slow down or stop so as to enable the immigration officer to come on board.

(2) Subject to the provisions of subregulation (3), the master of every vessel which arrives in Trinidad and Tobago shall exhibit such signal until authorised by an immigration officer to haul it down, and shall between the hours of sunset and sunrise show such coloured lights as are indicated in regulation 54.

(3) The provisions of this regulation shall not apply to any vessel which plies solely between ports in Trinidad and Tobago.

(4) The master of any vessel who contravenes any of the provisions of this regulation is guilty of an offence.

PROCEDURE WITH RESPECT TO PERSONS WHO ARE NOT CITIZENS OF TRINIDAD AND TOBAGO OR RESIDENTS

56. (1) A person who is not a citizen of Trinidad and Tobago or a resident and who has attained the age of sixteen years shall—

(a) furnish to the Minister such particulars (including photographs) within such time as the Minister may prescribe by Notification;

(b) furnish to the Minister, within forty-eight hours of any occurrence affecting the accuracy of information already given, details of the change;

(c) notify the Minister if he is about to change his residence and give details of the change within forty-eight hours of its occurrence;

(d) report each address in Trinidad and Tobago where he stays to the Minister when he has no permanent address. However, where the name and address of a citizen of Trinidad and Tobago is given as guarantor, this condition may be relaxed by the Minister in his discretion;
(e) on demand of the immigration officer, any police officer, or any other persons authorised by the Minister—

(i) produce a valid travel document; or

(ii) give a satisfactory explanation of the absence of this document.

(2) A person who is not a citizen of Trinidad and Tobago or a resident, and who fails to comply with the provisions of paragraph (1)(e) may be detained.

(3) The Minister may exempt any person or class of persons from the provisions of this regulation.

57. (1) Every keeper of premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward or otherwise, shall keep a record in such forms as may be prescribed by the Minister, of any person who is not a citizen of Trinidad and Tobago or a resident, staying at the premises and who has attained the age of sixteen years. The keeper of such premises shall furnish to the Minister such returns as he may prescribe.

(2) Every person who is not a citizen of Trinidad and Tobago or a resident, staying at any premises referred to in subregulation (1) shall sign a statement of his nationality when so required and shall furnish and sign a statement of such other particulars as may be prescribed by the Minister.

(3) All registrations kept under the provisions of this regulation shall be available at all times for inspection by the Minister, an immigration officer, a police officer, or any other person authorised by the Minister.

(4) Where a person is living or is being accommodated in any other premises or institutions including private hospitals, private schools and other private institutions, whom the director, owner, proprietor, occupier or superintendent of the premises knows or has reasonable cause to believe is not a citizen of
Trinidad and Tobago or a resident, the director, owner, proprietor, occupier or superintendent shall satisfy himself as far as he reasonably can that the provisions of this regulation with respect to the registration of and reporting of the movements of that person have been complied with, and if he is not so satisfied, he shall report the persons or that person to the nearest police station within forty-eight hours.

(5) For the purpose of this regulation “keeper” in relation to any premises, includes any person who for reward receives any other person to stay in the premises, whether on his own behalf or as a manager or otherwise on behalf of any other person; and “stay” means lodge or sleep for one night or more in accommodation provided for reward.

58. (1) The admission of a breach for the purposes of section 42(4) of the Act shall be in the form set out as Form 18.

(2) Where a person who is charged with committing a breach of the Act or of these Regulations is liable on summary conviction to a fine or to imprisonment, the complaint upon oath shall be in the form set out as Form 55.

(3) Where a person charged with committing a breach of these Regulations elects to have the matter heard by the Chief Immigration Officer, the complaint shall be in the form set out as Form 58.

(4) A notice of complaint against a person for committing a breach of these Regulations shall be in the form set out as Form 58.

59. The Warrants, Permits, Certificates or other documents to be prescribed by the Act or these Regulations, or issued or used for the purposes of this Act, are specified in the Forms set out in the First Schedule.
FIRST SCHEDULE

PRESCRIBED FORMS

FORM 1 — Passenger Declaration Form.
FORM 2 — Security Bond.
FORM 3 — Application for a Work Permit or an Extension of a Work Permit.
FORM 3A — Application for Group Work Permit or Extension of Group Work Permit.
FORM 4 — Declaration of Health.
FORM 5 — General Declaration (Departure Report).
FORM 6 — Application for Status of Resident of Trinidad and Tobago by a person under section 6 or 50(1) of the Act.
FORM 7 — Certificate of Registration as a Resident of Trinidad and Tobago.
FORM 8 — Report for Inquiry by Special Inquiry Officer.
FORM 9A — Notice of Appeal to the Minister against decision of Special Inquiry Officer.
FORM 9B — Notice of Appeal against a Rejection Order.
FORM 10 — General Declaration Arrival Report.
FORM 11 — Crew List.
FORM 12 — Stowaways List.
FORM 13 — Manifest of Embarking/Disembarking/In-transit Passengers.
FORM 14 — General Declaration (Outward and Inward).
FORM 15 — Notice of expected Arrival of Ship and request for Immigration Service.
FORM 16 — Notice of Approximate time of Departure.
FORM 17 — Permit issued by the Minister under section 10(1) of the Act.
FORM 18 — Admission of breaches of Immigration Act and Regulations in accordance with section 42(4) of the Act.
FORM 19A — Deportation Order Against.
FORM 19B — Deportation Order Against.
FORM 20 — Notice of Deportation.
FORM 21 — Certificate issued under section 7(1) of the Act.
FORM 22 — Certificate issued by an Immigration Officer under section 9(2) of the Act.
FORM 23 — Receipt from Master for Deportee.
FORM 24 — Warrant of the Minister under section 14(1) of the Act.
FORM 25 — Order of Detention made by the Minister/Chief Immigration Officer/Special Inquiry Officer under section 14(2) of the Act.

FORM 26 — Order to show cause and Notice of Hearing in Deportation proceedings under section 22 of the Act.

FORM 27 — Grant of Clearance under section 38 of the Act.

FORM 28 — Order of Supervision.

FORM 29 — Rejection Order.

FORM 30 — Variation of Immigration Officer’s Certificate under section 9(3) of the Act.

FORM 31 — Application for In-transit Pass.

FORM 32 — Disposal of Appeal.

FORM 33 — Bond for Conditional Release.

FORM 34 — Application for Student’s Permit.

FORM 35 — Notice to Transportation Company.

FORM 36 — Work Permit—For Issue to Employers and Employees.

FORM 37 — Application for Overseas Missionaries’ Permit.

FORM 38 — In-transit Pass.

FORM 39 — Cancellation of Work Permit for issue to Employers and Employees.

FORM 40 — Part A—Medical History.
   Part B—Physical Examination of Applicant.

FORM 41 — Order of the Minister to Commissioner of Prisons, etc.

FORM 42 — Application for Waiver of Visa.

FORM 43 — Student’s Permit.

FORM 44 — Notice to Applicant for admission detained for a hearing before a Special Inquiry Officer.

FORM 45 — Summons to a Witness.

FORM 46 — Decision of the Special Inquiry Officer—Voluntary Departure.

FORM 47 — Cancellation of In-transit Pass.

FORM 48 — Travelling Salesman’s Licence.

FORM 49 — Accommodation Register.

FORM 50 — Overseas Missionaries’ Permit.

FORM 51 — Application on behalf of a permitted entrant to enter Trinidad and Tobago.

FORM 52 — Certificate of Facilitation of Entry.
PREScribed forms—Continued

FORM 53  — Order of Minister under section 9(4) of the Act.
FORM 54  — Forfeiture of Deposit/Recognisance.
FORM 55  — Complaint Upon Oath.
FORM 56  — Application for a Certificate of Exemption from section 7(1) of the Act.
FORM 57  — Order of Release.
FORM 58  — Notice of Complaint against a person for committing a breach of the Immigration Regulations.
FORM 1
REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

WELCOME TO THE
REPUBLIC OF TRINIDAD AND TOBAGO

PASSENGER DECLARATION FORM

Flight No. .................................
Boarded At .................................

Please Print All Information

1. SURNAME

2. FIRST NAME ..............................  Middle Initial

3. (a) DATE OF BIRTH  ......................  (b) SEX: MALE  □  FEMALE  □

4. (a) COUNTRY OF BIRTH .................  (b) NATIONALITY ...................

5. PASSPORT NO. ............................  DATE OF ISSUE ..................

6. CARICOM ID. NO. ..........................

7. PERMANENT ADDRESS ...................

8. INTENDED ADDRESS (VISITOR) ...........

9. OCCUPATION ............................  Intended Length of Stay .............

10. PURPOSE OF ENTRY

    □ Holiday  □ Business  □ Work  □ In transit

    □ Study  □ Conference  □ Sport  □ Other  ...................

    □ Returning Resident  Length of Stay Abroad  ................

SIGNATURE OF PASSENGER ..........................

FOR OFFICIAL USE ONLY (Immigration)

TRINIDAD AND TOBAGO DEPARTURE RECORD

FLIGHT NO. .............................  PASSENGER DESTINATION ..............

1. SURNAME

2. FIRST NAME ..............................

3. PASSPORT NO. ............................

4. DATE OF BIRTH ................................

5. NATIONALITY ............................

UNOFFICIAL VERSION  L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 2

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

SECURITY BOND

Know all Men by these presents that I ...........................................................
of Trinidad and Tobago (hereinafter referred to as “the surety”) am held and firmly
bound onto the Comptroller of Accounts of Trinidad and Tobago in the sum of.................................................... dollars to be paid to the said Comptroller of
Accounts, for which payment well and truly to be made. I hereby bind myself, my
heirs, executors and administrators by these presents.

Signature of Surety ............................................................

Dated this ................................ day of ............................ 20................

WHEREAS ................................................................., who lately arrived in
Trinidad and Tobago by .................................................., is required by the immigration
officer to furnish security for his stay in Trinidad and Tobago.

And whereas the said surety desires that the said ........................................
should enter and remain in Trinidad and Tobago.

Now the above written obligation is conditioned to be void if the said surety do on
demand forthwith pay to the Comptroller of Accounts the amount to cover the cost of
repatriation (if any) and other incidental expenses, which within ..................years from
the date of these presents may be incurred by the Government of Trinidad and Tobago in
respect of the said ..........................................................

Signed, sealed and delivered by the above-named in the presence of

Signature of Witness .................... Signature of Surety ...........[L.S.]

Address ............................................................. Address .........................

Occupation .................................................. Occupation ..................
FORM 3

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION FOR A WORK PERMIT OR AN EXTENSION OF A WORK PERMIT

To: The Permanent Secretary, Ministry of National Security.

Note: Applicants wishing to employ persons are requested to submit in respect of the respective employee twelve (12) completed copies of this form to the Permanent Secretary along with the following:

(a) The official receipt of the Comptroller of Accounts evidencing payment of the fee payable on application for a work permit;
(b) three (3) photographs of the prospective employee;
(c) a police certificate with respect to the previous five (5) years;
(d) two (2) written character references, one (1) of which must be from the last employer; and
(e) in cases of extension, proof that all income tax due, has been paid.

1. Full name: Mr. ........................................................................................................

   Mrs. ....................................................................................................................

   Miss ...................................................................................................................

2. Date and Place of Birth ...........................................................................................

3. Present Nationality ................................................................................................

4. Previous Nationality ..............................................................................................

5. Passport No. ...........................................................................................................

6. Particulars of any change of name ........................................................................

7. Permanent Address ................................................................................................

8. Marital Status ........................................................................................................

9. Full name of wife/husband ......................................................................................

10. Particulars of Children ..........................................................................................

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Place of Birth</th>
<th>Nationality</th>
<th>Passport No.</th>
<th>Place and Date of Issue</th>
</tr>
</thead>
</table>

11. Profession or occupation to be followed in Trinidad and Tobago .............................

..............................................................................................................................

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 3—Continued

12. State job experience, including on-the-job training

13. Whether accompanied by wife/husband

14. Whether accompanied by children

15. Date of arrival/intended arrival in Trinidad and Tobago (in relation to present application)

16. Local residential address

17. Particulars of employment during the past five (5) years—

<table>
<thead>
<tr>
<th>Employer</th>
<th>Employer’s Address</th>
<th>Position Held</th>
<th>Duration of Employment</th>
<th>Reason for Termination</th>
</tr>
</thead>
</table>

18. Place/places of residence during the last ten (10) years preceding the application giving dates of such residence in each country—

19. Particulars of income assured while employed in Trinidad and Tobago, (state salary, commission, perquisites and other benefits)—
Immigration Regulations

20. SCHOOLS/UNIVERSITIES ATTENDED:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Dates</th>
<th>Degrees/Diplomas obtained (documentary proof required)</th>
<th>Dates Awarded</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Secondary/High School</td>
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<td>(2) University</td>
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<tr>
<td>(3) Other Courses</td>
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</tbody>
</table>

21. If to be self-employed give particulars of intended business on a separate sheet including financial circumstances with documentary support and business references:

22. Has the prospective employee ever been deported or required to leave any other country?

23. State offences (other than traffic offences) of which applicant has been convicted, if any, and give the date of conviction in each case.

I, .......................................................... hereby declare that the foregoing particulars are true and correct.

Signature of Employee

Date ........................................

24. Capital formation of company including—

(a) percentage of capital owned by Nationals of Trinidad and Tobago ..................

(b) percentage of capital owned by Non-Nationals of Trinidad and Tobago who are residents..............................................................

(c) whether subsidiary or affiliate of foreign-based company, and if so, name of parent company.

25. Brief description of the Company's activities ..........................................

26. Number of Employees .................................................................

*Regulation 32(2)(f) has been deleted by LN 112/1978.
See the Second Schedule to the Quarantine (Maritime) Regulations (Ch. 28:05—Sub. Leg.).
27. Particulars of Non-Nationals employed in Professional, Managerial and Senior Technical positions—

<table>
<thead>
<tr>
<th>Names</th>
<th>Posts Held</th>
<th>Date From</th>
<th>Date To</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

28. Particulars of Trinidad and Tobago Nationals employed in Professional, Managerial and Senior Technical positions—

<table>
<thead>
<tr>
<th>Names</th>
<th>Posts Held</th>
<th>Date From</th>
<th>Date To</th>
</tr>
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</table>

29. Full description of post to be filled with special experience and skills required for the position—

........................................................................................................................................................................
........................................................................................................................................................................
........................................................................................................................................................................

30. Period for which Permit is required .................................................................

31. Description of programme instituted by Company to train Nationals to fill the post for which this work permit is required .................................................................

32. Statement by employer as to what steps he has taken including advertisements in the Trinidad and Tobago daily newspapers and in newspapers in foreign countries where there are large concentrations of nationals of Trinidad and Tobago to secure the services of a national of Trinidad and Tobago to perform the duties for which this application is made and with what results ..........................................................................................................................
33. I, hereby declare that all the particulars in paragraphs 24–33 of the application are correct and true. If a visa is required in addition to the work permit I hereby make application for the said visa.

........................................................................
Signature of Employer

........................................................................
Address

........................................................................
Date

N.B.—(i) If the above space is insufficient the requested information can be attached on a separate sheet.
(ii) One copy of each newspaper containing the advertisement referred to in paragraph 32, and photostats of diplomas, certificates, etc., should be forwarded with this application.
FORM 3A

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION FOR GROUP WORK PERMIT OR EXTENSION OF GROUP WORK PERMIT
(for ten or more persons)

To: The Permanent Secretary, Ministry of National Security.

Note: Applicants wishing to employ persons are requested to submit seven (7) completed copies
of this form along with the following:

(a) a comprehensive covering letter;
(b) a copy of the Contract of employment;
(c) police certificate for each employee (if the contract exceeds three months);
(d) in cases of extensions for a period of more than six (6) months—
   i. proof that all income tax (PAYE) due has been paid;
   ii. a copy of previous Work Permits;
(e) A copy of advertisement where necessary.

1. Name of Company ........................................................................................................................................

2. Address ............................................................................................................................................................
   ..........................................................................................................................................................................

3. Telephone Number ............................................................................................................................................

4. Core business activities of the Company ........................................................................................................
   ..........................................................................................................................................................................
   ..........................................................................................................................................................................

5. List particulars of permits required

<table>
<thead>
<tr>
<th>Name</th>
<th>Nationality</th>
<th>Position</th>
<th>Period of Employment</th>
<th>Passport No.</th>
<th>Date and Place of Birth</th>
<th>*Accompanied by:</th>
</tr>
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</table>

*(give details of persons accompanying, including names and dates of birth on additional page if necessary).

6. If a visa is required in addition to a work permit, I hereby make application for a (single entry or
   multiple entry) visa in respect of the person/persons for whom the work permit or permits is/are required.

Signature of Employer ........................................................................................................................................

Date .................................................................................................................................................................

Company Stamp or Seal .....................................................................................................................................

______________________________________________

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 4

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

DECLARATION OF HEALTH (REGULATION 4)

(Quarantine Act—Ch. 28:05)

(To be rendered by the Masters of Ships arriving from Ports outside Trinidad and Tobago)

Before answering questions please read instructions overleaf

Port of .......................................................... Date ........................................

Name of Vessel .................................................. From .................. To .................

Nationality .......................................................... Master’s Name .........................

Net Registered Tonnage .......................................................... 

Deratisation or ................................................................

\{ Deratisation Certificate ........................................... Dated .........................

Exemption Cabin ..........................................................

Number of Passengers Deck ........................................ Number of

Crew ..........................................................

List of ports of call from commencement of voyages with dates of departure

..........................................................................................

..........................................................................................

HEALTH QUESTIONS

1. Has there been on board during the voyage any case or suspected case of plague, cholera, yellow fever, typhus fever or small pox? Insert particulars in the Schedule hereto.

2. Has plague occurred or been suspected amongst the rats or mice on board during the voyage, or has there been an unusual mortality amongst them?

3. Has any person died on board during the voyage otherwise than illness which you suspect to be of an infectious nature? Insert particular in Schedule hereto:

4. Is there on board or has there been during the voyage any case of illness which you suspect to be of an infectious nature? Insert particulars in Schedule hereto.

5. Is there any sick person on board now? Insert particulars in Schedule hereto. If more than six weeks have elapsed since the voyage begun, it will suffice to give particulars for the last six weeks.

Answer

Yes or No

........................................

........................................

........................................

........................................

........................................

........................................

........................................

........................................

(Regulation 32(2)(f) has been deleted by LN 112/1978.

See the Second Schedule to the Quarantine (Maritime) Regulations (Ch. 28:05—Sub. Leg.).

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 4—Continued

NOTE—In the absence of a surgeon, the master should regard the following symptoms as ground for suspecting the existence of infectious disease; fever accompanied by prostration or persisting for several days, or attended with glandular swellings, or any acute skin rash or eruption with or without fever; severe diarrhoea or diarrhoea symptoms of collapse; jaundice accompanied by fever.

6. Are you aware of any other condition on Board which may lead to infection or the spread of infectious disease? ..............................................

I hereby declare that the particulars and answers to the questions given in the Declaration of Health (including the Schedule) are true and correct to the best of my knowledge and belief.

(Sgd.) ..................................................

Master

Date .......................................................... Countersigned .............................................

INSTRUCTIONS

The master of a ship coming from a port outside Trinidad and Tobago must ascertain the state of health of all persons on board, and fill in and sign the Declaration of Health in the foregoing pages.

The master should send an International Quarantine Message either directly to the Visiting Officer or through the agent. The message may be in “clear” or in “code” and must be sent within the time specified in the Code.

The message must contain such of the items as are appropriate of the Standard Quarantine Messages [included in the Medical Section of the 1931 Intercolonial Code of Signal (pages 229 to 232 British edition)].

If the ship is not fitted with wireless, the appropriate signal must be hoisted on arrival.

The master should take all steps necessary to ensure that no person other than a pilot and his leadsman shall board or leave the vessel without the permission of the Health Officer until pratique has been granted.
## IMMIGRATION REGULATIONS

### SCHEDULE TO THE DECLARATION OF HEALTH

**Particulars of every case of Illness or Death occurring on Board**

<table>
<thead>
<tr>
<th>Name</th>
<th>Class of Rating</th>
<th>Age</th>
<th>Sex</th>
<th>Race</th>
<th>Port of Embarkation</th>
<th>Date of Embarkation</th>
<th>Nature of Illness</th>
<th>Date of its onset</th>
<th>Results of Illness</th>
<th>Disposal of Case</th>
</tr>
</thead>
</table>

*State whether recovered; still ill; died.*

†State whether still on board; landed at (give name of port); buried at sea.
FORM 5

REPUBLIC OF TRINIDAD AND TOBAGO

Reg. No. ....................
to be filled in the Immigration Office.

IMMIGRATION REGULATIONS

GENERAL DECLARATION

(Departure Report)

The Master of every ship carrying any passenger from a place in Trinidad and Tobago to a place out of Trinidad and Tobago, which is permitted under the Customs Act (Ch. 78:01) to be cleared after departure, shall furnish to the Chief Immigration Officer prior to departure or as may otherwise be permitted by the Chief Immigration Officer, a correct return in the form shown hereunder:

1. Name of Vessel ... ...
2. Description of Vessel ... ...
3. Nationality ... ...
4. Net Tonnage ... ...
5. Next Port of call ... ...
6. Number of crew ... ...
7. Has the master engaged any seamen at this port? ... ...
8. Has the Master discharged any of his crew at this port? ... ...
9. Cargo landed at Trinidad and Tobago... General ... tons
10. In-transit Cargo... ...
11. Amount of Bunkers taken (coal or oil) ...
12. Agents ... ...
13. Number of passengers embarking ... ...
14. Number of in-transit passengers ...

Port .................................................................
Date of Departure ................................................
Clearance Granted at ................................ o’clock ............................................ 20 ....
Bill of Health Issued

.................................................................
Master

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 6

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION FOR STATUS OF RESIDENT OF TRINIDAD AND TOBAGO

Form of application under the Immigration Act, for status of resident of Trinidad and Tobago by a person under section 6 or 50(1) of the Act.

To: The Permanent Secretary, Ministry of National Security.

Note: Applicants who are permitted entrants and wishing to reside in Trinidad and Tobago permanently are requested to submit three (3) completed copies of this form to the Permanent Secretary along with the following:
(a) Proof of satisfactory fulfilment of income tax obligations.
(b) A Certificate of Character.
(c) Four (4) identical passport size photographs.

I, ........................................................................................................................................

(Name of Applicant)

of ........................................................................................................................................

(Address of Applicant)

........................................................................................................................................

(Here insert occupation; profession; calling)

hereby apply for permission to become a resident of Trinidad and Tobago. In support of my application I tender the following information:

1. Full name: Mr. ................................................................................................................
   Mrs. ............................................................................................................................
   Miss ............................................................................................................................

2. Date and Place of Birth .....................................................................................................

3. Present Nationality ..........................................................................................................}

4. Passport Number and Date and Place of Issue .................................................................

5. Previous Nationality ........................................................................................................

6. Particulars of any change of name ................................................................................

7. Permanent Address ........................................................................................................

8. Marital Status ................................................................................................................

9. Full name of wife/husband ............................................................................................

10. Citizenship of Father ...................................................................................................... Is he a resident of Trinidad and Tobago?
11. Citizenship of Mother ..................................................................................................... Is she a resident of Trinidad and Tobago?
FORM 6—Continued

12. Reason for desiring to reside in Trinidad and Tobago ...........................................


13. Particulars of children are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Place of Birth</th>
<th>Passport No.</th>
<th>Place and Date of Issue</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

14. Profession or Occupation—Trade and Special Skills or other special qualifications, education

15. SCHOOLS/UNIVERSITIES ATTENDED:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Dates</th>
<th>Degrees/Diplomas Dates</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>From</td>
<td>To</td>
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<tr>
<td></td>
<td></td>
<td>Certificates obtained</td>
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<tr>
<td></td>
<td></td>
<td>(documentary proof</td>
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<td></td>
<td></td>
<td>required)</td>
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<tr>
<td>(1) Secondary/High School</td>
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<td>(2) University</td>
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<tr>
<td>(3) Other Courses</td>
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</tr>
</tbody>
</table>

16. State job experience, including on-the-job training ...........................................

17. Does the applicant belong or has belonged to any Club, Political Parties, Trade Union Organisations, Friendly Societies, Co-operatives, Civic or other Charitable Organisations, etc?  
If so, give particulars ........................................................................................................

18. Do you have any interest in lands in Trinidad and Tobago for Agricultural purposes?  
If so, state particulars ........................................................................................................

19. Date on which entry into Trinidad and Tobago was permitted with respect to this application ........................................................................................................

20. Proof of length of permitted stay in Trinidad and Tobago ..........................................

21. Period of ordinary residence in Trinidad and Tobago in respect of persons applying under section 50(1) of the Act .................................................................
22. Particulars of employment during the past five (5) years ..............................................

<table>
<thead>
<tr>
<th>Employer</th>
<th>Employer’s Address</th>
<th>Position Held</th>
<th>Duration of Employment</th>
<th>Reason for Termination</th>
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</tbody>
</table>

23. Place/places of abode during the last ten (10) years preceding the application giving dates of such abode in each country, including details of periods of absences from Trinidad and Tobago

---------------------------------------------------------------------------------------------------------------

24. Names and addresses of person(s) sponsoring the application under section 6 of the Act

---------------------------------------------------------------------------------------------------------------

25. Particulars of relatives (if any) who are either citizens or residents of Trinidad and Tobago able to provide for your care and maintenance ..........................................................

---------------------------------------------------------------------------------------------------------------

26. Annual income and other assets ..................................................

27. Do you have any children/grandchildren in Trinidad and Tobago who are either citizens of Trinidad and Tobago or residents willing and able to provide for your care and maintenance? ..........................................................

28. Has the applicant ever been deported or required to leave any other country? ..................

---------------------------------------------------------------------------------------------------------------

29. State offences (other than traffic offences) of which applicant has been convicted, if any, and give the date of conviction in each case ..........................................................

---------------------------------------------------------------------------------------------------------------

30. Does the applicant have any investments in Trinidad and Tobago? If so, give particulars

---------------------------------------------------------------------------------------------------------------

31. Does the applicant own property in Trinidad and Tobago? Give particulars ..........................

---------------------------------------------------------------------------------------------------------------
FORM 6—Continued

32. Any other information which the applicant considers may be of assistance, may be given

I, ........................................................................................................ hereby declare that the foregoing particulars are true and correct.

......................................................................................

Signature of Applicant

......................................................................................

Date

N.B.—(1) If the above space is insufficient, the requested information can be attached on a separate sheet.

(2) The attention of applicants for the status of resident of Trinidad and Tobago is directed to the provisions of sections 5, 6, 7 and 50(1) of the Immigration Act, as quoted hereunder:

5. (1) The following persons not being citizens of Trinidad and Tobago are residents of Trinidad and Tobago:

(a) a person who was entitled under the former Constitution to be registered as a citizen;

(b) a person to whom permission has been granted by the Minister under section 6 to become a resident;

(c) a person other than a person described in paragraph (a) or (b) who immediately before the commencement of this Act was deemed to be a person belonging to Trinidad and Tobago by virtue of section 2(2) of the former Ordinance;

(d) a person who applies for and is granted permission to become a resident under section 50(1);

(e) the child of a person who is a citizen of Trinidad and Tobago or who by virtue of this section is a resident or provided that such child is a minor or is dependent on and living with his parents;

(f) such other persons on whom the Minister may confer the status of a resident.

(2) For the purposes of subsections (1)(b) and (d), no period shall be counted towards the acquisition of resident status during which a person—

(a) is confined in or is an inmate of any prison or hospital for mental diseases;

(b) remains in Trinidad and Tobago after the making of a deportation order against him and prior to the execution of such order or his voluntarily leaving Trinidad and Tobago, unless an appeal against such order is allowed; or

(c) is in Trinidad and Tobago under a permit.

(3) For the purposes of subsection (1)(f) the Minister may, in his discretion, confer the status of a resident on any person he considers fit.

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
Persons who may be permitted to become residents.

6. (1) Subject to this Act and the Regulations, persons who come within the following classes may on application in the prescribed form, be granted permission by the Minister if he thinks fit, to become residents, that is to say:

(a) a permitted entrant who—

(i) by reason of his education, occupational qualifications, personal history, employment record, training, skills or other special qualifications has established or is likely to be able to establish himself successfully in Trinidad and Tobago in a profession, trade, self-operating business or agricultural enterprise and who has sufficient means of support to maintain himself and his immediate family in Trinidad and Tobago; and

(ii) has been continuously resident in Trinidad and Tobago for five years or such shorter period (not being less than twelve months) as the Minister may in the special circumstances of any particular case accept;

(b) a person who is the parent or grandparent of either a citizen or resident of Trinidad and Tobago, residing in Trinidad and Tobago, if such citizen or resident is willing and able to provide care and maintenance for that person;

(c) the spouse of a citizen or resident of Trinidad and Tobago; and

(d) a person who has ceased to be a citizen of Trinidad and Tobago by reason of his voluntary acquisition of citizenship of another country.

(2) In determining the suitability of an applicant for the grant of resident status under this section, the Minister shall be satisfied, inter alia, that the applicant—

(a) had entered the country legally;

(b) is not in a prohibited class; and

(c) is of good character as evidenced by a police certificate of good character.

Loss of resident status.

7. (1) Subject to subsection (6), resident status is lost by a person—

(a) who voluntarily resides outside Trinidad and Tobago for a continuous period of one year, unless he obtains from the Minister a certificate in the prescribed form exempting him from the provisions of this paragraph; or

(b) who was entitled under the former Constitution to be registered as a citizen of Trinidad and Tobago, if he has resided outside Trinidad and Tobago for a continuous period of two years immediately preceding the commencement of this Act, unless within a period of six months from that date he obtains from the Minister a certificate in the prescribed form exempting him from the provisions of this paragraph.
FORM 6—Continued

(2) Where the Minister is satisfied that a person has been—

(a) engaged in activities detrimental to the security of Trinidad and Tobago; or

(b) an habitual criminal,

that person shall be deemed to have lost the status of resident at the commencement of his engagement in such activities or at the time of his becoming an habitual criminal.

(3) For the purposes of subsection (2)(b) an habitual criminal is a person who—

(a) is not less than thirty years of age;

(b) has been convicted of an indictable offence punishable with imprisonment for two years or more and has been convicted on at least three previous occasions since the age of seventeen years of offences similarly punishable; and

(c) was on at least two of these occasions sentenced to imprisonment, or has at least on one occasion been sentenced to be detained at the Youth Training Centre or any other similar Institution.

(4) The Minister, if he has reasonable grounds for suspecting that a resident—

(a) has given false or misleading information in his application for residence; or

(b) is a person referred to in section 8(1)(e),(f),(k),(l),(m),(o) or(q),

may issue a written declaration under his hand stating that the resident has lost his resident status from the date specified in the declaration, and the Minister may make a deportation order against that person.

(5) Any period during which a permitted entrant is in Trinidad and Tobago that is less than the period required for the acquisition of resident status under section 6(1)(a)(ii) that might otherwise be counted by a person towards the acquisition of such status in accordance with Regulations made under this Act is lost upon the making of a deportation order against him, unless an appeal against such order is allowed.

(6) In no case shall residence out of Trinidad and Tobago for the purpose of serving in the public service or diplomatic or other service of Trinidad and Tobago, cause loss of resident status.

Applications by certain persons for resident status and for certificates under section 9.

50. (1) Notwithstanding anything in Part I to the contrary, a person who, upon the commencement of this Act, was ordinarily resident in Trinidad and Tobago for a period of five years is entitled to apply to the Minister for permission to become a resident, and the Minister may, if he thinks fit, grant such permission. An application under this subsection shall be made within one year of the commencement of this Act and no later, unless the Minister prescribes some further period, not exceeding three years, within which such application may be made.”.

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 7

REPUBLIC OF TRINIDAD AND TOBAGO

Registration No.: [Subsidiary]

IMMIGRATION REGULATIONS

CERTIFICATE OF REGISTRATION AS A RESIDENT OF TRINIDAD AND TOBAGO

To ...................................................... of .................................................................

This is to certify that permission has been granted you by the Minister to become a resident of Trinidad and Tobago under the authority of section 5 of the Act.

Your attention is directed to the provisions of regulation 19(3) of the Immigration Regulations, 1974 (which relate to notification of change of marital status).

This certificate is subject to cancellation if any information supplied in the application therefrom, is found to be false or misleading.

.................................................................
Permanent Secretary,
Ministry of National Security

N.B.: Regulation 19(3) reads as follows:
“A person to whom the status of resident has been granted shall notify the Permanent Secretary of any change in his marital status and the Permanent Secretary shall cause the necessary alteration to be made in the register of residents.”

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 8

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

REPORT FOR INQUIRY BY SPECIAL INQUIRY OFFICER

(pursuant to section 18 or 21)

To the Special Inquiry Officer Mr. ............................................................

I, Immigration Officer on duty at ..............................................................

having examined Mr./Mrs./Miss ..............................................................

who arrived in Trinidad and Tobago by Ship/Aircraft ................................

Flight from ...................................................... on .................................................

am of the opinion that Mr./Mrs./Miss .......................................................

entry would be in contravention of the Immigration Act/Regulations ...........

.................................................................

.................................................................

being a person who, etc., etc.

and request a further examination of Mr./Mrs./Miss .................................

.................................................................

by a Special Inquiry Officer.

.................................................................

Immigration Officer


UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 9A

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS
(To be prepared in triplicate)

NOTICE OF APPEAL TO THE MINISTER AGAINST DECISION OF SPECIAL INQUIRY OFFICER

TAKE NOTICE that I, .............................................................
of .............................................................
(last place of residence)

being aggrieved by the decision of a Special Inquiry Officer hereby appeal to the Minister from the deportation order made against me by the said Special Inquiry Officer ..........................

........................................ at .................................................................on the ........................................ day of

...............................................................,...,

AND TAKE FURTHER NOTICE that (a) all notices and papers in connection with the appeal may be sent to me at the following address:

.............................................................

and

(b) I wish/do not wish to make representations in this matter.

.............................................................

Dated at .................................................... this ........................................ day of

.............................................................,...,

.............................................................

.........................................................

Appellant

Service hereof acknowledged this ........................................ day of ........................................, 20.......
at ........................................, a.m./p.m.

.............................................................

Immigration Officer

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 9B

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS
(To be prepared in triplicate)

NOTICE OF APPEAL AGAINST A REJECTION ORDER

TAKE NOTICE that I, ...........................................................................................................................................

of ........................................................................................................................................................................

(last place of residence)

being aggrieved by the decision of the Examining Immigration Officer hereby appeal to a Special Inquiry Officer from the rejection Order made against me by the said Immigration Officer

........................................................................................................................................................................

at ........................................................................................................................................................................

on the ___________________ day of ______________________ 20____..

AND TAKE FURTHER NOTICE that (a) all notices and papers in connection with the appeal may be sent to me at the following address:.................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

and (b) I wish/do not wish to make representations in this matter.

Signed at ................................... this ............................................................

(time)

day of ................................................................. 20____

......................................................................................

Appellant

Service hereof acknowledged this ............................................................. day of

............... 20____ at .........................

(time)

......................................................................................

Immigration Officer

__________________________

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 10

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

GENERAL DECLARATION ARRIVAL REPORT

For Official use only

Reg. No. ..........................

..................................................

Date and time of arrival .................................. Time of Boarding ........................................

1. Name of Vessel ..........................................................................................................................

2. Description of Vessel ..................................................................................................................

3. Nationality ..................................................................................................................................

4. Net Tonnage .................................................................................................................................

5. Last Port of Call ............................................................................................................................

6. Duration of Voyage ....................................................................................................................... (days) (hours)

7. Number of Crew ..........................................................................................................................

8. Number of Crew Passes issued ....................................................................................................

9. Number of passengers for Trinidad and Tobago (as per passenger list) ..............................

..................................................

10. Number of passengers in transit .................................................................................................

11. Number of refusal cases ............................................................................................................ (names)

12. Are there any stowaways on board? .......................................................................................... (names)

13. If so, how many? .........................................................................................................................

14. Is there any person on board who is working his way to this port or elsewhere whose name is not included on the passenger list or crew list? ............................................................

..................................................

15. Does the Master intend to discharge any of his crew at this port? ........................................

.................................................. How many? .................................................................
FORM 10—Continued

16. Cargo for Trinidad and Tobago .................................................................
   General tons
   .................................................................
   Explosive tons
   .................................................................
   Bauxite tons
   .................................................................
   Livestock heads

17. In-transit cargo .......................................................................................  

18. Cargo to be trans-shipped .......................................................................  

19. Agent ........................................................................................................  
   Port of arrival ................................................................................................

......................................................................................................................
Signature of Master or Agent

......................................................................................................................
Immigration Officer
FORM 11

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CREW LIST

NOTE—This form is to be used for crew only.

Name of Ship ........................................ Owners or Operator ........................................

Agents .............................................. Last port of call ........................................

Date of arrival ..................................... Next port of call ........................................

Date of proposed departure .................... Nationality ........................................

<table>
<thead>
<tr>
<th>Number</th>
<th>Full Name</th>
<th>Date of Birth</th>
<th>Nationality</th>
<th>Duties on Board</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I hereby certify that the information furnished on the crew manifest is true and correct in every detail.

Date ..............................................

..............................................

Master

UNOFFICIAL VERSION  
L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 12

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

STOWAWAYS LIST

Warning: Failure to furnish full and accurate information is punishable by fine

Total Crew

Name of Vessel | Port of Arrival | Date of Arrival

Arriving from
Names of Local Agents

Name in full:

Surname | Given Name | Nationality | Port of Embarkation

1. ................................................. ................................................. ................................................. .................................................

2. ................................................. ................................................. ................................................. .................................................

3. ................................................. ................................................. ................................................. .................................................

4. ................................................. ................................................. ................................................. .................................................

5. ................................................. ................................................. ................................................. .................................................

1. ................................................. Master of the vessel

................................................. do solemnly declare that the foregoing is a true and complete list of stowaways on board. I will report my departure to the Immigration Officer in charge prior to departure and will report any changes which occur during the said vessel’s stay in Trinidad and Tobago.

.................................................

Master

Delivered to me at ................................................. on ................................................. 20 .................................................

.................................................

Immigration Officer

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 13

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

MANIFEST OF PASSENGERS

EMBARKING/DISEMBARKING/IN-TRANSIT

Transportation Company ...........................................................................................................

Owner or Agent of Vessel in Trinidad and Tobago .................................................................

(a) Aircraft .................................................... Flight No. ......................... Date ..............
    (Registration marks and nationality)

(b) Ship ...................................................... Nationality .......................... Date ..............
    (Name of Ship and Voyage No.)

Port of Embarkation ........................................... Port of Disembarkation ........................

(Place and Country) (Place and Country)

<table>
<thead>
<tr>
<th>Surname and Initials of Passengers</th>
<th>For use by owner or operator only</th>
<th>For office use only</th>
<th>Nationality of Passengers</th>
</tr>
</thead>
</table>

N.B.—In-transit passengers should be entered separately from disembarking passengers.

........................................................................................................

Master or Agent of Vessel

........................................................................................................

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
# Form 14

**Republic of Trinidad and Tobago**

**Immigration Regulations**

**General Declaration**

(Outward/Inward)

Owner/Operator

Marks of Nationality and Registration ........................................ Flight No. ....................

Date ................................

Departure from .................................................. Arrival at ...........................................

(Place and Country) (Place and Country)

Flight Routing

(“Place” Column always to list origin, every en route stop and destination)

<table>
<thead>
<tr>
<th>Place</th>
<th>Total number of crew</th>
<th>Numbers of passengers on this Stage</th>
<th>Cargo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Departure Place:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Embarking ................................</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Through on same flight ..............</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Arrival Place:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disembarking ..........................</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Through on same flight ..............</td>
<td></td>
</tr>
</tbody>
</table>

**Declaration of Health**

Persons on board known to be suffering from illness other than airsickness or the effects of accidents, as well as those cases of illness disembarked during the flight.

.................................................................

.................................................................

Any other conditions on board which may lead to the spread of disease.

.................................................................

**Unofficial Version**

Updated to 31st December 2016
Declaration of Health

Details of each disinfection or sanitary treatment (place, date, time, method) during the flight. If no disinfecting has been carried out during the flight give details of most recent disinfecting.

........................................................................................................
........................................................................................................

Crew member concerned

I declare that all statements and particulars contained in this General Declaration, and in any supplementary forms required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued the flight.

........................................................................................................

Authorised Agent or Pilot in Command

........................................................................................................
FORM 15

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

Port-of-Spain, Trinidad.

NOTICE OF EXPECTED ARRIVAL OF SHIP AND REQUEST FOR IMMIGRATION SERVICE

Chief Immigration Officer,
Port-of-Spain,

I hereby give notice of the arrival of ship/ss/mv. ..............................................................
with particulars as stated hereunder, and I request the service as indicated—

(1) Nationality ....................................................................................................................
(2) Last Port of call and date of departure therefrom ......................................................
(3) Name of last Quarantine Port of Call and date of departure therefrom ......................
(4) Date and estimated hour of arrival at Trinidad and Tobago ........................................
(5) Number of Crew .........................................................................................................
(6) Number of disembarking passengers ........................................................................
(7) Number of transit passengers ....................................................................................
(8) Number of Stowaways .................................................................................................
(9) Place of Arrival .................................................... Anchorage .............................
(10) Berth No. ..................................................................................................................

SERVICE REQUIRED

(a) Boarding ....................................................................................................................
(b) Attention to passengers ............................................................................................
(c) Clearance ..................................................................................................................
(d) Bill of Health ..............................................................................................................
(e) Grant of entry certificates to crew ...........................................................................
(f) Other services ............................................................................................................

I undertake to meet promptly the charges named for these services together with any overtime incurred.

Date .................................................................................................................................

Signature of Agent

Name and Address of Agent ..........................................................................................
.................................................................................................................................

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 16

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

NOTICE OF APPROXIMATE TIME OF DEPARTURE

Chief Immigration Officer,
Port-of-Spain.

Sir,

I hereby give notice of the departure and other particulars of the undermentioned ship—

1. Name of Ship ........................................................................................................

2. Approximate date and hour of departure ............................................................

3. Nationality .............................................................................................................

4. Next port of call ....................................................................................................

5. Number of stowaways ..........................................................................................

6. Number of crew .....................................................................................................

7. Number of passengers embarked ........................................................................

8. Number of passengers in transit ..........................................................................

9. Destination ............................................................................................................

10. Place of departure ............................................................................................... I hereby undertake to meet promptly all charges, etc., for the above service.

Date .........................................................................................................................

Signature of Master or Agent

Name and Address of Agent ..................................................

.................................................................................................................................

.................................................................................................................................

.................................................................................................................................

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 17

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

PERMIT ISSUED BY THE MINISTER UNDER SECTION 10(1) OF THE ACT

(i) This permit enables Mr./Mrs./Miss .......................................................... (name in full)

the holder of Passport No. .............................................. issued on ..........................................................

to enter and remain in Trinidad and Tobago as a ..........................................................

........................................................................................................................................................................

for a period of ..........................................................................................................................................

(ii) This permit is therefore valid until ............................................................................................

(iii) The holder is not permitted to engage in employment.

(iv) Other terms and conditions:

..................................................................................................................................................................

..................................................................................................................................................................

(v) This permit may be cancelled if the holder contravenes the conditions stated herein.

Date ............................................. Minister

RENEWAL

The period of validity of this permit is hereby extended to ..................................................

..................................................................................................................................................................

Date ............................................. Minister

*Delete where not applicable.
FORM 18

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ADMISSION OF BREACHES OF IMMIGRATION ACT AND REGULATIONS IN ACCORDANCE WITH SECTION 42(4)

I admit that ........................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................
...........................................................................................................................................................

......... contrary to section/regulation ............................................................ of Immigration Act/Regulations .................................................................

Dated this ...................................... day of ................................................................., 20........

Signed ..............................................................

in the presence of ..............................................................

..............................................................
Signature of Witness

Fined:

Paid ..............................................................
FORM 19A

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

DEPORTATION ORDER AGAINST

Under the Immigration Act

On the basis of the evidence adduced at an inquiry held at ..........................................................
.................................................................................................................................................. on the .................................................. day of
.............................................................................................................................................. 20......, I have reached the decision that you may not
enter or remain in Trinidad and Tobago, for the reason that ..................................................
..................................................................................................................................................
..................................................................................................................................................
..................................................................................................................................................
..................................................................................................................................................
(Here insert findings)

I hereby order you to be detained and to be deported to the place whence you came to Trinidad
and Tobago, or to the country of which you are a national or citizen, or to the country of your birth,
or to such country as may be approved by the Minister.

I further order you to remain out of Trinidad and Tobago while this Order is in force.

WARNING

Re-entry into Trinidad and Tobago without the permission in writing of the Minister while this
Order is in force constitutes an offence under section 29(8) of the Act. The penalty under this
section is a fine of one thousand, five hundred dollars and imprisonment for six months in addition
to being again deported from Trinidad and Tobago.

Date ..............................................

............................................................... Special Inquiry Officer

SERVICE HEREOF ACKNOWLEDGED BY

...................................................... at ........................................ a.m./p.m.

N.B.—If you wish you may appeal to the Minister against this Order in accordance with
section 27(2) of the Act within twenty-four hours.

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM OF UNDERTAKING NOT TO RETURN TO TRINIDAD AND TOBAGO

Whereas I have this day been served with a Deportation Order the serving of which order is hereby acknowledged by me; now I

……………………………………………………………………………………………………………………………………………………………………………………………………

……………………………………………………………………………………………………………………………………………………………………………………………………

hereby undertake that I will not return to Trinidad and Tobago unless I am specially permitted by the Minister in writing, to return.

Declared at ………………… this ……………………….. day of …………………, 20 ……………

……………………………………………………………………………………………………………………………………………………………………………………………………

Signature of Deportee
FORM 19B

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

DEPORTATION ORDER AGAINST

I have reached the decision that you may not enter or remain in Trinidad and Tobago for the reason that—

(i) You are neither a citizen nor a resident of Trinidad and Tobago;

(ii) You are a person described in

I hereby order you to be detained and to be deported to ...........................................................

............................................................................................................................. and I further order you to remain out of Trinidad and Tobago while this Order is in force.

Date ............................................................................................................................

Minister of National Security

WHEREAS I have been served with a Deportation Order, the service of which order is hereby acknowledged by me; now I, ............................................................................................................................. hereby undertake that I will not return to Trinidad and Tobago unless I am specially permitted by the Minister, in writing, to return.

DECLARED at ......................... this ..................... day of ..........................................., 20........

(Time)

.............................................................................................................................

(Signature of Deportee)

WITNESSED .................................................................................................

Signature of Immigration Officer

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 20

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

NOTICE OF DEPORTATION

To ........................................................................ of ........................................................................

(Name of transportation company)  (Address of transportation company)

An order of deportation/rejection under the Immigration Act, has been made against

.................................................................................................................................

(Name of Deportee/Reject)

as follows:

DEPORTATION ORDER AGAINST

.................................................................................................................................

Under the Immigration Act

On the basis of the evidence adduced at an inquiry held at .......................................................

................................................................................................................................. on the ............................................ day of

.................................................................................................................................20......, I have reached the decision that you

may not enter or remain in Trinidad and Tobago, for the reason that ....................................................

.................................................................................................................................

.................................................................................................................................

.................................................................................................................................

.................................................................................................................................

.................................................................................................................................

(here insert findings)

I hereby order you to be detained and to be deported to the place whence you came to Trinidad and Tobago, or to the country of which you are a national or citizen, or to the country of your birth, or to such country as may be approved by the Minister.

I further order you to remain out of Trinidad and Tobago while this Order is in force.

WARNING

Re-entry into Trinidad and Tobago without the permission in writing of the Minister while this Order is in force constitutes an offence under section 29(8) of the Act. The penalty under this section is a fine of one thousand, five hundred dollars and imprisonment for six months in addition to being again deported from Trinidad and Tobago.

Date..............................................

.................................................................................................................................

Special Inquiry Officer
FORM 20—Continued

You are hereby given notice of liability for detention and deportation/rejection costs.

Your attention is directed to sections 32 and 33 of the Immigration Act.

You are hereby ordered to convey, or cause the person against whom deportation/rejection order quoted hereinabove has been made, to be conveyed to the place whence he came to Trinidad and Tobago, or to the country of which he is a national or citizen, or to the country of his birth, or, subject to the approval of the Minister to a country that is acceptable to such person and that is willing to receive him. In that respect reference is made to the reverse side of this form.

Date .................................................. .......................................................... Chief Immigration Officer
Issuing Office ..................................................
(Reverse Side)

I. Statement of Conveyance

When transportation arrangements have been made, please fill in the following statement and return one copy to the issuing officer, retaining the duplicate for your records:

We have arranged to have .................................................................
(Name of Deportee/Reject)
conveyed to .................................................. leaving ..........................................................
(Destination) (Port of Departure)

On board ........................................................................................................
(Name of Vessel and/or Flight Number, with name of Transportation Company)
on .......................................................... at ........................................... o'clock.

Detention and deportation, rejection costs will be borne by this company.

Date ..........................................................
(Signature and Title of Official)

(Reverse Side)

(Name of Transportation Company)

II. Application for conveyance to a country requiring approval of Minister (To be forwarded to the Chief Immigration Officer, Port-of-Spain, Trinidad).

It is hereby requested that ................................................................. be conveyed to 
(Name of Deportee/Reject)

.................................................. which has signified its willingness to receive him.
(Name of Country)

Evidence to that effect is attached hereto.

..........................................................
(Signature and Title of Official)

Date ..........................................................
(Reverse Side)
(Name of Transportation Company)

UNOFFICIAL VERSION
UPDATED TO 31ST DECEMBER 2016
III. Acceptance of country mentioned in II by deportee.

I ........................................... accept to be conveyed to ...........................................
(Name of Deportee/Reject) (Name of Country)

which has signified its willingness to receive me.

Date ........................................... ..............................................................
(Signature of Deportee/Reject)

..............................................................................................
(Signature of Witness)

IV. Approval of the Minister of request of Transportation Company in II.

Approval has been given by the Minister under the provision of section 32 of the
Immigration Act, to the request of ..............................................................
(Name of Transportation Company)

to have ........................................... conveyed to ...........................................
(Name of Deportee/Reject) (Name of Country)

which has signified its willingness to receive him.

Date ........................................... ..............................................................
Permanent Secretary,
Ministry of National Security

Notice to Transportation Company

The Immigration Regulations provide that a request such as the above may be made once only
in each case.
FORM 21

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CERTIFICATE ISSUED UNDER SUBSECTION (1) OF SECTION 7 OF THE ACT

This is to certify that ............................................................... of ..............................................................
(Name of Resident) (Last known Address)

who is a resident of Trinidad and Tobago has been exempted by the Minister from the provisions
of subsection (1) of section 7 of the Immigration Act for a period of .................................

.............................................................................. with effect from ..............................................................

Dated this .............................................................. day of .............................................................. 20........

..............................................................................

Permanent Secretary,
Ministry of National Security

FORM 22

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CERTIFICATE ISSUED BY IMMIGRATION OFFICER UNDER SECTION 9(2) OF THE ACT

The bearer is permitted to enter and remain in Trinidad and Tobago not later than ..................

.............................................................................. for the purpose of ..............................................................

and may not engage in employment paid or unpaid.

(Immigration Department Stamp)

..............................................................................

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 23

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

RECEIPT FROM MASTER FOR DEPORTEE

This is to certify that I have this .......... day of ............................................................

20....... received on board the ............................................. Mr./Mrs./Miss ..........................

............................................................... and his/her dependants hereon named and I do undertake to afford them proper accommodation and maintenance during the passage.

Further I do undertake to make the necessary arrangements to prevent the persons named from disembarking from the ship/aircraft before it leaves Trinidad and Tobago.

Names of Dependents .................................................................

.................................................................

.................................................................

.................................................................

.................................................................

.................................................................

Master/Captain

FORM 24

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

WARRANT OF THE MINISTER UNDER SECTION 14(1) OF THE IMMIGRATION ACT

To every Immigration Officer or Police Officer—

WHEREAS an examination or inquiry is to be held respecting .................................................................

............................................................... or

WHEREAS a deportation order has been made under the Immigration Act, against

.................................................................

I hereby command you to arrest the said .................................................................

and to take him/her into your custody, in accordance with the provisions of the Immigration Act.

Dated at Port-of-Spain this ............... day of .................................................................

.................................................................

Minister of National Security

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 25

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ORDER OF DETENTION MADE BY THE
MINISTER/CHIEF IMMIGRATION OFFICER/SPECIAL
INQUIRY OFFICER UNDER SECTION 14(2) OF THE
IMMIGRATION ACT

To the Commissioner of Prisons/Police

WHEREAS an examination or inquiry is to be held respecting .................................................................

........................................................................................................................................................................
or

WHEREAS a deportation/rejection order has been made under the Immigration Act, against

........................................................................................................................................................................

I hereby order/direct you .................................................................................................................................
to cause his/her detention, in accordance with the provisions of the Immigration Act.

Dated at Port-of-Spain this ...................... day of ......................................................... 20 ........

........................................................................................................................................................................

Minister/Chief Immigration Officer/
Special Inquiry Officer
FORM 26

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS
(Immigration Division)

ORDER TO SHOW CAUSE AND NOTICE OF HEARING
IN DEPORTATION PROCEEDINGS UNDER SECTION 22
OF THE IMMIGRATION ACT

TRINIDAD AND TOBAGO
In the Matter of .........................

.............................................. Respondent

.......................................................... File No. ..........................................................

To .......................................................... ..........................................................

(Name) ............................................. (Address)

Upon information received by the Immigration Division, it is alleged that—

1. You are not a citizen or resident of Trinidad and Tobago.

2. You are a native of ..........................................................

3. And a citizen of ..........................................................

4. You entered Trinidad and Tobago at ..........................................................

on or about .......................................................... and ..........................................................

(set out alleged offences)

And on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to section 22(2) of the Immigration Act.

WHEREFORE, you are ordered to appear for hearing before a Special Inquiry Officer of the Immigration Division at ..........................................................

..........................................................

on ..........................................................and show cause why you should not be deported from Trinidad and Tobago on the Charge(s) set forth above.

Date..........................................................

Chief Immigration Officer

______________________________
FORM 27

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

GRANT OF CLEARANCE UNDER SECTION 38
OF THE ACT

REPUBLIC OF TRINIDAD AND TOBAGO

I hereby certify that the ship/aircraft of .........................................................

whereof ......................................................... is Master, has been granted clearance to
leave any port in Trinidad and Tobago, having complied with all the requirements of section 38 of
the Immigration Act and regulation 33 of the Immigration Regulations, and shall clear any port in
Trinidad and Tobago within twenty-four (24) hours of such compliance.

Number of Passengers .................................................................

Number of Crew ...........................................................................

Number of In-transit Passengers .....................................................

Number of Stowaways on Board ......................................................

Cleared at ......................................................................................

Time ..............................................................................................

.................................................................................................

Chief Immigration Officer

.................................................................................................

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 28

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ORDER OF SUPERVISION

In the case of .......................................................... whose deportation/rejection in accordance with the Immigration Act was ordered on .......................................................... section 17(1) of the Immigration Act provides as follows:

“Conditional release 17. (1) Subject to any order or direction to the contrary by the Minister, a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions, respecting the time and place at which he will report for examination, inquiry, deportation or rejection on payment of a security deposit or other conditions, as may be satisfactory to the Chief Immigration Officer.”.

THEREFORE, it is hereby ordered that such person shall be placed under supervision and permitted to be and to remain at large upon the following terms:

(1) That said person shall produce himself, at the time and place designated, for deportation/rejection pursuant to the order for deportation/rejection.

(2) That said person shall upon request produce himself, at time and place designated, to furnish such information relating to his availability for deportation/rejection as may be deemed fit and proper.

(3) That said person shall not travel outside ........................................... for a period in excess of 48 hours without first having notified the ................................................................. at the address shown in (6) below of the dates and places of such proposed travel.

(4) That said person shall furnish written notice to the .............................. of the Immigration Department at the address shown in (6) of any change of residence or employment within 48 hours after change is made.

(5) Security deposit (if any)—$ ...........................................

(6) That said person report in person on the day of .................................... to the ................................................................. of the Immigration Department at ........................................... unless that Officer grants him written permission to report on another date.

.................................................................................. Signed ..........................................................

(Place) for Chief Immigration Officer
FORM 28—Continued

I, ................................................................. hereby acknowledge that I have (read) had interpreted and explained to me in the .......................... language and understand the contents of this order, a copy of which I have received, I further understand that failure to comply with the terms of this order will subject me to being retaken into custody forthwith without warrant, and any security deposit that may have been made as a condition of my release being forfeited.

.................................................. ..................................................
(Immigration Officer) (Person’s Signature)

.................................................. ..................................................
(Address) (Address)
FORM 29

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

REJECTION ORDER

You have this day appeared for examination before an Immigration Officer at this port and are hereby rejected under section 20 or section 21* of the Immigration Act.

You are hereby ordered to be detained under the provisions of the Immigration Act pending your removal from Trinidad and Tobago.

Date ................................................................. .................................................................

Port of Entry .............................................................................................................................

Service hereof acknowledged by ......................................................... at ............... a.m./p.m.

Signature of Reject

*Note—Sections 20 and 21 of the Act read as follows:

20. (1) Where, in the opinion of the examining Immigration Officer, a person appearing before him for examination cannot be properly examined by reason of the effects of alcohol, drugs or illness, the Immigration Officer may cause an examination of such person to be deferred until such time as he may be properly examined or make an order for his rejection.

(2) A rejection order in the prescribed form or copy thereof shall be served upon the person against whom it is made and upon the owner or master of the vessel by which such person was brought to Trinidad and Tobago.

(3) A rejection order shall cease to be in force or to have effect when the person against whom it was made against appears before an Immigration Officer and can, in the opinion of such Officer, be properly examined by him.

21. (1) Where an Immigration Officer, after examination of a person seeking to enter into Trinidad and Tobago, is of opinion that it would or may be contrary to a provision of this Act or the Regulations to grant admission to such person into Trinidad and Tobago, he may either—

(a) make an order for the rejection of such person; or

(b) cause such person to be detained pending the submission of a report to a Special Inquiry Officer.

(2) A person in respect of whom an order for rejection has been made under subsection (1)(a) who is aggrieved by the making of such order may forthwith give notice of appeal to the Immigration Officer.

(3) Where a notice of appeal has been given under subsection (2), the Immigration Officer shall forthwith make arrangements for the appeal to be heard and determined by a Special Inquiry Officer.
FORM 29—Continued

(4) Where a notice of appeal has been given under subsection (2), the Immigration Officer may either—

(a) cause such person to be detained pending the hearing and the determination of such appeal; or

(b) release such person on such terms and conditions as he thinks fit having regard to all the circumstances of the case.

(5) The provisions of section 20(2) and (3) shall apply for the purposes of an Order for rejection made against a person under subsection (1)(a).”.

---

Regulation 41.

FORM 30

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

VARIATION OF IMMIGRATION OFFICER’S CERTIFICATE UNDER SECTION 9(3) OF THE ACT

The period of validity of the original certificate is hereby (varied) to permit the holder to remain not later than ........................................ and the conditions attached thereto—

remain unaltered/are varied to ...........................................................

Date........................................................................... Immigration Officer

...........................................................................................................

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 31

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

Immigration Division

APPLICATION FOR IN-TRANSIT PASS

I,............................................................................................................................................ hereby make application for the issue to me of an in-transit pass.

I hereby declare that the following particulars are correct in every detail:

Particulars of the person to whom the pass is to be issued

1. Full name: Mr/Mrs/Miss ...........................................................................................................

2. Nationality ............................................................................................................................

3. Date of Birth Place of Birth ....................................................................................................

4. Occupation ............................................................................................................................

5. Address in country of residence ............................................................................................

6. Passport or other travel document No. and place and date of issue Expiry date ........................

7. Reasons for visiting Trinidad and Tobago ............................................................................... 

8. Approximate date of arrival in Trinidad and Tobago ................................................................. 

9. Approximate duration of stay in Trinidad and Tobago ............................................................... 

10. Address in Trinidad and Tobago .............................................................................................. 

11. If in Trinidad and Tobago at the time of making this application, particulars of any certificate, 
permits or pass issued to the applicant ........................................................................................ 

12. Particulars and amount of money available for the purpose of visiting Trinidad and Tobago ........................................................... 

13. Evidence of returnability .........................................................................................................

Date .................................................................................................................................

Signature

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 32

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

DISPOSAL OF APPEAL

In the Matter of an Appeal by ........................................................................................................ made pursuant to the provisions of the Immigration Act, from a deportation order issued against him by a Special Inquiry Officer at .................................................................

......................................................................................................................... 20........

Whereas, I, the duly appointed Minister have considered the proceedings of the Inquiry, the evidence and testimony presented therein, together with all material and representation submitted to me.

Whereas I have examined all the circumstances of this Appeal:

Now therefore, I do ....................................................................................... the said Appeal.

...........................................................................................................

Minister of National Security

Dated at Port-of-Spain, Trinidad, this ...................... day of ................................. 20........

FORM 33

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

Immigration Division

BOND FOR CONDITIONAL RELEASE

Immigration Act, Ch. 18:01 section 17

.............................................................................................................. In the Matter of the Immigration Act, and

...........................................................................................................................

(name of person bonded)

KNOW ALL MEN BY THESE PRESENTS THAT WE[.........................................................................................]

(person/s bonded)

....................................................................................................................... of .............................................................................................. formerly of

....................................................................................................................... and held and firmly bound

(state place of domicile before coming to Trinidad and Tobago)

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
unto the Comptroller of Accounts in the penal sum of ........................................ dollars, to be paid to the Comptroller of Accounts, for which payment I/Ourselves bind myself/ourselves, my/our Heirs, Executors and Administrators and every one of them firmly by these presents.

Dated this ........................................ day of .............................................................. 20........

Signed, sealed and delivered in the presence of:

[..............................................................]

[..............................................................]

Witness  

Signature of person bonded

The condition of this obligation is such that if the said .............................................................. who has been ordered deported from Trinidad and Tobago/detained for Inquiry under the authority of the Immigration Act, and is required to report in person to ..............................................................

.............................................................. the immigration officer in charge at

.............................................................. o’clock in the ........................................ noon, on each and every ........................................ day from and after the date of such order pending such deportation or inquiry reports as aforesaid and surrenders himself to the immigration officer in charge when called upon to do so, then this obligation shall be void, but otherwise shall be and remain in full force and virtue.

..............................................................

Signature of person bonded

Taken and acknowledged today in the year first above mentioned at ..............................................................

.............................................................. in the place aforesaid before me.

..............................................................

Chief Immigration Officer

NOTICE

Section 17(2) of the Immigration Act, provides that: “Where a person fails to comply with any of the conditions under which he is released from custody or detention, he may without warrant be re taken into custody forthwith and any security deposit made as a condition of his release shall be forfeited and shall form part of the general revenue.”.
FORM 34

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION FOR STUDENT’S PERMIT

To the Chief Immigration Officer

I, ........................................................................................................................................

Born at .................................................. on .......................................................... holder of .......................................................... Passport No. .................................................. issued at ..........................................................

on .................................................. and valid until ..........................................................

in which my national status is given as ..........................................................

and now residing at .......................................................... hereby make application for a Student’s Permit valid until ..........................................................

2. I have been accepted for admission to—

........................................................................................................................................

........................................................................................................................................

I expect to remain as a student for a period of .................................................. years.

3. I attach the required documentary proof of my acceptance as a student.

State offences (other than traffic offences) of which applicant has been convicted, if any, and give the date of conviction in each case ..........................................................

........................................................................................................................................

........................................................................................................................................

Date ........................................................................................................ Signature of Applicant or Signature of Responsible Parent or Guardian

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 35

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

NOTICE TO TRANSPORTATION COMPANY

Immigration Division
Port-of-Spain
Trinidad

Sir,

Regulation 35 of the Immigration Regulations provides that the Minister, or any person acting under his authority, may give directions to the master of any ship or commander of any aircraft which is about to leave Trinidad and Tobago requiring him to afford to any person against whom a deportation/rejection order is in force, and to any dependants of that person specified in the directions, a passage to any port so specified (being a port in a country of which that person is a citizen or in a country or territory to which the Minister has reason to believe that he/she will be admitted and at which the ship or aircraft is to call or land in the course of the voyage) and proper accommodation and maintenance during the passage.

________________________________________________________________________________

is a person against whom a deportation/rejection order made under the Immigration Act is in force, and I, being an immigration officer acting under the authority of the Minister, require you to afford, him/her together with ......................................................................................................................

a passage to .............................................................................................................................................

and proper accommodation and maintenance during the passage.

Regulation 35 of the Immigration Regulations further provides that the master of a ship or commander of any aircraft shall, if so required by an immigration officer, take such steps as may be necessary for preventing any person placed on board the ship or aircraft under regulation 35 from disembarking from the ship or aircraft before it leaves Trinidad and Tobago and for that purpose the master or commander may detain the said person in custody on board the ship or aircraft.

I accordingly require you to take such steps as may be necessary to prevent the said ............

...................................................................................................................................................

from disembarking from your ship/aircraft before it leaves the territory. For this purpose you may, if necessary detain him/her in custody.

Date......................................................................................................................

Chief Immigration Officer

To the Master, ss/m.v.

_________________________________________________________________________________________
FORM 36

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

WORK PERMIT—FOR ISSUE TO EMPLOYERS
AND EMPLOYEES

Work Permit No. .......................................................... Authority .........................................................

Permission is hereby granted ............................................................
Whose particulars are appended below to make an entry into Trinidad and Tobago within
........................................ days of the date of this permit and remain ........................................

 ........................................................................................................................................................................

Trinidad and Tobago until ............................................................
as a .......................................................................................... only in the employment
of ........................................................................................................ subject to compliance with the provisions of the Immigration Act, and Regulations.

Nationality .............................................................. Passport No. ....................................................... 

Place and Date of Issue .......................................................... Valid to ......................................................

Date and Place of Birth .................................................................................

Conditions of Work Permit ........................................................................

........................................................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

........................................................................................................................................................................

This Work Permit:
(i) is not a travel document and will not be accepted as such;
(ii) must be produced to the Immigration Officer on arrival and subsequently on
demand by an Immigration Officer;
(iii) is liable to cancellation if the holder fails to comply with any of the
conditions subject to which it was issued or if any information supplied in the
application therefor is found to be false or misleading;
(iv) ceases to be valid if the holder leaves the employment shown in this work
permit or takes up other paid employment, business or professional occupation.

Date ........................................................................ Permanent Secretary, Ministry of National Security

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
NOTE:

The attention of the holder of this Permit is drawn to regulation 10. Subregulations (7) to (12) of regulation 10 of the Immigration Regulations read as follows:

“(7) Every work permit shall be kept by the person in respect of whom it is issued, and such person shall produce the work permit to an Immigration Officer or a Public Officer on demand or within three days of such demand at such place as the Immigration Officer or Public Officer may direct.

(8) A person having in his possession a work permit appearing to have been issued under these Regulations shall answer any questions put to him by an Immigration Officer or Public Officer relating to the possession of such permit.

(9) A person is guilty of an offence who—

(a) without reasonable excuse fails or refuses to produce a work permit as required in subregulation (7); or

(b) fails without reasonable excuse to answer any questions put to him in connection with the possession thereof.

(10) The Minister may, in any case where he is satisfied that the terms and conditions of a work permit have not been complied with or that the person in respect of whom such work permit has been issued has become a person described in section 8(1)(q) of the Act, vary or cancel such work permit; and on any such variation or cancellation, the Permanent Secretary shall transmit to the holder of such work permit a notice in the form set out as Form No. 39.

(11) Where an employment is terminated, or upon the expiration of the work permit an employer shall immediately inform the Permanent Secretary of the termination of the employment.

(12) The employer shall—

(a) not less than seven days before the arrival or expected arrival in Trinidad and Tobago of any person in respect of whom a work permit applies, notify the Chief Immigration Officer in writing of the expected arrival of such person;

(b) not less than fourteen days before the date of expiration of the work permit or on termination of the contract of employment, of any person, whichever is the earlier, notify the Chief Immigration Officer of the arrangements made for the repatriation of such person;

(c) where an employee fails to leave Trinidad and Tobago in accordance with the arrangements made for his repatriation, notify the Chief Immigration Officer of the fact within seven days of such failure to leave Trinidad and Tobago.”
[Subsidiary]

Regulation 9(1)(b).

FORM 37

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION FOR OVERSEAS MISSIONARIES’ PERMIT

(To be prepared in triplicate)

Application under section 9(1)(c) for entry or extension of stay, by Clergyman, Priest or members of a Religious Order. (Overseas Missionaries Permit).

Name of Religious Organisation ............................................................................................................

Address of Head in Trinidad and Tobago ................................................................................................

1. Name of Clergyman, Priest or Member of Religious Order ..............................................................

............................................................................................................................................................

Name by which known in Religion ........................................................................................................

2. Present Address in full of Clergyman, etc. ...........................................................................................

3. Date and Place of Birth .........................................................................................................................

4. Present Nationality ...............................................................................................................................#

5. Passport No. ........................................ Date and Place of Issue ..........................................................

............................................................................................................................................................

6. Educational Qualifications ...................................................................................................................

............................................................................................................................................................

............................................................................................................................................................

7. Previous Occupation, if any ...................................................................................................................

............................................................................................................................................................

............................................................................................................................................................

8. Purpose of Visit .....................................................................................................................................

............................................................................................................................................................

9. Married, Single, Widowed or Divorced ..............................................................................................

Wife’s Name ................................................ Maiden Name .................................................................

Date of Birth .........................................................................................................................................
10. Children’s Names and Dates of Birth

11. State period during which you were a member of any Religious Organisations, including the Organisation which has now applied on your behalf

12. Date/s of Ordination/s

13. What other Countries have you visited outside of your own during the last ten (10) years?

14. State the length and purpose of these visits

15. Have you or any of your dependants been barred from entering any country or deported from any country?

16. State offences (other than traffic offences) of which applicant has been convicted if any, and give the date of conviction in each case

17. If YES, give particulars and dates

18. State whether you were granted a previous permit by the Government of Trinidad and Tobago and for what purpose

I hereby declare that the information furnished by me is true and correct.

Date

Applicant

Note:

9 (7)(i) A person is guilty of an offence who—
(i) without reasonable excuse fails or refuses to produce an Overseas Missionaries’ Permit as required by this regulation; or
(ii) refuses to answer any question put to him.
FORM 38

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

IN-TRANSIT PASS

Valid for .......................................................... Signed ..........................................................

for Chief Immigration Officer

Date .......................................................... Destination ......................................................

The holder must report to an Immigration Officer any change of address.

FORM 39

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CANCELLATION OF WORK PERMIT FOR ISSUE TO EMPLOYERS AND EMPLOYEES

To .......................................................... of ..........................................................

This serves to inform you that Work Permit No. ..........................................................

issued to you on .......................................................... in respect of ..........................................................

is hereby varied/cancelled with effect from ..........................................................

You are therefore directed to report to the Chief Immigration Officer immediately so that your certificate to remain in Trinidad and Tobago may be regularised.

Signed ..........................................................

Permanent Secretary,

Ministry of National Security

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 40

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

MEDICAL HISTORY

PART A

(For persons who wish to remain in Trinidad and Tobago for periods exceeding one year)

DECLARATION BY APPLICANT OR LEGAL GUARDIAN

(which must be made in the presence of the Examining Medical Officer)

Name ................................................................. (full name in block capitals)

Address .........................................................................................................................

1. Have you or any member of your family included in this application ever had any serious illness or surgical operations? If so list them .................................................................

2. Have you or has any member of your family ever been under treatment for tuberculosis?

........................................................................................................................................

If so with what results? (report from Thoracic Medical Officer to be supplied; Chest X-ray of applicant to be produced).

3. Have you ever suffered from Malaria? .................................................................

(Evidence to be produced, bacteriological, etc.). .................................................................

When and where was your last attack? .................................................................

Where did you contract the disease? .................................................................................

4. Have you or has any member of your family ever been under treatment for Leprosy?

........................................................................................................................................

If so with what results? .................................................................................................

(Evidence to be produced, bacteriological, etc.) .................................................................

5. Have you or has any member of your family ever suffered from mental disease, fits, or epilepsy, or been treated for these or similar diseases or other mental disorder? ..............

I hereby certify that the information supplied by me to the Medical Examiner is correct in every particular.

........................................................................................................................................

Signature of Applicant/Legal Guardian

This form shall be completed by every applicant over 16 years of age, or by the parents or legal guardians of applicants under 16 years of age.
FORM 40—Continued

PHYSICAL EXAMINATION OF APPLICANT

PART B

To be completed by Examining Medical Officer after Part A has been presented.

Name of Applicant ...........................................................................................................

Height .......................................................... Weight ..................................................

Eye abnormalities:

Right .............. Left .............. Hearing (conversational voice):

Right .............. Left .............. Ear Drums ............................................................

Head and Neck .................................................

Spine .......................................................... Skin .................................................

Lungs .......................................................... Chest X-ray ......................................

Heart .......................................................... Pulse .............. Blood Pressure ...........

Repeat Blood

Pressure if

Abdomen ............... Hernia ....................... abnormal ........................................

Genito-Urinary .......................................................... Neurological .........................

Is Applicant Pregnant? .......................................................... Urinalysis .........................

Remarks .................................................................................................................

Qualifications ...........................................................................................................

Address ....................................................................................................................

Date .......................................................... ..........................

Signature of Examining Medical Officer

I certify that I have this day examined the above-named person and that the results are as set forth, and I certify that in my opinion, subject to any special observations under “Remarks”, he/she is in good health and of sound constitution, and not suffering from any infectious disease or mental or bodily defects which prevent him/her from earning his/her own living.

Remarks .................................................................................................................

.................................................................................................................

Date .......................................................... ..........................

Signature and Qualifications of Medical Officer and Practitioner

.................................................................................................................

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 41

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ORDER OF THE MINISTER TO COMMISSIONER OF PRISONS, ETC.

MINISTRY OF NATIONAL SECURITY

Order of the Minister under section 14(3) of the Immigration Act, Ch. 18:01.

To ..........................................................................................................................

(The Commissioner of Prisons, or other person in charge of the institution concerned)

WHEREAS ..............................................................................................................
a person in respect of whom an examination or inquiry is to be held?/a Deportation order has been made under the Immigration Act, is an inmate of ..................................................

.............................................................. I hereby command you, at the expiration of his sentence or term of imprisonment as reduced by the operation of law, to detain the said

........................................................................................................................................

and deliver him to an Immigration Officer to take him into custody and cause him to be detained as the warrant may direct.

............................................................................................................

Minister of National Security

*Delete whichever is inappropriate.
FORM 42

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS
(Immigration Division)

APPLICATION FOR WAIVER OF VISA

..............................................................
File No. .............................................

1. My Name is ..................................................................................................................

2. My Address is ..............................................................................................................
   (Apartment Number) (Number and Street) 
   ........................................................................... .............................................
   (City) (State)

3. My Permanent Address Abroad is .................................................................

4. The Country of which I am a Citizen is ............................................................

5. Place of Birth ........................................... Date of Birth ........................................

6. Date of Arrival ........................................... Port of Arrival ........................................

7. Manner of Arrival ........................................................................................................
   (Name of Vessel, Airline, etc.)

8. The reason I am not in possession of a Passport Visa is as follows: ......................
   .................................................................................................................................

..............................................................

Fees:
A fee of twenty dollars ($20.00), payable in Trinidad and Tobago currency must accompany this application. The fee is required for filing the application and is not returnable regardless of action taken thereon.

.............................................................. ..............................................................
(Date) (Signature)

APPLICANT NOT TO WRITE BELOW THIS LINE

Date .......................................................... Port ..........................................................

Waiver granted under regulation by Application approved/disapproved
authority of ..................................................................................................................

.................................................................................................................................

..........................................................

Signature

Chief Immigration Officer

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 43

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

STUDENT’S PERMIT

This Permit—

(i) enables ........................................................................................................ holder of
.................................................................................................................. passport or travel document

No. ........................................... issued at .................................................................
on ......................................................................................................................... to enter and remain in
......................................................................................................................... as a student for the
purpose of studying at ............................................................................................

(ii) is valid until ........................................................................................................

(iii) is subject to the following other conditions: ..................................................

.................................................................................................................................
Date .............................................................................................................. Chief Immigration Officer

NOTE:
This permit will cease to be valid if the holder fails to comply with any of the terms and conditions herein.
This permit is subject to cancellation if any information supplied in the application therefor is found to be false or misleading.

N.B.:—Quote regulation 9(6)(f), (g) and (h) on reverse of form.
FORM 44

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

NOTICE TO APPLICANT FOR ADMISSION DETAINED FOR A HEARING BEFORE A SPECIAL INQUIRY OFFICER

To: ............................................................................................................ Date: .................................................................

PLEASE TAKE NOTICE THAT:

You do not appear to me to be clearly and beyond a doubt entitled to enter Trinidad and Tobago as you may come within the exclusion provisions of section 8 of the Immigration Act, in that ..............................................................................................................................

Therefore you are detained under the provisions of section 14 of the Immigration Act, Ch. 18:01, for a hearing before a Special Inquiry Officer to determine whether or not you may be permitted to enter Trinidad and Tobago or whether you shall be excluded and deported. During such hearing you will have the right to be represented by an Attorney-at-law or any other person and to have a friend or relative present.

AT THE HEARING BEFORE THE SPECIAL INQUIRY OFFICER YOU MUST ESTABLISH THAT YOU ARE ADMISSIBLE TO TRINIDAD AND TOBAGO UNDER ALL PROVISIONS OF THE IMMIGRATION ACT AND REGULATIONS.

The Hearing—

(a) is scheduled for ........................................ on ..........................................................

(Time) (Date)

at ............................................................................................................................

(Place)

(b) will be scheduled and you will be notified as to time and place. It is understood that you want the notice of hearing sent to you at the following address:..............................

..................................................................................................................

Immigration Officer

CERTIFICATE OF SERVICE

Original of this notice was delivered to the above-named applicant by the undersigned on ........................................................................................................

..................................................................................................................

Immigration Officer

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
NOTICE TO RESPONDENT

Any statement you make may be used as evidence in Deportation Proceedings

THE COPY OF THIS ORDER SERVED UPON YOU IS
EVIDENCE OF YOUR IDENTIFICATION WHILE
YOU ARE UNDER DEPORTATION PROCEEDINGS,
The LAW REQUIRES THAT IT BE CARRIED
WITH YOU AT ALL TIMES

If you so choose, you may be represented in these proceedings at no expense to the Government of Trinidad and Tobago by an Attorney-at-Law, Relative or Friend. You should bring with you affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witness considered, you should arrange to have such witnesses present at the hearing.

When you appear you may, if you wish, admit that the allegations contained in the Order to Show Cause are true and that you are deportable from Trinidad and Tobago on the charges set forth therein. Such admission may constitute a waiver of any further hearing as to your deportability. If you do not admit that the allegations and charges are true, you will be given reasonable opportunity to present evidence on your own behalf, to examine the Government’s evidence, and to cross-examine any witness presented by the Government.

You may apply at the hearing for voluntary departure in lieu of deportation. Moreover, if you appear to be eligible to acquire lawful, permanent, resident status the Special Inquiry Officer will explain this to you at the hearing and give you an opportunity to apply.

You will be asked during the hearing to select a country to which you choose to be deported in the event that your deportation is required by law. The Special Inquiry Officer will also notify you concerning any other country or countries to which your deportation may be directed pursuant to law; and upon receipt of this information, you will have an opportunity to apply during the hearing for temporary withholding of deportation if you believe you would be subject to prosecution in any such country on account of race, religion, or political opinion.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration Division without further notice, or in a determination being made by the Special Inquiry Officer in your absence.
FORM 44—Continued

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing and waive any right I may have to more extended notice.

........................................................................................................

Signature of Respondent

Before:

........................................................................................................  ........................................

(Signature and Title of Witnessing Officer)  (Date)

CERTIFICATE OF SERVICE

This order and notice were served by me on ...............................................................
in the following manner.

........................................................................................................

Signature and Title of Employee or Officer

UNOFFICIAL VERSION
UPDATED TO 31ST DECEMBER 2016
FORM 45

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

SUMMONS TO A WITNESS

To ...........................................................................................................................................

Whereas an enquiry is being held by me into ........................................................................

........................................................................................................................................
and whereas it appears to me that you are likely to give material evidence respecting the subject
of such enquiry.

Now know you that I ...........................................................................................................by virtue of the
powers vested in me under subsection (2) of section 13 of the Immigration Act, Ch. 18:01, do
hereby summon you to appear at the office of .................................................................
on the .............................................. day of ................................................................. 20..... at .......... o’clock to give evidence concerning the matter of the said enquiry and to bring with you and
produce any document, book or paper that you have in your possession or under your control
relative to the subject matter of the said enquiry, and not to depart thence without leave of the
Special Inquiry Officer; and you are hereby warned that if without just excuse you neglect or
refuse to appear on the said date you shall be guilty of an offence against the said Act.

Given under my hand this ................................... day of ................................................. 20.....

........................................................................................................................................
Special Inquiry Officer

........................................................................................................................................

UNOFFICIAL VERSION L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 46

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

In the matter of a Special Inquiry in the case of ...............................
and in the matter of an application for voluntary departure
under the Immigration Act, section 25(5).

GRANT OF VOLUNTARY DEPARTURE

The above-named ........................................ (hereinafter called, “the Respondent”) having appeared
before me for hearing on this date pursuant to an Order to show cause/Report/Notice of Appeal
and admitted the truth of the following factual allegations made against him:
I am satisfied and have concluded that deportability has been thereby established;

The Respondent is willing to leave Trinidad and Tobago voluntarily and at no expense to the
Government of Trinidad and Tobago and has applied for voluntary departure instead of deportation;

IT IS ORDERED that the Respondent shall be permitted to depart voluntarily from Trinidad
and Tobago within such time and under such conditions as the Chief Immigration Officer shall
direct and without expense to the Government of Trinidad and Tobago.

Dated this ........................................... day of .......................................................... 20........

.................................................................
Special Inquiry Officer

WARNING

Failure to comply with the terms of this Order or to observe any condition prescribed by the
Chief Immigration Officer could result in the arrest and detention of the Respondent and the
making of a deportation order against him.
FORM 47

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CANCELLATION OF IN-TRANSIT PASS

To ..............................................................................................................................................

of .............................................................................................................................................

You are hereby notified that In-transit Pass No. ...........................................................................

which was issued to you on ................................................................. is hereby cancelled.

..............................................................................................................................................

Chief Immigration Officer

FORM 48

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

TRAVELLING SALESMAN’S LICENCE

Ministry of National Security, Port-of-Spain.

M ..............................................................................................................................................

of .............................................................................................................................................

is/are hereby licensed to carry on the business of a travelling salesman in Trinidad and Tobago

for a period of ................................................................. months from the date of issue.

Particulars of Licence ................................................................................................................

..............................................................................................................................................

..............................................................................................................................................

.............................................. .................................................................

Date Permanent Secretary,
Ministry of National Security

UNOFFICIAL VERSION L.R.O.

UPDATED TO 31ST DECEMBER 2016
**FORM 49**

**IMMIGRATION REGULATIONS**

**ACCOMMODATION REGISTER**

<table>
<thead>
<tr>
<th>Name</th>
<th>Date and Place of Birth</th>
<th>Nationality</th>
<th>Particulars of Passport</th>
<th>Country last visited</th>
<th>Domicile</th>
<th>COMMENCED</th>
<th>TERMINATED</th>
<th>Reason for being in Country</th>
<th>Signature</th>
<th>Remarks</th>
</tr>
</thead>
</table>

I certify that the above is a true record of accommodation for the period .................................................................

.................................................................................................................................

Keeper of Premises
FORM 50

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

OVERSEAS MISSIONARIES’ PERMIT

Permission is hereby granted to ……………………………………………………………………………

whose particulars are appended below to enter and remain in Trinidad and Tobago for the purpose

of engaging in missionary work with effect from ……………………………………………………………

This authority is valid for the period ………………………………………………………………………

…………………………………………………………………… and is subject to compliance with the

provisions of the Immigration Act and Regulations.

PARTICULARS

Date and Place of Birth …………………………………………………………………………………

Nationality ………………………………………………….. Passport No. ……………………………

Place and Date of Issue …………………………………………………………………………………

Valid to ………………………………………………………………………………………………………

Date ………………………………………………….. Permanent Secretary,

Ministry of National Security

N.B.—This permit is subject to cancellation if any information supplied in the application
therefor is false or misleading.

Serial No. ………………………………………

__________________________________________________________________________
REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

APPLICATION ON BEHALF OF A PERMITTED ENTRANT TO ENTER TRINIDAD AND TOBAGO

(1) Particulars relating to Citizen of Trinidad and Tobago or Resident making Application.

1. Name in full ..................................................................................................................

2. Full address in Trinidad and Tobago ..........................................................................

3. Age ................................ Nationality ........................................................................

4. Occupation and means of subsistence ....................................................................

5. Place of birth ...........................................................................................................

6. Dates of first and subsequent entry into Trinidad and Tobago ............................

........................................................................................................................................

7. Name of vessel..........................................................................................................

8. Full particulars, with dates of applicant’s subsequent movements and places of
   residence......................................................................................................................

........................................................................................................................................

9. Particulars of fixed property or other vested interest of applicant in Trinidad and Tobago
   or elsewhere................................................................................................................

........................................................................................................................................

10. Documentary evidence in support of above question .............................................

11. Particulars of wife, children, stating names, ages and where resident ..................

........................................................................................................................................

12. Particulars of relationship, if any, to proposed immigrant ......................................

........................................................................................................................................

13. I declare that to the best of my personal knowledge and belief the above-made
    declaration of the said Mr./Mrs./Miss is true.

Ref. para. 13.

A certificate signed by one of the following will be accepted:

Any member of the regular Police Service—giving rank and number; any Member of
Parliament, Mayor, Magistrate, Justice of the Peace, Minister of Religion, Attorney-at-
Law, Physician, Surgeon, Notary Public, School Principal and District Postmistress who
is resident in Trinidad and Tobago and being himself/herself a Citizen of Trinidad and
Tobago or a resident.

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
(2) Particulars relating to proposed Permitted Entrant.

Name in full .........................................................
Age ............ Nationality ..................................
Place of birth ..................................................
Place of residence ..........................................
Occupation ..................................................
Particulars of previous residence in Trinidad and Tobago, if any ..................................
...........................................................................
...........................................................................
Full particulars of business or employment which Immigrant intends to follow ..................
...........................................................................
If for a temporary visit only state how long ......
...........................................................................
Particulars of fixed property or other vested interests of immigrant in Trinidad and Tobago or elsewhere ..........................................................
Documentary evidence in support of above question ..........................................
...........................................................................
Particulars of wife, and children stating names, ages and where resident ..........................
...........................................................................
...........................................................................
State offences (other than traffic offences) of which applicant has been convicted, if any, and give the date of conviction in each case ..........................................
...........................................................................

I hereby declare that the information furnished by me at (1) and (2) above is true to the best of my knowledge and belief.

Date ............................................................  ............................................................

Signature of Applicant

Two passport-size photographs of the immigrant not taken more than two years to the date of the application to be submitted.
FORM 52

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

CERTIFICATE OF FACILITATION OF ENTRY

This is to Certify that representations having been made on behalf of ........................................

..............................................................................................................................................................

of ..............................................................................................................................................................

Permission has been granted to ............................................................................................................

to enter Trinidad and Tobago provided ............................................................................................

complies with the following requirements of the Immigration and Health Regulations, namely:

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FORM 53

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ORDER OF THE MINISTER UNDER SECTION 9(4) OF THE IMMIGRATION ACT, Ch. 18:01

I, ..............................................................................................................................................................

hereby declare that ........................................................................................................................................

being a person described in section ...........................................................................................................

of the Immigration Act, has ceased to be a permitted entrant with effect from ..........................

........................................................................................................................................................................

Date ....................................................................................................................................................................

Minister of National Security

---

FORM 54

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

FORFEITURE OF DEPOSIT/RECOGNISANCE

........................................................................................................................................................................ having failed to comply with the

( Name of person)

conditions under which he was released, is hereby declared to have forfeited his deposit/ recognisance

in the amount of ....................................................................................................................................................

Dated this ................... day of ................................................................., 20........

........................................................................................................................................................................

Minister of National Security

---

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 55

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

COMPLAINT UPON OATH

COUNTY OF

Complainant

(Name of Officer)

Versus

Defendant

(Name of person)

The complaint ................................................................. of the Passport and Immigration Department who says on his oath/affirmation that ................................................................. (Name of person) has contravened section/regulation .................................. of the Immigration Act/Immigration Regulations in that ........................................................................................................

........................................................................................................

........................................................................................................

........................................................................................................

And the said complainant prays that the said ................................................................. (Name of person) may be summoned to answer the said complaint.

Complainant

Taken before me this .......... day of ................................................................. 20.......
at ........................................................................................................

Magistrate or Justice

---

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016
FORM 56

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

(To be completed in triplicate)

APPLICATION FOR A CERTIFICATE OF EXEMPTION FROM THE PROVISIONS OF SECTION 7(1) OF THE IMMIGRATION ACT, Ch. 18:01

I. ......................................................................................... of .........................................................................................

........................................................................................................................................................................................................................................................................................................................................................................

(Name)

........................................................................................................................................................................................................................................................................................................................................................................

(Address)

a resident of Trinidad and Tobago hereby apply for exemption from the provisions of section 7(1) of the Immigration Act, Ch. 18:01. In support of my application I tender the following information:

1. Date and place of birth ........................................................................................................................................................................................................................................................................................................................................................................

2. Present Nationality ........................................................................................................................................................................................................................................................................................................................................................................

3. Passport No. .................................................. Date and place of issue ........................................................................................................................................................................................................................................................................................................................................................................

4. Occupation ........................................................................................................................................................................................................................................................................................................................................................................

5. Marital Status ........................................................................................................................................................................................................................................................................................................................................................................

6. Proof of grant of residence in Trinidad and Tobago ........................................................................................................................................................................................................................................................................................................................................................................

........................................................................................................................................................................................................................................................................................................................................................................

7. Period and places of ordinary residence in Trinidad and Tobago over a period of five (5) years immediately preceding the date of application ........................................................................................................................................................................................................................................................................................................................................................................

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8. If applying from outside of Trinidad and Tobago, period of residence outside of Trinidad and Tobago ........................................................................................................................................................................................................................................................................................................................................................................

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9. Reason for residence abroad ........................................................................................................................................................................................................................................................................................................................................................................

10. Certificate of exemption required until ........................................................................................................................................................................................................................................................................................................................................................................

11. Purpose of stay abroad ........................................................................................................................................................................................................................................................................................................................................................................

12. Intended address abroad ........................................................................................................................................................................................................................................................................................................................................................................

........................................................................................................................................................................................................................................................................................................................................................................

I declare that the foregoing particulars are true and correct.

Date ..............................................................................................................

Signature of Applicant

..............................................................................................................

UNOFFICIAL VERSION

L.R.O.

UPDATED TO 31ST DECEMBER 2016
FORM 57

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

ORDER OF RELEASE
[Under section 14(1) or 15 of the Immigration Act]

To .................................................................

(The Commissioner of Prisons or other persons in charge of the Institution concerned)

Whereas .................................................................

a person in respect of whom an examination or inquiry is to be held/a Rejection Order/Deportation

Order has been made under the Immigration Act, Ch. 18:01 is being detained at/is an inmate of

........................................................................................................

I hereby command you to release the said .................................................................

into the custody of the ................................................................., presenting this notice.

Date .................................................................

Minister/C.I.O.
FORM 58

REPUBLIC OF TRINIDAD AND TOBAGO

IMMIGRATION REGULATIONS

NOTICE OF COMPLAINT AGAINST A PERSON
FOR COMMITTING A BREACH OF
THE IMMIGRATION REGULATIONS

To: The Chief Immigration Officer

I, ................................................................., Immigration Officer on duty at ................................................................., hereby charge ........................................

(Name of Officer) (Port)

.................................................................................. for committing a breach of the Immigration Regulations, in that .................................................................

..................................................................................

..................................................................................

contrary to .................................................................

(Quote Regulation)

.........................................................................................

Date ......................................................... Immigration Officer

To: .................................................................................................................................

(Name of Person/Transportation Company)

You are hereby ordered to appear before the Chief Immigration Officer at ........................................... a.m./p.m. at .................................................................

(time) (Place)

.................................................................................. to answer the above charge(s).

.........................................................................................

Date ......................................................... Immigration Officer

SERVICE HEREOF ACKNOWLEDGED BY

.................................................................................................................................

(Signature)

I/We ................................................................. hereby elect to have the above complaint heard by the Chief Immigration Officer.

.................................................................................................................................

Date ......................................................... Signature
SECOND SCHEDULE
IMMIGRATION REGULATIONS

Countries for which visas are compulsory—
  Cuba
  Macedonia
  The Democratic People’s Republic of Korea (North Korea)
  Vietnam

THIRD SCHEDULE
IMMIGRATION REGULATIONS

FEES FOR VISITING AND CLEARING OF SHIP
BY IMMIGRATION OFFICER

I. For visiting or clearing a ship between 4.00 p.m. to 8.00 a.m. on ordinary days of the week and on Saturdays, Sundays and public holidays, $100.00 for first 3 hours and $50.00 per hour after, or part thereof.

II. For any Immigration Service to vessels other than visiting or clearing. Times and fees as at I above.
FOURTH SCHEDULE

IMMIGRATION REGULATIONS

A. Fees in respect of the Issue of Miscellaneous Permits and Certificates—

(i) For variation or extensions of Landing Certificate [beyond
ninety (90) days from date of arrival] ... ... $100.00

(ii) On application for the grant of Work Permit ... ... $600.00

(iii) For the duration of Work Permit ... ... $450.00

per month subject to a
minimum of
$1,350.00

(iv) Certificate for Facilitation of Entry—

(a) for citizens or residents of Caribbean Free Trade
Association Territories and of Caribbean Common
Market Countries... ... ... ... $100.00

(b) for persons who are not citizens or residents referred
to in (a)... ... ... ... $500.00

(v) Certificate of Residence:

(a) in respect of persons from Caricom Countries $400.00

(b) in respect of persons from non-Caricom Countries $1,000.00

(vi) Student’s Permit ... ... ... ... $200.00

(vii) Visa Waiver ... ... ... ... ... $400.00

(viii) Change of Status ... ... ... ... ... $100.00

(ix) Certificate of Residence under Amnesty Programme—

(a) Application fee (non-refundable) ... ... $200.00

(b) Certificate Fee ... ... ... ... $300.00

(x) Issue of letters confirming citizenship or residence ... $200.00

B. Citizens of Caricom countries shall pay one-half the fees stipulated at items (i), (v), (vi),
(viii) and (x).
FIFTH SCHEDULE
IMMIGRATION REGULATIONS

FEES IN RESPECT OF THE ISSUE OF LICENCES TO TRAVELLING SALESMEN

The following fees shall be payable to the Comptroller of Accounts:

In respect of the grant of the permission to a travelling salesman to engage in local business—

1. Where the permission is expressed to be valid for a period of twelve (12) months... ... ... ... $2,000.00

2. Where the permission is expressed to be valid for a period of six (6) months from the date on which it is granted... ... ... ... $1,000.00

SIXTH SCHEDULE
IMMIGRATION REGULATIONS

PORTS OF ENTRY

The following places are designated as ports of entry:

(a) Brighton (h) Piarco
(b) Crown Point (i) Point Lisas
(c) Chaguaramas (j) San Fernando
(d) Port-of-Spain (k) Scarborough
(e) Pointe-a-Pierre (l) Point Galeota
(f) Temladora (m) Cedros
(g) Point Fortin (n) Charlottesville

UNOFFICIAL VERSION
UPDATED TO 31ST DECEMBER 2016
SEVENTH SCHEDULE
IMMIGRATION REGULATIONS

FEES IN RESPECT OF TRAVEL DOCUMENTS

<table>
<thead>
<tr>
<th>Travel Documents</th>
<th>Fees Payable</th>
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</thead>
<tbody>
<tr>
<td>(a) Machine Readable Passports:</td>
<td></td>
</tr>
<tr>
<td>(i) Adult (sixteen years and over)—32 pages</td>
<td>...</td>
</tr>
<tr>
<td>(ii) Child (Two years and over but under sixteen)</td>
<td>...</td>
</tr>
<tr>
<td>(iii) Child (under two years)</td>
<td>...</td>
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<tr>
<td>(iii) Special 48-page passport</td>
<td>...</td>
</tr>
<tr>
<td>(b) Valid lost or misplaced passport (Adult)</td>
<td>...</td>
</tr>
<tr>
<td>(c) Valid lost or misplaced passport (Child)</td>
<td>...</td>
</tr>
<tr>
<td>(cd) Valid lost or misplaced passport (Child under two years)</td>
<td>Nil</td>
</tr>
<tr>
<td>(d) Expired lost or misplaced passport (Adult)</td>
<td>...</td>
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<tr>
<td>(e) Expired lost or misplaced passport (Child)</td>
<td>...</td>
</tr>
<tr>
<td>(es) Expired lost or misplaced passport (Child under two years)</td>
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</tr>
<tr>
<td>(f) Stolen passport (Adult)</td>
<td>...</td>
</tr>
<tr>
<td>(g) Stolen passport (Child)</td>
<td>...</td>
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<tr>
<td>(ge) Stolen passport (Child under two years)</td>
<td>...</td>
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<tr>
<td>(h) Mutilated or damaged passport (Adult)</td>
<td>...</td>
</tr>
<tr>
<td>(i) Single Entry Visa</td>
<td>...</td>
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<tr>
<td>Multiple Entry Visa</td>
<td>...</td>
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<tr>
<td>(ia) Mutilated or damaged passport (Child under two years)</td>
<td>...</td>
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<tr>
<td>(j) Expedited passport (additional cost per passport)</td>
<td>...</td>
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<tr>
<td>(k) Emergency passport</td>
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<tr>
<td>(l) Emergency Certificate</td>
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<tr>
<td>(m) Travel Permit</td>
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<tr>
<td>(n) Certificate of Identity</td>
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<tr>
<td>(o) Seaman’s I.D.</td>
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<tr>
<td>(p) Endorsement</td>
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<tr>
<td>(q) Affidavit in lieu of passport</td>
<td>...</td>
</tr>
<tr>
<td>(r) Visa...</td>
<td>...</td>
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</table>

EIGHTH SCHEDULE
IMMIGRATION REGULATIONS

FEE IN RESPECT OF THE ISSUE OF OVERSEAS MISSIONARIES’ PERMITS

The following fee shall be payable to the Comptroller of Accounts:
In respect of the grant of an Overseas Missionaries’ Permit... $500.00 per annum or part thereof.

UNOFFICIAL VERSION
L.R.O.
UPDATED TO 31ST DECEMBER 2016
IMMIGRATION (WORK PERMIT EXEMPTION) ORDER

made under regulation 10(14)

Citation.

1. This Order may be cited as the Immigration (Work Permit Exemption) Order.

Exemptions.

2. Subject to the provisions of section 8 of the Immigration Act relating to the prohibitions against entry into Trinidad and Tobago, the classes of persons listed in the Schedule are hereby exempted from the Immigration Regulations pertaining to work permits.

SCHEDULE

<table>
<thead>
<tr>
<th>Class of Persons</th>
<th>Conditions of Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Journalist</td>
<td>Entry for the duration of the event to be covered.</td>
</tr>
</tbody>
</table>

CARICOM TRAVELLING SALESMEN (EXEMPTION FROM LICENCE FEES) ORDER

made under regulation 11(6)

Citation.

1. This Order may be cited as the Caricom Travelling Salesmen (Exemption from Licence Fees) Order.

Exemption.

2. Caricom travelling salesmen who are engaged exclusively in the promotion and sale of Caricom goods are hereby exempted from the payment of licence fees.
DELEGATION OF FUNCTIONS (IMMIGRATION AND CITIZENSHIP) ORDER

made by the Minister under section 52(1) of the Interpretation Act

1. This Order may be cited as the Delegation of Functions (Immigration and Citizenship) Order.

2. In exercise of the powers conferred upon him by section 52(1) of the Interpretation Act, the Minister delegates the functions he is empowered to exercise under the Immigration Act and the Citizenship of the Republic of Trinidad and Tobago Act, to the Minister in the Ministry of National Security and Citizenship with effect from 1st March 1988.
IMMIGRATION (EXEMPTION FROM WORK PERMIT REQUIREMENTS) ORDER

made under regulation 10(14)

Citation.

1. This Order may be cited as the Immigration (Exemption from Work Permit Requirements) Order.

Interpretation.

2. In this Order—

“CARICOM national” means—

(a) a citizen of a CARICOM Member State; and

(b) has a connection with the State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the law thereof relating to immigration;

“CARICOM Member State” means a Member State of the Caribbean Community, excluding an associate member; and


Exemption from work permit requirements.

3. Subject to paragraph 4, the following categories of persons are exempt from the requirement, under regulation 10 of the Immigration Regulations, to hold a work permit to engage in employment in Trinidad and Tobago:

(a) CARICOM nationals exercising the right of establishment under Chapter III of the Treaty; and

(b) CARICOM nationals exercising the right to provide a service under Chapter III of the Treaty.

Requirement to meet entry requirements. Ch. 18:01.

4. An exemption granted under paragraph 3 is subject to the person meeting all other entry and stay requirements under the Immigration Act.
TAB 2
EXECUTIVE SUMMARY

The Republic of Trinidad and Tobago is a parliamentary democracy governed by a prime minister and a bicameral legislature. The island of Tobago’s House of Assembly has some administrative autonomy over local matters. In the 2015 elections, which observers considered generally free and fair, the opposition People’s National Movement, led by Keith Rowley, defeated the ruling People’s Partnership, led by Kamla Persad-Bissessar.

The Ministry of National Security oversees three major divisions: police, immigration, and defense. Police maintain internal security. The defense force, which includes the coast guard, is responsible for external security but also has certain domestic security responsibilities. The coast guard is the main authority responsible for maritime border security in places where there are no official ports of entry. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included: serious acts of corruption and laws criminalizing same-sex sexual conduct between adults, although those laws were not enforced and their constitutionality was being litigated.

The government took steps to identify, investigate, prosecute, and punish officials who committed human rights abuses, but impunity persisted.

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
Although the law prohibits such practices, there were reports that police officers and prison guards sometimes used excessive force.

**Prison and Detention Center Conditions**

Conditions in some of the prison system’s nine facilities continued to be harsh due to overcrowding.

**Physical Conditions:** Gross overcrowding was a problem. All prisons had inadequate lighting, ventilation, and sanitation facilities. Conditions at the sole women’s prison were better than those in other prisons.

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

**Independent Monitoring:** The government did not permit outside observers, such as the United Nations, the International Committee of the Red Cross, or other nongovernmental organizations (NGOs), to monitor the Immigration Detention Center. The government permitted monitoring of other prisons and detention centers by UN officials and independent human rights organizations.

**Improvements:** Government repair projects improved physical conditions at some detention facilities.

**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**

A police officer may arrest a person based on a warrant issued or authorized by a magistrate, or without a warrant if the officer witnesses the commission of an offense. Detainees must be charged and appear in court within 48 hours, and the government respected this standard. There is a functioning bail system, and bail is ordinarily available for those accused of most crimes. Persons accused of murder, treason, piracy, kidnapping for ransom, or hijacking, as well as persons convicted twice of violent crimes, are ordinarily ineligible for bail for 120 days. Authorities granted detainees immediate access to a lawyer.
The minister of national security may authorize preventive detention to protect public safety, public order, or national defense; the minister must state the grounds for the detention.

**Pretrial Detention**: Lengthy pretrial detention continued to be a problem. Pretrial detainees represented more than half the prison population. Most detainees’ trials began seven to 10 years after their arrest, although some spent even longer in pretrial detention. The length of pretrial detention frequently equaled or exceeded the maximum sentence for the alleged crime. Officials cited several reasons for the backlog, including the burden of the preliminary inquiry process. The law requires anyone charged and detained to appear in person for a hearing before a magistrate every 10 days, even if it is only to have the case postponed for an additional 10 days. This case load created further inefficiency.

**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. Criminal defendants enjoy the right to a presumption of innocence; to be informed promptly of the charges; to receive a fair, timely, and public trial; to be present at their trial; to communicate with an attorney of their choice or have one provided at public expense if unable to pay; to have adequate time and facilities to prepare a defense; to receive free assistance of an interpreter for any defendant who cannot understand or speak English; to confront prosecution or plaintiff witnesses and present their own witnesses and evidence; not to be compelled to testify or confess guilt; and to appeal.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**
Individuals or organizations may seek civil remedies for human rights violations through domestic courts and may appeal adverse decisions to the Inter-American Commission on Human Rights.

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.

Freedom of Expression: The Sedition Act defines seditious intent as an intention to bring contempt and hatred to the government; to raise disaffection among inhabitants of Trinidad and Tobago; to engender or promote feelings of hostility against any class of citizens of Trinidad and Tobago distinguished by race, color, religion, or profession; or to promote violence against a particular group.

The government charged Watson Duke, president of the Public Services Association, a labor union, with sedition in August. The charges stemmed from Duke’s statement at a press conference that his union members were willing to die if the government came to take their jobs. Some commentators expressed concern that Duke was targeted for his frequent criticism of the government, and they criticized the Sedition Act as an outdated colonial law. After the incident the government expressed willingness to update the law, but it did not drop the charges against Duke. Duke was free on bail awaiting trial.

Violence and Harassment: The government charged a police constable and the chief executive officer of A&V Oil Gas Limited with assaulting Trinidad Guardian photographer Kristian De Silva. The case was dismissed in September but later refiled by the director of public prosecutions. As of November the matter was pending.
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.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at https://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, and the government has not established a system for providing protection to refugees. The government agreed to let the Office of the UN High Commissioner for Refugees (UNHCR) conduct refugee status determinations. Thousands of UNHCR’s determinations affirmed refugee status. A positive determination by UNHCR, however, did not confer recognition by the government of an individual as a refugee or otherwise affect the person’s legal status in the country.
Durable Solutions: The government collaborated with UNHCR to facilitate transit of a few refugees to countries that had offered them resettlement.

Temporary Protection: In response to a large influx of Venezuelans, the government conducted a one-off registration exercise in June and agreed to allow registrants to reside, work, and access emergency health services in the country for one year from their date of registration. Approximately 16,500 Venezuelans registered with the government. Registration was unavailable to those who arrived after or who failed to register during the June exercise. Refugee children could not access public education, however, even if they were registered.

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 elections the opposition People’s National Movement, led by Keith Rowley, defeated the ruling People’s Partnership (PP), led by Kamla Persad-Bissessar, winning 23 parliamentary seats to the PP’s 18 seats. Commonwealth observers considered the elections generally free and fair.

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

Section 4. Corruption and Lack of Transparency in Government

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

Corruption: Corruption remained a problem at many levels of government. Senior police officials acknowledged that officers participated in corrupt and illegal
activities, often accepting bribes to facilitate drug, weapons, and human smuggling, as well as human trafficking.

Opaque public procurement processes continued to be of concern. There were continued allegations that some politicians and ministers had close relationships with gang leaders and facilitated procurement and contracting of road, bridge, and construction projects to companies owned and operated by criminal enterprises.

During the year high-profile corruption cases were initiated against current and former officials from each of the two main political parties. On May 2, police arrested former attorney general Anand Ramlogan and Senator Gerald Ramdeen. Prosecutors charged both with conspiring to engage in money laundering, corruption, and misbehavior in public office. On August 12, prosecutors charged Minister of Public Administration and Member of Parliament Marlene McDonald with seven criminal charges: three charges of misbehavior in public office, three charges of conspiracy to defraud the state, and one charge of money laundering.

Financial Disclosure: The law mandates that senior public officials disclose their assets, income, and liabilities to the Integrity Commission, which monitors, verifies, and publishes disclosures. The commission publishes a list annually of officials who failed to file by the deadline. The law provides criminal penalties for failure to comply, but there were no prosecutions.

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

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

Government Human Rights Bodies: The Office of the Ombudsman investigates citizens’ complaints concerning the administrative decisions of government agencies. Where there is evidence of a breach of duty, misconduct, or criminal offense, the ombudsman may refer the matter to the appropriate authority. The ombudsman has a quasi-autonomous status within the government and publishes a comprehensive annual report. Both the public and the government had confidence in the integrity and reliability of the Office of the Ombudsman and the ombudsman’s annual report.
Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Rape of men or women, including spousal rape, is illegal and punishable by up to life imprisonment, but the courts often imposed considerably shorter sentences in cases of spousal rape. The law criminalizes domestic violence and provides for protection orders separating perpetrators of domestic violence, including abusive spouses and common-law partners, from their victims. Courts may also fine or imprison abusive spouses but did so rarely.

Rape and domestic violence remained serious and pervasive problems. According to the UN Global Database on Violence against Women, 30 percent of women in the country experienced physical or sexual violence from an intimate partner in their lifetime, and 19 percent experienced sexual violence from a nonpartner.

Victims of rape and domestic violence had access to national crisis hotlines and through a law enforcement referral could access temporary shelter and psychosocial services. The police service provided resources to their Victim and Witness Support Unit to encourage reporting rape and domestic violence. The government was training a domestic violence unit of the police service.

Sexual Harassment: The law does not criminalize sexual harassment. In March Minister of Labour and Small Enterprise Development Jennifer Baptiste-Primus launched a national workplace policy on sexual harassment, citing the 2017 National Women’s Health Survey for Trinidad and Tobago. The survey stated 13 percent of women experienced sexual harassment at work, in public transport, and in public spaces, and that as many as 84 percent of instances of sexual harassment were not reported.

The Ministry of Labour and Small Enterprise Development reported that disputes involving sexual harassment between 2016 and 2018 were 69 percent of all disputes reported during that period, a 38 percent increase since 2015.

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

Discrimination: The law provides for the same legal status and rights for women as for men, and the government enforced the law effectively.
Children

Birth Registration: Every person born in the country is a citizen at birth, unless the parents are foreign envoys accredited to the country. A child born outside the country can become a citizen at birth if either parent is a citizen. The law requires every child be registered within 42 days of birth. Registration is required to access public services.

Education: Education is free and compulsory between the ages of five and 16. There are significant differences between boys and girls in enrollment, attendance, and completion in public schools. Nearly 60 percent of all dropouts between 2012 and 2019 were boys. Boys’ enrollment in primary schools exceeded that of girls, but by the upper secondary level girls outnumbered boys.

Child Abuse: The law prohibits corporal punishment of children. According to NGOs, however, abuse of children in their own homes or in institutional settings remained a serious problem. Penalties for child abuse can include a fine of up to 10,000 Trinidad/Tobago dollars ($1,500), two years’ imprisonment, or both.

Early and Forced Marriage: The legal minimum age of marriage is 18.

Sexual Exploitation of Children: The law prohibits commercial sexual exploitation of children through the sale, offering, or procuring for prostitution, and any practices related to child pornography. Authorities enforced the law.

The age of sexual consent is 18, and the age of consent for sexual touching is 16.


Anti-Semitism

There were fewer than 100 Jewish persons in the country. There were no reports of anti-Semitic acts.

Trafficking in Persons
Persons with Disabilities

The law prohibits discrimination based on disability but does not mandate equal access for persons with disabilities. Persons with disabilities faced discrimination, stigma, and denial of opportunities, including access to employment and education. Persons who believe they are being discriminated against can file a complaint with the Equal Opportunity Commission for conciliation. Complaints that remained unresolved may be brought before the Equal Opportunity Tribunal, a superior court that has the power to impose fines, make orders for compensation, and grant injunctions.

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

The law criminalizes consensual same-sex sexual conduct between adults, but the government did not enforce it, and a court ruling deemed the law unconstitutional. The government’s appeal of the ruling was pending and was intended to make the ruling settled law.

The law decriminalizes sexual exploration between minors who are close in age but specifically retains language criminalizing the same activity among same-sex minors.

The law does not specifically prohibit discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. There were reports of harassment and threats against LGBTI persons, but victims tended to avoid media attention, and discrimination did not appear to be serious or widespread.

HIV and AIDS Social Stigma

Stigmatization of persons with HIV persisted, especially of persons in high-risk groups, creating barriers to access and uptake of prevention and treatment services. The government’s HIV and AIDS Unit coordinated the national response to HIV/AIDS, and the government employed HIV/AIDS coordinators in all ministries as part of its multisector response.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of most workers, including those in state-owned enterprises, to form and join independent unions, bargain collectively, and conduct legal strikes, but with some limitations. A union must have the support of an absolute majority of workers to obtain bargaining rights. Employees providing essential services do not have the right to strike; these employees negotiate with the government’s chief personnel officer to resolve labor disputes. The law stipulates that only strikes over unresolved labor disputes may take place, and that authorities may prohibit strikes at the request of one party unless the strike is called by a union representing a majority of the workers. The minister of labor may petition the court to curtail any strike he deems harmful to national interests.

The law prohibits employers from discriminating against workers due to union membership and mandates reinstatement of workers illegally dismissed for union activities.

The law’s definition of a worker excludes domestic workers (house cleaners, chauffeurs, and gardeners), but domestic workers had an established trade union that advocated for their rights.

The government effectively enforced applicable laws, although there was little information on specific penalties or on whether the penalties were sufficient to deter violations.

A union must have the support of an absolute majority of workers to obtain bargaining rights. This requirement limits the right of collective bargaining. Furthermore, collective agreement negotiations are subject to mandatory mediation and must cover a minimum of three years, making it almost impossible for such agreements to include workers on short-term contracts. According to the National Trade Union Center, the requirement that all negotiations go through the Public Sector Negotiation Committee, rather than through the individual government agency or government-owned industry, provided a further restriction that added significant delays. Some unions claimed the government undermined the collective bargaining process by pressuring the committee to offer raises of no more than 5 percent over three years.
b. Prohibition of Forced or Compulsory Labor

The law prohibits and criminalizes all forms of forced or compulsory labor. The government enforced the law effectively, and penalties were sufficient to deter violations.

In June police officers from Trinidad’s Countertrafficking Unit rescued two Chinese nationals forced to work at a Chaguanas factory against their will. A businessman brought the couple to the country and told them they would be employed as chefs at a popular Chinese restaurant. After the couple arrived, their passports were taken away and they were forced to work in the factory.

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 sets the minimum age for employment at 16. Children ages 14 to 16 may work in activities in which only family members are employed or that the minister of education has approved as vocational or technical training. The law prohibits children younger than age 18 from working between the hours of 10 p.m. and 5 a.m. except in a family enterprise. There is no separate minimum age for working in hazardous activities.

The government was generally effective in enforcing child labor laws, and the penalties were sufficient to deter violations, but there were anecdotal reports of children working in agriculture, as domestic workers, or involved in commercial sexual exploitation as a result of human trafficking.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings.

d. Discrimination with Respect to Employment and Occupation

The law prohibits employment discrimination on the basis of political opinion, sexual orientation, gender identity, language, age, disability, and HIV status or other communicable disease. The government generally enforced the law effectively, but discrimination in employment occurred with respect to disability, and women’s pay lagged behind men’s, especially in the private sector.
e. Acceptable Conditions of Work

The national minimum wage was greater than the official poverty income level.

Workers in the informal economy reported wages above the national minimum wage but reported other areas of labor laws, including limits on the number of hours worked, were not enforced.

The Ministry of Labor and Small Enterprise Development is responsible for enforcing labor laws related to minimum wage and acceptable conditions of work. The Occupational Safety and Health Agency enforced occupational safety and health and regulations. Resources, inspections, and penalties appeared adequate to deter violations. The law provides a range of fines and terms of imprisonment for violations of the law, but despite these penalties, a number of violations occurred.

Occupational safety and health (OSH) standards are appropriate for the main industries in the country. Responsibility for identifying unsafe situations remained with OSH experts and not the worker. The law gives workers the right to remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities generally protected this right. According to government statistics, there were 81 critical accidents and 10 fatalities in the workplace between 2017 and 2018.

The law establishes a 40-hour workweek, a daily period for lunch or rest, and premium pay for overtime. The law does not prohibit excessive or compulsory overtime. The law provides for paid leave, with the amount of leave varying according to length of service. Workers in the informal economy reported wages above the national minimum wage but reported other areas of labor laws, including the number of hours worked, were not enforced.

Domestic workers, most of whom worked as maids and nannies, are covered by labor laws.
TAB 3
EXECUTIVE SUMMARY

The Republic of Trinidad and Tobago is a parliamentary democracy governed by a prime minister and a bicameral legislature. The island of Tobago’s House of Assembly has some administrative autonomy over local matters. In elections in 2015, which observers considered generally free and fair, the opposition People’s National Movement, led by Keith Rowley, defeated the ruling People’s Partnership, led by Kamla Persad-Bissessar.

Civilian authorities maintained effective control over the security forces.

Human rights issues included refoulement of refugees and corruption.

The government took some steps to punish security force members and other officials charged with killings or other abuses, but open-ended investigations and the generally slow pace of criminal judicial proceedings created a climate of impunity.

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. According to official figures, police shot and killed 28 persons through October 9, compared with 46 in 2017. There were occasional discrepancies between the official reporting of shooting incidents and the claims made by witnesses regarding who fired the first shot and whether the officers fired in self-defense. Police investigated all police shooting deaths.

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
Although the law prohibits such practices, there were some reports that police officers and prison guards sometimes mistreated individuals under arrest or in detention.

Officials from the Police Complaints Authority (PCA), a civilian oversight body that investigates complaints about the conduct of police officers, reported receiving few cases of cruel and inhuman treatment.

**Prison and Detention Center Conditions**

Conditions in some of the prison system’s nine facilities continued to be harsh due to overcrowding.

**Physical Conditions:** Convicted inmates constituted approximately 37 percent of the country’s prison population, while the others were in pretrial status, according to figures from 2017, the most recent data available. Most prisons suffered from extreme overcrowding, although the maximum-security prison was not at full capacity. Observers noted the Port of Spain Prison, the remand prison, and the immigration detention center had particularly poor conditions and severe overcrowding, with as many as nine prisoners kept in cells of 80 square feet. The Port of Spain Prison, designed to hold 250 inmates, held 595, and the remand prison, designed to hold 655 inmates, held 1,049, according to figures from 2016, the most recent data available. By contrast, the maximum-security prison held inmates in three-person cells, each with a toilet and shower.

The remand section of the Port of Spain Prison had particularly poor lighting, ventilation, and sanitation facilities.

Although conditions at the women’s prison were better than those in the Port of Spain Prison, the women’s facility occasionally became overcrowded, since it held both women on remand and those serving prison sentences. The daily average female prison population was 109 in facilities with a maximum capacity of 158, according to figures from 2017. Since there was no female youth facility, authorities placed some underage female prisoners in a segregated wing of the women’s prison and returned others to their families. Observers raised concerns the prison held young girls who had not committed any offense but were merely in state custody.

The government also operated the Immigration Detention Center (IDC) to house irregular immigrants waiting to be deported. The average length of detention was
one week to two months, depending on the speed with which the government secured public funding for deportation, as well as transit passports and visas. In some cases detention lasted more than four years. Observers reported the men’s section continued to be overcrowded.

In June a group of Cubans, Venezuelans, and Africans held at the IDC staged two protests against the conditions of the detention center and length of their stay in the facility. Some of those protesting had been at the IDC for more than one year, even after requesting repatriation.

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

**Independent Monitoring:** The government did not permit outside observers, such as the United Nations, International Committee of the Red Cross, or other nongovernmental organizations (NGOs), free access to conduct monitoring visits or interviews in the IDC. Other than the IDC, the government permitted regular and open prison visits by UN officials and independent human rights observers upon approval of the Ministry of National Security. These observers enjoyed a reasonable degree of independence.

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. Reports of abuses by police remained under investigation at year’s end.

In May the government passed an updated version of the Anti-Gang Act, which bans membership in criminal gangs and gang-related activities and permits authorities to hold suspects detained under the law without a warrant for up to 14 days, subject to a court order authorizing the detention. The opposition party raised human rights concerns; however, the government rarely relied upon measures contained in the act.

**Role of the Police and Security Apparatus**

The Ministry of National Security oversees three major divisions--the police service, immigration division, and defense force. The police service maintains internal security, while the defense force, which includes the coast guard, is
responsible for external security but also has certain domestic security responsibilities. The coast guard is the main authority responsible for border security along the coastlines where there are no official ports of entry. The Customs and Excise Division and the Immigration Division are responsible for security at the ports. Members of the defense force often joined police officers in patrolling high-crime neighborhoods but do not have arrest authority (apart from the coast guard, which can arrest in territorial waters and the Southern Caribbean).

The independent Police Service Commission (PSC), in consultation with the prime minister, appoints a commissioner of police to oversee the police force. In August the PSC appointed former minister of national security Gary Griffith as the new commissioner of police. The PSC also makes hiring and firing decisions in the police service, and the Ministry of National Security typically has little direct influence over changes in senior positions. The PSC has the power to dismiss police officers, the commissioner of police can suspend officers, and the police service handles the prosecution of officers. Municipal police, under the jurisdiction of 14 regional administrative bodies, supplement the national police force. Public confidence in police was very low because of high crime rates and perceived corruption.

The PCA investigates complaints about the conduct of police officers, including fatal police shootings; however, it received insufficient funding and had limited investigative authority. By law the PCA is free from the direction or control of any other person in the performance of its functions. The PCA had 25 investigators, and from October 2017 through August 27, the unit received 373 complaints, 300 of which were pending as of November. Through investigations by the PCA and other bodies, authorities charged police officers with a number of offenses, including attempted murder and corruption. The Police Professional Standards Unit and the Police Complaints Division, both nonindependent bodies within the police service, also investigated complaints against police.

**Arrest Procedures and Treatment of Detainees**

A police officer may arrest a person based on a warrant issued or authorized by a magistrate, or without a warrant if the officer witnesses the commission of an offense. Detainees, as well as those summoned to appear before a magistrate, must appear in court within 48 hours. In cases of more serious offenses, the magistrate either commits the accused to prison on remand or allows the accused to post bail, pending a preliminary inquiry. Authorities granted detainees immediate access to
a lawyer and to family members. Attorneys representing individual clients in the IDC also generally were allowed to visit them in the center.

Ordinarily, bail was available for minor charges. Persons charged with murder, treason, piracy, kidnapping for ransom, and hijacking, as well as persons convicted twice of violent crimes, are ineligible for bail for a period of up to 120 days following the charge, but a judge may grant bail to such persons under exceptional circumstances. When authorities denied bail, magistrates advised the accused of their right to an attorney and, with few exceptions, allowed them access to an attorney once they were in custody and prior to interrogation.

The minister of national security may authorize preventive detention to preclude actions prejudicial to public safety, public order, or national defense, in which case the minister must state the grounds for the detention.

Arbitrary Arrest: Instances of false arrest, although infrequent, were reported. Victims may pursue legal redress and the right to a fair trial through an independent judiciary.

Pretrial Detention: Lengthy pretrial detention resulting from heavy court backlogs and inefficiencies in the judicial system continued to be a problem. Pretrial detainees or remand prisoners represented more than half the prison population. Most persons under indictment waited seven to 10 years for their trial dates in the High Court, although some waited much longer. Officials cited several reasons for the backlog, including an understaffed prosecutorial office, a shortage of defense attorneys for indigent persons, and the burden of the preliminary inquiry process. Additionally, the law requires anyone charged and detained to appear in person for a hearing before a magistrate’s court every 10 days, if only to have the case postponed for an additional 10 days, resulting in further inefficiency.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence and impartiality. Although the judicial process was generally fair, it was slow due to backlogs and inefficiencies. Prosecutors and judges stated that witness and jury intimidation remained a problem.

Trial Procedures
The law provides all defendants with the right to a fair and public trial, and an independent judiciary generally enforced this right. Magistrates try both minor and more serious offenses, but in the latter cases, the magistrate must conduct a preliminary inquiry. Defendants have the right to be present, to be presumed innocent until proven guilty, and to appeal. Authorities inform them promptly and in detail of all charges. Defendants have the right to consult with an attorney in a timely manner and have adequate time and facilities to prepare a defense. Authorities provide an attorney at public expense to defendants facing serious criminal charges, and the law requires provision of an attorney to any person accused of murder. Although the courts may appoint attorneys for indigent persons charged with serious crimes, an indigent person may refuse to accept an assigned attorney for cause and may obtain a replacement. Defendants can confront or question adverse witnesses and present witnesses and evidence on their own behalf. Defendants may not be compelled to testify or confess guilt. The government provides free foreign language interpreters as well as sign-language interpreters as necessary in court cases.

Both civil and criminal appeals may be filed with the Court of Appeal and ultimately with the Privy Council in the United Kingdom.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

Individuals or organizations are free to file lawsuits against civil breaches of human rights in both the High Court and petty civil court. The High Court may review the decisions of lower courts, order parties to cease and desist from particular actions, compel parties to take specific actions, and award damages to aggrieved parties. Court cases may be appealed to the Inter-American Commission on Human Rights.

**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.

Violence and Harassment: In contrast with 2017, there were no credible reports of journalists subjected to violence, harassment, or intimidation due to their reporting.

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, 77 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.

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, but the government forced some asylum seekers to return to their home country.
The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons and other persons of concern under its mandate; however, this cooperation was considerably strained in numerous cases. Refugees and asylum seekers were often the subjects of immigration enforcement actions and deportations, affecting their freedom of movement.

**Protection of Refugees**

**Refoulement:** On April 21, the government deported 82 Venezuelans to their home country, some of whom were seeking asylum. Some of the deported asylum seekers expressed a well founded fear of Venezuelan authorities learning their identities, yet officials overseeing the deportation sought the assistance of the Venezuelan embassy during the process.

In principle, refugees are granted full protection from refoulement and detention if presented to the Immigration Division upon applying for asylum. In practice, however, the lack of adequate legal protection meant that valid, registered refugees and asylum seekers were often arrested and detained on immigration charges.

**Access to Asylum:** In the absence of national refugee legislation, UNHCR registered all asylum seekers, conducted refugee status determinations on behalf of the government, and attempted to promote durable solutions for all refugees recognized under UNHCR’s mandate.

The law does not provide for any exemption or nonpenalization of irregular entry or stay of asylum seekers or refugees, although the government adopted a refugee policy in June. Persons who expressed a need for international protection could be subject to detention if they entered via irregular ways or exceeded their permitted length of stay without having presented themselves voluntarily to the authorities.

The Living Water Community (LWC), a local Roman Catholic NGO and UNHCR’s operational partner, was the first point of contact for persons in need of international protection. It provided reception services, orientation, and counseling, and it notified the Ministry of National Security’s Immigration Division of the respective asylum applications. In coordination with UNHCR, the LWC engaged in case management and provided psychosocial care and
humanitarian assistance, including cash, housing assistance, and legal aid, among other services.

The Ministry of National Security’s Immigration Division authorized the stay of asylum seekers and refugees through the issuance of orders of supervision. These orders provided for protection against detention or deportation. In exchange for issuing an order of supervision, however, immigration authorities often confiscated the passports of refugees and asylum seekers and retained custody of their passports until the refugees or asylum seekers provided a financial deposit equivalent to a return flight ticket to their home country. This inhibited the freedom of movement of many refugees and asylum seekers and, in many cases, effectively trapped them in a country where they were not legally allowed to work and where their access to public services was considerably hindered. Many refugees and asylum seekers experienced xenophobia and discrimination, and sexual and gender-based violence was a particular concern for women.

**Employment:** In the absence of implementing legislation, neither refugees nor asylum seekers were permitted to work. They were sometimes subjected to exploitation, including sexual exploitation.

**Access to Basic Services:** Refugee and asylum-seeking children did not have access to public education, because by law they do not qualify for the required student permit. Refugees and asylum seekers struggled to access all but emergency public-health facilities. They did not have access to identity documents and were obliged to surrender their passports to the Immigration Division to remain in the country legally.

**Durable Solutions:** Due to the absence of national legislation that would allow for local integration, resettlement was traditionally the only durable solution for refugees in the country, but this was difficult due to lack of available spaces. UNHCR, the LWC, and the International Organization for Migration continued to collaborate on the identification, submission, and transfer of refugees in need of resettlement.

Some refugees and asylum seekers abandoned their claims and left the country due to the lengthy processing time and lack of rights, particularly the right to work. Many also feared harassment and discrimination.

The government also collaborated with UNHCR to facilitate the resettlement of a few refugees to smaller Caribbean islands by allowing them to stay temporarily in
the country to complete the formalities required for resettlement and then directly travel to their new asylum 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 elections the opposition People’s National Movement (PNM), led by Keith Rowley, defeated the ruling People’s Partnership (PP), led by Kamla Persad-Bissessar, winning 23 parliamentary seats to the PP’s 18 seats. Commonwealth observers considered the elections generally free and fair. During the campaign, however, observers noted the “lack of transparency and accountability regarding the financing of political parties.” Many experts raised concerns that the lack of campaign finance rules gives any incumbent party an advantage.

Following the election, former prime minister Persad-Bissessar initiated a court challenge to overturn the election results. The former prime minister challenged the results in six key swing constituencies where the results were close and where the PP argued a last-minute decision by the Elections and Boundaries Commission to extend voting helped the PNM. The courts found that the commission was wrong to extend voting but that the action did not change election results.

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

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials sometimes engaged in corrupt practices. There were reports of government corruption during the year, and the World Economic Forum and Transparency International ranked corruption as a problematic factor for doing business in the country. There were no documented instances of an individual receiving a criminal punishment for corruption.

Corruption: Corruption in police and immigration services continued to be a problem, with senior officials acknowledging that officers participated in corrupt
and illegal activities. There were allegations that some police officers had close relationships with gang leaders and that police, customs, and immigration officers often accepted bribes to facilitate drug, weapons, and human smuggling as well as human trafficking.

In September, two police officers were arrested for kidnapping and holding an innocent person for ransom. The minister of national security and commissioner of police worked quickly on the case, ensuring the safe release of the victim and arresting the suspected police officers. As of November the case was pending, but all charged officers remained incarcerated.

There were continued allegations that some ministers used their positions for personal gain.

Financial Disclosure: The law mandates that public officials disclose their assets, income, and liabilities to the Integrity Commission, which monitors, verifies, and publishes disclosures. Officials and candidates for public office were reluctant to comply with asset disclosure rules, primarily due to the perceived invasiveness of the process. The act stipulates a process when public officials fail to disclose assets and provides criminal penalties for failure to comply. The law clearly states which assets, liabilities, and interests public officials must declare.

While the commission undertook numerous investigations, it seldom referred cases to law enforcement authorities, and prosecution of those officials who refused to comply with asset disclosure rules was very limited.

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

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

Government Human Rights Bodies: The Office of the Ombudsman investigates citizens’ complaints concerning the administrative decisions of government agencies. Where there is evidence of a breach of duty, misconduct, or criminal offense, the ombudsman may refer the matter to the appropriate authority. The ombudsman has a quasi-autonomous status within the government and publishes a comprehensive annual report. Both the public and the government had confidence
in the integrity and reliability of the Office of the Ombudsman and the ombudsman’s annual report.

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

Women

Rape and Domestic Violence: Rape of men or women, including spousal rape, is illegal and punishable by up to life imprisonment, but the courts often imposed considerably shorter sentences. Police channeled resources to the Victim and Witness Support Unit in an effort to encourage reporting.

The law provides for protection orders separating perpetrators of domestic violence, including abusive spouses and common-law partners, from their victims. Courts may also fine or imprison abusive spouses, but it was rarely done.

The NGO Coalition against Domestic Violence charged that police often hesitated to enforce domestic violence laws and asserted that rape and sexual abuse against women and children remained a serious and pervasive problem.

Sexual Harassment: No laws specifically prohibit sexual harassment. Related statutes could be used to prosecute perpetrators of sexual harassment, and some trade unions incorporated antiharassment provisions in their contracts.

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

Discrimination: Women generally enjoyed the same legal status and rights as men. No laws or regulations require equal pay for equal work.

Children

Birth Registration: Every person born in the country is a citizen at birth, unless the parents are foreign envoys accredited to the country. Children born outside the country can become citizens at birth if on that date one or both of the parents is, or was, a citizen. The law requires registration of every child born alive within 42 days of birth.

Child Abuse: Child abuse cases continued to increase. During the fiscal year 2017, the Children’s Authority received and investigated more than 4,200 reports.
of child abuse and maltreatment. More than half (55 percent) of all cases involved female children. Neglect and sexual abuse accounted for 24 percent and 26 percent of the cases, respectively. The law prohibits both corporal punishment of children and sentencing a child to prison. According to NGOs, however, abuse of children in their own homes or in institutional settings remained a serious problem.

**Early and Forced Marriage:** Child marriage is illegal. The law defines a child as younger than age 18. In June 2017 parliament passed legislation changing the legal marriage age to 18. The president formally proclaimed the enactment of the Marriage Act in September 2017.

**Sexual Exploitation of Children:** The age of sexual consent is 18, and the age of consent for sexual touching is 16. Sexual penetration of a child is punishable by a maximum sentence of life in prison. The law creates specific offenses such as sexual grooming of a child (gaining the trust of a child, or of a person who takes care of the child, for the purpose of sexual activity with the child) and child pornography. The law prescribes penalties of 10 years’ to life imprisonment for subjecting a child to prostitution.


**Anti-Semitism**

There were fewer than 100 Jewish persons in the country. 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/](http://www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**

Disability rights advocates were not aware of any efforts by the government to implement the Convention on the Rights of Persons with Disabilities, which it
ratified in 2015. Prior to the ratification, the law prohibited discrimination based on disability but did not mandate equal access for persons with disabilities.

Persons with disabilities faced discrimination and denial of opportunities. Such discrimination could be traced to architectural barriers, employers’ reluctance to make necessary accommodations that would enable otherwise qualified job candidates to work, an absence of support services to assist students with disabilities to study, and social stigma accompanied by lowered expectations of the abilities of persons with disabilities, condescending attitudes, and disrespect.

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

On September 20, the High Court issued a final ruling on the country’s Sexual Offenses Act, removing an “antibuggery” law and effectively decriminalizing same-sex sexual conduct between consenting adults. High Court Judge Devindra Rampersad first ruled in April that the law was unconstitutional and expressed his intent to amend the law, which criminalized same-sex sexual conduct between consenting adults. Although the legislation was not struck out completely, the ruling provides that consenting adults will not be liable to criminal charges if engaging in consensual sexual acts. Immigration laws also bar the entry of “homosexuals” into the country, but the legislation was not enforced during the year.

The law identifying classes of persons protected from discrimination does not prohibit discrimination based on sexual orientation or gender identity. The 2012 Children Act decriminalizes sexual exploration between minors who are close in age but specifically retains language criminalizing the same activity among same-sex minors. Other laws exclude same-sex partners from their protections.

**HIV and AIDS Social Stigma**

Stigmatization of those with HIV persisted, especially among high-risk groups, including men who have sex with men. There were reports of discrimination against this group but no clear evidence of violence. The government’s HIV and AIDS Unit coordinates the national response to HIV/AIDS, and the government employed HIV/AIDS coordinators in all ministries as part of its multisector response.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of most workers, including those in state-owned enterprises, to form and join independent unions, bargain collectively, and conduct legal strikes, but with some limitations. Neither employers nor employees listed in essential services, such as hospital, firefighting, and external communications (telephone, telegraph, wireless) industries, have the right to strike, and walkouts can bring punishment of up to 36 months in prison and a fine of TT$40,000 ($6,000). These employees negotiate with the government’s chief personnel officer to resolve labor disputes. The law stipulates that only strikes over unresolved labor interest disputes may take place and that authorities may prohibit strikes at the request of one party if not called by a majority union. The minister of labor may petition the court to curtail any strike he deems harmful to national interests.

The law also provides for mandatory recognition of a trade union when it represents more than 50 percent of the workers in a specified bargaining unit. The law allows unions to participate in collective bargaining, prohibits employers from dismissing or otherwise prejudicing workers due to their union membership, and mandates reinstatement of workers illegally dismissed for union activities. The government’s Registration, Recognition, and Certification Board determines whether a given workers’ organization meets the definition of a bargaining unit and can limit union recognition by this means. The Registrar’s Office requires accounting for union funds and can audit and restrict accounts of a union on demand. The Industrial Relations Act’s definition of a worker excludes domestic workers (house cleaners, chauffeurs, and gardeners), but domestic workers have an established trade union that advocates for their rights. Separate legislation governs the employment relationship between the government and its employees, including civil servants, teachers, and members of the protective services (fire, police, and prison services). The Industrial Relations Act prohibits employees in essential services from taking industrial action. The government effectively enforced applicable laws, although there was little information on specific penalties or on whether they were sufficient to deter violations.

A union must have the support of an absolute majority of workers to obtain bargaining rights. This requirement limited the right of collective bargaining. Furthermore, collective agreement negotiations are subject to mandatory mediation and must cover a minimum of three years, making it almost impossible for such
agreements to include workers on short-term contracts. According to the National Trade Union Center, the requirement that all negotiations go through the Public Sector Negotiation Committee, rather than through the individual government agency or government-owned industry, provided a further restriction that added significant delays. Some unions claimed the government undermined the collective bargaining process by pressuring the committee to offer raises of no more than 5 percent over three years.

The government enforced labor laws with effective remedies and penalties. Resources, inspections, and remediation were adequate, although some observers called for an increased number of unannounced inspections and additional industrial court judges. A union may request that the Industrial Court enforce the laws, and the court may order employers found guilty of antiunion activities or otherwise in violation of the Industrial Relations Act to reinstate workers and pay compensation or may impose other penalties, including imprisonment. There was no information on specific penalties or on whether they were sufficient to deter violations.

Authorities generally respected freedom of association and the right to collective bargaining. Authorities did not use excessive force to end strikes or protests or otherwise retaliate against workers seeking to exercise their rights.

In August the government announced its intentions to close portions of the state-owned oil company, Petrotrin, on November 30. The shutdown could affect an estimated 2,600 permanent jobs. Following the announcement the Oilfield Workers Trade Union filed an injunction in the Industrial Court to stop Petrotrin from dismissing all its workers. President of the Industrial Court Deborah Thomas-Felix granted the injunction by the union, and it was to remain in effect until the issue of the closure of Petrotrin was fully resolved in the court or if the company successfully appealed the decision.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced and compulsory labor. Upon conviction, perpetrators of forced labor are subject to a fine of at least TT$500,000 ($74,600) and imprisonment for at least 15 years. Penalties were sufficient to deter violations. The Counter-Trafficking Unit, housed within the Ministry of National Security, is responsible for investigating potential forced labor cases and referring cases for prosecution.
In September a businesswoman, Radica Persad, was charged with trafficking a Bolivian man for the purpose of labor exploitation. As of November the matter was pending a decision from the magistrates’ court. There were no other reports of forced labor during the year.

Also 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

There were anecdotal reports of children engaged in the worst forms of child labor in the small-scale agricultural sector and domestic service. The law sets the minimum age for employment in public and private industries at 16. Children ages 14 to 16 may work in activities in which only family members are employed or that the minister of education approved as vocational or technical training. The law prohibits children younger than age 18 from working between the hours of 10 p.m. and 5 a.m. except in a family enterprise or within other limited exceptions. There is no clear minimum age for hazardous activities.

Violation of child labor laws is punishable by six months’ imprisonment or a fine of TT$2,500 ($375). In cases of child trafficking, including forced or exploitive child labor, perpetrators are subject to fines of TT$ one million ($150,000) and 20 years’ imprisonment. These penalties were sufficient to deter violations.

The government was generally effective in enforcing child labor laws, and the penalties were sufficient to deter violations, but there were anecdotal reports of children working in agriculture or as domestic workers. The Ministry of Labor and Small Enterprise Development and the Ministry of the People and Social Development are responsible for enforcing child labor laws. There were 18 labor inspectors in the Labor Inspectorate Unit in 2016--compared with 10 in 2015--trained to investigate and identify cases of child labor and to identify and report on indicators relating to possible cases of forced labor involving children.

The Minister of Labor and Small Enterprise Development may designate an inspector to gather information from parents and employers regarding the employment of a person younger than age 18. The Industrial Court may issue a finding of contempt against anyone obstructing the inspectors’ investigation.

The government did not have comprehensive mechanisms for receiving, investigating, and resolving child labor complaints.
d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit employment discrimination on the basis of political opinion, sexual orientation, gender identity, language, age, disability, or HIV status or other communicable disease. The government effectively enforced those laws and regulations. Discrimination in employment occurred with respect to disability, and women’s pay lagged behind men’s, especially in the private sector.

e. Acceptable Conditions of Work

The national minimum wage was greater than the official poverty income level of TT$665 ($100) per month.

The law establishes a 40-hour workweek, a daily period for lunch or rest, and premium pay for overtime. The law does not prohibit excessive or compulsory overtime. The law provides for paid leave, with the amount of leave varying according to length of service. Workers in the informal economy reported wages above the national minimum wage but reported other areas of labor laws, including the number of hours worked, were not enforced. There were an estimated 30,000 domestic workers, most of whom worked as maids and nannies, not covered by labor laws.

The law sets occupational health and safety standards, which were current and appropriate for the main industries in the country. The Ministry of Labor and Small Enterprise Development was responsible for enforcing labor laws related to minimum wage and acceptable conditions of work, while the Occupational Safety and Health Agency enforced occupational health and safety regulations, which apply to all workers in the formal economy, regardless of citizenship. Local labor laws generally protected foreign laborers brought into the country, a stipulation usually contained in their labor contract. Resources, inspections, and penalties appeared adequate to deter violations. The Occupational Safety and Health Act provides a range of fines and terms of imprisonment for violations of the law, but despite these penalties, a number of violations occurred.
The Occupational Safety and Health Act provides workers the right to remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities generally protected this right.
TAB 4
EXECUTIVE SUMMARY

The Republic of Trinidad and Tobago is a parliamentary democracy governed by a prime minister and a bicameral legislature. The island of Tobago’s House of Assembly has some administrative autonomy over local matters. In elections in 2015, which observers considered generally free and fair, the opposition People’s National Movement, led by Keith Rowley, defeated the ruling People’s Partnership, led by Kamla Persad-Bissessar, and the political transition was smooth.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included police and prison officials’ mistreatment of detainees; refoulement of refugees due to poor training of officials; official corruption; laws that criminalize same-sex sexual activity, although such laws were not enforced during the year; and continued criminalization of the status or conduct of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government took some steps to punish security force members and other officials charged with killings or other abuse, but open-ended investigations and the generally slow pace of criminal judicial proceedings created a climate of impunity.

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. According to official figures, police shot and killed 33 persons through September 26, more than double the 16 persons police shot and killed in 2016. Officials from the Police Complaints Authority (PCA) reported receiving more cases of police killings of mentally challenged persons than in previous years; the police killed three mentally challenged persons for the year. Analysts speculated that police shootings had increased in tandem with the rise in violent crime committed by an increasingly well-armed criminal element. Police acknowledged the shooting deaths. There were occasional discrepancies between
the official reporting and the claims made by witnesses regarding who fired the first shot and whether the officers fired in self-defense.

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

Although the constitution and the law prohibit such practices, there were credible reports that police officers and prison guards mistreated individuals under arrest or in detention.

Police shot and killed Paul Marchan, an outpatient of St Ann’s mental hospital, after he reportedly attacked two separate groups of police officers. Marchan’s family claimed the circumstances police attributed to causing his death were false. The file was under investigation by the PCA.

Prison and Detention Center Conditions

Conditions in some of the prison system’s nine facilities continued to be harsh.

Physical Conditions: Convicted inmates constituted approximately 37 percent of the country’s prison population, while the others were in pretrial status, according to figures from 2016, the most recent data available. Most prisons suffered from extreme overcrowding, while the maximum-security prison was not at full capacity. Observers often described the Port of Spain Prison, the remand prison, and the immigration detention center as having particularly poor conditions and severe overcrowding, with as many as nine prisoners kept in cells of 80 square feet. The Port of Spain Prison, designed to hold 250 inmates, held 610, and the remand prison, designed to hold 655 inmates, held 1,071, according to figures from 2016, the most recent data available. By contrast, the maximum-security prison held inmates in three-person cells, each with a toilet and shower.

The remand section of the Port of Spain Prison had particularly poor lighting, ventilation, and sanitation facilities.

Although conditions at the women’s prison were better than those in the Port of Spain Prison, the women’s facility occasionally became overcrowded, since it held
both women on remand and those serving prison sentences. The daily average female prison population was 130 in facilities with a maximum capacity of 158, according to figures from 2016, the most recent data available. Since there was no female youth facility, authorities placed some underage female prisoners in a segregated wing of the women’s prison and returned others to their families.

Authorities held a daily average of 10 female juveniles at the women’s prison in 2016, the most recent year for which data was available. Observers raised concerns that the prison held young girls who had not committed any offense but who were merely in state custody.

The government also operated the Immigration Detention Center to house irregular immigrants waiting to be deported. The average length of detention was one week to two months, depending on the speed with which the government secured public funding for deportation, as well as transit passports and visas. In some cases detention lasted more than four years. Observers reported that the men’s section continued to be overcrowded.

In August the minister of national security announced that the Cabinet approved 53.6 million Trinidad and Tobago dollars (TT$) ($7.9 million) to upgrade the remand section of the Golden Grove Prison, which would enable prisoners to use toilets and not pails.

Administration: Independent authorities investigated and monitored prison and detention center conditions but did not document the results in a publicly accessible manner.

Independent Monitoring: The government permitted regular and open prison visits by UN officials and independent human rights observers upon approval of the Ministry of Justice. These observers enjoyed a reasonable degree of independence.

d. Arbitrary Arrest or Detention

The constitution and the law prohibit arbitrary arrest and detention and provide 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. Reports of abuses by police remained under investigation at year’s end.

The Anti-Gang Act bans membership in criminal gangs and gang-related activities and permits authorities to hold suspects detained under the law without being
charged for up to 120 days, after which the suspect may apply to a judge for bail if the case has not yet reached trial. Authorities continued to arrest many individuals pursuant to the anti-gang law but subsequently released most arrestees.

Three men charged under the Anti-Gang Act during the 2011 state of emergency won their malicious prosecution lawsuits in September and received TT$220,000 ($32,000) in compensation. Many lawsuits filed by some of the approximately 450 other suspects remained pending before the courts.

Role of the Police and Security Apparatus

The Ministry of National Security oversees the police service, immigration division, and defense force, which includes the coast guard. The police service maintains internal security, while the defense force is responsible for external security but also has certain domestic security responsibilities. The coast guard is the main authority responsible for border security along the coastlines where there are no official ports of entry. The Customs and Excise Division and the Immigration Division are responsible for security at the ports. Members of the defense force often joined police officers in patrolling high-crime neighborhoods. Defense force members do not have arrest authority, apart from the coast guard, which can arrest in territorial waters and the Southern Caribbean.

The independent Police Service Commission, in consultation with the prime minister, appoints a commissioner of police to oversee the police force, although there has not been a permanent commissioner assigned since 2012. The commission also makes hiring and firing decisions in the police service, and the ministry typically has little direct influence over changes in senior positions. The Police Service Commission has the power to dismiss police officers, the commissioner of police can suspend officers, and the police service handles the prosecution of officers. Municipal police under the jurisdiction of 14 regional administrative bodies supplement the national police force. Public confidence in police was very low because of high crime rates and perceived corruption.

The PCA is a civilian oversight body that investigates complaints about the conduct of police officers, including fatal police shootings; however, it received insufficient funding and had limited investigative authority. By law the PCA is free from the direction or control of any other person in the performance of its functions. The PCA had 22 investigators, and from October 1, 2016, through September 30, the unit received 283 complaints, 211 of which were pending as of November. Through investigations by the PCA and other bodies, authorities
charged police officers with a number of offenses, including attempted murder and corruption. The Police Professional Standards Unit and the Police Complaints Division, both nonindependent bodies within the police service, also investigate complaints against police.

**Arrest Procedures and Treatment of Detainees**

A police officer may arrest a person based on a warrant issued or authorized by a magistrate, or without a warrant if the officer witnesses the commission of an offense. Detainees, as well as those summoned to appear before a magistrate, must appear in court within 48 hours. In cases of more serious offenses, the magistrate either commits the accused to prison on remand or allows the accused to post bail, pending a preliminary inquiry. Authorities granted detainees immediate access to a lawyer and to family members.

Ordinarily, bail was available for minor charges. Persons charged with murder, treason, piracy, kidnapping for ransom, and hijacking, as well as persons convicted twice of violent crimes, are ineligible for bail for a period of up to 120 days following the charge, but a judge may grant bail to such persons under exceptional circumstances. When authorities denied bail, magistrates advised the accused of their right to an attorney and, with few exceptions, allowed them access to an attorney once they were in custody and prior to interrogation.

The minister of national security may authorize preventive detention to preclude actions prejudicial to public safety, public order, or national defense, in which case the minister must state the grounds for the detention.

**Arbitrary Arrest:** False arrest, although infrequent, occurred. Victims may pursue legal redress and the right to a fair trial through an independent judiciary.

**Pretrial Detention:** Lengthy pretrial detention resulting from heavy court backlogs and inefficiencies in the judicial system continued to be a problem. Pretrial detainees or remand prisoners represented approximately 63 percent of the prison population. Most persons under indictment waited seven to 10 years for their trial dates in the High Court, although some waited much longer. Officials cited several reasons for the backlog, including an understaffed and underfunded prosecutorial office, a shortage of defense attorneys for indigent persons, and the burden of the preliminary inquiry process. Additionally, the law requires anyone charged and detained to appear in person for a hearing before a magistrate’s court every 10
days, if only to have the case postponed for an additional 10 days, resulting in further inefficiency.

e. Denial of Fair Public Trial

The constitution and the law provide for an independent judiciary, and the government generally respected judicial independence and impartiality. Although the judicial process was generally fair, it was slow due to backlogs and inefficiencies. Prosecutors and judges stated that witness and jury intimidation remained a problem.

Trial Procedures

The constitution and the law provide all defendants with the right to a fair and public trial, and an independent judiciary generally enforced this right. Magistrates try both minor and more serious offenses, but in the latter cases, the magistrate must conduct a preliminary inquiry. Defendants have the rights to be present, to be presumed innocent until proven guilty, and to appeal. Authorities inform them promptly and in detail of all charges. All defendants have the right to consult with an attorney in a timely manner and have adequate time and facilities to prepare a defense. Authorities provide an attorney at public expense to defendants facing serious criminal charges, and the law requires provision of an attorney to any person accused of murder. Although the courts may appoint attorneys for indigent persons charged with serious crimes, an indigent person may refuse to accept an assigned attorney for cause and may obtain a replacement. Defendants can confront or question adverse witnesses and present witnesses and evidence on their own behalf. Defendants may not be compelled to testify or confess guilt. The government provides free foreign language as well as sign-language interpreters as necessary in court cases.

Both civil and criminal appeals may be filed with the Court of Appeal and ultimately with the Privy Council in the United Kingdom.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies
Individuals or organizations are free to file lawsuits against civil breaches of human rights in both the High Court and petty civil court. The High Court may review the decisions of lower courts, order parties to cease and desist from particular actions, compel parties to take specific actions, and award damages to aggrieved parties. Court cases may be appealed to the Inter-American Commission on Human Rights.

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

The constitution and the law prohibit 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 the 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.

Freedom of Expression: The law prohibits acts that would offend or insult another person or group on the basis of race, origin, or religion or that would incite racial or religious hatred.

Violence and Harassment: In September a Trinidad Guardian newspaper photojournalist, Kristian De Silva, was assaulted while on the job. The incident took place on the compound of a company accused of defrauding the government. One of the journalist’s attackers was a police officer, Corporal Billy Ramsundar, who was later was charged with assault and damaging a camera. The matter was before the court at year’s end.

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, 69 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 constitution and the law provide for the freedoms of peaceful assembly and association, and the government generally respected these rights.

c. Freedom of Religion

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

d. Freedom of Movement

The constitution and various laws provide for freedom of internal movement, foreign travel, emigration, and voluntary repatriation, and the government generally respected these rights.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern under its mandate.

Protection of Refugees

Refoulement: Due to a lack of training and awareness of refugee rights by officers at points of entry, reported cases of refoulement continued to occur at airport and ports.

Access to Asylum: The government has not passed legislation to implement its obligations under the 1951 UN Convention and its 1967 Protocol Relating to the Status of Refugees. In the absence of national refugee legislation, UNHCR registered all asylum seekers, conducted refugee status determinations on behalf of the government, and promoted durable solutions for all refugees recognized under UNHCR’s mandate.
The immigration law neither adequately considers the needs of persons in need of international protection nor provides for the granting of refugee status. The law does not provide for any exemption or nonpenalization of irregular entry or stay of asylum seekers or refugees. Persons who expressed a need for international protection could be subject to detention if they entered via irregular ways or overstayed their permitted time of entry without having presented themselves voluntarily to the authorities. Generally, the government observed the principle of nonrefoulement, but there were reported cases of persons who claimed asylum at the border or while in detention being returned to their country of origin. In principle refugees were granted full protection from refoulement and detention if presented to the Immigration Division upon applying for asylum. They lived throughout the country, worked illegally, and had access to public-health facilities and in limited circumstances, public education.

The Living Water Community (LWC), a local Roman Catholic nongovernmental organization (NGO) and UNHCR’s operational partner, was the first point of contact for persons in need of international protection. It provided orientation and counseling and notified the Ministry of National Security’s Immigration Division of the respective asylum applications. In close coordination with UNHCR, the LWC engaged in case management and provided psychosocial care and humanitarian assistance, including cash, housing assistance, and legal aid, among other services.

Pending parliament’s approval of implementing legislation, the Ministry of National Security’s Immigration Division authorized the stay of asylum seekers and refugees through the issuance of orders of supervision.

Employment: In the absence of legislation, neither refugees nor asylum seekers were permitted to work. They were sometimes subject to exploitation, including sexual exploitation.

Access to Basic Services: Refugee and asylum-seeking children had access to education, but the majority faced difficulty in enrolling in public schools due to insufficient spaces and other administrative obstacles. Refugees and asylum seekers had access to most primary health-care services. They did not have access to identity documents and were obliged to surrender their passports to the Immigration Division.

Durable Solutions: Due to the absence of national legislation that would allow for local integration, resettlement was traditionally the only durable solution for
refugees in the country, but this was a difficult, due to lack of available spaces. UNHCR, the LWC, and the International Organization for Migration continued to collaborate on the identification, submission, and transfer of refugees in need of resettlement.

The government also closely collaborated with UNHCR by facilitating the resettlement of a few refugees recognized under its mandate in smaller Caribbean islands by allowing them to stay temporarily in the country to complete the formalities required for resettlement and then directly travel to their new asylum country.

In the first half of the year, seven individuals were resettled to the United States through this mechanism of regional cooperation.

Some refugees and asylum seekers abandoned their claims and left the country due to the lengthy processing time and lack of rights, particularly the right to work.

Section 3. Freedom to Participate in the Political Process

The constitution and the law provide 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 elections the opposition People’s National Movement, led by Keith Rowley, defeated the ruling People’s Partnership, led by Kamla Persad-Bissessar, winning 23 parliamentary seats to the Partnership’s 18 seats. Commonwealth observers considered the elections generally free and fair. During the campaign, however, observers noted the “lack of transparency and accountability regarding the financing of political parties.” Many experts raised concerns that the lack of campaign finance rules gives any incumbent party an advantage.

Following the election, former prime minister Persad-Bissessar initiated a court challenge to overturn the election results. The former prime minister challenged the results in six key swing constituencies where the results were close and where the People’s Partnership argued that a last-minute decision by the Elections and Boundaries Commission to extend voting helped the opposition. The courts found
that the commission was wrong to extend voting but that this action did not change the results of the election.

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

**Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials sometimes engaged in corrupt practices. There were reports of government corruption during the year, and the 2016-17 World Economic Forum *Global Competitiveness Report* ranked corruption as the second-most problematic factor for doing business in the country. There were no documented instances of individuals receiving a criminal punishment for corruption.

**Corruption:** Corruption in the police and immigration services continued to be a problem, with senior officials acknowledging that officers participated in corrupt and illegal activities. There were allegations that some police officers had close relationships with gang leaders and that police, customs, and immigration officers often accepted bribes to facilitate drug, weapons, and human smuggling and trafficking. There is no internal affairs unit responsible for investigating incidents of professional misconduct attributed to law enforcement officials.

In February a Trinidad and Tobago Police Service officer was convicted and fined TT$40,000 ($5,925), for soliciting and accepting money from a driver to forgo charges in an accident. The officer was on suspension from duty.

There were continued allegations that some ministers used their positions for personal gain.

**Financial Disclosure:** The law mandates that public officials disclose their assets, income, and liabilities to the Integrity Commission, which monitors, verifies, and publishes disclosures. Officials and candidates for public office were reluctant to comply with asset disclosure rules, primarily because of the perceived invasiveness of the process. The act stipulates a process when public officials fail to disclose assets and provides criminal penalties for failure to comply. The law clearly states which assets, liabilities, and interests public officials must declare.
While the commission undertook numerous investigations, it seldom referred cases to law enforcement authorities, and prosecution of those officials who refused to comply with asset disclosure rules was very limited.

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

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

**Government Human Rights Bodies:** The ombudsman investigates citizens’ complaints concerning the administrative decisions of government agencies. Where there is evidence of a breach of duty, misconduct, or criminal offense, the ombudsman may refer the matter to the appropriate authority. The ombudsman has a quasi-autonomous status within the government and publishes a comprehensive annual report. Both the public and the government had confidence in the integrity and reliability of the Office of the Ombudsman and the ombudsman’s annual report.

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

**Women**

**Rape and Domestic Violence:** Rape of men or women, including spousal rape, is illegal and punishable by up to life imprisonment, but the courts often imposed considerably shorter sentences. Police channeled resources to the Victim and Witness Support Unit in an effort to encourage reporting.

The law provides for protection orders separating perpetrators of domestic violence, including abusive spouses and common-law partners, from their victims. Courts may also fine or imprison abusive spouses, but it was rarely done.

The NGO Coalition against Domestic Violence charged that police often hesitated to enforce domestic violence laws and asserted that rape and sexual abuse against women and children remained a serious and pervasive problem.
Sexual Harassment: No laws specifically prohibit sexual harassment. Related statutes could be used to prosecute perpetrators of sexual harassment, and some trade unions incorporated anti-harassment provisions in their contracts.

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 generally enjoyed the same legal status and rights as men. No laws or regulations require equal pay for equal work.

Children

Birth Registration: Every person born in the country is a citizen at birth, unless the parents are foreign envoys accredited to the country. Children born outside the country can become citizens at birth if on that date one or both of the parents is, or was, a citizen. The law requires registration of every child born alive within 42 days of birth.

Child Abuse: Child abuse cases continued to increase; from October 1, 2015, to September 30, 2016, the Children’s Authority received and investigated 5,522 reports of abuse. More than one-half of all cases involved female children. Neglect and sexual abuse accounted for 27 percent and 25 percent of the cases, respectively. The law prohibits both corporal punishment of children and sentencing a child to prison. According to NGOs, however, abuse of children in their own homes or in institutional settings remained a serious problem.

Early and Forced Marriage: Child marriage is illegal. On June 9, parliament passed legislation changing the legal marriage age to 18. The president formally proclaimed the enactment of the Marriage Act on September 28.

Sexual Exploitation of Children: The law defines a child as less than 18 years of age. The age of sexual consent is 18, and the age of consent for sexual touching is 16. Sexual penetration of a child is punishable by a maximum sentence of life in prison. The law creates specific offenses such as sexual grooming of a child (gaining the trust of a child, or of a person who takes care of the child, for the purpose of sexual activity with the child) and child pornography. The law
prescribes penalties of 10 years’ to life imprisonment for subjecting a child to prostitution.

**International Child Abductions:** The government is 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 were fewer than 100 Jews in the country. 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**

Disability rights advocates were aware of no efforts by the government to implement the Convention on the Rights of Persons with Disabilities, which it ratified in 2015. Prior to the ratification, the law prohibited discrimination based on disability but did not mandate equal access for persons with disabilities.

Persons with disabilities faced discrimination and denial of opportunities. Such discrimination could be traced to architectural barriers, employers’ reluctance to make necessary accommodations that would enable otherwise qualified job candidates to work, an absence of support services to assist students with disabilities to study, lowered expectations of the abilities of persons with disabilities, condescending attitudes, and disrespect.

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

Although the law criminalizes consensual same-sex sexual activity, providing penalties of up to 25 years’ imprisonment, the government generally did not enforce such legislation, except in conjunction with more serious offenses such as rape. Immigration laws also bar the entry of “homosexuals” into the country, but the legislation was not enforced during the year.
The law identifying classes of persons protected from discrimination does not prohibit discrimination based on sexual orientation. The 2012 Children Act decriminalizes sexual exploration between minors close in age but specifically retains language criminalizing the same activity among same-sex minors. Other laws exclude same-sex partners from their protections.

**HIV and AIDS Social Stigma**

Stigmatization of those with HIV persisted, especially among high-risk groups, including men who have sex with men. There were reports of discrimination against this group but no clear evidence of violence. The government’s HIV and AIDS Unit coordinates the national response to HIV/AIDS, and the government employed HIV/AIDS coordinators in all ministries as part of its multisector response.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law, including related statutes and regulations, provides for the right of most workers, including those in state-owned enterprises, to form and join independent unions, bargain collectively, and conduct legal strikes, but with some limitations. Neither employers nor employees listed in essential services, such as hospital, fire, and external communications (telephone, telegraph, wireless), have the right to strike, and walkouts can bring punishment of up to 36 months in prison and a fine of TT$40,000 ($5,970). These employees negotiate with the government’s chief personnel officer to resolve labor disputes. The law stipulates that only strikes over unresolved labor interest disputes may take place and that authorities may prohibit strikes at the request of one party if not called by a majority union. The minister of labor may petition the court to curtail any strike he deems harmful to national interests.

The law also provides for mandatory recognition of a trade union when it represents more than 50 percent of the workers in a specified bargaining unit. The law allows unions to participate in collective bargaining, prohibits employers from dismissing or otherwise prejudicing workers due to their union membership, and mandates reinstatement of workers illegally dismissed for union activities. The government’s Registration, Recognition, and Certification Board determines whether a given workers’ organization meets the definition of a bargaining unit
and can limit union recognition by this means. The Registrar’s Office requires accounting for union funds and can audit and restrict accounts of a union on demand. The Industrial Relations Act definition of a worker excludes domestic workers (house cleaners, chauffeurs, and gardeners), but domestic workers have an established trade union that advocates for their rights. Separate legislation governs the employment relationship between the government and its employees, including civil servants, teachers, and members of the protective services (fire, police, and prison services). The Industrial Relations Act prohibits employees in essential services from taking industrial action. The government effectively enforced applicable laws.

A union must have the support of an absolute majority of workers to obtain bargaining rights. This requirement limited the right of collective bargaining. Furthermore, collective agreement negotiations are subject to mandatory mediation and must cover a minimum of three years, making it almost impossible for such agreements to include workers on short-term contracts. According to the National Trade Union Center, the requirement that all negotiations go through the Public Sector Negotiation Committee rather than through the individual government agency or government-owned industry, provided an additional onerous restriction that added significant delays. Some unions claimed the government undermined the collective bargaining process by pressuring the committee to offer raises of no more than 5 percent over three years.

The government enforced labor laws with effective remedies and penalties. Resources, inspections, and remediation were adequate, although some observers called for an increased number of unannounced inspections and additional industrial court judges. A union may request that the Industrial Court enforce the laws, and the court may order employers found guilty of antiunion activities or otherwise in violation of the Industrial Relations Act to reinstate workers and pay compensation or may impose other penalties, including imprisonment. There was no information on specific penalties or on whether they were sufficient to deter violations.

Authorities generally respected freedom of association and the right to collective bargaining. Authorities did not use excessive force to end strikes or protests or otherwise retaliate against workers seeking to exercise their rights.

In January and February, the Industrial Court ordered 11 companies to pay approximately TT$11,000,000 million ($1.6 million) to 26 workers who were wrongfully dismissed. The largest individual judgement was against the natural
gas company BG Trinidad and Tobago Limited in which the employee was awarded TT$ three million ($500,000).

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced and compulsory labor. Upon conviction, perpetrators of forced labor are subject to a fine of at least TT$500,000 ($74,600) and imprisonment for at least 15 years. Penalties were sufficient to deter violations. The Counter-Trafficking Unit, housed within the Ministry of National Security, is charged with investigating potential forced labor cases and with referring cases for prosecution.

There were no confirmed cases of forced labor, or specific cases reported by NGOs or media. There were no prosecutions or convictions through October. One of the cases brought to the court in 2015 concluded in the magistrate court, with a decision pending as to whether it would progress to the High Court.

Also 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 age for employment in public and private industries at 16. Children ages 14 to 16 may work in activities in which only family members are employed or that the minister of education approved as vocational or technical training. The law prohibits children under 18 from working between the hours of 10 p.m. and 5 a.m. except in a family enterprise or within other limited exceptions. There is no clear minimum age for hazardous activities.

Violation of child labor laws is punishable by six months’ imprisonment or a fine of TT$2,500 ($373). In cases of child trafficking, including forced or exploitive child labor, perpetrators are subject to fines of TT$ one million ($150,000) and 20 years’ imprisonment. These penalties were sufficient to deter violations.

The government was generally effective in enforcing child labor laws, and the penalties were sufficient to deter violations, but there were anecdotal reports of children working in agriculture or as domestic workers. The Ministry of Labor and Small Enterprise Development and the Ministry of the People and Social Development are responsible for enforcing child labor laws. There were 18 labor inspectors in the Labor Inspectorate Unit in 2016, compared with 10 in 2015,
trained to investigate and identify cases of child labor and also to identify and report on indicators relating to possible cases of forced labor involving children.

The minister may designate an inspector to gather information from parents and employers regarding the employment of a person under 18. The Industrial Court may issue a finding of contempt against anyone obstructing the inspectors’ investigation.

The government did not have comprehensive mechanisms for receiving, investigating, and resolving child labor complaints. There were anecdotal reports of children engaged in the worst forms of child labor in the small-scale agricultural sector and domestic service.

Also 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

The law and regulations do not prohibit employment discrimination on the basis of political opinion, sexual orientation, gender identity, language, age, disability, or HIV status or other communicable disease. The government effectively enforced those laws and regulations. Discrimination in employment occurred with respect to disability, and women’s pay lagged behind men’s outside the public sector.

e. Acceptable Conditions of Work

The national minimum wage was greater than the official poverty income level of TT$665 ($99) per month.

The law establishes a 40-hour workweek, a daily period for lunch or rest, and premium pay for overtime. The law does not prohibit excessive or compulsory overtime. The law provides for paid leave, with the amount of leave varying according to length of service. Workers in the informal economy reported wages above the national minimum wage but reported other areas of labor laws including the number of hours worked were not enforced. There were an estimated 30,000 domestic workers not covered by labor laws.

The law sets occupational health and safety standards, which were current and appropriate for the main industries in the country. The Ministry of Labor and Small Enterprise Development was responsible for enforcing labor laws related to
minimum wage and acceptable conditions of work, while the Occupational Safety and Health Agency enforced occupational health and safety regulations, which apply to all workers in the formal economy, regardless of citizenship. Local labor laws generally protected foreign laborers brought into the country, a stipulation usually contained in their labor contract. Resources, inspections, and penalties appeared adequate to deter violations. The Occupational Safety and Health Act provides a range of fines and terms of imprisonment for violations of the law, but despite these penalties a number of violations occurred.

The Occupational Safety and Health Act provides workers the right to remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities generally protected this right.
TAB 5
Trinidad and Tobago: Situation and treatment of sexual minorities; state protection and support services; whether Sections 13 and 16 of the Sexual Offences Act and Section 8(1)(e) of the Immigration Act are enforced (2011–July 2015)

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Trinité-et-Tobago : information sur la situation des minorités sexuelles et le traitement qui leur est réservé; la protection offerte par l'État et les services de soutien; information indiquant si les articles 13 et 16 de la loi sur les infractions sexuelles (Sexual Offences Act) et l'alinéa 8(1)e de la loi sur l'immigration (Immigration Act) sont appliqués (2011-juillet 2015)

Canada: Immigration and Refugee Board of Canada, Trinidad and Tobago: Situation and treatment of sexual minorities; state protection and support services; whether Sections 13 and 16 of the Sexual Offences Act and Section 8(1)(e) of the Immigration Act are enforced (2011-July 2015), 17 August 2015, TTO105242.E, available at: https://www.refworld.org/docid/55debf24.html [accessed 19 May 2020]

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1. Situation and Treatment of Sexual Minorities in Trinidad and Tobago

1.1 Overview

According to the Sexual Offences Act, homosexual intercourse is illegal in Trinidad and Tobago (Trinidad and Tobago 1986, Sec. 13). Sources similarly state that same-sex sexual activity is illegal in the country (ILGA May 2015, 92; US 25 June 2015, 18). According to sources, homosexuals are prohibited from entering Trinidad and Tobago under immigration laws (ibid.; Trinidad and Tobago 1969, Sec. 8(1)(e); ILGA May 2015, 122).

Sources indicate that homophobia is still present (GlobalGayz 28 Aug. 2012; Outlish 18 July 2011), particularly outside of urban areas (GlobalGayz 28 Aug. 2012).

According to a 2012 article by GlobalGayz, a travel and culture website about LGBT life in countries around the world (ibid. n.d.), Gay Pride had been celebrated in Trinidad and Tobago for almost 20 years; however the celebrations were "neither outdoors nor public," so they did not look like festivals (ibid. 28 Aug. 2012). According to the same source, "[t]here are numerous gay events within Carnival masquerade but they are not publicity advertised" (ibid.).
According to sources, gay bars and clubs exist in Trinidad and Tobago (ibid.; Caribbean Vulnerable Communities n.d.). GlobalGayz reported in 2012 that "at any one time there may be more than one gay club but there has never been more than four operating in the entire country" (28 Aug. 2012).

According to Trinidad and Tobago newspaper Daily Express (CCN n.d.), LGBT organizations have held protests in the capital city of Port of Spain (10 May 2012).

According to a survey on societal attitudes towards LGBT people conducted in 2013 by the Caribbean Development Research Services (CADRES), which was funded by the UK Foreign and Commonwealth Office, approximately 64 percent of Trinbagonians [residents of Trinidad and Tobago] "tolerate" or "accept" homosexuals; 75 percent of respondents believe that violence against gays or sexual minorities constitutes discrimination; and 85 percent of respondents are opposed to discrimination on the basis of sexual orientation (CADRES May 2013). The Trinidad and Tobago Guardian reports that the survey was based on interviews with 1,080 randomly selected men and women from all over the country, but that "a full report explaining the methodology and limitations of the survey was unavailable to the media" (17 May 2013). According to the Asociacion Internacional de Lesbianas, Gays, Bisexualidades, Trans e Intersex para America Latina y el Caribe (ILGALAC), a similar survey commissioned by UNAIDS in 2013 stated that 56 percent of Trinbagonians describe themselves as either accepting or tolerant of homosexuals, 64 percent said violence against sexual minorities is discrimination, and 78 percent said that it is not acceptable for people to be treated differently on the basis of sexual orientation (ILGA n.d.). The survey was "based on 1,176 face to face interviews conducted in Trinidad and Tobago in October 2013 with randomly-selected adults across 29 locations" (ibid.).

1.2 Discrimination

Sources report that sexual minorities face discrimination in employment (Daily Express 30 Dec. 2011; Trinidad and Tobago Guardian 12 Feb. 2014; CAISO 13 July 2013). Sources also report that sexual minorities face discrimination in education (ibid.; The Silver Lining Foundation [May 2015]). In correspondence with the Research Directorate, the Executive Director of the Coalition for Inclusion of Sexual Orientation (CAISO), a network of individuals and groups in Trinidad and Tobago who attempt to mobilize resources within their communities and advocate for LGBT rights (CAISO 2010), stated that sexual minorities also experience discrimination in housing and that CAISO has received reports of this type of discrimination (ibid. 13 July 2015).

In submissions to the Trinidad and Tobago Constitution Reform Commission in 2013, CAISO and the Silver Lining Foundation [1] outlined cases of homophobic discrimination of youth within the education system (CAISO and the Silver Lining Foundation 25 Apr. 2013, 4). Cases included LGBT youth being subjected to name-calling and verbal abuse by schoolmates; teacher-led gossiping or bullying ; physical assaults by stoning; suggested "reparative therapy" by school officials to boys exhibiting "homosexual tendencies" ; and "a daily pattern of harassment from schoolmates" (ibid, 5, 6, 8).

Sources also report that youth are rejected by their families and forced to leave their homes because of their sexual orientation (Newsday 27 Nov. 2014; New Ways Ministry n.d.; The Silver Lining Foundation 26 Sept. 2014).

1.3 Incidents of Violence

According to sources, sexual minorities have been victims of violence in Trinidad and Tobago (Freedom House 2014; Trinidad and Tobago Guardian 12 Feb. 2014; At 25 Feb. 2015, 369-370). Sources indicate that the country's Constitution Reform Commission acknowledged that there is a "high level of violence and abuse" against LGBT people (ibid.; Trinidad and Tobago Guardian 12 Feb. 2014). According to the Silver Lining Foundation, LGBT people have faced bullying, physical assaults, verbal assaults and abuse in their homes, schools and by the general public in Trinidad and Tobago (26 Sept. 2014).

Sources report that an openly gay 26 year-old man was stabbed several times in June 2014 by a group of men (Trinidad and Tobago Guardian 26 June 2014; Bubblews 25 June 2014; US 25 June 2015, 19). The US
Department of State's Country Reports on Human Rights Practices for 2014 reports that media identified the attack as a hate crime (ibid.).

Daily Express quoted a representative of CAISO in 2011 as reporting that a young LGBT man was severely beaten by his family and that LGBT men have also been "gang-raped" (30 Dec. 2011).

According to International Business Times, a digital global news publication that covers business, economic, political and technological issues (International Business Times n.d.), Trinidad and Tobago "does not have a history of public violence against homosexuals" (ibid. 9 Aug. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Further information on public violence against homosexuals in Trinidad and Tobago could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Legislation

Section 13 of the Sexual Offences Act states the following:

13. (1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment-

if committed by an adult on a minor, for life;

if committed by an adult on another adult, for twenty-five years;

if committed by a minor, for five years.

(2) In this section "buggery" means sexual intercourse per anum by a male person with a male person or by a male person with a female person. (Trinidad and Tobago 1986, Sec.13)

Section 16 of the Act states the following:

16. (1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment -

if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;

if committed on or towards a person sixteen years of age or more for five years.

(2) Subsection (1) does not apply to an act of serious indecency committed in private between -

a husband and his wife; or

a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.

(3) An act of "serious indecency" is 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. (ibid., Sec. 16)

Section 8(1)(c) of the Immigration Act states the following:

8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely

...
(e) prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes. (ibid. 1969, Sec. 8(1)(e))

2.1 Implementation of Legislation

Sources report that the law criminalizing same-sex sexual activity is generally not enforced (The Independent 17 Mar. 2015; CAISO 3 July 2015; US 25 June 2015, 18), except in instances such as rape (ibid.). The Executive Director of CAISO noted that they "cannot identify any prosecutions for private consensual sodomy in decades" (CAISO 3 July 2015). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that the immigration law provisions prohibiting the entry of homosexuals into Trinidad and Tobago are also generally not enforced (The Independent 17 Mar. 2015; US 25 June 2015, 18). Country Reports 2014 notes that the law was not enforced during 2014 (ibid.). The Independent similarly notes that the law is "often unenforced" (The Independent 17 Mar. 2015).

Sources report that Maurice Tomlinson, a gay rights activist from Jamaica, filed a lawsuit with the Caribbean Court of Justice against Trinidad and Tobago and Belize, challenging the countries' immigration laws that prohibit the entry of homosexuals into the country (ibid. 22 June 2015; Gay Star News 19 Mar. 2015; AP 18 Mar. 2015). According to the Associated Press (AP), Tomlinson argues that Trinidad and Tobago's immigration legislation is discriminatory and violates his freedom of movement rights within the region (ibid.).

The Associated Press (AP) reports that state authorities testified in March 2015 that the immigration law provisions that prohibit homosexuals from entering Trinidad and Tobago are "unenforced" due to "unwritten policies" (ibid.). Sources report that Trinidad's acting immigration chief, Gerry Downes, testified that immigration officials do not inquire into the sexual orientation of an individual when applying to enter the country (ibid; Gay Star News 19 Mar. 2015). According to Gay Star News, an international LGBT news, entertainment and travel site, Tomlinson argued that the application of the law remains at the "discretion of the immigration officer" (ibid.).

3. State Protection for Sexual Minorities

Amnesty International (AI) reports on the failure of Trinidad and Tobago to confront the issue of violence against LGBTI people and refers to the Constitution Reform Commission's failure to produce recommendations on achieving equality and preventing discrimination, despite acknowledging the high level of violence and abuse against LGBTI people in the country (AI 25 Feb. 2015, 369-370).

A Trinidad and Tobago Guardian article reports that a draft report published by the Constitution Reform Commission on 30 January 2014 fails to address "rights and legal protection" for the LGBT community (Trinidad and Tobago Guardian 12 Feb. 2014). The article notes that the issue was raised by "several stakeholders" during public consultations, including LGBT activists, "churchgoers and ordinary members of the public" (ibid.). According to the article, while the draft report contained "proposals" that "persons should not be fired from their jobs or excluded from employment because of their sexual orientation," the report "stops well short of enshrining full constitutional protection to the gay community, despite demonstrating awareness of the seriousness of the discrimination" (ibid.).

According to sources, the Equal Opportunity Act protects against discrimination in the areas of education, employment, housing and access to goods and service but does not extend protection to sexual minorities (CAISO 3 July 2015; US 25 June 2015, 18; Trinidad and Tobago 2000, Sec. 3-6). Section 5 of the Act states that the law provides protection from discrimination on the basis of a person's status, however, Section 3 of the Act states that gender ("sex") "does not include sexual preference or orientation" (ibid., Sec. 3, 5).

Sources indicate that Prime Minister Kamla Persad-Bissessar stated that it would not be possible to decriminalize homosexuality or grant rights to LGBT people because public opinion is too divided on the issue.
(Gay Star News 29 Sept. 2014; Pink News 26 Sept. 2014). The CAISO Executive Director stated that

[p]rotection for sexual orientation exists explicitly in law or state policy only in two areas: extradition requests (Extradition (Foreign & Commonwealth [Territories]) [Act], as amended in 2004); and privacy of data about sexual orientation collected (Data Protection Act provisions which took effect in 2012). Benefits and protections provided to unmarried partners in four laws related to death benefits, domestic violence, estates, maintenance and property are limited to partners of the opposite sex … (CAISO 3 July 2015)

With regard to protection by the judiciary, the CAISO Executive Director stated that proposed non-discrimination guidelines that would include sexual orientation were announced by the judiciary, but that "they do not appear to have been implemented" (ibid.). Corroborating and further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Executive Director of CAISO stated that records of enforcement of the provisions against same-sex sexual activity, including arrests, prosecutions and sentences, are "not easily available," but noted that CAISO has documented "arbitrary arrests and harassment of gay and transgender persons" by the police (ibid.). The source explained that LGBT victims have been subjected to "extreme reluctance or hostility by police, including name-calling" (ibid.). Other sources report that sexual minorities who have been victims of violence are hesitant to report incidents to police out of fear of negative response by police and court officials, such as harassment (US 25 June 2015, 19) or ridicule (Daily Express 30 Dec. 2011).

4. Support Services Available to Sexual Minorities

Sources indicate that there are active LGBT rights NGOs in Trinidad and Tobago (LGBT Alliance Trinidad n.d.; CAISO 2010; The Silver Lining Foundation n.d.). The Silver Lining Foundation is a youth-led LGBT organization (ibid.). According to the Trinidad and Tobago Guardian, CAISO is a local advocacy group that seeks to promote recognition of the gay community in the government's legislative agenda (Trinidad and Tobago Guardian 22 July 2013). CAISO also works with religious leaders to "develop a theology of inclusion"; raises awareness about crimes against LGBT that have gone unprosecuted; and promotes awareness of LGBT in the culture and history of the country (CAISO 2010).

LGBT Alliance Trinidad is a non-profit organization that serves the gay community in Trinidad and Tobago, including providing counselling (LGBT Alliance Trinidad n.d.a) and legal advice (ibid. n.d.b).

According to GlobalGayz, the Women's Caucus is a non-political organization that provides gay women with a space to express themselves outside of the nightclub environment (GlobalGayz 28 Aug. 2012). The organization aims to assist women in the LGBT community by hosting gatherings and using proceeds to assist the needy in their community (ibid.).

According to sources, there are LGBT shelters in Trinidad and Tobago that welcome sexual minorities (Newsday 27 Nov. 2014; New Ways Ministry n.d.). Four such shelters are run by the Holy Faith Sisters (ibid.; Newsday 27 Nov. 2014; Credo Foundation for Justice n.d.), through the Credo Foundation for Justice, "whose purpose is to protect children, and reduce the number of those who are socially displaced and abused" (ibid.). According to the Archbishop of the Catholic Church in Trinidad and Tobago, the shelters are "open to any boy or girl we feel [we] are equipped to help, irrespective of race, religion or sexual orientation" (New Ways Ministry n.d.). Trinidad and Tobago newspaper Newsday indicates that the four shelters are the Credo Centre at Nelson Street, the Aylward House Transitional Facility in Gonzales, Sophia House at Park Street, Port-of-Spain, and Ruah, a "transitional facility for girls in Belmont" (27 Nov. 2014).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=55debf24
[1] The Silver Lining Foundation is a youth-led NGO that serves marginalized youths and focuses on bullying and discrimination, with specific regard to LGBT issues (The Silver Lining Foundation n.d.).

References


_____ 3 July 2015. Correspondence from the Executive Director to the Research Directorate.


Coalition Advocating for the Inclusion of Sexual Orientation (CAISO) and the Silver Lining Foundation. 25 April 2013. Letter to Constitution Reform Commission, Trinidad and Tobago. Sent to the Research Directorate by the Executive Director, 13 July 2015.


Pink News. 26 September 2014. "Trinidad and Tobago: Prime Minister Says Gay Rights is 'Not Legally Possible.'" [Accessed 24 June 2014]


Additional Sources Consulted

Oral sources: The following were unable to provide information within the time constraints of this Response: Caribbean Vulnerable Communities.
Attempts to contact the following were unsuccessful within the time constraints of this Response: LGBT Alliance Trinidad; The Silver Lining Foundation; Trinidad and Tobago - Ministry of National Diversity and Social Integration, Ministry of Tourism, Police Service.

Internet sites, including: 76 Crimes; CariFLAGS; Change.org; International Day Against Homophobia, Transphobia and Biphobia; International Gay and Lesbian Human Rights Commission; International Lesbian, Gay, Bisexual, Trans and Intersex Association - Latin America and the Caribbean; International Refugee Rights Initiative; Legislationline; Trinidad and Tobago - Ministry of National Diversity and Social Integration, Ministry of Tourism, Parliament; United Nations - Human Rights Council, RefWorld, UNAIDS.

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TAB 6
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*

Trinidad and Tobago

* The annex to the present report is circulated as received
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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1, held its twenty-fifth session from 2 to 13 May 2016. The review of Trinidad and Tobago was held at the 15th meeting on 10 May 2016. The delegation of Trinidad and Tobago was headed by His Excellency Eden Charles, Ambassador Extraordinary and Plenipotentiary. At its 20th meeting held on 13 May 2016, the Working Group adopted the report on Trinidad and Tobago.

2. On 12 January 2016, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Trinidad and Tobago: Kenya, Georgia and Qatar.

3. In accordance with paragraph 15 of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, the following documents were issued for the review of Trinidad and Tobago:

   (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/25/TTO/1);

   (b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/25/TTO/2);

   (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/25/TTO/3).

4. A list of questions prepared in advance by Norway, Slovenia, the United Kingdom of Great Britain and Northern Ireland and Spain was transmitted to Trinidad and Tobago through the troika. These questions are available on the extranet of the UPR.

I. Summary of the proceedings of the review process

A. Presentation by the State under review

5. Trinidad and Tobago stated that it was honoured to participate in its Second Cycle Review and indicated that the preparation of the national report had involved various stakeholders including government ministries, other state agencies, and representatives of civil society.

6. In fulfilling its human rights obligations, it had sought to implement measures to address priority areas such as the protection of the rights of women and children, poverty reduction, improvement in the administration of justice and reducing the amount of violent crimes. With regard to the continued increase of violent crime given the country’s vulnerability to drug trafficking and illegal arms trade, the Government took steps to address this issue with the passage of various pieces of legislation such as the Trafficking in Persons Act, 2011, the enactment of the Anti-Terrorism (Amendment) Act, 2010, as well as the Interception of Communication Act, 2010.

7. The Government continued to improve the administration of justice in an effort to reduce the backlog of cases before the Courts, specifically those related to the length of time that a person may be detained before being brought before Courts. To address this issue, the Administration of Justice (Indictable Proceedings) Act, 2011 and the Indictable Offences (Committal Proceedings) Act, 2014 were enacted.
8. The Police Complaints Authority of Trinidad and Tobago, also offered a safe, independent environment in which complaints may be lodged and investigated. This service was offered free of charge as an accessible mechanism for members of the public to submit complaints against police officers and to curb the use of unnecessary force by the Police Service in the conduct of their work.

9. The Trinidad and Tobago Police Service had also implemented the “Policing for People Initiative” to provide officers with the training required to improve the quality of policing. The aim was to change the culture of the police service in its interaction with the public in order to be a closer alliance between the Police Service and the public, with the concomitant effect of greater cooperation in the fight against crime.

10. On death penalty, Trinidad and Tobago informed that it was only applicable for crimes of murder and treason and that before applying the death sentence, due process was carefully observed, through the imposition of several safeguards. These safeguards included commutation of the death sentence if not carried out within 5 years; appeals to the Court of Appeal and to the Judicial Committee of the Privy Council, the final Court of Appeal; and the right of a prisoner to apply to the Advisory Committee on the Power of Pardon by virtue of section 89 of the Constitution. The death penalty has been in abeyance since 1999.

11. Various policy mechanisms were also in place to protect and promote the rights of prisoners. The Penal Reform and Transformation Unit was established in 2002 to review the penal system. Since then, further reforms had been implemented towards a more restorative system of justice. The Trinidad and Tobago Prison Service was guided by the Standard Minimum Rules for the Treatment of Prisoners. Strategies had also been adopted to meet the needs of imprisoned women to ensure that the mother-child relationship was maintained and to address women’s health needs especially related to pregnancy and revenue earning. Inmates were able to benefit from the rehabilitative system, involving religious/spiritual programmes of all faiths, psychological services, medical services, cognitive/moral programmes relating to leadership, conflict resolution, drug rehabilitation, counselling, adolescent development, self-esteem and anger management, social/sporting programmes, educational programmes ranging from academic to vocational, some of which were conducted by the Prison Service.

12. The Ministry of National Security had embarked upon the introduction and implementation of a system of Offender Management. This system sought to establish a seamless process for offenders from the point of arrest through to the point of release. At its core, was the delivery of a managed set of interventions, sequenced and tailored to respond to the risks and needs of the individual offender.

13. In light of the accepted recommendation to improve the living conditions in prisons and detention centers, the Prison Service Act, 1965 was amended by the Miscellaneous Provisions (Prisons) Act, 2014 along with the Prison Rules to provide for, among other things, the removal of an Inspector of Prisons and the creation of an Inspectorate of Prisons and the establishment of an Appeals Tribunal in respect of disciplinary actions against prisoners. The Inspectorate was charged with the responsibility to inspect and report on the conditions in prisons, industrial institutions, the treatment of prisoners, prisoner complaints and programmes, facilities, services and opportunities available to promote the rehabilitation of prisoners and young offenders.

14. Trinidad and Tobago had sought to implement the accepted recommendation to reduce the case backlog and address the inefficiencies in the judicial system that contributed to lengthy pre-trial detentions and exacerbated difficult prison conditions. In September 2015, the Chief Justice of Trinidad and Tobago announced the approval of Criminal Case Management Rules that would facilitate early disclosure and disposal of preliminary issues, impose stricter timelines and also impose a positive obligation on all
parties, including Judicial Officers to assist in progressing cases in accordance with the overriding objective of dealing with cases justly and expeditiously.

15. Regarding poverty reduction especially as it related to women, Trinidad and Tobago informed that such matters were now addressed under the Office of the Prime Minister with a Minister of State having responsibility for gender affairs. Financial assistance was provided through the “Women in Harmony” Programme to women who headed households as single parents with little or no skills and low or no income for more than a decade.

16. Another initiative geared towards the enhancement of women with specific needs was the “Non-traditional Skills Training Programme for Women”. It was designed to provide specialized, technical/vocational education and training to low income women. This programme was aimed at raising the economic productivity among unskilled, unemployed women between the ages of 18 – 50 years and since 2001, had trained over 3000 women in non-traditional fields.

17. Trinidad and Tobago had also paid attention to the needs of persons with disabilities. A Disability Affairs Unit, within the Ministry of Social Development and Family Services, and a National Coordinating Committee on Disability had been established. Additionally, a Draft National Policy on Persons with Disabilities and a Draft Disabilities Bill were under consideration. Broad programmes were also developed to ensure the safety and independence of the differently-abled. The Government provided financial assistance to purchase aids and assistance devices and the Public Transport Service Corporation provided a dial-a-ride service to transport differently-abled persons to work, to school, to Government offices and to the supermarket.

18. Efforts had been made by the Ministry of Labour and Small Enterprise Development to promote and encourage the integration of persons with disabilities into the labour market in both the public and private sectors.

19. Efforts in safeguarding the rights of persons with disabilities had been strengthened with the ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2015. An Inter-Ministerial Committee was established to operationalize the articles of the Convention.

20. In July 2015, the National Enrichment Centre for Persons with Disabilities was commissioned to enhance the quality of life of persons with disabilities. The Centre was earmarked to provide rehabilitation services, opportunities for vocational training and employment, independent life skills programmes, socially interactive activities and therapeutic services for persons with disabilities at no cost.

21. The right of children with disabilities to access education was supported by the Special Education Unit of the Student Support Services Division of the Ministry of Education.

22. Trinidad and Tobago sought to implement various recommendations made during its initial review concerning the full implementation of the Children’s Authority and the proclamation of the Children Act, 2012. On 18 May 2015, the Children Act, 2012 was proclaimed which resulted in the immediate operationalization of the Children’s Authority. The Children Act, 2012 along with other legislation and the Children’s Authority represented an overhaul of the former child protection system to a new regime. The Children Act, 2012, repealed and replaced the Children Act, 1925. The new legislation was wide ranging in its scope and dealt with, among other things, sexual conduct against children, cruelty, juvenile justice, corporal punishment, compulsory school age, evidence and procedures in relation to children in criminal proceedings, Children’s Attorneys and the employment of children. The Children’s Authority which was established by the Children’s Authority Act, 2000 served as the hub of the new national child protection system and
performed several key functions geared towards safeguarding and improving the lives of children in Trinidad and Tobago. The Children’s Authority received and investigated reports of the mistreatment of children and, in order to deliver the most effective service, had established a 24-hour Helpline where reports could be made anonymously. It had also established an Emergency Response Team to investigate reports of the mistreatment of children on a 24-hour basis.

23. The Government had devised a number of programmes and initiatives to promote and protect the rights of children. The Family and Children Division Bill, 2016 sought to make jurisdiction for all family matters and children matters exercisable in a specific Division of the High Court.

24. Trinidad and Tobago was a State Party to the Convention on the Rights of the Child and the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The national laws also gave effect to the provisions of these treaties, for example, the International Child Abduction Act, 2008. Administratively, a Civil Child Abduction Unit under the Ministry of the Attorney General and Legal Affairs, served as a Central Authority, in matters of parental abduction. Other measures included the Child Advocacy Unit which operated out of the Solicitors General’s Department.

25. A Child Protection Unit (CPU) within the Trinidad and Tobago Police Service (TTPS) which was staffed by specially trained officer investigated all matters pertaining to child abuse. CPUs existed in more than half of the police geographical divisions.

26. The Children Act, 2012 prohibited the use of corporal punishment in schools. The Act also addressed issues relating to the sale of children, child pornography, and child prostitution. These actions were supported by the Trafficking in Persons Act, 2011 which also provided some protection for children under heinous crimes.

27. The protection of the rights of the women of Trinidad and Tobago was of fundamental importance to the Government. The Government had recognized that, as in any society, women fall victim to domestic violence, sexual harassment and other forms of emotional and verbal abuse. In addition to specific legislation covering many of these offences, women were also protected under the Sexual Offences Act, 1986. Other legislation that protected women from abuse and discrimination included the Domestic Violence Act, 1999, Trafficking in Persons Act, 2011 and Equal Opportunities Act, 2000. In 2012, the Maternity Protection Act, 1998 was amended by the Miscellaneous Provisions (Maternity Protection and the Masters and Servants Ordinance) Act, 2012. These specific pieces of legislation supplemented the provisions of Section 4 of the Constitution which entrenched the fundamental rights and freedoms of all citizens.

28. Education remained at the forefront of the Government’s investment in sustainable development. In 2015, Trinidad and Tobago achieved Universal Early Childhood Care and Education (ECCE), which was coupled with the existing Universal Primary and Universal Secondary education, as well as Universal Tertiary education up to the undergraduate level. Further to these policy measures, there were important legislative changes that promoted the right to education. With the proclamation of the Children Act, 2012, the age of compulsory schooling had increased from 6-12 to 5-16 years.

29. Despite the progress achieved under the MDGs, in September 2015, Trinidad and Tobago joined the rest of the international community in adopting the 2030 Sustainable Development Agenda and had embarked on its implementation within the context of the Government’s national development plan, Vision 2030.

30. Trinidad and Tobago underscored that it was committed to putting in place measures and mechanisms to meet international human rights obligations for the benefit of all its citizens. The country expressed appreciation for the receipt of advance questions and
indicated its readiness to receive recommendations and comments emanating from the Working Group.

B. Interactive dialogue and responses by the State under review

31. During the interactive dialogue, 56 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report.

32. The Netherlands welcomed the on-going parliamentarian debate on equal rights and non-discrimination of the LGBTI community. Since discrimination based on sexual orientation remained prevalent, the Netherlands highlighted the need to improve the fulfilment of rights of LGBTI persons.

33. Nicaragua highlighted reforms and improvements in the area of children's rights, rights of persons with disabilities and combating trafficking, as well as efforts towards restitution of women’s rights. It commended the ratification of the CRPD and the establishment of an Inter-Ministerial Committee to oversee its implementation. Nicaragua encouraged Trinidad and Tobago to pay particular attention to vulnerable groups.

34. Nigeria noted the broad consultations, covering national institutions and NGOs, in the compilation of Trinidad and Tobago’s report. It highlighted the fact that the recommendations accepted during last review had been implemented. Nigeria commended the enactment of the Trafficking in Persons Act and the establishment of a Counter-Trafficking Unit and noted the review of the Administration of Justice Act and the establishment of a Juvenile Court.

35. Norway noted the legislative reforms relating to violence against women, despite the high level of gender-based violence was a concern. Norway was also worried about continued stigma and discrimination against LGBTI-persons, as well as people living with HIV. It noted with concern that Trinidad and Tobago had failed to outlaw child marriage.

36. Pakistan noted that despite resource constraints, Trinidad and Tobago had made efforts to implement the majority of the first cycle recommendations. It commended the ratification of the CRPD and stressed that the Children Act, Child Protection Units, National Health Card and policies related to the elimination of discrimination against women would contribute to the promotion and protection of human rights.

37. Panama acknowledged efforts towards combating corruption and recognized that this was a systemic problem hindering the full enjoyment of human rights. It highlighted achievements in the field of children’s rights and rights of persons with disabilities.

38. Paraguay welcomed significant legislative progress. It urged Trinidad and Tobago to further progress in matters related to the elimination of discrimination against women, empowerment of women in decision-making processes and eradication of violence against women. Paraguay was worried by the fact that, in certain cases, 12 year old children could marry legally.

39. The Philippines acknowledged enactment of the Trafficking in Persons Act in accordance with the Palermo Protocol and the continuing cooperation with other States in matters of trafficking in persons. It remained concerned about the reported upward trend of crime rate and encouraged Trinidad and Tobago to continue adopting a human rights based approach in the implementation of its security reforms.

40. Portugal welcomed the ratification of the CRPD. It highlighted there had been no executions in Trinidad and Tobago since 1999.
41. The Republic of Korea noted the ratification of the CRPD, the enactment of the Trafficking in Persons Act and the Children Act, and the adoption of the National Refugee Policy as major progresses made to protect the most vulnerable groups.

42. Trinidad and Tobago noted the comments and the recommendations made by all the intervening states thus far and stated that these would be referred to the authorities in the Capital. Consultations at the government and society levels would determine whether or not they could be included in the human rights machinery.

43. In response to the issue of child marriage, Trinidad and Tobago informed that it recognized same as a critical issue. As a multi-ethnic and multi-religious country, altering existing legislation which reflected traditional norms and values needed extensive and inclusive consultation. The issue of child marriage was a subject of a current and live debate in the country and with the recent amendment to the Children Act, the age of a child had been raised to 18 years in compliance with international standards. Consultations will continue to ensure that there is no inconsistency with the raising of the age of a child to 18 and other practices that did not conform to that age limit.

44. In response to the advanced questions posed by the delegation of Norway, Trinidad and Tobago stated that it recognized that discrimination against any affected group was a scourge to be tackled. Thus taking into consideration the cultural and the diverse nature of the population, any changes to statutory law would involve extensive nationwide consultation, not only involving the affected groups, but the wider society.

45. It informed that the matter of the establishment of a NHRI in accordance with the Paris principles continued to receive the consideration of the Government. More in depth studies were being done and a holistic approach was adopted to ascertain whether or not existing institutions such as the Equal Opportunities Commission and the Office of the Ombudsman could be adjusted and possibly converted into an NHRI.

46. In response to the advance question from Slovenia, Trinidad and Tobago referred to its extensive opening statement wherein it was indicated that corporal punishment was prohibited in schools.

47. Regarding UK’s question on the issue of the three-tiered classification of murder and matters relating to the abolishment of the death penalty, Trinidad and Tobago indicated that when the Constitution (Amendment)(Capital Offences) Bill, 2011 was being debated, the issue of the abolishment of mandatory imposition of death penalty was discussed. Trinidad and Tobago continued to address the issue of the death penalty and stated that the death penalty is never carried out without observance of due process of law.

48. On the issue of the empowerment of women, Trinidad and Tobago mentioned the increasing number of women sitting in the two houses of the Parliament, noting that the presiding officers of both bodies were women.

49. With regard to the length of pre-trial detention, a question posed by the UK, separate pieces of legislation were currently applicable in Trinidad and Tobago, namely the Administration of Justice (Indictable Proceedings) Act, 2011 which repealed the Indictable Offences (Preliminary Enquiry) Act, 1917. The Indictable Offences (Preliminary Enquiry) Act, 1917, continued to apply to proceedings which were instituted prior to the coming into force of the 2011 Act. Trinidad and Tobago further indicated that the situation would continue to be monitored and that consideration would be given to what was said.

50. Senegal welcomed the promulgation of the Trafficking in Persons Act, the operationalization of the Children’s Authority, the ratification of the CRPD and the presentation of reports to treaties bodies, especially to the Committee on the Elimination of Discrimination Against Women.
51. Sierra Leone noted the enactment of new legislation to improve the human rights situation. Given that there had been no executions since 1999, Sierra Leone urged Trinidad and Tobago to put into place a moratorium on the death penalty with a view to abolishing it, and to consider incorporating this abolition in their Constitutional review. Sierra Leone encouraged strengthening efforts to end sexual assault and domestic violence.

52. Singapore welcomed the Trafficking in Persons Act and the ratification of the CRPD. It wished Trinidad and Tobago success in achieving the UN 2030 Agenda for Sustainable Development. Singapore remained committed to sharing its development experience with Trinidad and Tobago and other Small Island Developing States.

53. Slovenia congratulated efforts to promote the rights of the elderly, and engagement in gender responsive budgeting. It welcomed the ratification of the CRPD and the submission of a report to CEDAW; as steps towards implementing its past recommendations 88.1 and 87.4 (of the first UPR cycle). Slovenia considered its past recommendation 88.39 as partially implemented as it noted that the reviewed Children Act introduced the prohibition of corporal punishment in all settings outside the home. Slovenia noted that the death penalty continued to be mandatory for those found guilty of murder and that non-coercive sexual activity between minors of the same sex could lead to life imprisonment.

54. South Africa welcomed the enactment of several laws to promote and protect the rights of women and girls as well as continued progress in social and human development.

55. Spain congratulated Trinidad and Tobago for the ratification of the CRPD. Spain urged the signature and ratification of the ICCPR-OP2. Trinidad and Tobago should pursue combating all forms of discrimination, particularly discrimination based on sexual orientation. Spain praised efforts to combat sexual and gender-based violence.

56. Switzerland noted the ratification of the CRPD and the introduction of a national policy on refugees. It remained concerned by the insufficient implementation of first cycle UPR recommendations and advised a transparent and inclusive process for implementing both cycles’ UPR recommendations.

57. Turkey commended efforts promoting gender equality and encouraged effective implementation of the draft national gender policy. It noted the establishment of the Central Registry on Domestic Violence, appreciated proclamation of an Anti-Trafficking Act and observed on-going efforts for reducing violent crime through enactment of legislation.

58. Uganda commended Trinidad and Tobago’s commitment to protect women and children, reduce poverty and the incidence of violent crime and improve the welfare of those living with HIV/AIDS; and highlighted continued efforts were necessary. It praised the enactment of the Trafficking in Persons Act. Uganda highlighted that increased protection of children against all forms of abuse remained the key concern.

59. The United Kingdom of Great Britain and Northern Ireland welcomed the on-going review of the death penalty. It recognised the work undertaken to address discrimination against women and asked for concrete steps to implement existing legislation on sexual harassment and violence against women; implementing specialized Rape and Sexual Offences Units within police stations.

60. Trinidad and Tobago acknowledged the recommendations raised in this round inclusive of those urging that consideration be given to the ratification of human rights Conventions which had not yet been ratified. With regard to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, Trinidad and Tobago stressed that although it had not become a State Party to that Protocol, the Children Act addressed the question of the sale of children.
61. The United States of America commended efforts to assist persons with disabilities and provide greater safeguards for persons with HIV/AIDS. It noted efforts to improve aspects within the justice sector, but remained concerned about reports of police mistreatment and poor prison conditions. It was also concerned about violence and discrimination against women and about the lack of respect for the human rights of LGBTI persons.

62. Uruguay noted with concern the increasing number of cases that could result in the death penalty. It welcomed the establishment of a National Policy to Address Issues of Refugees and Asylum Seekers and measures concerning women's rights. Uruguay was concerned about increased maternal mortality, particularly among adolescents, and encouraged Trinidad and Tobago to redouble efforts on sexual education and access to sexual and reproductive health services.

63. The Bolivarian Republic of Venezuela acknowledged efforts towards implementation of accepted UPR recommendations, which had led to an effective mechanism for developing national human rights programs. It welcomed steps taken to ensure access to health, housing, food, and education. It underlined the implementation of the National Social Development Programme, the enactment of the Children Act 2012 and the National Strategic Plan for Child Development 2012-2016, and welcomed public policies aimed at strengthening the gender dimension.

64. Argentina commended the ratification of the Convention on the Rights of Persons with Disabilities and encouraged Trinidad and Tobago to accede to international human rights treaties, to which it was not yet a party. Argentina also took note of the efforts to combat gender violence and discrimination suffered by women and girls.

65. Australia commended the ratification of the Convention on the Rights of Persons with Disabilities in 2015, however, indicated that persons with disabilities continued to face discrimination. Australia also remained concerned that violence and discrimination against LGBTI persons had not been addressed through legislative and policy instruments.

66. The Bahamas noted that Trinidad and Tobago had become the first Commonwealth Caribbean State to submit a UPR Mid-Term Progress Report and commended the inclusive multi-stakeholder consultations undertaken to draft the national report. The Bahamas commended strengthening of the legal framework to protect children and the gender equality initiatives, including development of tools for gender-sensitive budgeting and training programmes, which challenge traditional gender role stereotypes.

67. Barbados noted the adoption of relevant legislation in 2013 on human trafficking and the establishment of national agencies to give effect to countering this global issue; Children Act of 2012, which established a juvenile justice system; ratification of the Convention on the Rights of Persons with Disabilities; decriminalization of defamation; and the National Policy to Address Refugee and Asylum Seeker Matters.

68. Botswana applauded the proclamation of a number of laws, including the Trafficking in Persons Act and the Children Act and welcomed improving access to justice and the introduction of electronic monitoring to relieve prison overcrowding. Botswana, however, noted reports of abuses carried out by law enforcement officials, including corruption, and reports of inequalities faced by women in all sectors of the economy.

69. Canada was encouraged by the commitment of Trinidad and Tobago to amend the Police Complaints Authority Act, aiming to give the Police Complaints Authority more
powers to effectively investigate serious misconduct, corruption and criminal offences involving police officials. Canada encouraged swift consideration in Parliament of new provisions as well as law enforcement training and public education initiatives to ensure its effective implementation.

71. Chile welcomed the entry into force of the Trafficking in Persons Act, ratification of the Convention on the Rights of Persons with Disabilities, and establishment of the National Policy to Address Refugee and Asylum Seeker Matters. Chile was, however, concerned about the maintenance of the death penalty in legislation, discrimination against LGBTI persons, violence against women and children, and early marriage of girls.


73. Colombia welcomed the adoption of the National Policy to Address Refugee and Asylum Seeker Matters and the establishment of a Special Joint Committee on Human Rights, Diversity, Environment and Sustainable Development.

74. Cuba underscored the announcement made by Trinidad and Tobago in 2015 of the attainment of the Universal Early Childhood Care Education. Cuba also highlighted the establishment of the Drug Treatment Court, which was an alternative to imprisonment for drug offenders, with the purpose of breaking the cycle of abuse, multiple arrests and recidivism.

75. Denmark commended Trinidad and Tobago for ratifying several of UN core human rights conventions and also submitting the latest report to CEDAW in 2015. Denmark, however, regretted that the Convention against Torture was still missing from the UN conventions ratified by Trinidad and Tobago and hoped that it would join the 159 State Parties to this Convention.

76. Ecuador acknowledged the enactment of the Children Act, which covered issues such as sexual abuse, cruelty, juvenile justice, corporal punishment, mandatory schooling age, evidence and proceedings in criminal cases and child labour. Ecuador also commended the amendments to the Regional Health Authorities Act, new medical facilities, and passing of a new regulation on emergency medical staff and services.

77. France welcomed the delegation of Trinidad and Tobago and made recommendations.

78. Georgia commended the ratification of the Convention on the Rights of Persons with Disabilities and the adoption of a comprehensive Trafficking in Persons Act and the Children Act. Georgia also welcomed the submission of a mid-term implementation report on the recommendations accepted during the previous UPR and encouraged Trinidad and Tobago to continue this practice.

79. Germany welcomed that there had been no executions since 1999 but noted with concern tendencies to continue the promotion of the retention of the death penalty. Germany remained worried that provisions criminalizing and discriminating LGBTI persons were still in effect. Germany indicated that more actions needed to be taken to safeguard children against sexual and other physical abuse.

80. Trinidad and Tobago once more thanked the States that had made comments, and provided recommendations. It noted that the positive tone was a reflection of the
recognition of the country’s efforts to implement obligations that emanated from its own national laws as well as international obligations in the realm of human rights.

81. Reference was made to previous responses with regard to police mistreatment, prison conditions, gender equality, death penalty, early marriages, affected groups and the ratification of the CAT. It was noted that while the CAT had not been ratified, Trinidad and Tobago as a State Party to the Rome Statute of the ICC, recognized torture as an international crime that should be punished by all States.

82. It welcomed the willingness of countries like Denmark to speak about exchanging best practices as one of the purposes of this peer review for all States.

83. Ghana commended Trinidad and Tobago for the progress achieved since the last review in 2011, including the enactment of the Trafficking in Persons Act.

84. Guatemala acknowledged the progress that Trinidad and Tobago had achieved on the basis of the voluntary commitments made during the UPR process as well as the work that had been undertaken for the fight against corruption, the rights of the child, gender equality and elimination of all forms of discrimination, and citizens’ security.

85. Honduras commended the ratification of the Convention on the Rights of Persons with Disabilities, approval of the National Policy to Address Refugee and Asylum Seeker Matters, and the establishment of a Special Joint Committee on Human Rights, Diversity, Environment and Sustainable Development.

86. Indonesia appreciated the entry into force of the Trafficking in Persons Act, the revised Children Act, and the ratification of the Convention on the Rights of Persons with Disabilities. Indonesia further commended the juvenile justice reforms in promoting rehabilitative and restorative justice and the amendments to the Miscellaneous Provisions (Prisons) Act to improve prison and detention living conditions. Indonesia also welcomed the review of the draft Immigration Policy.

87. Italy noted positively the measures aimed at furthering the protection of children and combating trafficking in persons. Italy also welcomed the commitment of Trinidad and Tobago to promote economic, social and cultural rights, and in particular, the results achieved concerning the right to education.

88. Jamaica noted the multi-stakeholder review of the draft Immigration Policy undertaken by Trinidad and Tobago and was confident that this review, guided by the best interests of the people, would take into account regional and international commitments and best practices.

89. Kenya noted that their engagement with the Human Rights Council and the national steps they have taken have enabled the country to make valuable contributions to the work of the Council, implement core human rights treaties and protect human rights despite their challenges and constraints.

90. Malaysia noted that actions have been taken to curb crime and violence, and improve the efficiency of the administration of justice to ensure early consideration of court cases. Although significant progress has been made, Malaysia was of the view that several areas could be further improved.

91. The Maldives welcomed Trinidad and Tobago’s introduction of the 2012 Children Act to ensure protection of children against sexual abuse and efforts in enacting the Administration of Justice Act of 2012. The Maldives noted the Baby Care Assistance Initiative, providing financial assistance for any child born to under-privileged parents during the course of the fiscal year.
92. Mexico encouraged Trinidad and Tobago to harmonize its national regulatory framework with the standards contained in the Convention on the Rights to Persons with Disabilities. Mexico welcomed the legislative and policy measures taken to strengthen the child protection system and urged the government to establish mechanisms to monitor and ensure their effective implementation to safeguard safety of minors.

93. Mongolia noted that violence against women, human trafficking remained issues of concern in Trinidad and Tobago and noted the state’s efforts to combat such criminal activity, through the proclamation of the Trafficking in Persons Act, 2011 in 2013.

94. Montenegro noted the concerns of the CESCR Committee and asked Trinidad and Tobago to elaborate on its possible intention to amend the Equal Opportunity Act 2000 to afford protection to individuals on the grounds of sexual orientation and gender identity and to brief on whether a definition of discrimination against women has been incorporated in the Draft National Policy.

95. Morocco welcomed the attention paid by the state to fight crime and violence in society; to the situation of refugees and asylum seekers; to the rights of workers and employers including the right to work for persons with disabilities; the adoption of national laws protecting children against sexual violence; and facilitating access to affordable housing.

96. Brazil appreciated that Trinidad and Tobago “de facto” abolished the death penalty and encouraged Trinidad and Tobago to take concrete steps in order to formally abolish the capital punishment and the corporal punishment in its legal system.

97. Costa Rica was concerned about the functioning and effectiveness of the national commission for constitutional reform, and about reports on the prevalence of human trafficking, domestic violence, sexual violence and gender-based violence.

98. Egypt commended the enactment of the Trafficking in Persons Act; ratification of the Convention on the Rights of Persons with Disabilities and establishment of an inter-ministerial committee to monitor the implementation of the Convention; enactment of this Children Act; and the initiatives taken by the Ministry of National Security to reinforce personal safety through fighting crimes and violence.

99. Trinidad and Tobago thanked all delegations for their contributions to the interactive dialogue. With regard to persons with disabilities, Trinidad and Tobago recalled that it had previously stated that it had ratified the CRPD and was in the process of drafting a national legislation to give domestic legal effect to the provisions under that Convention.

100. It expressed appreciation for the positive comments made on the Trafficking in Persons Act and the efforts undertaken in that field.

101. Trinidad and Tobago noted the recommendation on the ratification of the CMRW and the need for consultation with the Capital on this issue. It mentioned the issue of cooperation and multilateralism within the human rights treaties referring to a comment made by Jamaica.

102. Trinidad and Tobago informed Costa Rica that it was one of the countries which had ratified the Arms Trade Treaty (ATT) at an early stage and was currently in the process of finalizing its domestic implementing legislation. By ratifying the ATT, it had also committed to addressing gender-based violence in terms of the transfer of arms.

103. It noted that issues raised in relation to the establishment a NHRI in accordance with the Paris principles, the death penalty, affected persons and inclusivity were previously addressed.
104. In Trinidad and Tobago the issue of human rights, its safeguarding and protection concerned everybody, notwithstanding the fact that the Government had the right to set the legislative agenda to ensure that laws were passed and that administrative mechanisms were in place to safeguard the human rights of all citizens taking into account the increasing role of civil society.

105. Trinidad and Tobago commended all the delegations contributing to the interactive dialogue and highlighted its continued effort to give effect to section 4 of the Constitution, the bill of rights of Trinidad and Tobago.

II. Conclusions and/or recommendations*

106. The recommendations listed below enjoy the support of Trinidad and Tobago:

106.1. Maintain the tempo to reform the constitution and conclude this important reform as it will consolidate and enhance the legal framework for protection and promotion of human rights (Kenya);

106.2. Continue efforts to harmonize national legislation with international human rights norms (Morocco);

106.3. Develop and implement a National Action Plan for Human Rights to further ensure systematic and comprehensive approach for the promotion and protection of human rights, with the full engagement of civil society (Indonesia);

106.4. Foster a better understanding of the needs of young people and establish guidelines for their development (Cuba);

106.5. Develop and implement a national awareness raising campaign on human rights (Maldives);

106.6. Continue to develop training programmes in the field of human rights for law enforcement officials (Egypt);

106.7. Submit overdue reports to the relevant treaty bodies (Sierra Leone);

106.8. Take steps to submit overdue reports to treaty bodies (Ghana);

106.9. Avail technical assistance from OHCHR towards implementation of its obligations under international laws and treaties (Maldives);

106.10. Continue legislative review and reform to address any instances of discrimination against women in national law (Bahamas);

106.11. Continue to promote the rights of vulnerable groups, especially women, children and persons with disabilities (Senegal);

106.12. Continue its significant efforts to promote gender equality, in particular the implementation of the Draft National Gender Policy as well as the proper enforcement of the existing legal frameworks (Norway);

106.13. Continue to promote women empowerment (Pakistan);

106.14. Develop more equitable strategies to achieve gender equality on the basis of the assessment or examination of the different needs, constraints, opportunities and priorities of men and women (Cuba);

* The conclusions and recommendations have not been edited
106.15. Implement gender equality by establishing same wages for same jobs for men and women (Algeria);
106.16. Continue efforts to eliminate discrimination against women to allow for equal access to the labour market (Morocco);
106.17. Increase its collaboration with regional and hemispheric partners to address high levels of violence and organised crime (Jamaica);
106.18. Establish an authority that will investigate and recommend action against abuses by law enforcers as a way to curb corruption, violations and protect the integrity of the security forces (Botswana);
106.19. Enact comprehensive prison and related judicial reform to ensure that conditions of detention are in conformity with UN Standard Minimum Rules for the Treatment of Prisoners, including but not limited to: addressing overcrowding and sanitary issues in prisons; providing sufficient resources for rehabilitation and reintegration of prisoners; and relieving the judicial backlog that has contributed to the detention of over 2,000 people in remand awaiting a trial, many who have been in custody for several years (Canada);
106.20. Take all necessary measures to solve the problem of prison overcrowding and to improve detention conditions, including by providing sufficient resources to the body responsible for investigating allegations of torture and ill-treatment and ensuring its independence (France);
106.21. Strengthen plans and policies to eradicate violence against women (Paraguay);
106.22. Prioritise measures to significantly reduce gender-based violence including violence against women and girls (Jamaica);
106.23. Establish appropriate coordination mechanisms that can ensure an effective multisectoral response to cases of sexual and domestic violence (Guatemala);
106.24. Take steps to strengthen policies aimed at addressing gender-based violence, domestic violence, sexual harassment, rape and child sexual abuse (Ghana);
106.25. Pursue efforts to strengthen legislation and public policies aimed at eradicating violence against women (Ecuador);
106.26. Establish an adequate mechanism to ensure an effective response to sexual and domestic violence (Turkey);
106.27. Develop a coordinated, inter-agency approach for responding to gender-based violence, with support from international partners, as required (Bahamas);
106.28. Approve the national gender policy and put it into practice in order to guarantee, inter alia, the effective implementation of the Domestic Violence Act, the establishment of appropriate and effective coordination mechanisms to ensure effective multisectoral response to sexual and domestic violence and sexual harassment in the workplace and in public life, as well as the explicit prohibition of discrimination against women (Honduras);
106.29. Ensure adequate follow up to the review of the Domestic Violence Act conducted in 2014-2015 in order to strengthen measures to prevent and combat
106.30. Strengthen the response to various forms of violence against woman and take appropriate measures in order to ensure gender equality in the labor market (Egypt);

106.31. Continue its efforts in the fight against violence and discrimination against women, and ensure the effective implementation of existing legislation, particularly legislation on the minimum legal age of marriage (France);

106.32. Strengthen efforts to prevent and eradicate forced marriage of children and adolescents (Chile);

106.33. Partner with existing independent human rights organizations to monitor and evaluate government interventions that combat domestic violence (United States of America);

106.34. Fully implement the Domestic Violence Act and develop a comprehensive policy to raise awareness of and prevent domestic violence (Germany);

106.35. Develop statistics and indicators on gender-based violence in order to design and implement public policies in an effective manner (Mexico);

106.36. Ensure that rape is diligently prosecuted as a grievous sexual assault (Slovenia);

106.37. Enact laws and policies to combat the problem of sexual harassment in the workplace and in public life (Guatemala);

106.38. Put in place a system to support victims of sexual and gender-based violence (Spain);

106.39. Strengthen and expand policies, protections and programs addressing gender-based violence and sexual exploitation of children, provide targeted training to law enforcement, and ensure survivors are protected and have access to medical and legal services (Canada);

106.40. Take immediate and long term actions to eliminate discrimination and violence against women, narrow the gender gap in economic and social settings, and undertake public campaigns against gender-based violence (Malaysia);

106.41. Ensure proper investigation of child abuse (Germany);

106.42. Introduce more rigorous anti-trafficking laws to better protect women and girls (Sierra Leone);

106.43. Provide adequate funding and human resources for its anti-human trafficking programs (Philippines);

106.44. Strengthen existing policies to combat human trafficking (Spain);

106.45. Improve efforts to address human trafficking by strengthening procedures for identifying victims of trafficking (Turkey);

106.46. Continue to take steps to strengthen the protection for and assistance to victims, and to prosecute perpetrators, by ensuring the full implementation of the Trafficking in Persons Act (Singapore);
106.47. Ensure that victims of trafficking are provided with the opportunity to seek asylum and enjoy the corresponding rights and services, to strengthen the effort to protect and assist victims of trafficking (Uganda);

106.48. Continue efforts to strengthen the system for combatting trafficking in persons and establish a response mechanism to provide assistance to victims of this crime (Mexico);

106.49. Continue to strengthen national efforts to address the phenomenon of trafficking in human beings (Egypt);

106.50. Provide increased support to the family as the dominant and only natural environment suitable for raising children, to ensure adequate protection (Uganda);

106.51. Step up efforts to facilitate the participation of women in political and public affairs and to combat stereotypes regarding the role of women (Argentina);

106.52. Continue the efforts to reduce the unemployment rate, eradicate poverty, and give priority to the protection and promotion of economic, social and cultural rights of people (China);

106.53. Adopt a human rights based approach in the engagement with youth, and increase the resources for youth development in urban and rural areas, including by improving the access to and quality of education (Malaysia);

106.54. Continue progressing towards the eradication of poverty, through implementing its successful social policies (Venezuela (Bolivarian Republic of));

106.55. Strengthen measures on rural development (South Africa);

106.56. Continue national efforts to address the prevalence of HIV and AIDS (South Africa);

106.57. Ensure the right to health of persons living with HIV/AIDS, through the strengthening of inter-institutional coordination, the establishment of programs to make available essential medicines, as well as strategies to address the increased rate of infection by HIV and new infections among adolescents and young women (Colombia);

106.58. Build state capacity to develop policy and programmatic responses to address the needs of people living with HIV (Norway);

106.59. Implement the updated National Policy on Persons with Disabilities (Maldives);

106.60. Review and revise domestic legislation and policies to reflect the provisions and principles of the CRPD (Australia);

106.61. Accelerate efforts to incorporate the Convention on the Rights of Persons with Disabilities into national law (Bahamas);

106.62. Develop policy and legislation to promote, protect and fulfil the rights of persons with disabilities (South Africa);

106.63. Develop policy and legislation in the area of protection of the rights of persons with disabilities (Georgia);

106.64. Continue to implement the Convention on the Rights of Persons with Disabilities (Pakistan);
106.65. Take all necessary legislative and policy measures to ensure that persons with disabilities have appropriate employment opportunities and children with disabilities have access to quality education (Singapore);

106.66. Take steps to review domestic legislation and policies to reflect the provision and principles of the Convention on the Rights of Persons with Disabilities and fully implement the updated National Policy of Persons with Disabilities (Ghana);

106.67. Implement the legislation and policies to address all forms of discrimination and disability (Kenya);

106.68. Elevate the socioeconomic situation for persons with disabilities (Malaysia);

106.69. Develop public policies aimed at guaranteeing the rights of persons with disabilities, mainly in education, professional development and participation in social life on an equal footing (Mexico);

106.70. Effect the National Policy on refugee and Asylum Seekers matters the Cabinet approved in 2014 (Kenya);

107. Trinidad and Tobago considers that the following recommendation is already implemented:

107.1 Ratify and apply the Arms Trade Treaty (Costa Rica).

108. The following recommendations will be examined by Trinidad and Tobago which will provide responses in due time, but no later than the thirty-third session of the Human Rights Council in September 2016:

108.1. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Italy);

108.2. Accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Honduras);

108.3. Consider its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia);

108.4. Ratify CAT (Turkey) (Denmark) (France) (Ghana);

108.5. Continue expanding the legal framework for the promotion and protection of human rights through the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (CED) as well as to consider taking steps towards the abolishment of death penalty (Mongolia);

108.6. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (Italy) (Paraguay) (Uruguay);

108.7. Ratify and accede to CAT, ICRMW and ICPPED (Sierra Leone);

108.8. Progress towards the ratification of the Convention against Torture (Chile);

108.9. Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Optional
Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Guatemala);

108.10. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment for the establishment of a National Preventive Mechanism (Panama);

108.11. Ratify the Convention against Torture and its Optional Protocol, as well as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Portugal);

108.12. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Kingdom of Great Britain and Northern Ireland) (Costa Rica);

108.13. Sign the Convention against Torture and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the Optional Protocols to the Convention on the Rights of the Child (Spain);

108.14. Consider, to the extent possible, acceding to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Nicaragua);

108.15. Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Switzerland);

108.16. Ratify the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (Uruguay);

108.17. Take all necessary measures to combat violence against children and ratify the Optional Protocols to the Convention on the Rights of the Child (France);

108.18. Consider acceding to the 1990 International Convention on the Migrant Workers and their Families (Ecuador);

108.19. Consider its accession to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Indonesia);

108.20. Consider ratifying the ICRMW and CAT (Philippines);

108.21. Ratify the International Convention on Migrant Workers (Algeria) (Ghana);

108.22. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance without making reservations and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications (Panama);

108.23. Ratify the International Convention for the Protection of All Persons from Enforced (France) (Ghana);

108.24. Consider re-acceding to the American Convention on Human Rights and accepting the contentious jurisdiction of the Inter American Court of Human Rights (Brazil);
108.25. Enact the bill on the ICCPR, which lapsed in Parliament (Nigeria);

108.26. Consider establishing a National Human Rights Institution (NHRI) in accordance with the Paris Principles (Republic of Korea);

108.27. Establish promptly a NHRI in full compliance with the Paris Principles (A Status) (Portugal);

108.28. Establish NHRI in accordance with the Paris Principles (Senegal);

108.29. Establish an independent human rights institution that conforms with the Paris Principles (Australia);

108.30. Set up a NHRI in accordance with the Paris Principles (Sierra Leone);

108.31. Establish a NHRI under Paris Principles to undertake and oversee the further advancement of the human rights agenda (Barbados);

108.32. Take appropriate measures in the legislative sphere, including allocations of financial resources with a view to strengthening the office of the Ombudsman and bring it in line with the Paris Principles (Honduras);

108.33. Extend a standing invitation to the Council’s Special Procedures (Portugal) (Republic of Korea) (Georgia);

108.34. Take steps to issue standing invitations to all special procedures (Ghana);

108.35. Strengthen the cooperation with human rights mechanisms and extend a standing invitation to the special procedures (Turkey);

108.36. Take into account the recommendations of the National Commission for Equal Opportunities concerning the need to amend the Equal Opportunities legislation so that it covers the elderly, persons living with HIV and discrimination on the grounds of sexual orientation (Colombia);

108.37. Put into effect first cycle recommendations 87.23 and 88.50, and develop policy and programmatic responses to the needs of LGBTI persons (United States of America);

108.38. Amend the Equal Opportunity Act to include sexual orientation and gender identity as prohibited grounds for discrimination, as part of a proactive strategy to promote respect for the dignity and rights of all individuals (Canada);

108.39. Adopt legislation prohibiting discrimination on the grounds of sexual orientation and gender identity, introducing also awareness-raising programs that promote respect for sexual diversity (Chile);

108.40. Enact legislation prohibiting discrimination against LGBTI persons, including removing laws criminalising same sex activity (Australia);

108.41. Repeal articles 13 and 16 of the Law on Sexual Offences of 1986, penalizing sexual relations between consenting individuals of the same sex. Despite the fact that laws criminalizing same sex activity are not enforced, a formal withdrawal of the law is highly recommended (Netherlands);

108.42. Take steps to combat discrimination of LGBTI people in legislation and practice, including decriminalisation of sexual activities between consenting adults of the same sex (Norway);
108.43. Decriminalize sexual relations between consenting adults of the same sex (Slovenia) (Spain);

108.44. Take additional measures as necessary to ensure the full enjoyment of human rights by vulnerable groups that are suffering from discrimination, such as LGBTI persons, including investigation and punishment of cases of discrimination and repealing of laws that criminalize and stigmatize them (Argentina);

108.45. Put an end to discrimination (particularly legal discrimination) against LGBT persons and to criminalization of homosexuality (France);

108.46. Repeal all provisions that criminalize consensual same-sex relationships or that discriminate against LGBTI persons (Germany);

108.47. Decriminalize homosexuality and combat all forms of discrimination and abuse against LGBTI persons (Italy);

108.48. Decriminalize same sex relations including in the Sexual Offences Act. (Montenegro);

108.49. Take concrete measures with a view to decriminalizing consensual same-sex relations and abolishing any discriminatory legislation against LGBTI people, even if it is not applied in practice (Brazil);

108.50. Review the Children Act of 2012 in order to decriminalize consensual sexual relations between minors of the same sex (Chile);

108.51. Adopt a three-tiered classification of murder that will provide sentencing judges with the discretion to impose a sentence other than death and thereby preclude its mandatory imposition (United Kingdom of Great Britain and Northern Ireland);

108.52. Partner with appropriate international agencies to strengthen national capacities to collect, process, and analyse relevant human rights statistical information concerning police misconduct and prison conditions (United States of America);

108.53. Set the universal minimum age for marriage to 18 years, in line with the Civil Marriage Law (Norway);

108.54. Harmonize the minimum age for marriage, in accordance with the provisions of the Convention on the Rights of the Child (Paraguay);

108.55. Harmonize all its relevant legislation relating to the age of marriage and raise the age of marriage to 18 (Sierra Leone);

108.56. Raise the age of marriage to 18 for both boys and girls (Slovenia);

108.57. Raise the minimum age of marriage in the national legislation to align it with the definition of a child in the CRC (Algeria);

108.58. Abolish child marriage by having a minimum age of marriage at 18 (Botswana);

108.59. Repeal the legislation that exempts spouses of minors from prosecution for sexual offences against their spouse (Norway);

108.60. Repeal the right of parents to use corporal punishment (Slovenia);

108.61. Prohibit corporal punishment of children at home and in schools (Honduras);
108.62. Take steps to decriminalise defamation (Ghana);
108.63. Design and implement the National Plan on Business and Human Rights in line with the UN Guiding Principles on the matter (Colombia);
108.64. Ensure comprehensive sexuality education, with a view to preventing teen pregnancies and the spread of sexually transmitted infections, in particular HIV (Slovenia);
108.65. Speed up the review of the draft Immigration policy (Nigeria);
108.66. Take measures to enact relevant regulatory legislation to provide adequate attention to the migrant population and their human rights (Mexico);
108.67. Adopt national legislation that grants legal effect to the protection of refugees and the respect for the principle of non-refoulement in accordance with the relevant international instruments (Uruguay).

109. The recommendations below did not enjoy the support of Trinidad and Tobago
109.1. Withdraw the reservation to the First Optional Protocol to the International Covenant on Civil and Political Rights and ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Panama);
109.2. Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile);
109.3. Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Uruguay);
109.4. Establish an official moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, so as to bring the legislation into conformity with the de facto situation (Netherlands);
109.5. Establish a formal moratorium on the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a view to abolishing death penalty both in practice and in law (Portugal);
109.6. Establish a formal moratorium on the death penalty with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Australia);
109.7. Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (Montenegro);
109.8. Abolish by law the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (France);
109.9. Take measures aimed at abolishing the death penalty (Paraguay);
109.10. Repeal the death penalty, as previously recommended (Canada);
109.11. Abolish the death penalty (Norway) (Honduras);
109.12. Consider taking steps towards the abolishment of death penalty (Mongolia);
109.13. Consider taking all necessary steps to introduce a de jure moratorium of capital executions with a view to fully abolish the death penalty (Italy);

109.14. Encourage an informed debate among the population on the topic of the death penalty and promote its de jure abolition (Switzerland);

109.15. Initiate a national discourse about the death penalty and establish an official moratorium on executions with a view to abolishing the death penalty as called for by the UN General Assembly resolution 69/186 (Germany);

109.16. Establish an official moratorium on the death penalty, with a view to its full abolition (Slovenia);

109.17. Establish a de jure moratorium on the death penalty that could ultimately lead to its suppression from legislation (Spain);

109.18. Continue with the steps already taken on the right to life, liberty and security of the person and in particular to continue the moratorium on the death penalty and work towards eliminating it (Kenya);

109.19. Abolish the death penalty and declare an official moratorium on all executions as a well as repealing all provisions of national legislation that may provide for the death penalty (Costa Rica).

110. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.
Annex

Composition of the delegation

The delegation of Trinidad and Tobago was headed by H.E Eden Charles, Ambassador Extraordinary and Plenipotentiary Chargé d’Affaires a.i. and Deputy Permanent Representative Permanent Mission of the Republic of Trinidad and Tobago to the United Nations, New York and composed of the following members:

- Ms. Mariella Fonrose Second Secretary, Permanent Mission of the Republic of Trinidad and Tobago to the United Nations, Geneva;
- Mr. Ian Rampersad Director, International Law and Human Rights Unit Ministry of the Attorney General and Legal Affairs.
I. Background and framework

A. Scope of international obligations
The United Nations Country Team for Trinidad and Tobago (“UNCT”) notes that during the 2011 Universal Periodic Review of Trinidad and Tobago (“2011 UPR”) the country received numerous recommendations to ratify or accede to various international human rights treaties. Trinidad and Tobago (“Trinidad” or “T&T”) has ratified/acceded to many of the core international human rights treaties including, most recently, the Convention on the Rights of Persons with Disabilities. However, Trinidad has made reservations with respect to certain provisions of these instruments and has not ratified any of the Optional Protocols.

With regard to regional human rights mechanisms, Trinidad does not recognize the jurisdiction of the Inter-American Court of Human Rights to hear individual petitions.

Recommendations to the Government:
• Consistent with the recommendations issued in the 2011 UPR, the UNCT encourages Trinidad to accede to all core UN human rights instruments as soon as possible.

B. Constitutional and legislative framework
• Trinidad is a parliamentary democracy modeled on the British Westminster system and observes the principle of the separation of powers. The Government consists of the Executive, the Legislature and the Judiciary. The Constitution recognizes and guarantees the protection of the fundamental rights and freedoms of T&T citizens consistent with the principles of the ICCPR. Trinidad has a Republican Constitution, which establishes the Office of the President as Head of State. The Presidency is an independent Office, which plays no part in party politics. Whereas the President is the Head of State, the Prime Minister is the Head of Government.
• In May 2015 Trinidad proclaimed The Children Act 2012, the Children’s Authority Act 2000 and the Children’s Community Residences, Foster Care and Nurseries Act.
• In January 2013, Trinidad proclaimed the Trafficking in Persons Act 2011 which criminalizes human trafficking and creates very specific protection for women and children who are victims.
• The Legal Aid and Advice (Amendment) Act, 2012, provides legal aid services to indigent persons and to those who cannot afford exorbitant private legal fees/representation.
• The Administration of Justice (Deoxyribonucleic Acid) Act 2012, allows for the mandatory sampling of certain categories of accused persons and offenders and the keeping of DNA record, was partially proclaimed in August of 2012.
• The Constitutional Amendment Bill 2014 and 2015 have lapsed.

C. Institutional and human rights infrastructure and policy measures

• During its 2011 UPR, Trinidad “noted” recommendations to establish an NHRI in compliance with the Paris Principles, as well as for the Office of the Ombudsman to be accredited under the same principles. While Trinidad does have an Ombudsman, it is mandated to investigate cases of administrative injustice only and it is not an ICC accredited institution.

• The International Law and Human Rights Unit within the Ministry of the Attorney General has a mandate to fulfill the country’s human rights reporting obligations. It also has the responsibility of liaising with international organizations in relation to human rights matters.

• A “Human Rights Desk”, a non-governmental entity, was established in 2006 as a regional project of the Caribbean Regional Network of People Living with HIV/AIDS. This Desk no longer exists.

Recommendations to the Government:

• Promote accountability systems for results as well as allocation of resources among institutions involved in the implementation of human rights related plans and policies.

• Re-establish Human Rights Desk with strengthened capacity and official links to the Office of the Ombudsman.

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies

• With the support of UN Women, in 2015 Trinidad submitted its 4th to 7th Periodic State Report to the Committee on the Elimination of Discrimination against Women.

• UNICEF continues to monitor the preparation of the overdue report to the Committee on the Rights of the Child and has been advocating for its completion and submission.

C. Cooperation with the Office of the High Commissioner for Human Rights

• The UNCT notes that the Government of Trinidad and Tobago (“GOVTT”) demonstrated its commitment to the UPR process through its submission of a midterm report to the Human Rights Council in 2015.

• To date, the GOVTT has had limited engagement with the OHCHR with regard to seeking technical assistance in meeting its international human rights obligations or facilitating human rights training and education.

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination
**Gender equality and women’s rights**

- The Constitution prohibits discrimination on the basis of sex, and speaks specifically to the right of the individual to equal treatment under and protection by the law, as well as from any public authority. However, the Constitution does not have a section that expands on equality and specially gender equality under the law. The *Equality Opportunity Act, 2000*, prohibits discrimination on the basis of status, which includes sex and marital status as one of among seven bases upon which discrimination is prohibited. However the act explicitly excludes sexual preference and orientation and does not explicitly reference gender equality.

- Before September of 2015, the *Ministry of Gender, Youth, and Child Development* had primary responsibility for protecting women’s rights and advancement, and it sponsored income generation workshops for unemployed single mothers and nontraditional skills training for women. After the 2015 general election, the GOVRTT chose to split and decommission the Ministry of Gender, Youth & Child Development. The Gender Unit was merged into a new *Ministry of Social Development and Family Services*.

- The draft *National Gender Policy*, which has been pending for almost 15 years, is yet to be implemented. Cabinet twice deferred action on an omnibus national gender policy, which had been the subject of considerable consultation and resources, and intended to achieve domestication of CEDAW. Issues primarily related to sexual orientation and abortion have prevented the GOVRTT from passing the gender policy.

- A draft version of the *2012 National Policy on Gender and Development* has not yet been adopted.

- There is systematic lack of sex disaggregated data in the English-speaking Caribbean, including Trinidad. However, efforts have been made on the part of GOVRTT, academia and civil-society to provide updated gender analyses.

- Domestic violence is an endemic problem in Trinidad. Episodes of gender-based violence (“GBV”) are published daily in the local newspapers. Sexual and gender-based violence, in particular domestic violence and incest, is an ongoing challenge. Figures provided by the Crime and Problem Analysis (CAPA) Unit of Trinidad and Tobago Police Service (TTPS) indicated that from 2004 to 2014, the police received 15,312 reports of domestic violence. Between 1991 and 2014, there were 125,166 applications for protection filed in magistrates’ courts. This represented a rate of just over 10,000 applications a year.

- In addition, reported instances of crimes related to sexual assault and domestic violence increased from 551 in 2013 to 825 in 2014.

- Although significant gains have been made in Trinidad regarding legislative reform relating to violence against women, legal gaps and challenges remain regarding operationalization of the laws and barriers to women’s ability to access justice. For example, the domestic violence legislation emphasizes protection and not punishment. The *Domestic Violence Act, 1999* does not give the police powers of arrest without warrant upon receipt of a complaint of a domestic violence offence.
Also, the process of obtaining a protection order continues to be difficult for many women. Civil society actors working in the area of gender-based violence also report that the legislative framework addressing domestic and sexual violence is not adequately implemented or enforced.

- The GOVRTT continues to implement a number of efforts in favour of prevention, punishment and eradication of all forms of violence against women. The GOVRTT and civil society have supported increased sensitization on the Domestic Violence Act, 1999 which provides protection orders for victims, as well as penalties, fines and possible imprisonment for breaches of the Protection Order. Revision of this act is currently ongoing under the Ministry of Social Planning and Family Services. The GOVRTT also financed the State Accountability Framework Initiative which, with collaboration with UN Women, UNFPA and other UN agencies, involves the mapping of programmes/policies and the development of a strategic framework to address sexual and gender based violence in Trinidad.

- Programmes and policies to support ending violence against women have been implemented across T&T. A multi-sectoral Committee on Domestic Violence produced a Procedural Manual for Police Officers and a Report including comprehensive recommendations for addressing domestic violence. The Procedures Manual was approved by Cabinet. Also, the National Domestic Violence Unit of the Gender Affairs Division of the former Ministry of Gender, Youth and Child Development, operates a Hotline 24 hours, seven days a week and receives approximately 30,000 calls annually. NGOs supported by the GOVRTT provide eleven shelters for female victims of domestic violence and a rape crisis centre. Counselling services, support groups and resource facilities are also available within communities to assist in the prevention and treatment of domestic violence.

- In 2013 the Tobago House of Assembly partnered with the Global Centre for Behavioural Health (GCBH) USA, in hosting the 1st Caribbean Conference on Domestic Violence and Gender Equality: Breaking the Silence. The conference brought together technical experts and stakeholders from several countries, including Trinidad, and facilitated critical conversations about strengthening prevention strategies and responses to GBV.

- Also in Tobago, the Division of Health and Social Services implements prevention strategy workshops to empower women. This incorporates better services for women surviving violence, such as hotlines, shelters, legal advice, access to justice, counselling, police protection, and health services. The Division pursues more accurate reporting rates and better data collection.

- There are no laws that specifically prohibit sexual harassment. Although related statutes could be used to prosecute perpetrators of sexual harassment, and some trade unions incorporated anti-harassment provisions in their contracts, both the GOVRTT and NGOs suspect that many incidents of sexual harassment go unreported.

- Women continue to experience inequality in the labour market, with higher unemployment levels than men despite educational advancements, suffer substantial pay inequity for equivalently qualified men and women in the same job and industry categories of work and are segmented in the lowest paying jobs.
• In T&T the unemployment rate was 3.7% in the first quarter of 2013, which is the lowest unemployment rate ever recorded in T&T. During this time, although women still had a higher rate of unemployment than men, the unemployment levels for women decreased at a slightly faster rate. While this was positive, many of the jobs women gained were temporary, so when the economy began to contract in 2014 - 2015 the Central Bank of Trinidad and Tobago noted that the majority of persons leaving the labour force were females (9,100 persons) who were previously employed under temporary arrangements.
• After the last election cycle, women represent 29.16% of elected parliamentarians. There are 9 women out of the current 23 members.

**Recommendations:**
• Complete the review of the draft National Gender Policy to submit to Cabinet for approval as soon as possible.
• Either adopt the 2012 version of the National Policy and Gender Development or revisit via a consultative process the 2009 document which is less progressive on human rights issues (particularly LGBT and abortion).
• Strengthen all plans and policies to eradicate violence against women, taking into account factors that increase inequality and discrimination.
• Engage in public education initiatives to improve critical understanding of gender based violence, domestic violence, sexual harassment, rape, and child sexual abuse, including the legal rights and implications, and access to redress and support services.
• Ensure adequate and efficient coordination mechanisms are in place to ensure effective multi-sectoral response to sexual and domestic violence.
• Establish the systematic collection of sex disaggregated data, as per the UN agreement on the Global Set of Minimum Gender Indicators, to identify, measure and track gender equality in Trinidad and Tobago.
• Reform the Sexual Offences Act to allow for the introduction of a National Sex Offenders’ Registry.
• Implement legislation and policies to address sexual harassment in the workplace and in public life.
• Promote more gender responsive programmes to engage men and boys in ending violence against women and girls initiatives using a gender justice approach.
• Amend the Domestic Violence Act to ensure punishment as well as protection.
• Introduce legislation to provide incentives to political parties that implement temporary special measures to promote gender parity in the list of candidates for parliamentary and local government elections and senatorial appointments.

**The rights of children**
• The GOVRTTT has taken steps to improve the state of child protection. In May 2015, it proclaimed the Children’s Authority Act; Children’s Community Residences, Foster Care and
Nurseries Act, 2000; Children Act, 2012; and Adoption of Children Act, 2000. While this legislation represents a strong step forward, more needs to be done to give full effect to this package of children’s legislation.

- The Children’s Authority, mandated to implement the Children's Authority Act, has a core complement of staff, is operational and has the power to intervene in the best interests of children that are in need of care and protection. An issue of prevailing concern is that under the 2000 Sexual Offences Act, the legislation requires teachers, health care providers and parents to report knowledge of sexual activity amongst minors (under the age of 18). This may discourage young people from accessing sexual and reproductive health services. Health care providers are also reluctant to provide services as they know they will have an obligation to report.

- In Trinidad marriage of girls as young as 12 and boys at 14 is permitted. The Children Act provides exemptions from criminalization for sexual offences against minors by the spouses of minors. The new legislation decriminalizes non-coercive sexuality between minors close in age in non-familial or custodial relationships. However, it explicitly withheld this decriminalization provision when children are of the same sex. This makes non-coercive sexual activity between minors of the same sex subject to life imprisonment, regardless of their ages.

- There are more than 2,500 teenage pregnancies reported annually in Trinidad. According to the former Minister of Health, most of the teenagers become pregnant from fathers who are between the ages of 25-40 and some mothers are below the ages of 12.

- The GOVRTT is currently developing a comprehensive National Child Policy which will provide long-term guidance and set the framework to provide adequate legislation, interventions and infrastructure that affect the safety, wellbeing and development of all children.

- The GOVRTT, with the support of numerous stakeholders, launched the Break the Silence campaign which is a project that seeks to break the silence on the taboo subject of child sexual abuse.

- Under the newly proclaimed Children Act, 2012, corporal punishment is lawful in the home but is no longer lawful in schools, state institutions or as a criminal sentence. It is however still widely practiced in schools, without any significant consequence. Enforcement of this is therefore a challenge.

- The age of criminal responsibility in Trinidad is effectively seven years old. Although the GOVRTT has recognized that this is a specific human rights issue which must be addressed, the Children Act fails to repeal legislation.

- Some juvenile offenders are separated from adult inmates and are placed in separate institutions. Options include: The St. Jude’s Home for Girls, the St. Michael’s Home for Boys as well as the Youth Training Centre for boys. However, both civil society actors and UNICEF note that there have been cases where juveniles, especially juvenile females, were sent to the adult prisons primarily due to capacity constraints.

- UNDP is currently working with the Children’s Authority to establish facilities for girls and boys who come into conflict with the law and require institutionalization.
- There are currently inadequate monitoring procedures of the treatment of children placed in institutions under the authority of the state such as juvenile detention centers, orphanages, foster care and adoption living arrangements. The new Children’s Authority is charged with establishing standards for all child institutions and monitoring their compliance.

- The T&T judiciary, in partnership with UNDP and the National Centre for State Courts, launched the Juvenile Court Project. The objective of the project is to strengthen the capacity of the judiciary to deal with juvenile justice matters using a rehabilitative and less retributive approach.

- The GOVRR, along with UNDP, is currently drafting a Family and Children Division Bill to address the legislative gaps in the justice system on the treatment of children.

**Recommendations:**

- Ratify the Optional Protocols to the Convention on the Rights of the Child.

- Abolish child marriage and implement comprehensive sexuality education in schools. Access to sexual and reproductive health education and services should also be provided for young people to avoid early pregnancy.

- Reconcile the Marriage Act, Muslim Marriage and Divorce Act, Hindu Marriage Act, and the Orisa Marriage Act, so that minimum age of marriage for both girls and boys is in line with definition of the age of the child as outlined in the CRC.

- Establish protocols for the periodic review of the treatment and the circumstances of children who have been placed by the authorities, for the purpose of care, protection or treatment of their health, in state and/or private facilities.

- Introduce in schools comprehensive sex education that is age appropriate, gender responsive and life-skills based, with the view to addressing teen pregnancy and positive relationships between young women and men of school age.

- Establish a facility to house young female offenders.

**Discrimination, violence and stigma against persons living with HIV/AIDS, lesbian, gay, bisexual, transgender and intersex persons**

- The Sexual Offences Act criminalizes sexual relations between consenting individuals of the same sex. The law barring homosexuals from immigrating to Trinidad is also still in effect, although not enforced.

- UNFPA supports the training and sensitization of health care providers who work with the most at risk populations, including the LGBT community and sex workers, as a means of building capacity to meet their needs, and to reduce stigma and discrimination in the health care environment so as to facilitate universal access to services.

- The Equal Opportunity Act, 2000 does not explicitly ban discrimination based on sexual orientation, gender or HIV status. The lack of legal protection supports an environment of stigma and discrimination against persons perceived to be HIV positive and towards members of the LGBT community limiting uptake of essential public health services.
• The GOVRTT has not indicated any intention to remove laws that criminalize same sex relationships. However, some government representatives are taking a human rights approach to ensuring that all citizens have access to public services regardless of their sexual orientation.

• Civil society & stakeholders have reported that the LGBT community is sometimes subject to forced marriages and corrective rapes.

B. Right to life, liberty and security of the person

• Although 2014 police crime statistics show a decrease in overall serious criminal activity, violent crime remains a major concern. The majority of violent crimes (homicides, kidnappings, assaults, sexual assaults) are attributed to the influence of gangs, illegal narcotics, and firearms (approximately 100 criminal gangs have been identified in T&T). Not all crimes are reported. There are also instances in where crimes are reported, but not documented. Approximately 23% of reported crimes result in an arrest.

• The US Department’s 2015 Trafficking in Persons (TIP) Report, T&T is a destination, transit, and possible source country for adults and children subjected to sex trafficking and forced labor. T&T received a Tier 2 ranking indicating that T&T has not fully complied “with the minimum standards for the elimination of trafficking.”

• In January 2013, Trinidad proclaimed the Trafficking in Persons Act, 2011 which is intended to improve prosecution of trafficking offenders and the protections for victims of forced labor and sex trafficking. Human trafficking in T&T is particularly relevant to the sex industry where primarily Latin American women are being brought into the country to work in the sex industry. In September & October 2015, police conducted two raids on illegal brothels which uncovered two human trafficking rings. The victims, including 22 women from the Dominican Republic, were rescued and taken into government care while investigations continue.

• The Counter Trafficking Unit in the Ministry of National Security has partnered with IOM to provide training/sensitizations on human trafficking for a number of government ministries and agencies as well as engaging in public awareness activities such as community outreach initiatives as well as public service announcements via radio, television and YouTube.

• With regard to the death penalty, in his opening address for the 2015/2016 law term, the Chief Justice stated that there is currently an unofficial moratorium on the death penalty in Trinidad. He indicated that, although the ultimate fate of the death penalty should be left to the legislature and the people of the T&T, practical difficulties relating to process and capacity make it unlikely that the sentence will be implemented again.

• The death penalty continues to be a mandatory sentence for murder and death sentences. By the end of 2012 there were 36 prisoners under the sentence of death and, according to the opening speech of Chief Justice this year, over the past few years the number of persons awaiting trial for murder has risen to 514. No executions have taken place since 1999. The 2013 report of the Constitution Reform Commission recommended the retention of the death penalty.

**Recommendations:**
Increase capacity building efforts in human trafficking by extending training and sensitization programs to other law enforcement agencies outside the TTPS.

Introduce human trafficking modules into law enforcement training academy.

C. Administration of justice, including impunity, and the rule of law

- One of the more serious human rights challenges were police killings during apprehension or in custody and poor treatment of suspects, detainees, and prisoners. Other human rights problems involved inmate illnesses and injuries due to poor prison conditions and high-profile cases of alleged bribery.
- The U.S. State Department identifies killings by police during apprehension and the mistreatment of suspects, detainees, and prisoners as major human rights concerns for T&T. In 2014, 42 persons were shot and killed by police. There have been consistent and significant discrepancies between the official reporting of shooting incidents and the claims made by community witnesses.
- In August 2014 the army’s Defence Force Reserves were called to assist with street patrolling until January 2015, despite serious concerns that the force was not trained to carry out these duties.
- In May 2014, prosecutor and senior attorney Dana Seetahal was murdered by a group of men who were arrested in September 2015. It is suspected that her murder was an assassination given the nature of her high-profile cases which included the kidnapping and murder of a businesswoman.
- Law enforcement and civil society report that some police and immigration officers facilitated trafficking in the country, with some law enforcement officials directly exploiting victims. Anti-trafficking activists reported some police officers had ties to sex trade establishments, which is likely to inhibit law enforcement’s willingness to investigate allegations of trafficking in the sex trade.
- While the GOVRTT has previously demonstrated a willingness to investigate and sanction public security officials who were involved in human rights violations, allegations of the abuse of sex workers and undocumented migrants suggest impunity and indicates that access to justice for these vulnerable groups is questionable.
- A Victims and Witness Support Unit was established within the TTPS as part of reforms aimed at bridging the gap between the police and the victims and witness of crimes. The unit is also intended to address issues of sexual and gender based violence. The UNCT commends the work of the unit and notes that it has resulted in increased reporting in the communities were interventions are conducted.
- Severe case backlog is one of the institutional deficiencies of the T&T judicial system. According to the US State Department Human Rights report, pre-trial detainees or remand prisoners represented approximately 50% of the prison population. Most persons under indictment waited between six to ten years for their trial dates in the High Court. Officials cited several reasons for the backlog, including an understaffed and underfunded prosecutorial office, a shortage of defence attorneys for indigent persons, and the burden of the preliminary inquiry process. However, the Chief Justice recently announced that the new Criminal Case Management Rules, which will go into effect in 2016, would facilitate early disposal of preliminary issues, impose stricter timelines and also impose a positive obligation on all parties to assist in progressing cases in accordance with the overriding objective of dealing with cases justly and expeditiously.
**Recommendations to Government:**

- Prioritize investigation and sanctions of public security officials in cases of human rights violations
- Conduct sensitisation sessions with all law enforcement officers on human rights issues in Trinidad.

**D. Right to work and to just and favourable conditions of work**

- The **Equal Opportunity Act, 2000**, contains no specific provisions regarding equal remuneration for men and women for work of equal value. In 2007 women earned 80.3% of men’s monthly income (average and median), and that the gender wage gap had been highest in the occupational group of service and sales workers (47%) and legislators, senior officials and managers (39.4%).
- There are discriminatory provisions in several government regulations, such as those requiring that married female officers might have their employment terminated if family obligations affected their efficient performance of duties.
- The **Equal Opportunity Commission**, established under the **Equal Opportunity Act, 2000** has suggested amending the legislation. The GOVRTT has indicated that the **Equal Opportunity (Amendment) (No. 2) Bill, 2011**, has been drafted and is being reviewed by the Law Review Commission.
- With regard to the worst forms of child labour, the GOVRTT has indicated that it is consulting with the social partners on the list of occupations deemed hazardous to children under the age of 18. However, these consultations have been ongoing since 2004 and the list is not yet updated.
- The current **Industrial Relations Act, 1972** (“IRA”) contains a number of antiquated provisions relating to collective bargaining, in particular those related to the right to strike and take industrial action and negotiation by minority unions in the absence of majority unions. The GOVRTT indicates that an advisory committee was appointed in February 2012 to review the IRA and to propose specific amendments to this legislation.
- Both the current the **Shipping Act, 1987** and the **Trade Disputes and Protection of Property Act** allow for imprisonment as a sanction if an employee engages in “breaches of labour discipline” or “wilful and maliciously breaks a contract of service.”

**Recommendations:**

- Ratify **ILO Convention 189** to promote domestic workers’ rights.
- Take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value.
- Amend or repeal the **Industrial Relations Act**.

**H. Right to social security and to an adequate standard of living**

- According to the Household and Budgetary Survey for 2011, the poverty level stands at 21.8%.
- The Ministry of Social Development and Family Services is mandated with responsibility of addressing the social challenges of poverty, social inequality and social exclusion. The Ministry
conducted the Survey of Living Conditions in 2014/2015 to assess the situation of poverty in Trinidad which would contribute to future programme and policy planning for poverty eradication. The government is working to combat poverty through the provision of various social programmes including, but not limited to, the Poverty Reduction Programme, the Public Assistance Grant, Disability Assistance Grant, General Assistance Grant and the Targeted Conditional Cash Transfer Programme.

- Many women who have little access to economic resources perceive the Public Assistance Program as offering an alternative pathway for child support and some measure of economic stability.
- The GOVRTT conducted a Population Situation Analysis which identifies those most vulnerable in society, including the poor. Based on this analysis, Cabinet approved a Population Policy and a Population Council has been proposed. The Council would be responsible for monitoring population data to address inequality in the society.

**Recommendations:**
- Introduce a social safety net floor which allows for the specific needs of families with children who are most vulnerable to benefit from social security.

**I. Right to health**
- According PAHO, between the years 2010 to 2013, maternal mortality rates rose 40% from 46 per 100,000 births in 2010 to 64 in 2013.
- In July 2015, according to several media reports, the former Health Minister announced that one of the explicit goals of introduction of a new national health card was to make it harder for migrants to access HIV care and services. In September 2015, following a change in government, the new Health Minister promised to review this policy and indicated that anyone can go to any health care facility and receive treatment.
- Although abortion is legal in T&T to preserve the health and life of the woman, many women are uninformed and unsure of their rights. Civil society organizations indicate that there is a vital need for appropriate public awareness campaigns as a way to combat belief that abortions are absolutely illegal in T&T (this misconception often leads to alternative solutions to fulfil abortions which put pregnant women’s lives at risk).
- With the support of the UNFPA and PAHO, the GOVRTT has drafted a Sexual and Reproductive Health Policy and has committed to the establishment of a Women’s Health Unit in the Ministry.
- The new Minister of Education, who took office in September 2015, has stated that efforts to provide sexual education and health services for school-age children must be coupled with “religious education to form a part of the curriculum in all our schools. Sex education is something we need to discuss and we feel it is the responsibility of the parent to educate his or her child with respect to their sexual well-being.”
The Ministry of Health has not placed essential medicines as a priority on the national agenda. As such, there are consistently stock-outs of penicillin, contraceptives, HIV testing kits and other items. Coordination around HIV/AIDS has declined and Trinidad is the only Caribbean country to observe an increase in persons with HIV/AIDS over the last four years. UNAIDS estimated that 14,000 persons in Trinidad were living with HIV in 2013.

Recommendations to Government:

- Revise or implement policies and protocols governing provision of reproductive health services to young persons, including young women, to ensure provision of contraceptive and other sexual and productive health services. Policies and protocols should be accompanied by educational programmes for health care providers.
- Conduct a complete study regarding ascertaining the incidences and causes of abortion related deaths in T&T.
- Reform the Offences Against the Person Act and implement common law which provides for safe and legal abortion services for women and girls.
- Continue to strengthen current efforts to increase the accessibility and quality of health services and education for all its citizens.
- Upgrade quality of care in child and maternal health services to diminish infant and child mortality and neonatal mortality.
- Introduce medical and public health interventions that are timely and appropriate for mothers who are pregnant, especially those who have expressed a need to manage NCDs.
- Review of the use of the PAHO Strategic Fund to obtain medications at a lower price that currently procured through national procurement mechanisms.

I. Persons with Disabilities

- UNDP reports that, according to the 2011 Trinidad and Tobago Population and Housing Census, there are approximately 52,244 persons living with a disability (PWDs), which is equivalent to 4% of the total population of 1,328,019. Of this total, 96.5% resides in Trinidad & Tobago and 3.5% in Tobago. With regard to children with disabilities (CWDs), the data indicates that 3,302 persons between the ages of 0 — 17 have some type of disability.
- PWDs in T&T have not had, and continue to be deprived of, the opportunity to participate fully in society due to physical and social barriers. Persons with disabilities in Trinidad face discrimination and denial of opportunities, such as: architectural barriers; employers’ reluctance to make necessary accommodations that would enable otherwise qualified persons living with disabilities to work; an absence of support services to assist children with disabilities; lowered expectations of the abilities of persons with disabilities; and condescending attitudes and disrespect towards persons with disabilities.
• With the new Government in place, the Disability Unit, under the Ministry of Social Development and Family Services, is working on several projects including new legislation, a National Register and disability sensitization workshops.

• Although the law prohibits discrimination on the basis of disability, it does not mandate equal access for persons with disabilities to the political process, employment, education, transportation, housing, health care, or other citizen services.

• The GOVTTT is currently reviewing the yet been implemented 2006 National Policy on Persons with Disabilities. This policy includes initiatives to strengthen services for children with disabilities, support their families, train professionals in the field and encourage the inclusion of children with disabilities into regular educational system and their integration into society.

• The UNCT notes that Trinidad’s Immigration Act, 1969 prohibits entry to “persons who are idiots, imbeciles, feeble-minded persons, persons suffering from dementia and insane persons, and who are likely to be a charge on public funds” and “persons who are dumb, blind or otherwise physically defective, or physically handicapped, which might endanger their ability to earn a livelihood, or render them likely to become charges on public funds”. The Act also prohibits entry to persons afflicted with any infectious or dangerous infectious disease.

Recommendations to Government:

• Review and revise domestic legislation and policies to reflect the provisions and principles of the Convention on the Rights of Persons with Disabilities.

• Finalize and fully implement the updated National Policy on Person with Disabilities.

• Develop a national register of persons with disabilities.

• Increase public awareness initiatives regarding the rights of persons living with disabilities and the CRPD.

• Conduct sensitization sessions to raise public awareness about the challenges faced by PWDs.

N. Migrants, refugees and asylum seekers

• There remains a clear lack of oversight with regard to the protection of migrant rights: Lengthy administrative detention stays, costly deportation, accusations of discrimination against certain foreign nationalities, unfavourable detention center conditions, allegations of ill-treatment and abuse against detainees, migrants detainees held in prisons, including asylum seekers and refugees, lack of access to places of detention by NGOs and a substantial amount of undocumented migrants.

Recommendations:

• Conduct a migration profile

• Develop a comprehensive migration policy

• Reduce detention periods for migrants

• Build capacity in migrant rights and human rights
TAB 8
Violence against LGBTI Persons
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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

2015
www.iachr.org
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EXECUTIVE SUMMARY
EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 5

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

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

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

Chapter 6

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

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

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

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

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

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

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

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

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

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

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

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

A. Background

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

2. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the Americas. The IACHR found that during a period of fifteen months (between January 2013 and March 2014) there were at least 770 acts of violence committed against LGBT persons, which included 594 killings. As will be

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2 The IACHR uses the LGBTI acronym when referring to lesbian, gay, bisexual, trans and intersex persons. When referring to violence only experienced by lesbian, gay, bisexual, and trans persons, the IACHR uses the LGBT acronym. As explained below, violence against LGBT persons is based on the perception of sexual orientations and gender identities that transgress socially accepted gender norms. Common forms of violence against LGBT persons include, but are not limited to, physical or sexual assault based on sexual orientation or gender identity, and police harassment or violence based on the same. Whereas violence against intersex persons stems from lack of recognition and acceptance of persons whose bodies differ from the socially accepted standard for male and female bodies, and most often takes its form in medically unnecessary surgeries or treatment carried out on intersex persons in the absence of their informed consent. While human rights violations faced by LGBTI persons have aspects in common, oftentimes violence faced by intersex persons is distinct from the violence that is experienced by LGBT persons. An intersex person can also be lesbian, gay, bisexual and/or trans, and as such could be the target of both violence directed at intersex persons and violence based on sexual orientation and/or gender identity.

3 The IACHR did not receive information regarding killings or acts of violence committed against intersex persons during that period. The majority of acts of violence against intersex persons is the result of State-
discussed in Chapter 4 of the Report, the IACHR notes that the low number of complaints of acts of violence renders violence based on prejudice invisible throughout the region. Many of these attacks were committed with verbal violence motivated by prejudice based on the perception of the sexual orientation or gender identity of the victims. Acts of violence against LGBT persons, or those perceived as such, are particularly cruel and in some instances characterized by levels of brutality exceeding that of other hate crimes. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has noted “grotesque homicides” perpetrated with broad impunity, allegedly at times with the “complicity of investigative authorities.” According to the information received and as will be examined in this Report, there are high levels of impunity regarding this violence.

3. As a result of several years’ work by civil society organizations in the context of the Organization of American States (OAS) political bodies, and particularly thanks to the work of the Coalition of LGBTQI Organizations of Latin America and the Caribbean, the OAS General Assembly adopted a historic resolution on human rights, sexual orientation and gender identity in 2008. In consecutive years, the OAS General Assembly adopted other resolutions calling on OAS Member States to eliminate all forms of discrimination and violence against LGBTI persons. In these resolutions, Member States gradually agreed on key issues such as the need to: prevent and investigate crimes against LGBTI persons and bring their perpetrators to justice; produce data on violence against LGBTI persons; protect human rights defenders; guarantee access to justice for LGBTI persons; adopt public policies to combat discrimination against persons based on their sexual orientation or gender identity; ensure access to political participation by LGBTI persons; avoid undue


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

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

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

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

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

B. Methodology of the Report

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

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

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

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

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

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15 Summaries, press releases and information regarding these meetings of experts are available at www.iachr.org.
17 The Questionnaire is available in English, Spanish, Portuguese and French at www.iachr.org.
18 Three people also provided responses to the questionnaire in their personal capacity: Tijon Cox, Ximena Gauché Marchetti, and Ronald Céspedes.
on HIV/AIDS (UNAIDS), and the Arcus Foundation, between 2011 and 2015. These important contributions allowed the Commission to further its work on the promotion and protection of the rights of LGBTI persons in the region, and were key in the preparation and adoption of this Report. Additionally, the IACHR acknowledges the support provided by the Cyrus R. Vance Center for International Justice, through its Human Rights and Access to Justice Program, and its collaborating firms and attorneys through the Pro-Bono Network of lawyers. This support came in the form of research on the legislation and jurisprudence of many countries in the region regarding the rights of LGBTI persons.

C. Terminology

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

1. Diversity in orientations, identities and bodies

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

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

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

13. There is ample documentation of the existence of Two-spirit and diverse ancestral sexualities in indigenous peoples and groups, prior to colonization. Some indigenous groups and/or persons are known for their “gender diversity, which includes the fluid nature of sexual and gender identity and its interconnectedness with spirituality and traditional world views.” Two-spirit persons have both feminine and masculine spirits. Two-spirit “recognizes gender as a continuum and includes diverse identities, sexual orientations and social roles.” A two-spirit Native American may feel too restricted by the categories “lesbian” or “gay” because of their “personhood, spirituality, and specific, complex identities.” The term muxe or muxhe in the Zapotec cultures of Oaxaca, in southern Mexico, is often used to refer to a person assigned male at birth who dresses and behaves according to a female gender identity, as it is socially and culturally viewed. Generally, Muxe is seen as a third gender. As a muxe person told the IACHR, “we want to be named from a different place, from our place of origin. In my case as a Muxe, I do not fit in the LGBT acronym; I have no representation.”

14. Further, the IACHR is aware that there are multiple notions of sexuality and sexual orientation that do not necessarily fall into predetermined notions of persons being heterosexual, gay, lesbian or bisexual. For example, the Inter-American Commission takes note of accounts of Mati workers in Suriname, whose roots are traced back to West Africa. The term Mati has been used to broadly and generally.

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20 See Interview with Mauro Cabral, “Poéticas y Políticas de la Intersexualidad,” October 8, 2014, (available in Spanish only).
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define “working class-women who typically have children and engage in sexual relationships with men and with women, either consecutively or simultaneously.”

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

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

2. Sex as a Social Construct

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

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

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

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

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35 Cabral, Mauro and Maffia, Diana. “Los sexos ¿son o se hacen?” Buenos Aires, Argentina, 2013 (available only in Spanish; free translation by the IACHR).


37 Cabral, Mauro. Interview with Benzur, Gabriel. “Cuando Digo Intersex. Un diálogo introductorio a la intersexualidad,” 2005 (available only in Spanish; free translation by the IACHR).


39 Document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled Intersex issues in the ICD: a revision, drafted following a consultation held in Geneva on 8-9 September 2014, p. 2. This statement also affirms that “most intersex characteristics are not pathological, but express healthy variation amongst human bodies.”


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3. Sexual Orientation, Gender Identity, Gender Expression

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

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

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42 IACHR, Application before the Inter-American Court of Human Rights in the case of Karen Atala and daughters, Chile, Case 12.502, September 17, 2010, paras. 111 and 116.
44 The Yogyakarta Principles are a set of principles guiding the application of international human rights law in relation to sexual orientation and gender identity. The Principles were adopted by a diverse group of human rights experts, including judges, academics, a former UN High Commissioner for Human Rights, Special Procedures (independent human rights experts) of the UN Human Rights Council, independent experts, members of treaty bodies, NGOs and others. Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2006.
47 There is a wide range of political positions around the use of the term travesti (as used in Spanish or Portuguese). Some groups of trans activists have pointed out that this term is derogatory, while other groups see the term travesti as a political term with great significance. See, for example, The Declaration of Feminist Travestis, XI Feminist Meeting of Latin-American and the Caribbean, Mexico City, Mexico, 2009.
medical treatment. However, these could be considered necessary in the construction of the gender identity by some trans persons.

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

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

23. There are other terms that are also sometimes used such as queer51 or gender non-conforming persons. The latter concept refers to persons who do not agree with or who do not follow the social ideas or stereotypes about how they should behave or express themselves based on the sex they were assigned at birth.52 The terms trans persons or gender non-conforming can also be used as umbrella terms to include concepts such as transsexual, travesti, gender-queer, Two-Spirit, among others.53 Nevertheless, not all trans persons are gender non-conforming and vice versa.

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51 There are different approaches to the term queer as an identity category. It is used as an “umbrella term” by the range of sexual orientations and identities that go beyond the “LGBT” acronym. See, for example, Eli R. Green, Eric N. Peterson, LGBTQI Terminology, LGBT Resource Center, UC Riverside, 2003-2004. Likewise, the concept “gender-queer” is a general term for persons whose gender identity goes beyond the male/female binary. See Heartland Trans* Wellness Group, Trans and Queer/LGBTQIA Terminology, p. 5. Also, “queer movements” make reference to the exclusions, failures in the politics of representation and the effects of re-naturalization of all identity politics. If we can say that in a political sense, queer movements are “post-gay,” then we can affirm that from a theoretical perspective, queer theory comes as reflection of the mistakes of feminism (both essentialist and constructive feminism) of the eighties: liberal feminism.” See, e.g. Jesús Carrillo interviews Beatriz Preciado, “Entrevista con Beatriz Preciado.” October 2004 (available only in Spanish; free translation by the IACHR).
52 Sylvia Rivera Law Project, Fact Sheet: Transgender and Gender Nonconforming Youth in School, (last visited in May 2015).
CHAPTER 2
UNDERSTANDING AND DEFINING VIOLENCE AGAINST LGBTI PERSONS
UNDERSTANDING AND DEFINING VIOLENCE AGAINST LGBTI PERSONS

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

A. Features of Violence against LGBTI Persons

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

54 See above (Chapter 1). In this Report, the IACHR will use the LGBT or the LGBTI acronym depending on which groups or human rights violations it is making reference to.
accepted standard for female or male bodies in an attempt to “fix their sex”;\(^\text{55}\)
among other examples.

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

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

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

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

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


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

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

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


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

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


OHCHR, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 1.

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

B. Heteronormativity, Cisnormativity and the Binary Systems of Sex and Gender

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

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

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

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

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

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

C. Stigma, Stereotyping and Discrimination

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

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

umbrella of culture, religion and tradition.”90 She adds that “the interpretations of culture on which such practices are based are neither immutable nor homogenous and must therefore be challenged, including by questioning the legitimacy of those who perpetuate stigmatizing practices in the name of culture and uncovering the underlying power dynamics.”91

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

that the criterion used by the military authorities was based on an apparent incompatibility between homosexuality and the regime of military discipline and the military institution itself, without providing reasonable and objective reasons to justify that distinction. The Commission does not find the relationship between means and ends, as between punishing “acts of homosexuality” in the armed forces and upholding the military values sought to be protected, such as honor, dignity, discipline, and extolling civic-mindedness. Stating otherwise would imply ascribing a negative moral value to the sexual act between persons of the same sex itself, in addition to promoting the stigmatization of gay, lesbian or bisexual persons, those perceived as such, or those who maintain relations with persons of the same sex inside and outside the armed forces.92

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


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

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

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95 See e.g., the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted at the Forty-Third regular session of the OAS General Assembly, on June 6, 2013. Further, the Inter-American Convention on Protecting the Human Rights of Older Persons includes specific reference to non-discrimination based on “different sexual orientations and gender identities,” (article 5, “Equality and non-discrimination for reasons of age”). OAS, General Assembly, Inter-American Convention on Protecting the Human Rights of Older Persons, Forty-fifth regular session, adopted at Washington D.C., June 15, 2015, signed that same day by Argentina, Brazil, Chile, Costa Rica and Uruguay.

97 The UN Committee on Economic, Social and Cultural Rights (CESCR) has indicated that “Other status’ as recognized in article 2, para.2, includes sexual orientation. (...) In addition, gender identity is recognized as among the prohibited grounds of discrimination.” UN, CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20, July 2, 2009, para. 32. The European Court of Human Rights has held that sexual orientation and gender identity are covered under Article 14 of the European Convention on Human Rights, which establishes that “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” See ECtHR, Identoba and Others v. Georgia, No. 73235, Judgment 12 May 2015.
98 See IACHR, Application before the Inter-American Court of Human Rights in the case of Karen Atala and daughters, Chile, Case 12.502, September 17, 2010, paras. 90, 93 and 95.
covered by the phrase “other social condition” under Article 1.1 of the American Convention. This is analogous to the inclusion of such categories in Article 9 of the Convention of Belém do Pará, discussed below.

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

D. Violence Based on Prejudice

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

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100 Article 1(1) of the American Convention establishes: “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

101 The first country to include specific reference to intersex persons in equality legislation was South Africa with a 2005 amendment to its 2000 Promotion of Equality and Prevention of Unfair Discrimination Act. This amendment established that the category ‘sex,’ includes ‘intersex.’ Similar legislation has been adopted in Germany, Finland, Scotland, the Autonomous Basque Community in Spain, and Malta. Perhaps the most well-known is the Australian Sex Discrimination Amendment of 2013. This law establishes that a person discriminates against another on the ground of the latter’s intersex status if the discrimination is based on: (a) the aggrieved person’s intersex status; or (b) a characteristic that appertains generally to persons of intersex status; or (c) a characteristic that is generally imputed to persons of intersex status; and if the discriminator treats the aggrieved person less favorably than, in similar circumstances, the discriminator treats or would treat a person who is not of intersex status. It also establishes that a person discriminates against another person on the grounds of the aggrieved person’s intersex status if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of intersex status. The legislation defines “intersex status” as the status of having physical, hormonal or genetic features that are (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. Parliament of the Commonwealth of Australia, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013, Act No. 98 of 2013. Council of Europe, Commissioner for Human Rights. Issue paper: Human Rights and Intersex People. Silvan Agius. May 12, 2015, pp. 44-45.


within the ambit of a social group category, either as a group sharing a common characteristic or because they are perceived as a cognizable group in the society.” The IACHR highlights that this same reasoning applies to persons with non-normative gender identities and expressions, including trans persons. Academically, the concept of prejudice has been deemed preferable to the concept of homophobia “because it [prejudice] conveys no assumptions about the motivations underlying negative attitudes, locates the study of attitudes concerning sexual orientation within the broader context of social psychological research on prejudice, and avoids value judgments about such attitudes.”

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

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

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


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


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

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

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

46. In this Report, the IACHR examines States’ obligations to investigate and prosecute acts of violence against LGBT persons, and the challenges faced in this regard. The

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

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

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

E. Violence and Discrimination against Women

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

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

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

\(^{119}\) OAS, General Assembly, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted at Belem do Pará, Brazil on September 6, 1994. Entry into force on March 5, 1995, Article 1 (emphasis added).


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

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

125 Cisgender is the term used to refer to persons whose gender identity corresponds with the sex assigned at birth. Cisgender is the opposite of transgender.
126 OAS, General Assembly, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted at Belem do Pará, Brazil, on September 6, 1994. Entry into force on March 5, 1995, Article 9: establishes: “[w]ith respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.” (Emphasis added).
CHAPTER 3
IMPACT OF LAWS THAT CRIMINALIZE LGBT PERSONS ON VIOLENCE
Chapter 3 Impact of Laws that Criminalize LGBT Persons on Violence | 49

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.

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

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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.

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.

129 The IACHR received reports about at least four countries in which same-sex activity is directly prohibited in the military or indirectly punished with a disciplinary sanction in the police forces: [Brazil] Military Penal Code, Article 235, criminalizes “pederasty” (“pederastia”), which is to “practice or engage in lewd acts, homosexual or not, in a place under military administration” and establishes a 6 to 12 month detention. The Code dates from 1969, when women were not allowed to join army forces, therefore civil society claims that the term “pederasty” was used to restrict same-sex activity (Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil, received by the IACHR Executive Secretariat on December 24, 2013). Currently, there is a lawsuit pending before the Supreme Court (“Ação de Descumprimento de Preceito Fundamental - ADPF”), requesting that this provision be declared unconstitutional; [Peru] Decree 1.150 regulates disciplinary sanctions in the National Police and establishes expulsion due to “same-sex activity” or sex which “causes scandal and deterioration of the institution’s image”; [Dominican Republic] Law 285 adopted in 1966, Article 210. The Chief of Police of Santo Domingo has 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. 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.

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

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

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workers and on persons living with HIV is an issue of deep concern to the

58. The IACHR notes that former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has indicated that this type of legislation adversely affects the enjoyment of the right to health of persons who engage in same-sex sexual activity, for example by negatively impacting their health-seeking behaviour and their mental health.\footnote{UN, Human Rights Council, \textit{Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health}, Anand Grover, A/HRC/14/20, April 27, 2010, para. 17. Further, “[v]iolence can inhibit individuals from seeking access to health services out of fear of reprisals and secondary victimization resulting from identification as a victim of such an attack.” (para. 21).} The European Court of Human Rights\footnote{ECHR, Norris v. Ireland, No. 10581/83, Judgment October 26, 1988, para. 192.} and the South African Constitutional Court\footnote{Constitutional Court of South Africa, Case CCT 11/98, The National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and others, October 9, 1998, para. 23.} have also referred to this impact on the mental health of LGBT persons (in the form of anxiety, guilt and depression) that is brought about by the mere existence of laws criminalizing same-sex intimacy. These laws can also have a dire effect on the implementation of public health policy, including in the context of persons deprived of liberty.\footnote{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.}

59. In 2012, the IACHR, the Inter-American Commission on Women, UNAIDS and the Pan-American Health Organization (PAHO) expressed concern over the link between criminalization of consensual same-sex intimacy and the HIV epidemic, because of pervasive social stigma and discrimination. These organizations affirmed that legislation and public policies in force in several OAS Member States have a dire impact on the full exercise of human rights by key populations at higher risk of HIV infection and persons living with HIV, and constitute the main barrier to achieving Universal Access to HIV related services, including prevention and treatment.\footnote{IACHR, Press Release No. 147/12 \textit{The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas}, December 17, 2012. The IACHR has further indicated that criminalization and its link with stigma towards men who have sex with men have led to a spread of HIV in Jamaica. IACHR, \textit{Report on the Situation of Human Rights in Jamaica}, OEA/Ser.L/V/II.144 Doc.12, August 10, 2012, paras. 292, 293.}

60. With regard to legislation that prohibits sex and intimacy between consenting adults of the same sex, the IACHR takes note of decisions by the UN Human Rights Committee\footnote{UN, Human Rights Committee, \textit{Toonen v. Australia}, Communication No. 488/1992 (1994), paras. 8.5 and 8.6.} and the European Court of Human Rights\footnote{ECHR, Dudgeon v. United Kingdom, No. 7525/76, Judgment of October 22, 1981, para. 60; ECHR, Norris v. Ireland, No. 10581/83, Judgment of October 26, 1988, para. 46; ECHR, A.D.T. v. United Kingdom, No.}
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

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

\textsuperscript{140} IACHR, Report No. 81/13, Case 12, 743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, paras. 113-114.

\textsuperscript{141} IACHR, Report No. 81/13, Case 12, 743, Merits, \textit{Homero Flor Freire}, Ecuador, November 4, 2013, para. 114.

\textsuperscript{142} Constitutional Court of Colombia, Judgment C-507, July 14, 1999, para. 5.11.


\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.

\textsuperscript{145} United States Supreme Court, Lawrence v. Texas, 539 U.S. 558 (2003), June 26, 2003.


\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.

\textsuperscript{148} International Commission of Jurists, SOGI Casebook.

\textsuperscript{149} 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, CCR/P/CHL/CO/5, May 18, 2007, para. 16.

\textsuperscript{140} 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)”\textsuperscript{151}. 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.”\textsuperscript{152} 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.\textsuperscript{153}

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.\textsuperscript{154} 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.\textsuperscript{155}
Since 1986 a number of countries in the Caribbean have amended the provisions in their sexual offences legislation, which deal with buggery, “unnatural crime” and similar offenses, in order to make them stricter.156 A small number of countries had already made similar amendments previously.157 In some instances these modifications increased the penalties for such crimes,158 while in others, the crimes were more clearly defined.159 The Bahamas is the only country member of the CARICOM that has decriminalized same-sex sexual activity between consenting adults in private.160 In 1991, the law was amended to decriminalize this activity,161 but the law as amended still contained a prohibition against same-sex sexual activity in a public space, and, until 2008, there was no corresponding prohibition for opposite-sex couples.162 Additionally, with the 1991 reform, same-sex sexual activity between women was criminalized for the first time. Finally, the use of the narrowly defined term “anal sex” was replaced by the broadly defined term “sexual intercourse,”163 a change which expanded the criminalization of sexual activity.164 This was amended in 2008 in the following terms: “any adult who has sexual intercourse with another adult in a public place (whether male or female)” is guilty of a sexual offence. Currently, all sex in public regardless of whether between same sex or different sex couples is prohibited. The penalty was reduced from twenty years to two years.165 However, there remains a discriminatory provision with respect to the different and older age of consent for same-sex activity as opposed to different-sex activity. Further, The Bahamas’ penal code justifies the use of force


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

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

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

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

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

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

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


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

64. 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. 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}


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.


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

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 adults have indicated that they have either attempted to adopt177 or have been successful in adopting measures to protect the rights of LGBT persons.178

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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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. There is also vagueness as to what, in the eyes of the court, constitutes “gross” or “serious” indecency. 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.” 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. In some cases, countries have replaced “gross indecency” with “serious indecency” and have substantially increased the penalty.

3. Legislation criminalizing non-normative gender identities and expressions

In addition to legislation in various countries in the region that criminalizes consensual same sex intimacy, Guyana has legislation criminalizing cross-dressing, or dressing with the clothes socially attributed to another gender. This provision reinforces gender stereotypes and constitutes discrimination on the grounds of gender identity and expression. According to information received by

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187 The 1998 Sexual Offences Act of Dominica (section 14) and the 2005 Criminal Code (section 132) of St. Lucia define “gros indecency,” in the same way that other countries define “serious indecency” – see infra.

188 These countries include Guyana, Jamaica, and St. Vincent and the Grenadines.


191 Tracy Robinson explains that “prior to 1986 in Trinidad and Tobago, the offence of gross indecency by a male with another male had a maximum sentence of two years. After 1986 it was replaced by the crime of serious indecency defined as an act other than sexual intercourse by a person involving the use of the genital organs to arouse or gratify sexual desire” and the punishment for “serious indecency for consenting adults increased to five years.” Further, “like Trinidad and Tobago, the 1992 Barbados Act replaced the misdemeanor of gross indecency, which was committed by a male in relation to another male and gave rise to imprisonment of up to two years, with the new one of serious indecency.” Robinson, Tracy, “A legal analysis of sex work in the Anglophone Caribbean,” paper prepared for the United Nations Development Fund for Women (UNIFEM), April 2007.

192 Under section 153 part (1) (xxvii) Chapter 8:02 Summary Jurisdiction Offences, an offense is committed when “a man, in any public way or public place, for any improper purpose, appears in female attire, or being a woman, in any public way or public place, for any improper purpose, appears in male attire.”
the Commission, police have arbitrarily applied this law in order to "further discrimination" against trans persons.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 discriminate 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

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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 Judicature, Civil Jurisdiction, Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) vs. Attorney General of Guyana, Judgment of November 6, 2013, p. 26.

¹⁹⁶ High Court of The Supreme Court of Judicature, 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 Judicature, 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.

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200 The Advocate, “Man arrested for Gay Sex in Grenada,” May 26, 2011. See also information presented by the organizations Groudonation 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 LGBT 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}

\section*{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.

\section*{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 legitimates 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}

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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

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\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.


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Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health declared that criminalization may not be the sole reason behind stigma, but that it perpetuates it, through the reinforcement of existing prejudices and stereotypes.222

81. The Commission has expressed that while criminalization of sexual orientation is discriminatory for anyone, it can involve a more severe violation of rights in the case of children and adolescents because of the particularly harmful psychological effects it has on children and young persons whose identity and orientation is still in the process of maturing and who are, as a result, extremely vulnerable.223 More specifically, the IACHR has found that “[i]n some States of the region, children face the juvenile justice system for engaging in certain sexual behavior, especially having sexual relations with members of the same sex. Then, too, in some States children become special targets of police brutality and violence by detention facility personnel because of their sexual orientation and gender identity.”224

82. The IACHR notes that legislation criminalizing same-sex intimacy between consenting adults has also been used by some courts in the Caribbean to justify instances of violence against persons based on the perception of their sexual orientation, which will be discussed in more detail in chapter six of this Report. In defense against a charge of assault or murder, accused persons have invoked, and courts have accepted, justifications such as self-defense or provocation due to “a state of violent temporary insanity” following a non-violent same-sex sexual advance.

83. Another aspect to take into account is that minor offenses can be used to harass LGBT or non-gender-conforming persons and draw them into the criminal justice system, thereby criminalizing LGBT persons and subjecting them to more violence. Once such persons are incarcerated or in the justice system, this situation can in turn give rise to further incidents of discrimination and violence. A study found that the law against cross-dressing is more frequently invoked than the buggery law, and people are sometimes prosecuted and convicted of this offense. Five trans persons who were interviewed for that study in April-May 2011 indicated that each of them had been charged with a crime at some point, and all but one had been charged with the crime of cross-dressing. Of the five, those whose charges had come to trial 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.”225

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222 UN, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, April 27, 2010, para. 22.
225 Carrico, Christopher “Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana,” Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16.
84. The Commission takes the view that the historical discrimination against LGBT persons compels States to be particularly vigilant to adopt measures to ensure the interruption of cycles of violence, exclusion and stigma. States must protect lesbian, gay, bisexual, and trans persons from violence exerted against them, in view of the principle of non-discrimination. States have an obligation to adopt measures to protect against and respond to the forms of violence directed against LGBT persons, as a direct consequence of the principle of non-discrimination.

85. Finally, the Inter-American Commission is of the opinion that laws that criminalize same-sex intimacy between consenting persons of the same sex in private are incompatible with the principles of equality and non-discrimination according to international human rights law. Thus, and taking into account their impact on violence against LGBT persons, the IACHR urges the States of the region that have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws, and legislation criminalizing cross-dressing, to repeal those laws, and, in the meantime, to impose an explicit and formal moratorium on enforcement of those laws. This would send a clear message to society in general, and law enforcement agents in particular, that such laws cannot be used to threaten or extort LGBT persons or those perceived as such.

B. Legislation to protect “public morals” and its impact on violence

86. The IACHR has received reports on the impact of other legislation, which while not directly criminalizing same-sex activity or trans persons, is generally construed and applied to criminalize LGBT persons. Examples include legislation against vagrancy and loitering, laws seeking to protect “public morals,” or “proper conduct,” and laws that criminalize conduct regarded as “indecent,” “lewd,” “provocative” or “affronts against public morals and good manners.” These laws exacerbate police abuse, extortion, ill treatment, and acts of violence against LGBT persons in various countries in the region. To use one example, vagrancy laws provide law enforcement with authority that is broad and poorly defined and that can be used to discriminate against trans persons, arbitrarily regulating the use of public spaces, and judge persons based on their physical appearance.226

87. The UN Human Rights Committee has expressed concern regarding certain legal provisions, such as misdemeanour codes (ordenanzas contravencionales) which are “used to discriminate against people on account of their sexual orientation.”227

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226 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated 29 November 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 20. See also, CEJIL and Hivos, Diagnóstico sobre los crímenes de odio motivados por la orientación sexual e identidad de género en Costa Rica, Honduras y Nicaragua, San José. Costa Rica: CEJIL, 2013. [Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua], (available only in Spanish).

The UN Committee against Torture has stated, speaking in regard to LGBT persons, that the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuses against them.\footnote{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.} 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.\footnote{[Argentina] e.g. Ley 219-1951, Province of Jujuy, “against moral and good manners” and Provincia de Salta, Ley Provincial N°7.135, Article 114, “prostitution”; [Chile], Penal Code, Article 373, “good manners,” “scandal;” [El Salvador] Ordenanza para la Convivencia Ciudadana del Municipio de San Salvador, Article 32, “moral and good manners;” [Ecuador] Guayaquil, Ordenanza Reglamentaria de la zona de regeneración urbana, Article 4.4, “public order” and “good manners;” [Guatemala] Penal Code, Article 489, “good manners;” [Honduras] (“Ley de Policía y de la Convivencia Social,” decreto 226-2001); [Mexico] Penal Code of Jalisco State, “Article 135, “acts against public morals,” “obscene exhibitions;” among others.}

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.\footnote{[Argentina] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note OEA -592 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.} 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).\footnote{See for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the Organización de Transexuales por la Dignidad de la Diversidad, Chile, received by IACHR Executive Secretariat on November 25 2013. See also, BBC Mundo, “Derechos gays: paradoja colombiana,” September 4, 2008.}

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.\footnote{IACHR, Annual Report 2013, Chapter IV: Honduras, para. 427.} 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.”\footnote{IACHR, Annual Report 2013, Chapter IV: Honduras, para. 427, making reference to HRW, “Not worth a penny: Human Rights abuses against transgender people in Honduras,” May 2009.} According to civil society organizations, this law in Honduras is constantly used to arbitrarily detain many persons in unofficial detention centers, especially sex workers,
without any judicial control, and with highly subjective interpretations about the vague concepts of “social coexistence” or “moral.”234

90. Further, these police laws stipulate that someone who is “wandering in a suspicious way” can be brought in to the police station for identification purposes in the name of “society’s protection.”235 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.236

91. The State of Argentina has acknowledged that in some provinces, the police are using particular statutes (Código de Faltas and Código Contravencional) to penalize, harass and persecute LGBT persons.237 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.”238 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,239 or, like Chile, have accepted recommendations by international bodies to review them.240

92. The IACHR has received reports by civil society that the terms used in these laws are so vague that their application is mainly based on the prejudices, and subjective and personal views held by the authorities charged with their enforcement. Such laws could therefore be used to target public displays of

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235 Honduras, Law on Police and Social Harmony of Honduras (Ley de Policía y de la Convivencia Social), Article 100.

236 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6.

237 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12. The State of Argentina noted, however, that these codes had been or were in the process of being repealed in most provinces.

238 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on 13 December 2013, p. 12.

239 In 1997 the Supreme Court of Venezuela declared the unconstitutionality of its 1939 Law on Vagrants and Crooks (“Ley de Vagos y Maleantes”). Reportedly, this law was used to commit abuses against LGBT persons and trans women who were sex workers. Quieteria 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.\textsuperscript{241} 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.\textsuperscript{242} 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.”\textsuperscript{243}

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.”\textsuperscript{244} Allegedly, trans women are treated like criminals and suffer psychological, physical and sexual harassment.\textsuperscript{245} 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.\textsuperscript{246}

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.\textsuperscript{247} Old vagrancy laws still remain on the books as part of particular statutes in some countries. These statutes usually deal with “small charges,\textsuperscript{248} summary jurisdiction,\textsuperscript{249} [and] minor offences,” in other words,

\begin{footnotesize}
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\item \textsuperscript{241} Article 373 of the Chilean Criminal Code. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by MOVILH, Chile, received by IACHR Executive Secretariat on November 20, 2013, pp. 9-10.
\item \textsuperscript{242} Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX) and Red Peruana TLGB, Informe Anual Sobre Derechos Humanos De Personas Trans, Lesbianas, Gays Y Bisexuales en el Perú 2012: Sin Igualdad No Hay Justicia, 2012, Peru, p. 57 (in Spanish only).
\item \textsuperscript{243} IACHR, Hearing on Human Rights, Sexual Orientation, and Gender Identity in Haiti, 141\textsuperscript{st} Period of Sessions, March 25, 2011. Audio and video available at: www.iachr.org.
\item \textsuperscript{244} Global Rights International; Gay and Lesbian Human Rights Commission (IGLHRC); International Human Rights Clinic, Human Rights Program, Harvard Law School; and Colectivo Binni Laanu A.C., The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Mexico A Shadow Report, Submitted to the Human Rights Committee, March 2010, p. 12.
\item \textsuperscript{245} IACHR, Hearing on Hate crimes against members of the LGBT Community and Impunity in Central America, 140\textsuperscript{th} Period of Sessions, October 26, 2010. Audio available at: www.iachr.org.
\item \textsuperscript{248} [Antigua and Barbuda] Small Charges Act 1892, Chapter 405, ss 19, 41; [Dominica] Small Charges Act 1891, Cap 10:39, s 39; [St. Kitts and Nevis] Small Charges Act 1892, Chapter p. 75, ss 18, 29, 39, 43.
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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.

95. 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.
254 IACHR, Hearing on Hate crimes against LGBTI persons in Central America, 140th Period of Sessions, 26 October 2010 (reference to Nicaragua, in Spanish only, audio at 00:17:15). Audio available at: www.iachr.org.
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.
CHAPTER 4
FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS
FORMS AND CONTEXTS OF VIOLENCE AGAINST LGBTI PERSONS

A. Introduction

96. The Inter-American Commission emphasizes that this Report focuses on physical violence against LGBTI persons, namely killings and serious non-lethal attacks such as rape and attacks by large groups of people (mob attacks). This chapter first identifies general trends with respect to violence faced by LGBTI persons. Next, it examines violations of the right to life and personal integrity, resulting from acts committed by both State and non-state actors, followed by an examination of some of the different contexts in which this violence occurs, including medical violence against intersex persons, and attempts to “modify” sexual orientation or gender identity. State actors who perpetrate violence include law enforcement agents such as police officers and members of the armed forces, prison personnel, custodial staff in migration detention centers, health care professionals working in public hospitals, teachers and non-teaching staff in public schools, and other State employees. Acts of violence based on prejudice perpetrated by State agents have been reported in almost every OAS Member State. Finally, the Commission analyzes hate speech and incitement to violence.

B. General trends in the findings of the IACHR

1. Underreporting and lack of official data

97. The IACHR notes that the available data do not reflect the full dimensions of the violence suffered by LGBTI persons in the Americas. The IACHR has noted that “[m]any cases of violence against LGBT persons are underreported; many persons are afraid of reprisals, reluctant to identify themselves as LGBT, or do not trust the police or the justice system.” Further, internalized stigma and prejudiced views

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held by LGBT persons themselves might also hinder recognition and acknowledgment of abuse.

98. In many OAS member States, victims, family members, and friends of victims are frequently deterred from reporting the killings of their lesbian, gay, bisexual or trans relatives or friends, due to the high levels of prejudice and hostility against non-normative sexual orientations and gender identities held by authorities and other members of their communities. Oftentimes when the crime is reported, the information regarding the sexual orientation or gender identity of the victim is either concealed or overlooked. The IACHR has indicated that underreporting of cases of violence against LGBT persons is particularly apparent in cases of non-lethal attacks, since few of these are reported to authorities, monitored by non-governmental organizations, or covered by the media. One organization in Mexico has estimated that the available data may reflect only one third of the crimes actually committed in that country.

99. The data collection mechanisms in OAS countries are very limited. The IACHR recently conducted a fifteen-month monitoring project concerning LGBT-related killings and acts of violence. In carrying out this project, the IACHR found that official statistics were insufficient, and it had to rely on other sources of information such as media coverage, reports from civil society organizations, and other monitoring sources. This monitoring effort produced a Registry of Violence that, although not exhaustive, revealed pervasive violence against LGBT persons throughout the region.

100. Insufficient training of police agents, prosecutors, and forensics authorities might also lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.” Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender

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identity and thereby identify trans women as “gay men.” 264 In some States, organizations have reported that authorities register gay, trans, lesbian or bisexual persons under umbrella terms like “LGBT” or “gay” —even if they are trans persons— without specifying their sexual orientation or gender identity. 265

101. Underreporting and a lack of official data mechanisms render violence against LGBT persons invisible, and hinder an effective State response. The UN Office of the High Commissioner on Human Rights indicated in its May 2015 Report to the Human Rights Council that:

In most countries, the absence of effective systems for recording and reporting hate-motivated violence, or “hate crimes,” against LGBT persons masks the true extent of violence. Where they exist, official statistics tend to understate the number of incidents. Victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality or reprisals. In addition, prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting. Failure to investigate, prosecute and punish violations when reported also contributes to incomplete assessments of the scale of violence. 266

2. Pervasiveness of violence

102. In December 2014 the Inter-American Commission published the findings of its Registry of Violence against LGBT persons in the Americas, a tool used to learn about and give visibility to the alarmingly high levels of violence experienced by LGBT persons in the region. The IACHR closely monitored killings and other acts of violence during a fifteen-month period (between January 2013 and March 2014). The findings of the Registry of Violence indicate that there were at least 770 acts of violence committed against LGBT persons during this period, across 25 OAS Member States (Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela). However, when reporting this statistic the Commission noted that lack of information with respect to violence in other countries in the Americas during that time period was not an indication that violence did not occur in those countries. It is likely that killings and/or other acts of violence against LGBT persons did take place in those countries, but this

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265 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colectivo Entre Tránsitos et. al.” (Colombia), received by the IACHR Executive Secretariat on 25 November 2013, p. 16; Colombia Diversa, Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012, June 2014, p. 7.
266 OHCHR, Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, para. 25 [original footnotes omitted].
violence was not officially reported and was not covered in the media. The IACHR is of the view that violence based on prejudice, in the terms defined in chapter two of this Report, is prevalent in all countries in the Americas.

3. Invisibility of everyday violence

103. The IACHR notes that underreporting also renders everyday violence against LGBT persons invisible, particularly as it relates to non-lethal attacks. Non-lethal attacks are the most common type of violence suffered by LGBTI persons in all OAS Member States. Reports received by the IACHR from independent sources indicate that lesbian, gay, bisexual and trans persons suffer a wide variety of attacks on a regular basis, which may range from pushing and shoving to beatings or the throwing of bottles, stones, or other objects. These acts of violence are reported to be so commonplace in some parts of the region that they may not be reported, because they are part of ‘everyday life’ for LGBT persons. Further, instances of day-to-day violence are generally not monitored by organizations or covered by the media, both of which tend to focus on the most serious crimes and especially murder. When the Commission published the findings of its Registry of Violence, it noted that during the fifteen-month period referred to above, it had documented 176 cases of non-lethal violence. This was low relative to the 594 killings in the Registry of Violence, and suggests underreporting of non-lethal violence against LGBT persons. In publishing the Registry of Violence the Commission stated: “killings are most prone to be reported by the media, leaving out ordinary and persistent forms of everyday violence, which have to be, nonetheless, fully exposed, identified and addressed by States.” Further, available information regarding violence against LGBT persons in private settings is limited, which renders this type of violence invisible and reducing the possibilities that the State can effectively address it.

4. Invisibility of violence against certain groups: trans men, bisexual and intersex persons

104. There are certain groups of persons within the “LGBTI” acronym whose experiences of violence are more invisible than others, due to a variety of reasons. For example, the IACHR has been informed by civil society organizations that violence against trans men or trans persons who identify as male takes place mainly in the private sphere and is frequently not visible outside the spaces in

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which it occurs. The IACHR has held that “trans men tend to be more invisible within the larger LGBT community, and in this regard—contrary to what happens with trans women— invisibility shields them from the types of societal violence usually affecting other gender non-conforming persons.” According to the information received, severe violence in the family, in the health sector, and school bullying, are among the most common types of violence suffered by trans men. However, the Commission received information that Alex Peña, a trans man and police officer from the Metropolitan Police (Cuerpo de Agentes Metropolitanos - CAM) in San Salvador, was allegedly severely beaten by four police officers from the National Civil Police (PNC), following his participation in a LGBT pride parade in San Salvador. While he was beaten he allegedly was told that he was been treated “like a man,” making reference to his gender identity.

105. Further, the IACHR has found that violence against bisexual persons is the most difficult to track. During the fifteen-month period monitored (between January 2013 and March 2014), the IACHR was informed of three acts of violence against bisexual men, or those perceived as such. The IACHR notes the difficulty in documenting violence specifically targeting bisexual persons. Unless a source specifically indicates that someone is being targeted because of his or her bisexuality, violence against bisexual persons is often exerted because such persons are perceived as either gay or lesbian, or because such persons are witnessed expressing same-sex affection. This tendency in the data to categorize bisexual persons and bisexual expressions of affection as gay or lesbian, regardless of the true motivation, renders violence based on prejudice towards bisexuality invisible for data collection purposes. Notwithstanding, a study carried out in the United States suggests that bisexual persons “experience higher rates of sexual and intimate partner violence than gay, lesbian, and straight people.”

106. Regarding intersex persons, the IACHR notes that during the fifteen-month period (between January 2013 and March 2014) included within the Registry of Violence referred-to above, there was no data or reports recording instances of violence against intersex persons. The Commission also indicated that this lack of data is due to a variety of reasons, including the fact that these so-called “normalizing” surgeries conducted on intersex persons is generally carried out according to State-approved medical protocols, and is not reported in the media or denounced by victims, families or organizations. The IACHR also noted that intersex persons and their families often experience deep feelings of shame and fear; this

269 IACHR, Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133rd Period of Sessions, October 23, 2008.
274 Movement Advancement Project-BiNetUSA- Bisexual Resource Center, Understanding issues facing bisexual Americans, September 2014.
contributes to the invisibility of, and secrecy surrounding, this subject.\textsuperscript{275} These negative feelings, amplified by existing societal taboos about sexuality and genitalia, are the most commonly reported reactions of intersex persons to the lengthy procedures to which they are subject.\textsuperscript{276} A study by the Human Rights Commission of San Francisco found that the parents of intersex children have also reported feeling shame, fear, horror, humiliation, regrets, and ongoing doubt about the choices they may have made for their children.\textsuperscript{277} A study conducted in Uruguay found that most intersex persons who were subjected to “normalizing” surgeries were not informed that they were intersex until after their surgeries. In fact, due to the societal taboo surrounding intersex issues, those who were interviewed were unaware of any “out” intersex individuals, even within the LGBT community.\textsuperscript{278}

5. **High levels of cruelty**

OAS Member States\textsuperscript{279} and civil society organizations\textsuperscript{280} have pointed out that crimes against LGBT persons stand out for their brutality and cruelty. The UN Special Rapporteur on Violence against Women has indicated that killings due to sexual orientation and gender identity are characterized by serious levels of physical violence that “in some cases exceed those present in other types of hate crimes.”\textsuperscript{281} The cruelty and brutality of acts of violence based on prejudice against persons with non-normative sexual orientations and gender identities has been


\textsuperscript{276} See, among others: IACHR, Hearing on *Human Rights Situation of Intersex Persons*, 147\textsuperscript{th} Period of Sessions, March 15, 2013; Cabral, Mauro, “*Pensar la intersexualidad, hoy*” in Maffía, Diana (Ed.), *Sexualidades Migrantes: género y transgénero*, 2003, p. 122.


\textsuperscript{278} Heinrich Böll Foundation (Ghattas, Dan Christian), *Human Rights between the Sexes: A preliminary study on the life situations of inter*\textsuperscript{a} *individuals*, Vol. 34 Publication Series on Democracy, 2013, p. 46.

\textsuperscript{279} For example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 5.


noted by the IACHR, the UN High Commissioner for Human Rights, and civil society organizations.

108. In the Registry of Violence, referred-to above, there are numerous examples of killings that are particularly heinous, including cases of stoning, decapitation, burning, or impalement. Many victims are repeatedly stabbed or beaten to death with hammers or blunt objects. Others are punched or kicked to death, have acid thrown at them, or are suffocated. Some victims in the Registry were repeatedly run over by cars, mutilated or set afire. In many cases, victims were killed after being subject to gruesome acts of torture, inhumane or degrading treatment, and multiple forms of extreme humiliation, debasement, torture and/or rape.

109. In the last few years, several cases of brutal killings against LGBT persons were brought to the attention of the IACHR. For example, in 2009, the body of Jorge Lopez Mercado was found decapitated, partially burned and with his four limbs severed from his torso in Puerto Rico. In March 2012, Daniel Zamudio, a 24-year-old man, was brutally attacked and sadistically tortured for several hours by a group of four men at a park in Santiago, Chile. Although Daniel Zamudio was found still alive and was immediately hospitalized, the severity of the wounds inflicted lead to his death a few days later. The IACHR issued a press release strongly...
condemning his murder and urging an investigation. In October 2013, the four defendants were found guilty and sentenced to prison. The IACHR also learned of the case of a 17-year-old lesbian girl from Valdivia, Chile, who was attending a vigil for Daniel Zamudio shortly after his death, when she was attacked, beaten with objects and marked with a swastika using cigarettes. She did not file a complaint out of fear of revealing her sexual orientation to her mother.

110. “Ahumada and Angulo asked [Daniel Zamudio] if he was gay. [...] When he answers “yes,” Ahumada slapped him [...] Angulo said he was a shit because he was gay, Ahumada laughed. // Ahumada and Angulo started to beat him continuously; they jumped on his head and nose. [...] Then they sat down and they continued smoking. Then, Angulo rose and urinated on Zamudio’s mouth and chest; Ahumada did the same, he also urinated on him; then they kept beating him; Ahumada smashed a bottle [...] on Zamudio’s head and Angulo grabbed the bottle neck and carved three swastikas on him, two on his stomach and one on his chest, and he stabbed him twice on the left side of his body. [...] Ahumada and Angulo beat Daniel again, they grabbed his head [...] and it bounced against the floor. [...] Ahumada then smashed another bottle against Zamudio’s head and told Angulo that he should learn “the carvings” and carve two other swastikas on his back. After that, they jumped on his head, beat him on the nose, eyes, genitals and they urinated again over Zamudio. Raúl Lopez then grabbed a rock, and smashed it against his leg, trying to break it. He then [...] grabbed his leg, twisted it and broke it; they were all laughing and they said it sounded like a chicken bone.”

111. In February 2013, the body of a 20-year-old trans woman was found in a rural road in Puebla, Mexico. Her face had been disfigured with a club or bat, several of her teeth were found a few yards apart and one of her eyeballs was detached. In 2013, the IACHR was informed of the case of Joel Molero, a 19 year-old Peruvian man who was brutally attacked and beheaded, with his genitals, fingers and toes mutilated. His body was then put on a mattress and set on fire.
6. **Violence in response to public displays of same-sex affection**

The Inter-American Commission has received reports of same-sex couples who were attacked because they showed affection in public, such as holding hands, caressing, embracing or kissing. Private security guards in shopping centers have also been known to expel same-sex couples in response to public displays of affection. In São Paulo, a gay couple was allegedly attacked and violently thrown off a metro train by a group of more than fifteen men after the group of men told the couple to stop embracing each other. In Mexico, a gay couple who were watching a football game at a bar are reported to have been suddenly surrounded by twenty other male patrons who cursed at them, demanded they kiss each other, and then proceeded to push, spit, and throw beer at them. The couple declared to the press that they would not file a formal complaint because they were accustomed to these kinds of attacks. In Chile, lesbian women have also been attacked for displaying same-sex affection. In Colombia, organizations allege that same-sex couples continue to be persecuted and harassed, even after a decision by the Constitutional Court establishing that discrimination had occurred when a gay couple was expelled from a shopping mall by two guards for displaying affection in public. Same-sex couples showing public displays of affection are also a frequent target of police abuse and arbitrary detention by state agents—often with excessive use of force or verbal abuse—because of what is considered “immoral behavior” in public spaces.

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295 See e.g. [Mexico], Milenio, “Retiran a pareja gay de centro comercial,” March 27, 2015.

296 Pragmatismo Político, “Gays são espancados por 15 homens no metrô de São Paulo” November 14, 2014 (Available only in Portuguese).


298 See e.g. [Chile] The Clinic, “Movilh denuncia golpiza a lesbianas en pub y dos casos de discriminación en clínica,” July 25, 2012 (Available only in Spanish).

299 Colombian Constitutional Court, Decision T-909 of 2011, December 1, 2011 (Available only in Spanish).

C. Violations of the Right to Life

1. Extrajudicial Executions

For the purpose of this Report, *extrajudicial executions*[^301] are understood as deprivations of the right to life unlawfully perpetrated by State agents. The inter-American case law has already established that extrajudicial executions are, by definition, contrary to Article 4(1) of the American Convention[^302] and that the deprivation of life by the authorities of the State is a matter of the utmost gravity.[^303] Although there is underreporting and lack of information regarding extrajudicial executions of LGBT persons at the hands of state officials, the IACHR is very concerned about reports received of extrajudicial executions of LGBT persons that are perpetrated by State agents. According to one regional organization, which obtained its information from witness testimony, police officers have been directly involved in a “good number” of killings of trans women. The motives included retribution against those who had reported an officer’s wrongdoing, and the result of arguments with the police over “sexual favors or money.”[^304]

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that lesbian, gay, bisexual and trans persons are “especially vulnerable” to extrajudicial killings.[^305] For example, it is reported that four military police officers, after having humiliated two trans sex workers in Salvador, Brazil, in August 1998, forced them to jump into the sea, where one of them drowned.[^306] The IACHR also received information about the 2006 killing in Guatemala of Paulina Méndez Cartagena, a trans woman who was allegedly killed by four police officers who responded to a domestic disturbance. The motives included retribution against those who had reported an officer’s wrongdoing, and the result of arguments with the police over “sexual favors or money.”[^304]

[^301]: The term “extrajudicial executions” has been used to refer to executions carried out by the State, other than those executions that are carried out in conformity with the law, such as in the application of the death penalty. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, January 29, 2007, para. 1, fn. 1.


officials. Paulina Méndez Cartagena was with Sulma Alegría Robles, another trans woman, when they were attacked. Robles survived the attack and the IACHR granted her precautionary measures.

On 16 December 2005, around 11.30 p.m., Paulina and Sulma – both transgender persons – were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements about the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well-intended advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission on Human Rights.

The IACHR has also received information about attempted extrajudicial executions of trans persons by members of the police. In December 2008, Nohelia Flores Álvarez was stabbed seventeen times in the throat, back, stomach and arms by a male police officer in Honduras, after the officer held her at gunpoint demanding sex, which she refused. The police officer was sentenced to ten years in prison on September 2009. In January 2010, the IACHR requested the State of Honduras to adopt precautionary measures to protect her life and personal integrity, as well as that of three other persons who were being threatened in the context of the trial against the police officers, including two state agents, members of the Dirección Nacional de Investigación Criminal in Tegucigalpa, who were investigating the case.

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307 HRW, “Guatemala: Transgender People Face Deadly Attacks: Victims concerned that police may have been responsible for these crimes,” February 21, 2006.
308 On February 3, 2006, the IACHR granted precautionary measures in favor of Sulma Alegría Robles, Jorge Luis López Socolaistoa, and 11 other members of OASIS (the Organization to Support Integrated Sexuality) in Guatemala. According to the information available, on the night of December 16, 2005 in Guatemala, two transsexual persons (Robles, a client of OASIS, and Paulina Méndez Cartagena, a communications assistant at OASIS), were shot and injured in an incident allegedly involving four uniformed policemen. Cartagena’s injury reportedly proved fatal and Robles, who survived the incident, is a key witness in the investigation of the shooting. Other sources confirm that the lesbian, gay, bisexual, and transgender community in Guatemala faces attacks and threats that often involve the police, which has given rise to the fear of a clandestine policy of “social cleansing.” In view of these incidents, the Commission requested that the Government of Guatemala adopt the measures necessary to protect the life and physical integrity of the beneficiaries of the precautionary measures, and report on action taken to investigate judicially the events that gave rise to the precautionary measures. IACHR, Summary of PM 3-06 – Sulma Alegría Robles and members of OASIS, Guatemala.
311 The IACHR continues monitoring the implementation of these precautionary measures. The latest meeting between the State and the beneficiaries was held in October 2015, in the context of the 156th Period of Sessions. IACHR, Summary of PM 18-10 – Indyra Mendoza Aguilar et al., Honduras, January 29, 2010.
In January 2013, two police officers were arrested in connection with the kidnapping, torture and execution of a young gay couple. The incident apparently originated with a quarrel between two young men, aged 17 and 22, in Mexico City. After they were both expelled from a nightclub, a police patrol car and other cars arrived and police agents violently pushed them into a white vehicle that was escorting the patrol car. The bodies of the two men were found the following day with numerous signs of beatings in various parts of the body (some of which were so brutal they left bones uncovered), their hands and feet strongly tied with wire, their ears amputated, and with three gunshot wounds in the head of each man. Surveillance cameras showed that the vehicles that were used to apprehend the men outside the nightclub drove to the vicinity of the place in which the bodies were found.\textsuperscript{312}

The IACHR has noted that for the majority of cases of violence against LGBT persons recorded in the Registry of Violence covering the time period of January 2013 to March 2014, there is little or no data as to the perpetrators of the violence, particularly in the cases of killings. Notwithstanding this, during that fifteen-month period, the IACHR received information of alleged executions by state agents of a 15-year-old boy in Patu, Brazil,\textsuperscript{313} a 40-year-old trans woman in Mexico City,\textsuperscript{314} and the aforementioned two gay men aged 17 and 22 in Mexico City.\textsuperscript{315} The IACHR was also informed of the killing of Angelina Lucía Martínez Figueroa, a 19-year-trans woman in Cartagena, Colombia, from a shot in the head, allegedly from a stray bullet resulting from shots fired into the air by a police agent in an effort to break up a street fight.\textsuperscript{316}

2. Killings

The Commission found that during a fifteen-month period (between January 2013 and March 2014), at least 594 persons who were LGBT or perceived as such were killed in attacks that were apparently related to the perception of their sexual orientation or their gender identity and expression.\textsuperscript{317} This included 283 killings of gay men, or those perceived as such, and 282 killings of trans women and trans


\textsuperscript{313} Portal Catolé News, “\textit{Soldado PM mata adolescente em Patu, e comete suicídio em seguida},” April 7, 2013. (Available only in Spanish).

\textsuperscript{314} Sdpnoticias, “\textit{Soldado mata a travesti en hotel del DF; no sabia que era hombre},” October 10, 2013. (Available only in Spanish).

\textsuperscript{315} Animal Político, “\textit{CDHDF confirma 7 asesinatos cometidos por policías capitalinos},” May 2, 2013. (Available only in Spanish).


persons who identify as female. The IACHR was also able to identify trends in the data regarding the locations of killings and the weapons used. Gay men, or those perceived as such, were more likely to be killed by bladed weapons and in private spaces, such as the home of the victim. Whereas trans women and trans persons with female gender identities were more likely to be killed by firearms, and their bodies were more likely to be found in the streets or other public spaces, and sometimes in situations linked to sex work.

120. Some civil society organizations and State agencies in some countries in the Americas have registered an increase in the number of killings in recent years. However, it is not possible to categorically conclude whether in fact there has been an increase in killings, or, because of a more rigorous monitoring, there is greater visibility and documentation of the killings of LGBT persons. In this section, the IACHR summarizes some data on killings by different sources in several countries in the region, while signaling countries in which there seems to be an increase in the number of killings. For example, in 2014, the Mexican Executive Commission for Attention to Victims [“Comisión Ejecutiva de Atención a Víctimas” (CEAV)] —a federal autonomous governmental agency— expressed its concern with regard to the rising number and increasingly violent nature of crimes based on prejudice against LGBT persons. According to the Mexican civil society organization Letra S Sida, Cultura y Vida Cotidiana A.C., there have been 1,218 killings motivated by prejudice against LGBT persons. According to this report, more than 80% of victims had received several types of attacks before being killed. Other organizations in Mexico documented at least 164 killings of trans women between 2007 and 2012, confirming a steady increase in the numbers in these years.

121. In 2013 an organization in Chile reported an increase in the number of killings of LGBT persons with respect to previous years, amounting to a total of 24 since 2002. Organizations from Guatemala report that killings of LGBT persons are not found in police records, and when exceptionally they are, they end in

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318 IACHR, Registry of Violence against LGBT persons (January 2013- March 2014), (Available only in Spanish).
321 Comisión Ejecutiva de Atención a víctimas (CEAV), Boletín 32/2014: “Preocupa a la CEAV que en México sigan aumentado víctimas de homofobia con expresiones cada vez más violentas,” May 16, 2014 (available only in Spanish).
322 Report by Letra S, Sida, Cultura y Vida Cotidiana A.C., cited in Notiese, Registran 1218 homicidios por homofobia en México, May 12, 2015 (available only in Spanish).
323 Centro de Apoyo a las Identidades Trans (CAIT), Informe Crímenes de Mujeres Trans en México: Invisibilidad = Impunidad, 2013, p. 9.
impunity.\textsuperscript{326} They also point out that victims who are transgender tend to be young, with an average age of 25,\textsuperscript{327} and live in constant fear of being assaulted or attacked.\textsuperscript{328} According to an organization from civil society, at least 30 trans persons were killed between 2009 and 2010 in Guatemala.\textsuperscript{329} In Honduras, according to Red Lésbica Cattrachas, at least 189 killings of LGBT persons were registered between 2008 and 2014,\textsuperscript{330} and 10 killings had taken place during the first five months of 2015.\textsuperscript{331}

In Peru, local organizations reported that at least 38 LGBT persons were killed between 2001 and 2013,\textsuperscript{332} and 13 were killed between April 2014 and March 2015.\textsuperscript{333} In Venezuela, organizations reported that at least 46 killings have been documented between 2009 and 2013.\textsuperscript{334} In Argentina, an organization indicated that 25 killings of LGBT persons have been reported between 2011 and 2013.\textsuperscript{335} In 2014, it was reported that seven LGBT persons were killed, compared to five the year prior. The organization noted that while there were fewer killings of gay men in 2014, killings of trans persons more than doubled, in comparison with 2013.\textsuperscript{336} In October 2015, organizations reported that three trans women were killed in one
In Uruguay, according to information provided by civil society organizations, the Ministry of Interior had reported that five trans women were killed in 2012, three of which were killed in the span of three months.

The State of Colombia informed the IACHR that between 2011 and 2013, at least 219 killings of LGBT persons had been registered nationwide. A civil society organization reported that between 2010 and 2011 at least 280 LGBT persons were killed. The UN Office of the High Commissioner for Human Rights indicated that 2013 had seen an increase in the number of reported killings of LGBT persons in Colombia in comparison to those reported in 2012. The Commission has also received information on the differential impact of the armed conflict in Colombia on LGBTI persons. The Colombian organization Caribe Afirmativo has documented 114 violent deaths of LGBT persons in the Caribbean Region of Colombia, 58 of which occurred in territories where the armed conflict persists. The victims were primarily gay men and trans women. Worrisome information has been brought to the attention of the Commission from other regions in Colombia. In Cauca, it was reported that a gay man had his penis cut off and he was left to bleed to death.

Further, the IACHR has received troubling information about the number of killings of LGBT persons taking place in Brazil. Reported figures from Brazil far surpass the number of killings reported in any other OAS Member State. It bears mentioning in this regard that, although high levels of violence and prejudice against persons with non normative sexual orientations and gender identities may exist in Brazil, several other factors may also contribute to these figures being so disproportionately high. First, Brazil is the second most populated OAS Member State after the United States of America, with more than 200 million inhabitants. Second, Brazilian civil society, and the State itself during the last few years, have built up robust reporting mechanisms through which cases are identified and recorded. In quantitative terms, the State of Brazil informed the IACHR that there were 278 killings of LGBT persons in 2011 and 310 reported cases in 2012, a year-
over-year increase of 11.5%. In 2013, the local organization “Grupo Gay da Bahia” (GGB) documented at least 312 killings of gay men, lesbian women, and trans persons in its 2013 Annual Report. Gay men (59%) and trans women (35%) represent the majority of the victims.

125. The disturbing brutality of the killings reported in Brazil can be grasped through the following examples. In April 2014, a bisexual woman—who had a 6-year-old son and who had left her boyfriend to live with a woman—was viciously stabbed, disemboweled, and her body abandoned near a railroad track. The perpetrator cut out the victim’s vulva and inserted it in her mouth before leaving. Investigators stated that this action spoke to the motive of the crime and that a former boyfriend of the woman was among the suspects. In January 2014, a 40-year-old gay man was found near death near a sugar cane plantation in João Pessoa, his body showing signs of having been brutally beaten and raped. He was hospitalized but died shortly after. In May 2013, a 22-year-old gay man was verbally attacked with homophobic epithets on the street and then run down with a car three consecutive times in Rio de Janeiro. Although his friends took him to a hospital, he did not survive the wounds; his spinal cord was fractured in three places and his hip, ribs and lungs were also severely affected. During 2013, the IACHR was informed of numerous killings of trans women who were sex workers, most of the killings allegedly perpetrated by their clients. These included victims who were — among many other violent acts — smashed in the head with rocks, stoned to death while offering their services, beaten to death with a broken bottle, stabbed while waiting in their regular spots, repeatedly shot when approaching a car, and shot following a disagreement over fees.

126. Entertainment and socialization spaces for gay persons, and their vicinities, are also common locations in which killings take place. Bars and dance clubs are

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345 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 3.
351 Globo.com “Travesti é encontrado morto com a cabeça esmagada na Vila Irmã Dulce,” January 5, 2014 (available only in Portuguese); R7 Notícias, “Travesti é encontrada morta com marcas de pedrada na cabeça em Teofilo Otoni,” August 13, 2013. (Available only in Portuguese).
353 Folha PE, “Travesti assassinado na praia de Piedade,” January 24, 2013 (available only in Portuguese).
354 Terra Noticias, “RS: travesti é morto com sete facadas no centro de Gravataí,” March 6, 2013 (available only in Portuguese).
355 DOL Br, “Travesti é executada no bairro da Guanabara,” January 8, 2014 (available only in Portuguese).
reported to be frequent locations where perpetrators target their victims, a *modus operandi* colloquially referred to as “pick-up crime.” In 2006, a serial killer was known to be targeting gay men in Mexico City by seducing them at gay bars, kidnapping them, and demanding ransom from their families. At least four gay men were killed. The gruesome details of the cold-blooded confessions of the serial killer included different ways in which he tormented his victims during their captivity, such as engraving marks on their foreheads with bladed instruments. The killer declared that “he had done society a favor, because gay men corrupt children.”

Other examples in which killers reportedly lured victims at bars include the well-known case of Matthew Shepard in the United States, and a similar case reported in Chile. In recent years, online dating sites and location-based phone dating applications have also been reported as tools used by perpetrators to find their victims in the United States. In November 2014 in Colombia, there was reportedly a criminal gang that would lure gay men through social media in order to rob, attack, or kill them. In January 2013, a group of men in a car passed in front of a gay bar in Mexico City and started screaming slurs directed at two patrons who were hugging each other. When one of the gay men confronted the group, one of the men in the car pulled out a gun and shot him dead on the spot.

D. Violations of the Right to Personal Integrity

1. Violations in the context of law enforcement: Torture, cruel, inhuman and degrading treatment

127. Articles I and XXV of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration” or “Declaration”) and Articles 5 and 7 of the American Convention protect the right to security of the person, the right to

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359 Case of the killing of José González Quiroga (54) in Teno, Maule Region of Chile. See Movimiento de Integración y Liberación Homosexual (MOVILH), *XII Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile 2013, 2014*, p. 50.


361 Colombia Diversa, Activista LGBT fue brutalmente asesinado en Bogotá, 18 de noviembre de 2014; SENTIDO, *La Muerte de Guillermo Garzón, más allá de un “crimen pasional”*, November 20, 2014 (available only in Spanish).

362 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México (México), received by IACHR Executive Secretariat on December 20, 2013, p. 135; Terra Noticias, “PGJDF investiga crimen de odio a pareja homosexual,” January 27, 2013 (available only in Spanish).
personal integrity, and the right to be free from arbitrary and illegal detention. Further, the Inter-American Convention to Prevent and Punish Torture, adopted by the OAS General Assembly in 1985 and ratified by 18 OAS Member States, establishes States’ obligations to prevent, investigate, punish and provide redress regarding acts of torture. According to this treaty, State Parties shall take measures to emphasize the prohibition of torture in interrogation, detention or arrest in the trainings of police officers and other public officials who are responsible for the custody of persons who are deprived of liberty whether temporarily or long-term.\(^{363}\)

128. The IACHR has held that the lawful activity of security forces, directed toward the protection of the population, is fundamental for achieving the common good in democratic society. Human rights require that States prevent and respond to the arbitrary exercise of authority and constitute an essential safeguard of the security of the public. Respect for, and correct interpretation and application of, the guarantees established in the American Convention and American Declaration must serve as a guide to member states to ensure that the activities of their security forces respect human rights.\(^{364}\)

129. Regarding the prevention by the State of acts of torture and ill-treatment against LGBTI persons, the IACHR has highlighted that legislation and regulations concerning the police must set out “clearly that no law enforcement officer can inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment,” and that every law enforcement agent must immediately report any case of torture or cruel, inhuman or degrading treatment of which he or she has knowledge.\(^{365}\)

130. In the last few years, the IACHR has continuously received information on acts of violence against LGBT persons that are perpetrated by law enforcement agents,\(^{366}\) including acts of torture, degrading or inhumane treatment, excessive use of force, arbitrary detention, and other forms of abuse.\(^{367}\) Numerous cases of State-led


\(^{366}\) For the purposes of this Report, “law-enforcement agent” includes any state agent legally empowered to fulfill duties pertaining to public security, including regular police forces, military police, airport security agents, ‘gendarmerie’, constabulary forces, and migration police or other border control authorities.

violence have been documented throughout the Americas. Indeed, several OAS Member States have expressed concern about these abuses. The Registry of


Violence of the IACHR, referred to above, indicated that between January 2014 and March 2015, there were forty-three cases of police abuse; however, the Commission highlights the high levels of underreporting of acts of violence, particularly, those committed by state agents, as noted at the beginning of this chapter. Further, Human Rights Treaty Bodies within the United Nations Human Rights System, several Special Procedures and the Office of the High Commissioner for Human Rights, have all received similar information, and have documented their concern over reports of police abuse against LGBT persons in several OAS Member States. Several organizations have reported that police forces even feel that they are entitled to exert violence against LGBT persons.
131. The Commission has previously expressed concern about cases of police abuse against LGBT persons,\(^{374}\) and has indicated that police involvement in discrimination and violence against LGBT persons leads others to believe that they can harm persons of non-normative sexual orientations and gender identities with impunity.\(^ {375}\) The IACHR notes that police and other State security agents – legally entitled to enforce public order – share the same attitudes and prejudices against LGBT persons that are prevalent in society at large. Arbitrary detention is another significant concern in the overall context of police abuse against LGBT persons. As indicated in the previous chapter, the IACHR found that police officers arbitrarily deprive LGBT persons of their liberty on the grounds of alleged “public scandal,” or because their sole presence is considered a threat to “public morals”. Numerous reports indicate that trans women and trans sex workers are particularly vulnerable to police abuse and are regularly subjected to inhumane treatment by law enforcement when detained.\(^ {376}\) Many trans Latin American women in Queens, New York, have experienced being stopped and searched by the police on suspicion of prostitution while walking in their own neighborhoods. As was affirmed by a trans woman: “to the police, all transgenders are prostitutes.”\(^ {377}\)

132. According to information received by the Commission, the violence occurs at all stages of police custody, including apprehension, transportation in police vehicles and, above all, in the premises of police stations and lock-up facilities. Among the most commonly reported forms of abuse are: extortion and the demand for sexual favors; the use of excessive force; vicious beatings; the use of firearms to hurt or incapacitate victims; instances in which trans women are forced to strip fully naked in public; and constant hostility and acts of humiliation such as forcible removal of wigs, misgendering\(^ {378}\) and constant verbal abuse. As noted by the UN Office of the High Commissioner for Human Rights, “States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”\(^ {379}\)

133. According to information received, police agents have arrested LGBT persons based solely on their appearance, the way they are dressed, or their gender expression. For example, it is reported that in 2011 in Belize, two police officers arrived at a bar. One of the police officers asked two trans women: “why are you dressing like that if you are men?” The officers proceeded to arrest the women, and when asked for a reason, the officers answered: “because you look suspicious, you confuse me.” In transit, the two trans women were subjected to mistreatment. The


\(^{376}\) See below, section of this Report on LGBT persons deprived of liberty.


\(^{378}\) Willful misgendering occurs when someone refers to a person using terms (generally pronouns, nouns, and adjectives) that express a gender with which they do not identify, in order to humiliate and debase. This takes place when trans women are referred to as men or according to their male registered name and when trans men are referred to as women or according to their female registered name. See, for example, Colombia Diversa, *Cuando el Prejuicio Mata: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2012*, June 2014 (available only in Spanish), p. 30.

abuse continued at the lock up facility, with one police officer insinuating that they “should be murdered and dumped on a nearby highway.” The women suffered rape threats from other detainees and one of them was forced to strip naked. They were released the next morning, with no charges brought against them. They did not file charges out of fear of reprisals and further victimization.380

134. “All my arrests always came from just walking on the street, coming out of a club, or just because a cop identified me as transgender. They would always look for condoms. They don’t care about you, they take your purse, throw it on their car, your stuff they throw it on the floor, they pat frisk you, they ask if you have fake boobs, take them off right there, if you have a wig, take it off. It’s humiliating. Right there in the street, they take your identity right there. When they find condoms, they say ‘what are these for… how many dicks did you suck today? How much money did you make today?’”381

135. In 2013, a group of men were dancing during carnival in Port-au-Prince, Haiti, when police officers started beating them, uttering slurs and making comments that “they did not like it that they were effeminate.”382 In Mexico City, a young man was allegedly arrested by federal police officers while he was walking on the street late at night. When he asked why he was being arrested, the officers answered “because you are gay” and then asked him to perform oral sex on them.383 In Nicaragua, reports indicate that lesbian women have been repeatedly arrested by the police and kept for hours in detention facilities while being asked “why they dressed like that” and “why didn’t they look for men.”384 In 2013, two men were talking in a park in Santo Domingo, Dominican Republic, when a police car stopped beside them. Two police agents pushed the two men into the police car while referring to them as women, and drove them to a police station. When they demanded an explanation for their arrest, a police officer answered: “If you need a reason, we will say that you both were having oral sex at Parque Duarte.” Another officer then said that the men should be put in cells where men would rape them to “make them men.” Police agents told them that being a “faggot” was worse than being a criminal. The next day they were released without any further explanation.385

382 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHR, Cuny School of Law, SEROvie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.
383 Agenda LGBT A.C., Informe de la situación de homofobia en México del año 2013, February 2013 (updated in June 2013); La Jornada, “Joven fue detenido, vejado, golpeado y robado por policías ‘por andar de puto’,” March 27, 2013 (available only in Spanish).
384 Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional, March 2012, p. 27.
385 IACHR, Press Release 79/13, “IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGBTI Persons,” October 24, 2013; Acento.com.do, “[En este país ser maricón es peor que ser delincuente]” (opina “agente de la ley”), August 22, 2013 (available only in Spanish); Testimony of the
136. Police abuse is also reported to take place in or around places where LGBT persons socialize or its surroundings. For instance, a violent police raid is reported to have taken place at an LGBT beauty pageant in Monterrey, Mexico, in February 2013. Agents of the federal police force —under the command of an official of the Federal Public Ministry— stormed the night club where the contest was taking place, ordered everyone out, and arrested at least 70 people who were present at the event, who were fined, without criminal charges. According to the information presented to the Commission, police agents insulted them using homophobic and transphobic slurs: “faggots, we are taking you because dressing up as women is immoral.” The IACHR has also received reports of police cracking down on clubs and hangouts of LGBT persons in other countries.

137. In Argentina, an official study conducted in 2012 showed that 83% of surveyed trans women had been victims of serious acts of violence and discrimination perpetrated by police officers. Another study prepared by civil society organizations two years following the passing of the gender identity law indicated that trans women feel safer in public spaces, and police abuses against trans persons had diminished. However, other reports indicate that grave instances of police abuse against LGBT persons, particularly trans women, are still frequent in various Argentinean provinces.

138. The IACHR has received reports from multiple organizations of cases in which police agents not only perpetrate violence, but also incite others to attack LGBT persons, or are indifferent toward violence perpetrated against LGBT persons by third parties. Reportedly, police officers were involved in the attack of a gay man in Jamaica which ultimately led to a mob killing. The incident began with the police officers beating the victim with batons, after which they urged others to beat him. The victim was dismembered, stabbed and stoned to death.
139. A trans woman in Honduras explained that when a drunk and aggressive client stabbed her in the arms, neck, and leg in September 2011, she sought help from the police. She recalls: “the police didn’t ask me to make a statement, they laughed at me and asked me for sexual services even after I had told them that I was injured and needed help. They told me that I got what I deserved for being out in the street.”

140. When Argentinean human rights defender and activist Diana Sacayán was insulted and attacked at a bar in 2013, she sought the assistance of two gendarmerie agents who were nearby. Allegedly, the agents spoke to her attacker, allowed him to leave and went back to her saying, “you’d better start running.” They then hit her with a baton. When she arrived at the local police station to file a report, it is alleged that the chief officer on duty refused to take her report and had her taken to a nearby hospital. She suffered a fractured nose and cheekbone. No record was made of her presence at the police station. The IACHR has also received information of police indifference in cases of violence against LGBT persons in Chile.

141. Since the coup d’état in Honduras in 2009, the Inter-American Commission and the UN Special Rapporteur on the situation of human rights defenders have found that LGBT persons were among the groups suffering severe violence in Honduras. In fact, the Special Rapporteur indicated that the persistence of such acts could indicate a pattern of hate crimes, primarily committed by the police and private security guards. In its latest visit to Honduras, the IACHR received more reports on arbitrary detention and acts of violence perpetrated by police agents against LGBT persons. Civil society alleges that mistreatment of trans women regularly takes place in public view and with no consequences for the perpetrators. For instance, in July 2014, a video emerged of a trans woman sex worker being attacked by a man, while others watched, in the city of San Pedro Sula, Honduras. According to the victim, the perpetrator was a doctor who had


393 Página 12, “Ataque brutal a una activista trans,” August 27, 2013 (available only in Spanish); Infojus Noticias, “Líder trans pide que se cree un protocolo para las fuerzas de seguridad,” August 28, 2013 (available only in Spanish); El 1 Digital, “Sacayán denunció que gendarmes la atacaron a bastonazos,” September 3, 2013 (available only in Spanish); Diario NCO, “La Matanza: Diversas Organizaciones Sociales Repudiaron Hechos De Violencia Contra Diana Sacayán,” September 5, 2013 (available only in Spanish).


398 IACHR, Preliminary Observations concerning the Human Rights Situation in Honduras, December 5, 2014.

399 Cattrachas et. al., Audiencia de Homicidios de Personas LGTBI e Impunidad en las Américas ante la CIDH, November 1, 2012, p. 9.

400 La Prensa, “Video: Indignación por golpiza que le dan a un transexual en Honduras,” July 29, 2014 (available only in Spanish).
hired her for sex but refused to pay. The video reportedly shows how law enforcement officers not only fail to intervene or provide any assistance to the victim, but how they also take part in the beating.\footnote{El Heraldo, “Brutal golpiza a ‘gay’ en Honduras,” August 6, 2014 (available only in Spanish).} Similarly, a transgender activist en El Progreso, Honduras, recounted: “[in] 2012, three policemen forced me into a patrol car telling me they were going to take me to the station, but they took me to an isolated place and kicked me and punched me in the stomach for over 15 minutes. They left me lying there and threatened to kill me if I talked.”\footnote{RedLactrans et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 15.}

In Colombia, civil society organizations claim that violence perpetrated by police officers is part of a larger, pervasive, systematic pattern of behavior based on prejudice that the State has not been able to prevent or eradicate,\footnote{Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Colectivo Entre Tránsitos et. al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 9; Colombia Diversa, Impunidad Sin Fin: Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales y Personas Trans en Colombia 2010-2011, 2013, pp. 48 a 49.} particularly in areas outside the capital. Numerous cases of alleged police abuse have been documented in Cartagena, Barranquilla, Cali and Medellin. For example, Corporación Caribe Afirmativo documented 18 cases of mistreatment carried out in 2014 by members of the security forces — which includes police and soldiers — in the departments of Atlántico (5), Bolívar (5), César (2), Córdoba (1), Guajira (2), Magdalena (2), and Sucre (3).\footnote{Corporación Caribe Afirmativo. Information received on January 1, 2015. On file with the Executive Secretariat of the IACHR.} There were also reports that members of security forces beat trans women, particularly those who are sex workers, in the places where they receive surgery, such as silicone implants, as if wishing to destroy those parts of their bodies.\footnote{Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014. Cited in IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, para. 308.} In 2011, the UN High Commissioner for Human Rights highlighted the case of a trans woman who was brutally attacked by eight police agents and left unconscious at a neighborhood police station in Medellín.\footnote{United Nations High Commissioner for Human Rights, Report on the situation of human rights in Colombia: Annex, A/HRC/16/22, February 3, 2011, para. 9.} With respect to police mistreatment in Cali, a defender of transgender rights told the IACHR that only in one very serious case of assault of a transgender woman, followed by threats to force the woman to drop her complaint, was a policeman suspended for three days without pay. The defender explained: “only some police are abusive, but the lack of response and impunity concerns the whole police force.”\footnote{Testimony of a transgender woman human rights defender from Cali. Meeting of LGBTI persons with the President of the IACHR in Cali. September 30, 2014, cited in IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, para. 310.} In September 2014, the IACHR requested information from the State of Colombia concerning reports by local organizations of a wave of violence perpetrated by police officers against trans women in Cali, Cartagena and Barranquilla.\footnote{IACHR, Letter of request of information pursuant Article 41 of the American Convention. September 24, 2014. On file with the IACHR Executive Secretariat. The formal letter sent to the government requested...}
that 22 cases had been registered by police forces in those three cities, 17 of which had occurred in Cali. The State also informed the Commission that out of these 17 cases of abuse, 7 had been closed with no finding of wrongdoing by the officer (*archivados*), 8 had been stayed, one was under investigation, and in only one case the defendant had received a written admonition. Further, three of the four cases in Cali had also been closed with no finding of wrongdoing by the officer (*archivados*), while one was still under investigation.409

143. In 2011, activists from the Mexican state of Durango demonstrated before the local council, denouncing at least 70 instances of rape and sexual abuse committed by the local police against gay and trans sex workers, all of which had ended in impunity.410 A survey carried out by civil society in the Dominican Republic found that 36% of trans women who were engaged in sex work reported having to agree to “sexual favors” demanded by police agents to avoid arrest.411 Civil society organizations also report instances of police abuse, extortion, and arbitrary detention targeting Afro-descendant trans women in Brazil. 412 In November 2014 the IACHR declared admissible a petition against the State of Peru in which Luis Alberto Rojas Marín, a young gay man, was allegedly arrested by police agents and, as alleged, suffered severe physical violence while in detention, including torture. Petitioners allege that three police officers raped the alleged victim with a rubber baton, in a context in which he was sexually harassed and insulted because of his sexual orientation.413

144. Finally, the Inter-American Commission has received information indicating that local governments in the Peruvian districts of Lima Metropolitana, Pueblo Libre, Jesús María, San Isidro, and Comas, have enforced policies aimed at the “eradication” of gay persons.414 In 2012, civil society organizations reported the
existence of official documents issued by a section of the government of the City of Lima ("Gerencia de Seguridad Ciudadana"), which allegedly specified that the "eradication" of gay persons would be included among the security operations carried out. The Municipality of Lima and the mayor apologized through social media and indicated that the document had been revoked. In 2014, the online reporting system of the Government of the District of Santiago de Surco in Lima, Peru, featured an option to report gay persons. Further, the IACHR had access to a copy of the statistical report issued by that district in August 2014, which indicated that since 2008, local agents had intervened in 1,257 cases of "eradication of prostitution and homosexualism."

- **Persons Deprived of Liberty**

145. The Commission is concerned about recurring acts of violence faced by lesbian, gay, bisexual and trans persons, or those perceived as such, who are deprived of liberty in the Americas. The IACHR has received troubling reports from various States and State agencies, as well as experts and non-governmental organizations, of instances of violence, torture, and inhumane and degrading
Treatment against LGBT persons, or those perceived as such, in prisons, lock up facilities, police stations, immigration detention centers, and other places of detention. According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, LGBT persons are at the bottom of the informal hierarchy in detention facilities, which results in double or triple discrimination, and they are disproportionately subjected to torture and other forms of ill treatment. Although the IACHR has received information that LGBT persons live in deplorable conditions in detention centers, the focus of this Report is on violence. Thus, other aspects of deprivation of liberty of LGBT persons more related to discrimination, and not directly linked to violence, are out of the scope of this Report.

146. Every person deprived of liberty is to be treated humanely in strict accordance with international human rights instruments, with respect for his or her inherent dignity, and with the guarantee of fundamental rights. States are the guarantors of the rights of persons deprived of liberty, given the dependence of persons in custody on the State and on the decisions made by custodial staff. As such, States are called on to guarantee the life and physical and personal integrity of persons under their custody. States have the duty to ensure that the manner and method of the deprivation of liberty does not exceed the level of suffering inherent to being locked up. States have a duty to take necessary preventive measures to protect persons deprived of liberty from attacks by the State’s own agents or by third persons, including other persons deprived of liberty.
147. Discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance. According to the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, persons deprived of liberty shall not be discriminated against for reasons of sex, gender, sexual orientation, or any social condition. According to the Yogyakarta Principles, “everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity.”

148. According to the information received by the IACHR, LGBT persons who are deprived of their liberty are at a heightened risk for sexual violence – including a higher risk for multiple sexual assaults – and other acts of violence and discrimination at the hands of custodial staff or other persons deprived of liberty. The Special Rapporteur on violence against women, its causes and consequences has expressed concern about lesbian women being placed in cells with men as punishment for the women refusing the sexual advances of prison staff. Allegedly, female prisoners whom guards viewed as “masculine” in appearance have reportedly been subjected to harassment, physical abuse, and “forced feminization.” Additionally, gay men or trans women deprived of their liberty may be forced into servitude by other inmates, required to do menial tasks on their behalf, and provide “sexual services” to them. Police agents have reportedly incited others to sexually abuse LGBT persons who are detained, even handing out condoms to facilitate the abuse. Further, there are reports of prison guards having LGBT prisoners beaten up or allowing other prisoners to rape them, and of prison staff placing LGBT prisoners in cells with known sexual predators. There are also reports of prison staff

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434 IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the IACHR by Resolution 1/08 at its 131st Regular Period of Sessions, held March 3-14, 2008.


439 [Guyana] Carrico, Christopher, Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana, Published by the Faculty of Law UWI Rights Advocacy Project, Faculty of Law, University of the West Indies, March 2012, p. 16; [Nicaragua] Procuraduría para la Defensa de los Derechos Humanos (PDDH) Nicaragua, Respeto a los Derechos Humanos de las personas de la Diversidad Sexual por parte de la Policía Nacional, March 2012, p. 23.
running prostitution rings, in which all trans prisoners are forced to participate as sex workers.\(^{440}\) Several NGOs report that LGBT persons often decide to remain in their cells as much as possible in order to avoid being attacked by other inmates.\(^{441}\)

149. According to the Bureau of Justice Statistics of the United States Department of Justice, LGBT inmates in US detention facilities are among those with the highest rates of sexual victimization.\(^{442}\) Among LGBT prisoners, 12.2% reported being sexually victimized by another inmate and 5.4% reported being victimized by staff.\(^{443}\) In México, for instance, local organizations allege that at least 60% of LGBT persons deprived of their liberty have been subject to different kinds of abuse.\(^{444}\) In Colombia, a case that was decided by the Constitutional Court is illustrative of the extent to which a gay man may be subjected to repeated sexual abuse.\(^{445}\) In Guatemala, organizations report that a young gay man was sexually assaulted by 17 men,\(^{446}\) and a trans woman was allegedly raped more than 80 times while in detention.\(^{447}\)

150. The Subcommittee on the Prevention of Torture indicated that one trans person deprived of liberty in Paraguay had been raped by a group of inmates after having been forced to walk around in a short skirt. Allegedly, trans persons deprived of liberty at the National Penitentiary of Tacumbú were routinely asked to perform sexual scenes in the common areas of the prison, watched by other inmates and paid for by guards. A trans person was allegedly killed in 2008 after a guard inserted a police baton into her anus.\(^{448}\) In the September 2014 visit to Paraguay


\(^{441}\) [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (México), received by the IACHR Executive Secretariat on November 1, 2013, p. 9; [Peru] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by El Centro para la Promoción de Derechos Sexuales y Reproductivos, PROMSEX (Perú), received by the IACHR Executive Secretariat on December 20, 2013, p. 1.

\(^{442}\) US Department of Justice - Bureau of Justice Statistics, PREA Data Collection Activities 2013, June 2013, NCJ 242114, p. 2.

\(^{443}\) US Department of Justice - Bureau of Justice Statistics, PREA Data Collection Activities 2013, June 2013, NCJ 242114, p. 2.

\(^{444}\) Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Asistencia Legal por los Derechos Humanos, ASILEGAL (México), received by the IACHR Executive Secretariat on November 1, 2013, p. 9.

\(^{445}\) Colombian Constitutional Tribunal, Decision T-1096/04, case of Mauricio Gutiérrez, November 4, 2004; see also, Colombia Diversa, Situación de los derechos humanos de lesbianas, gays, bisexuales y transgeneristas en Colombia, 2005, p. 35.

\(^{446}\) Fundación Myrna Mack et. al, Discriminación por orientación sexual e identidad de género y una aproximación a la interseccionalidad con otras formas de discriminación en Guatemala, November 4, 2012, p. 37. The IACHR has also received information regarding degrading treatment and sexual violence by authorities against gay detainees. IACHR, Fifth Report on the Situation of Human Rights In Guatemala, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, chapter 8, para. 45.


\(^{448}\) UN, Subcommittee on Prevention of Torture, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay CAT/OP/PRY/1, adopted on June 7, 2010, para. 241. 214. See also, UN, Special Rapporteur on torture and
by the IACHR’s Rapporteur on Persons Deprived of Liberty he noted that trans persons were subject to different forms of violence and discrimination ranging from physical and verbal assaults to multiple instances of rape. During a March 2015 public hearing, the government of Paraguay informed the IACHR that it had adopted measures to guarantee improved conditions of detention for trans persons in the National Penitentiary of Tacumbú.

151. In 2014 and 2015, the Commission received troubling information regarding instances of rape and sexual violence against trans persons deprived of liberty in the United States, in prisons and immigration detention facilities. In July 2014, the IACHR was informed that Marichuy, a trans woman detained at the Eloy Detention Center in Arizona, had been raped after having been subjected to previous instances of abuse and threats of rape. According to a 2013 Report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sixteen gay and trans persons in the United States were subjected to solitary confinement, torture and ill treatment, including sexual assault, while in detention in immigration facilities.

152. In January 2015, it was reported that Leslieann Manning, a trans woman, sued the New York maximum security facility where she was being held, alleging that prison staff were deliberately indifferent to her heightened risk for the sexual assault which she suffered. In the case of Ashley Diamond, a trans Afro-descendant woman deprived of liberty in Georgia, United States, the Commission requested information from the government in April 2014, based on publicly available information that Diamond had been raped at least seven times since being detained in 2012, and that her access to hormone therapy had been withheld. According to a news report, she had been mocked by prison officials as a “he-she thing” and thrown into solitary confinement for “pretending to be a woman.” Allegedly, Diamond has undergone drastic physical changes after being denied access to hormones and, in desperation, has tried to castrate herself and kill herself several times. In an interview, Diamond said, “every day I struggle with
trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this.”

The United States government responded to the request for information indicating that the US Department of Justice had joined in the federal lawsuit that Diamond had filed against Georgia corrections officials.

153. On November 26th 2013, Ayelén, a trans woman, was reportedly arrested by local police in the city of San Miguel de Tucumán in Argentina. She was allegedly taken to the police station where five police officers raped her. She was then taken to a cell shared with other prisoners, where she, as it is reported, was raped again by several of them. The following day she was forced to clean the police station. She managed to escape, and she went to a local hospital and filed a report. While the physical examinations were being performed at the hospital, police agents allegedly showed up and persuaded her to drop the charges. She alleges that was even forced to sign a document in which she declared that what she had previously stated was untrue.

154. In April 2015, the IACHR was informed of the situation of violence and discrimination faced by Verónica Bolina, an afro-Brazilian trans woman deprived of liberty in São Paulo, Brazil. According to the information received, Bolina had been severely beaten, tortured, and subjected to degrading treatment at the hands of police after she bit off half the ear of a prison warden. On April 27, 2015, the IACHR sent a letter requesting information on the measures taken to investigate the attacks perpetrated against her and the measures taken to guarantee her safety, as well as information on the situation of other trans persons deprived of liberty in São Paulo.

155. Trans women are at a heightened risk of sexual violence because of their routine imprisonment in male facilities, without regard to the specificities of the person or the case. The Commission has received reports that trans women are regularly housed in male pavilions in some OAS Member States. On the other hand,

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458 Response to IACHR, Request for information on the basis of Article 18 of the Rules of Procedure of the IACHR, September 27, 2015 (re: request for information regarding Ashley Diamond). The Permanent Representative of the United States of America before the OAS, May 28, 2015, received June 3, 2015 (on file with the Executive Secretariat).
460 Letter dated April 27, 2015, (Reference: Investigation in the case of Verónica Bolina). Filed with the IACHR Executive Secretariat.
461 See e.g. Lambda Legal, “Transgender Incarcerated People in Crisis,” no date.
462 [Chile] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Organización de Transexuales por la Dignidad de la Diversidad (OTD, received by IACHR Executive Secretariat on November 25, 2013, p. 4; [Guatemala] REDLACTRANS et al., The Night is Another Country. Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 16; [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México (Mexico), received by IACHR Executive Secretariat on December 20, 2013, p. 135.
according to the available information, various prison compounds in Argentina, Brazil, Colombia, El Salvador, Guatemala, Honduras, Jamaica, Paraguay, the United States, and Uruguay have separate pavilions or cells in male prisons to specifically house trans women and gay men.

156. Although this segregation of gay men and trans women from the general inmate population is done to better ensure their safety, the IACHR is concerned about reports of inferior living conditions in these cells or units when compared to other units in the facility, and further stigmatization due to these measures of segregation. Further, it is possible that this segregation limits their access to programs and benefits afforded to the general population, which are key to rehabilitation or participation in early release programs. Measures taken to protect persons deprived of liberty who are LGBT should involve no greater restrictions on their rights than is experienced by the general inmate population. The United Nations Office on Drugs and Crime has recommended that the principle for classification and allocation should be to house LGBT detainees “in whichever environment will best ensure their safety.” For example, the IACHR has also received information that sometimes LGBT persons are housed with persons living with HIV, furthering stereotyping and stigmatizing LGBT persons.

Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013, p. 5. Diario Uno (Mendoza), “En el pabellón gay conviven 15 presos,” May 5, 2009 (available only in Spanish).

Answer to the IACHR LGBTI Rapporteurship questionnaire, submitted by the organization Gajop, Gabinete de Assessoria Jurídica às Organizações Populares, Brazil, p. 4.

Colombia Diversa, “Del Amor y otras condenas; personas LGBT en cárceles en Colombia”, 2013-2014, pp. 26-27, indicating that according to data produced by the State (INPEC), 14% of prisons in Colombia have a specific pavilion or cell for LGBT persons.


Verified by the IACHR delegation that visited the San Pedro Sula National Penitentiary, during the December 2014 onsite visit to Honduras. IACHR, Press Release No. 146/14, IACHR Wraps Onsite Visit to Honduras, December 5, 2014. The IACHR delegation was informed that gay and bisexual men and trans women were previously housed with the general male population, and that this made them more vulnerable to sexual violence. This situation had changed and they had their separate dorm, where they felt safer.

The Jamaica Gleaner, Gay colony in prisons, October 8, 2006.


Huffington Post, New York’s Largest Jail to Open Housing Unit For Transgender Women, November 18, 2014.


For example, the IACHR has also received information that sometimes LGBT persons are housed with persons living with HIV, furthering stereotyping and stigmatizing LGBT persons. Colombia Diversa, “Del amor y otras condenas: personas LGBT en cárceles en Colombia,” 2013-2014, p. 26.


United Nations Office on Drugs and Crime (UNODC), Handbook on Prisoners with special needs: Lesbian, gay, bisexual and transgender (LGBT) Prisoners, 2009, p. 115. In the United States, some prisons in certain states have adopted policies for trans persons deprived of liberty, which apply to housing, clothing, showering, grooming, searches, and other aspects of detention, with the result of trans women being placed in female prisons and being referred to treatment on the basis of their gender, as opposed to their sex assigned at
LGBT persons deprived of liberty, including torture and sexual abuse, is compounded by the impunity surrounding these acts. This is particularly true when state agents overseeing custody of the victims perpetrate violence against them, since the victims tend not to report these crimes out of fear of further victimization and violence.

157. During a public hearing held in October 2015, the IACHR received information about the allocation of trans women to penitentiaries depending solely on criteria related to their genitalia: “if she has a penis she will be assigned to a male detention facility, and if she has a vagina, she will be sent to a female detention facility.” The non-governmental organization Almas Cautivas A.C. indicated that both in male detention facilities, and in female detention facilities, trans women are “isolated from the general population, in spaces called “annexes” or “módulos,” arguing that it is for their safety. There, they face physical, verbal, psychological and even sexual abuse. The threats and insults by the authorities of the detention centers (security, custody and technical staff) and by the penitentiary authorities is a constant.” The IACHR considers that the decision on where to house trans persons must be made on a case-by-case basis, and that OAS Member States must undertake the measures to ensure, whenever possible, that trans persons participate in the decision related to their allocation in detention centers.

158. “I was detained 18 times because I was a sex worker... they took me from the street and told me I was disrupting public order (escándalo en la vía pública) so they would lock me up. At the beginning I was in Sector 10, which was only for gay and trans persons, but that (disappeared)... the last time I was housed in Sector 5 with men... I was also victim of abuse, several rapes... one has to have sex the “chiefs,” to those in charge, in order to survive. These acts are not denounced out of FEAR... when I entered a prison, I was treated as a man, they would use my male name, they would insult me, they would tell me “you are a man, stop with your bad habits (“mañas”). Having a trans identity is very challenging, and assuming oneself as trans comes with great responsibility... some [trans women] prefer to cut their hair short because they would rather pass as gay and not as trans women, because we are victimized the most.”

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476 Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, Human Rights of LGBT Persons Deprived of Liberty in Latin America, hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156th Period of Sessions, October 23, 2015 (free translation by the IACHR).

477 Testimony given by Ari Vera, Almas Cautivas A.C. (Mexico), during the hearing IACHR, Human Rights of LGBT Persons Deprived of Liberty in Latin America, hearing requested by the organization Association for the Prevention of Torture (APT) based in Geneva, 156th Period of Sessions, October 23, 2015.


479 Testimony by a trans woman who was formerly deprived of liberty in Guatemala. REDNADS, “Primer Diagnóstico: Necesidades de las Poblaciones LGBTI Privadas de Libertad”, June 2015, p. 65 (available in Spanish only. Free translation by the IACHR).
159. The Commission has also received troubling reports of the routine use of solitary confinement to segregate LGBT individuals for their purported “protection”. For example, in the United States, the American Civil Liberties Union (ACLU) found that “…for prisoners and detainees who are […] (LGBT), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population.” The ACLU has also indicated that depression and suicidal behavior can be “made significantly worse by forced segregation and isolation.” The IACHR has also received reports of the use of solitary confinement in immigration detention centers in the United States, such as the case of Delfino Quiroz, a gay man from Mexico who was held in solitary for four months in 2010.

160. The Inter-American Commission reiterates that solitary confinement should only be used in exceptional circumstances, for the shortest possible period of time, and only as a measure of last resort. It must be subject to strict judicial oversight and take place in cells that meet the minimum conditions according to international standards. Persons deprived of liberty in solitary confinement must undergo strict medical supervision. Subjecting prisoners to prolonged periods of time in solitary confinement, or in similar situations of deprivation of human contact, may produce irreversible physical and mental damage, and amount to inhuman or degrading treatment. Sexual orientation and gender identity should not be used as criteria in subjecting persons to unduly prolonged solitary confinement. Persons deprived of liberty must not be penalized or punished due to prejudice and discrimination based on perceived or actual sexual orientation or gender identity. Even where the intent is to protect LGBT persons deprived of liberty from other inmates, the methods used must not subject LGBT persons deprived of liberty to harmful situations such as prolonged solitary confinement.

161. The IACHR has received information on good practices being employed in some countries in the region, such as Argentina, Brazil, Colombia, El Salvador,
Guatemala, Honduras, Mexico, and the United States, among others. The IACHR was informed, for example, of certain measures that have been adopted by the Procuración Penitenciaria de la Nación of Argentina since 2008. In Colombia, a directive issued by the penitentiary authority in 2011, and several decisions of the Constitutional Court, have helped to protect the rights of LGBT persons deprived of liberty. The subject of these include trainings and sensitization programs aimed at guards and detainees regarding sexual orientation and gender identity in places of detention. In the United States, the Federal Prison Rape Elimination Act (PREA) requires prison authorities to make sexual abuse complaint procedures accessible to trans detainees, and to train guards on issues related to trans persons. The IACHR has received reports of positive developments in El Salvador, Guatemala and Mexico, in which governments and civil society organizations have jointly engaged in training prison guards and staff on treatment of LGBT persons deprived of liberty, and developing protocols for the handling of LGBT detainees. In Honduras, the bill that establishes the National Preventive Mechanism states that its personnel need to verify the existence of LGBT persons as “vulnerable groups” within the population of persons deprived of liberty. Finally, the IACHR notes that a trans person, Maria Clara de Sena, has been appointed as a member of the State Mechanism to Prevent and Combat Torture in the state of Pernambuco in Brazil. It has been reported that this appointment and the subsequent work of de Sena have further helped to protect the right to personal integrity of LGBT persons in that state.

162. States must refrain from committing acts of torture, inhuman or degrading treatment against persons deprived of liberty, including those that are motivated by prejudices related to sexual orientation or gender identity. Further, as guarantors of the rights of persons deprived of liberty, states must protect the life and personal integrity of LGBT persons, or those perceived as such, from other persons deprived of liberty. The IACHR urges OAS Member States to adopt urgent

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488 Information submitted to the IACHR by the Federal Prison Supervisory Agency [Procuración Penitenciaria de la Nación Argentina], received by the IACHR Executive Secretariat on December 20, 2013.
491 Contra Punto, LGBTI Recluidos contarán con protocolo de atención, June 23, 2015 (Available only in Spanish).
492 Ministerio de Gobernación de Guatemala, SP Comprometido con Sensibilizar Necesidades de Reclusos LGBT, February 19, 2015.
493 The IACHR was informed that the organization Almas Cautivas, A.C. has provided a series of trainings in different penitentiaries in the country, effectively training more than 300 public servants on issues pertaining to trans persons and gender identity. They have also joined forces with the UNHCR to conduct trainings for immigration detention officers who work for the “Instituto Nacional de Migración” in Mexico. April and June 2015.
494 National Prevention Mechanisms are national agencies, either standalone or incorporated in national human rights institutions, which are responsible for the prevention of torture. They are mandated by the Optional Protocol to the Convention against Torture, of which Honduras is a signatory.
496 GELEDES, “Maria Clara de Sena, transexual de PE é a 1ª do mundo a atuar no combate à tortura em prisões”, June 6, 2015 (available in Portuguese only).
and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region’s places of detention, including prisons and immigration detention centers. The IACHR urges OAS Member States to develop comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.497

163. The Commission calls on OAS Member States to restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons. The IACHR urges OAS Member States to ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not result in punishment of, deny access to benefits to, or place undue restrictions on, such LGBT persons.

164. Finally, the Inter-American Commission calls on OAS Member States to adopt measures to prevent violence against LGBT persons deprived of liberty. These measures include, among others, the following: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers.498 Caution must be exercised in collecting data on the prevalence of LGBT persons and of violence based on prejudice in places of detention, given the inherent risks of further victimization, stigmatization, and abuse.499 Finally, an important component of prevention is also the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons. This sends a clear message to the population deprived of liberty that violence against LGBT persons is not tolerated.

2. Rape and other acts of sexual violence

165. The Inter-American Court of Human Rights has defined sexual violence as any action “with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”500 The Court has established that “rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. ...[R]ape must also be understood as an act of vaginal or anal penetration, without the victim’s consent, through the

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499 The Association for the Prevention of Torture (APT) has developed a set of guidelines for conducting preventive monitoring of the situation of LGBT persons deprived of liberty around the world. In the guidelines, the APT draws special attention to the caution that is warranted when conducting interviews of, or collecting data regarding, LGBT persons deprived of liberty. APT and Penal Reform International, “LGBTI Persons Deprived of Liberty: a framework for preventive monitoring,” 2013.
use of other parts of the aggressor’s body or objects, as well as oral penetration with the virile member.” 501 Following this same line of reasoning, the IACHR, too, has observed that sexual violence takes many forms. The Court’s jurisprudence regarding sexual violence creates comprehensive, multidimensional obligations for the State to prevent, investigate, prosecute, and redress this serious human rights violation. 502

166. Lesbian, gay, bisexual, trans, and intersex persons can be particularly vulnerable to sexual violence. One of the reasons for this vulnerability stems from the fact that non-normative sexual orientations and gender identities challenge the traditionally accepted notions of sex, sexuality, and gender. Therefore, in societies where such challenges are confronted with violence, discrimination, and prejudice, sexual violence may acquire a particular significance when perpetrated against LGBT persons, as it can be used as a way to punish and debase victims for being who they are. The IACHR has also received information on rape and acts of sexual violence committed against intersex persons, since in the “social imaginary” these types of sexual abuses are part of a way to “cure intersex bodies.” 503

167. The Commission has received worrying numbers of reports of rapes committed against gay men and trans persons. These acts regularly form part of attacks that combine physical, psychological, and sexual violence, and which may lead to the murder of the victim. 504 The IACHR has also received information concerning the related stigma faced by gay men who are victims of sexual violence. 505 Forcible introduction of objects into the anus appears to be a common way of inflicting excruciating pain on victims, and is usually a part of brutal acts of violence perpetrated against gay men and trans women.

168. In the United States in 2010, a gang kidnapped and brutally raped two 17-year-old gay adolescents and a 30-year-old gay man, using a baseball bat and the wooden handle of a plunger. The act was carried out as punishment for the victims being gay and having admitted to having sex with each other. The victims were also tied and burned with cigarettes on their nipples and penises. 506 In 2007, several men in Trinidad and Tobago who were seeking sexual partners on a popular internet site fell victim to a pattern of crimes. In the worst instances they were kidnapped, tortured, robbed, gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) was able to document a number of these assaults by interviewing victims. Only one of these victims has pursued police action, and none of the rape victims who were interviewed had sought medical attention. 507 In 2013, the IACHR received

507 IACHR, Hearing on Discrimination on the base of Gender, Race and Sexual Orientation in the Americas, 133rd Period of Sessions, October 23, 2008. Video y audio no disponibles.
information about a case in Brazil in which a former alderman was viciously stabbed 106 times and was anally penetrated with the handle of a sickle.\footnote{Grupo Gay da Bahia (GGB), “Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014” (Available only in Portuguese), p. 3; UOL.com, “Ex-vereador foi morto com mais de 100 facadas e teve cabo de foice introduzido no ânus.” May 25, 2013 (available only in Portuguese).}

169. During the October 2014 visit to Colombia of the Chair of the IACHR, the Rapporteurship on the Rights of LGBTI Persons was informed of the case of a trans woman in Barranquilla who, after suffering many years of attacks and discrimination, was brutally raped by a group of four men who introduced several ants into her anus. She committed suicide shortly after the episode.\footnote{IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (Cali and Tumaco). Information provided by human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.}

170. The Commission has also received reports of acts of rape which appear to have a distinct and clear motivation: so-called “corrective rapes,” which are an extreme manifestation of prejudice against diverse sexual orientations and gender identities, and are perpetrated especially against lesbian or bisexual women. “Corrective rape” has been defined as a “hate crime in which an individual is raped because of their perceived sexual or gender orientation, with the intended consequence of the rape being to ‘correct’ the individual’s orientation or make them ‘act’ more like their gender.”\footnote{Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities, June 27, 2013.} Behind this crime lies the perverse and erroneous belief that being penetrated by a male will render the woman “normal” again. Former UN High Commissioner for Human Rights, Navi Pillay, stated that “corrective” rape commonly combines “a fundamental lack of respect for women, often amounting to misogyny, with deeply-entrenched homophobia.”\footnote{Pillay, Navi “The shocking reality of homophobic rape” in The Asian Age, June 20, 2011.}

171. The IACHR recognizes that the very concepts of “corrective rape” and “corrective sexual violence” are incoherent and deplorable, since any attempt to “correct” a fundamental aspect of a human being’s identity by violence is repugnant to human dignity and decency. The essence of these crimes is punishment for non-normative sexualities and genders. As the Inter-American Court has noted, rape is an extremely traumatic experience.\footnote{Cfr. U.N., Human Rights Commission. 50th Session. Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments. Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance to resolution 1992/32 of the Human Rights Commission. Doc. E/CN.4/1995/34 of January 12, 1995, para. 19.} It causes great physical and psychological damage that is difficult to overcome even with time, and it leaves the victim “physically and emotionally humiliated.”\footnote{Cfr. Eur.C.H.R., Case of Aydin v. Turkey (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.} The IACHR notes that this type of sexual violence ranks among the least reported types of violence against LGBT persons in the Americas. In addition to the reasons why victims are often deterred from reporting sexual violence generally, such as shame and re-victimization, the reporting of this type of sexual violence may additionally raise victims’ fears of revealing their sexual orientation.

\footnote{508}{Grupo Gay da Bahia (GGB), “Assassinato de Homossexuais (LGBT) no Brasil: Relatório 2013/2014” (Available only in Portuguese), p. 3; UOL.com, “Ex-vereador foi morto com mais de 100 facadas e teve cabo de foice introduzido no ânus.” May 25, 2013 (available only in Portuguese).}
\footnote{509}{IACHR Chair meeting with LGBTI organizations in the Colombian Caribbean (Cali and Tumaco). Information provided by human rights defender in Barranquilla. Cartagena, Colombia. October 3, 2014.}
\footnote{510}{Keren Lehavot and Tracy L. Simpson, Incorporating Lesbian and Bisexual Women into Women Veterans’ Health Priorities, June 27, 2013.}
\footnote{511}{Pillay, Navi “The shocking reality of homophobic rape” in The Asian Age, June 20, 2011.}
172. During the 2014 visit of the Chair of the IACHR to Colombia, the LGBTI Rapporteurship also received testimonies of several lesbian and bisexual women who had been raped as a punishment due to their sexual orientation. One of these testimonies stood out: “the [IACHR] delegation heard a story of a young Afro-descendant woman who, after telling her father she was a lesbian at the age of 11, was allegedly subjected to rape during a 14-year period by her father’s friends, which resulted in five children. She alleges that she was not given information on health services or access to justice. After she managed to escape, she was then raped several times at the hands of illegal armed groups, often in front of her partners, as a punishment for her sexual orientation, and has been consequently internally displaced several times.”

173. Further, several sources indicate that rape against lesbian women or those perceived as such is an issue of particular concern in Jamaica. To name a few of the reported incidents, in 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days. During this time, different religious men raped her repeatedly, day after day, in an attempt “to make her take men” and “live as God instructed.” In 2008, four more cases with similar facts were reported to local organizations. In all of these cases the women refused to report the matter to the police out of fear of further victimization. At least another three episodes of rape were reported in 2009. In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her “butch” or “manly” attire. After she was raped, the rapists cut her with a knife “so she could better take men.” A few days after that episode, a friend of the first woman was abducted in a car at knifepoint, brutally raped, and then left on the side of the road half-naked. The women refused to go to the police because of the perceived ineffectual nature of any police response. In at least one case, a foreign court has made explicit reference to the risk of rape of lesbian women when granting asylum to a Jamaican lesbian due to the risk of violence to lesbians in Jamaica.

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514 IACHR Chair meeting with the National Table of Victims affected by the Armed Conflict. Cartagena, Colombia. October 3, 2014.
521 United Kingdom Upper Tribunal Immigration and Asylum Chamber (UTIAC), SW (lesbians - HI and HT applied), UKUT-251, decision of June 24, 2011, para. 107(2).
174. The IACHR has received several reports this type of sexual violence in other OAS Member States. Organizations from Haiti have indicated that in 2012, five police officers gang-raped two lesbians and during the attack they told them: “You have never been with a man? You are not a real woman! We will make you one.” In another case in 2012, two women who were engaging in romantic behavior in a car were suddenly interrupted by four police officers on patrol. The police officers proceeded to rape the women. In Ecuador, this type of sexual violence has been reported to take place as one of the heinous methods employed in the “clinics of de-homosexualization,” which are described in more detail later in this chapter.

175. Sexual violence generates psychological and emotional suffering and scarring. Further, sexual violence may cause physical injury—including life-threatening wounds, as is the case when anal or vaginal rape is performed with large or sharp objects— and greater susceptibility to HIV infection. Taking into account that LGBT and gender non-conforming persons are at high risk of being denied medical treatment or being further victimized when seeking health care following a sexual assault, the impact of sexual assaults on LGBT and gender non-conforming persons may, in some cases, be even more serious than for other victims that do not identify as LGBT or are not perceived as such.

3. Mob attacks

176. In the past few years, the IACHR has also received information about alarming numbers of angry mob attacks, particularly in countries in the Caribbean. During the months of August and September 2013, the Commission received various accounts of attacks consisting of “large crowds barricading, throwing objects (such as stones and Molotov cocktails), or calling for lynching of gay men. At least seven of these attacks were reported in the past two months: 5 in Jamaica and 2 in Haiti.” These attacks usually start with a person or a group of persons being “singled out” as gay or trans. by passers-by in public places. Tension tends to escalate quickly and, within minutes, large numbers of people may gather around the victim or victims. Several reported cases include victims being chased while trying to escape or having bottles, stones, or other objects thrown at them. In cases


523 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre et. al, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.

524 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre et. al, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.


527 The word used may not necessarily be “gay” but instead can be local expressions such as “battyman,” “sissy boy,” “shemale,” or other offensive epithets.
where a crowd surrounds the victim, physical violence may escalate to the point of leaving the victim severely wounded or even dead.

177. In particular, the Commission has received reports of mob attacks occurring with unsettling frequency in Jamaica. The information presented indicates that a number of mob attacks against gay men or those perceived as such took place in December 2005, February 2007, March 2007, and in 2008. In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Reportedly, villagers also confronted the police when they arrived at the scene and tried to protect the three men. Another alarming case took place in 2012 at the University of Technology, Jamaica, when a student was chased by a group of male and female students through the university campus. The victim was able to reach the security office, where the mob remained screaming outside. A video shows how at least two guards slapped, kicked and punched the student in front of the crowd, while members of the mob began entering through the security office windows. A few months later, the guards were released after the student decided to drop the case.

178. Further, in 2013 there were several reports of mob attacks in Jamaica. In July 2013, Dwayne Jones, a 16-year-old transgender teen, was stabbed to death by a mob at a party in Jamaica. According to available press reports, a group of men gathered around Jones after someone had told them that Jones was trans. Jones was viciously stabbed and shot to death and then thrown into nearby bushes. Jones was reported to have suffered relentless teasing in high school for being considered “an effeminate boy,” until dropping out for good. Jones had also been expelled from her house at the age of 14 and had resorted to living on the street. One year after the murder, a local organization indicated that no arrests had been made in the case. Upon a request for information made by the IACHR, the State responded

528 See IACHR, Annual Report 2014, Chapter V: Follow-up of Recommendations issued by the IACHR in its country or thematic reports, Report on the Situation of Human Rights in Jamaica, para. 173 and ff.
536 The Jamaica Gleaner, J-FLAG Condemns Mob Killing Of Alleged MoBay Cross-Dresser, July 24, 2013; The Huffington Post Gay Voices, Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report, August 11, 2013; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
537 Human Rights Watch, Jamaica: Cross-Dressing Teenager Murdered, August 1, 2013; The New York Post, Transgender teen killed by mob in Jamaica after wearing dress to party - casts light on nation’s ‘rabid homophobia,’ August 11, 2013.
538 Quality of Citizenship Jamaica (QCJ), Press Release: Dwayne ‘Gully Queen’ Jones One Year Later, July 22, 2014; Jamaica Observer, Justice Minister condemns killing of St James cross-dresser, July 29, 2013; IACHR,
that investigations were ongoing; forensic materials had been collected, thirteen statements had been recorded, and two suspects had been interrogated and later released due to insufficient evidence for prosecution.\textsuperscript{540}

179. According to a report received by the IACHR, on August 1, 2013, in Jamaica, a crowd quickly gathered around a police patrol car and started harassing two men inside who were perceived to be gay. Police officers had to disperse the crowd using warning shots and pepper spray.\textsuperscript{541} On the very same day, the police had to be called to rescue two gay men from another irate crowd that claimed the men “were engaging in an illegal activity in a house” in St. Catherine.\textsuperscript{542} Only ten days after these incidents, the IACHR received information that, on August 10, 2013, police personnel had to rescue a trans person in St. Catherine, after an angry mob that had seen her in the community threatened to flog her.\textsuperscript{543} On August 22, 2013, another irate mob barricaded five gay men in their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety.\textsuperscript{544} Additionally, on August 26, 2013, local media reported that two men had to seek refuge when, after the men had arrived at a police station following their involvement in a motor vehicle accident, angry local residents said that the men “appeared” to be gay. Police officers had to escort the men out of the police station and away from the angry mob that had gathered outside.\textsuperscript{545} Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.\textsuperscript{546}

180. On October 2, 2013, the IACHR sent a letter to the Jamaican State asking for specific information on measures taken in response to these mob attacks, particularly regarding policies adopted to prevent future acts of violence against LGBT persons, or those perceived as such.\textsuperscript{547} The government replied in part:

> It is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.\textsuperscript{548}

\textsuperscript{539} Press Release 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.\textsuperscript{540} IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].\textsuperscript{541} Permanent Mission of Jamaica to the OAS, ref. 6/80/1, received November 12, 2013.\textsuperscript{542} On The Ground News, \textit{Residents and Police square off over Cops found in ‘compromising position’}, August 2, 2013.\textsuperscript{543} The Daily Extra, \textit{Angry crowds surround gay men in two Jamaican incidents}, August 6, 2013. See also, CVM TV (Kingston, Jamaica), \textit{CVM Newswatch}, online video, August 1, 2013 [minute 25:27].\textsuperscript{544} The Jamaica Star Online, \textit{Cops Rescue Man In Girl Clothes, Save Him From Angry Mob}, August 14, 2013.\textsuperscript{545} The Huffington Post Gay Voices, \textit{Jamaica Mob Traps And Barricades 5 Gay Men In House}, August 26, 2013.\textsuperscript{546} CVM TV (Kingston, Jamaica), \textit{News at noon, video}, [minute 5:50] August 26, 2013.\textsuperscript{547} The Jamaica Gleaner, “House Occupied By Gays Firebombed,” October 10, 2013.\textsuperscript{548} IACHR, Request for information based on Article 41 of the American Convention – Jamaica, October 2, 2013 [on file with the IACHR’s Executive Secretariat].\textsuperscript{548} Permanent Mission of Jamaica to the OAS, Ref. 6/80/1, received November 12, 2013.
181. The Inter-American Commission has received information on mob attacks in other OAS Member States, such as Belize,\(^{549}\) Haiti,\(^{550}\) and Saint Lucia.\(^{551}\) In Haiti, two men thought to be gay were beaten to death during an anti-gay march led by the Haitian Coalition of Religious and Moral Organizations (Coalition Haïtienne des organisations religieuses et morales). The march took place in July 2013, in Port-au-Prince, amidst a wave of violence against LGBT persons.\(^{552}\) Further reports indicate that, in 2011, a mob attacked two gay men living in a camp for internally displaced persons, allegedly because they were engaged in romantic activity in their tent. Attackers ripped into their tent and beat the two men while accusing them of causing the 2010 earthquake.\(^{553}\)

### E. Medical Violence against Intersex Persons

182. As indicated in chapter two of this Report, the IACHR has received reports of generalized human rights violations carried out against intersex persons because their bodies do not physically conform to socially accepted standards for “female” and “male” bodies.\(^{554}\) Intersex advocacy groups and organizations have indicated that human rights violations suffered by intersex persons are different from the human rights violations which lesbians, gays, bisexuals and trans persons typically suffer.\(^{555}\) The IACHR has been informed that specific human rights violations commonly suffered by intersex persons include: irreversible sex assignment and genital “normalizing” surgeries; involuntary sterilization; being subjected to excessive genital exams, photography and display; human experimentation; lack of access to information and medical records or history; delayed birth registration, and denial of health care services or health insurance, among others.\(^{556}\)

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550 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, pp. 1, 2.


552 IACHR, Press Release No. 54/13, IACHR Condemns Recent Wave of Violence against LGBTI Persons in Haiti, July 30, 2013; [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, p. 1; Haiti Sentinel, Haiti: Two assumed homosexuals beaten to death by protest mob, July 19, 2013.

553 [Haiti] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS,” received by the IACHR Executive Secretariat on November 25, 2013, p. 2.


556 IACHR, Hearing on Situation of Human Rights of Intersex Persons in the Americas, 147\(^{th}\) Period of Sessions, March 15, 2013. See also, Advocates for Informed Choice (Tamar-Mattis, Anne), Report to the Inter-American Commission on Human Rights, 2013, p. 2-7. See also, Council of Europe, Commissioner for Human
183. In March 2013, an intersex trans man testified before the IACHR: “[t]he 41-year-old man sitting before you right now was once, a long time ago, a 14-year-old girl who, upon being told that she was born without a vagina or a uterus, was also told that it was necessary to cut part of her intestine in order to surgically ‘create a vagina’. The purpose of that surgery was to ensure that I would grow up to become a woman who could be penetrated by a man. The failure of this procedure is obvious and after two surgeries and six years of vaginal dilations with a piece of metal called a “bougie,” what I can attest to as a consequence of that intervention is the transformation of the healthy teenager that I used to be into the man that I am—someone who survives every day the experience of having been raped repeatedly, while asleep on an operating table.”

184. The IACHR has been increasingly receiving reports of sex assignment and genital surgeries practiced without informed consent on intersex children and adults, most of which are reported to be irreversible in nature and aimed at attempting to “normalize” the appearance of the person’s genitals. The IACHR has been informed of cases documented in Argentina, Brazil, Canada, Colombia, Costa Rica, Chile, El Salvador, Mexico, United States, and Uruguay among others. Nevertheless, the IACHR has been informed that these interventions are standard practice in countries across the Americas. The Commission notes

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557 Testimony given by Mauro Cabral (Argentina) at IACHR, Hearing on Situation of Human Rights of Intersex Persons in the Americas, 147th Period of Sessions, March 15, 2013.
561 See articles by Janik Bastien-Charlebois (Université du Québec à Montréal).
562 See below, reference to a decision by the Colombian Constitutional Court.
that documentation and data around this problem is scarce, which is addressed in more depth in Chapter 6 of this Report under the obligation of States to collect data.

185. Studies brought to the attention of the IACHR show that “genital-normalizing” surgeries —i.e., interventions with cosmetic purposes— have no medical benefits, because intersex presentations of the body, in the majority of cases, pose no danger to life or health. Intersex organizations and activists refer to these surgeries as “cosmetic” because their only purpose is making bodies look like the dominant standard of what constitutes a “male” or “female” body. The “medical urgency” behind these surgeries during infancy stems from the alleged impossibility of parents, the medical community, the civil registry and society in general to accept sexual “uncertainty” because the infant cannot be easily and promptly classified as a girl or boy. These interventions are carried out because variations in sex characteristics are generally considered obstacles to leading a “normal” life, not because they themselves pose a risk to the lives of intersex persons. Indeed, organizations have reported that these surgeries are part of an attempt to prevent suffering later in life that is caused by “lack of conformity with binary sexual standards.” Given these implications, some intersex organizations and human rights defenders characterize these surgeries as culturally accepted forms of infant genital mutilation.

186. These non-medically necessary surgeries and procedures have been reported to cause intersex children and adults great harm, including —but not limited to— chronic pain, life-long trauma, genital insensitivity, sterilization and diminished or lost capacity for sexual pleasure. Reports indicate that most procedures do not consist of a single intervention, but instead involve multiple invasive surgeries (which repeatedly expose children to the inherent risks of anesthesia and surgery in infancy), recurrent use of dilation contraptions, or administration of hormones.

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570 This has been acknowledged by States. See, e.g. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 received by IACHR Executive Secretariat on December 2, 2013, p. 2.
575 IACHR, Public Hearing on Situation of Human Rights of Intersex Persons in the Americas, 147th Period of Sessions, March 15, 2013;
During these processes, intersex children are usually exposed to abusive display and repeatedly examined for training or scientific purposes, which in turn humiliates them and may cause deep psychological harm. For example, the Commission has been informed that regular vaginal dilation is often imposed on a child following vaginoplasty. This is achieved through the repeated forcing of an object into the vagina of a child, a practice which has been described as “extremely painful, highly traumatic, and comparable to sexual abuse in terms of the patient’s experience.” The UN Special Rapporteur on the right to health has described it as “a painful and high-risk procedure with no proven medical benefits.”

An intersex person testified before the IACHR: “twenty six years ago a team of medical professionals discovered that I had “XY” chromosomes and internal testes, more commonly referred to today as “partial androgen insensitivity syndrome.” Immediately after that, a surgery was scheduled to remove those internal testes, I was one then. When I was three, another surgery was performed. This time, it was to reduce the size of my clitoris, which was judged to be “half a centimeter too long.” Then, when I was eleven and entering puberty, I underwent a third surgery. This time was to construct a “more acceptable” vagina via the method called “vaginoplasty.” I was lied to and told that I had cancerous ovaries and that the doctors were saviors, and had saved me.”

Further, the IACHR was informed that these interventions are regularly carried out without the informed consent of intersex persons or that of their parents or legal guardians. In fact, the UN Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have expressed concern over the lack of informed consent for these surgeries. The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted the importance of informed consent for intersex persons. Further, he recommended that health-care providers strive to postpone non-emergency invasive and irreversible


579 UN, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, August 10, 2009, para. 49.


interventions until the patient is sufficiently mature to provide informed consent.582

189. The IACHR has been informed that medical protocols in force in several OAS Member States are still based on concepts that pathologize all intersex persons and all variations in sex characteristics and usually prescribe surgeries for “normalization” of the genitals. In some cases the consent of the patient may not even be legally required.583 For example, it is reported that legal provisions in force in some OAS Member States, which allow doctors to make urgent decisions justifying interventions in cases of medical emergency, and which override parental consent have been applied in cases of surgeries that aim at “standardizing” the genitals of intersex children.584 In other cases, doctors may consult parents but provide scarce or no information on the implications of procedures. A study conducted in the United States by the Human Rights Commission of San Francisco found that many parents choose “normalizing” medical interventions for their intersex children based on misinformation and/or coercion from doctors recommending such procedures.585 Testimony at IACHR hearings has included that of intersex persons whose parents had asked doctors to do “whatever it takes” to make the intersex persons “normal.”586

190. Moreover, a report issued by the United Nations Development Programme (UNDP) and the Office of the Ombudsman (Procuraduría para la Defensa de los Derechos Humanos) in El Salvador noted that legal provisions in the Health Code of El Salvador do not prohibit “sex assignment surgeries” on intersex children and do not require free and informed patient consent, even in cases where the children are old enough to have the capacity to accept or reject such alterations to their bodies.587 Chilean organizations have reported that in 2003, a 20-year-old man discovered through a series of medical tests that just after his birth, the doctor who had been authorized by his parents to treat an inguinal hernia had in fact removed the child’s testicles and operated on his genitals. According to the report, the parents had neither given consent to gender reassignment nor were they informed after the surgery. Activists alleged that this is not an isolated case in the Chilean

582 UN, Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, August 10, 2009, para. 46.
584 IACHR, Public Hearing on Discrimination against Trans Persons in the Americas, 153rd Period of Sessions, October 30, 2014. Activists referred to the case of Article 46 of the Costa Rican Code of Children and Adolescents (Law No. 7.739): “Article 46: Denial of consent. If parents, legal representatives or guardians refused to consent, for any given reason, the urgent hospitalization, treatment or surgery of any of their children, the medical professional will be entitled to take the necessary steps to protect their life or their physical or emotional integrity, in accordance with Article 144 of the Family Code.”
According to a researcher of intersex issues in Brazil, it is extremely rare that doctors decide not to conduct surgeries on intersex children at birth.\textsuperscript{589}

In an inter-agency statement, several international UN human rights bodies and agencies have noted that these surgeries and procedures may result in the termination of all or some of the reproductive capacity of intersex persons.\textsuperscript{590} Sex-assignment treatments often involve the removal of viable gonads or other internal and external reproductive organs, leaving intersex persons with permanent, irreversible infertility.\textsuperscript{591}

The IACHR emphasizes that forced and involuntary sterilization of intersex persons represents a serious human rights violation. Involuntary sterilization has serious implications for the physical and psychological integrity, right to reproductive autonomy, and right to self-determination of intersex persons. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics should be reviewed and modified accordingly in order to ensure that intersex persons can effectively enjoy the highest attainable standard of health and other human rights.\textsuperscript{592}

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.”\textsuperscript{593}

The IACHR notes that the principle of free, prior and informed consent is of utmost importance and must be the guiding principle in every decision made in relation to surgeries, procedures, hormone treatments, or any other medical treatment of intersex persons. The Inter-American Commission on Human Rights recommends that OAS Member States make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person. Amendments must be


\textsuperscript{589} Information provided by Paula Sandrine Machado, Public Hearing on Human Rights Situation of Intersex Persons, 147\textsuperscript{th} Period of Sessions, March 15, 2013.


\textsuperscript{592} Council of Europe, Commissioner for Human Rights, Issue paper: Human Rights and Intersex People, Silvan Agius. May 12, 2015, p. 9. Regarding the issue of “pathologization” of intersex persons, the IACHR takes note of a document prepared by intersex activists and human rights defenders from around the world in the context of the process of review and reform of the International Classification of Diseases (ICD) produced by the World Health Organization. See document entitled Intersex issues in the ICD: a revision, drafted following a consultation held in Geneva on September 8-9, 2014.

\textsuperscript{593} Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, February 1, 2013, para. 32; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, July 28, 2008, para. 47.
made to medical protocols to ensure the right to autonomy of intersex persons: intersex persons must decide for themselves whether they want to undergo surgeries, treatment or procedures.\textsuperscript{594} Considering that the majority of these medical interventions are not medically necessary and given that, in general, there is a high risk that they will cause irreversible damage to the physical and mental health of intersex persons, those interventions can only be undertaken when the intersex child can provide his or her prior, free and informed consent. Surgeries and other medical interventions that are not medically necessary must be postponed until intersex persons can decide for themselves.

195. Finally, according to information provided by human rights defenders, activists and intersex persons during the March 2013 public hearing, the Inter-American Commission on Human Rights recommends OAS Members States to (i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitization campaigns at the national level on the short-term and long-term effects of “normalizing” interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in order to bring down stereotypes, stigma and invisibility surrounding intersex persons.

\section{F. Other Forms of Violence in the provision of health services}

196. According to reports received by the IACHR, mistreatment, harassment, and even physical violence are part of the experience of LGBT persons seeking medical attention in many OAS Member States. Echoing these reports, UN human rights bodies have expressed concern over cases of mistreatment suffered by LGBT persons when trying to access health care services.\textsuperscript{595}

197. In a study carried out in the United States in 2009 by civil society organizations, almost 56\% of lesbian, gay or bisexual respondents and 70\% of transgender and gender-nonconforming respondents affirmed that they had experienced at least one of the following types of discrimination or aggression: being refused needed care; being blamed for their health status; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh

\textsuperscript{594} IACHR, Public Hearing on Human Rights Situation of Intersex Persons, 147\textsuperscript{th} Period of Sessions, March 15, 2013.

\textsuperscript{595} See e.g. [Chile] Human Rights Committee, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007, para. 16; [Costa Rica] Committee on the Elimination of Discrimination against Women, Concluding Observations: Costa Rica, CEDAW/CRI/CO/5-6, July 29, 2011, para. 40.
or abusive language; or health care professionals being physically rough or abusive.  

198. The State of Honduras even brought to the attention of the IACHR a report showing that medical professionals who are religious have been reported to mistreat LGBT patients, expressing to them that their existence is a "sin before God." For its part, the State of Paraguay acknowledged that prejudice and violence against LGBT persons in medical environments was one of the reasons why LGBT persons refrained from seeking medical assistance.  

199. Besides mistreatment, civil society organizations have reported that LGBT persons are frequently refused care or treatment based on their sexual orientation, gender identity or appearance. This refusal may take the form of overt denial or of continuous referral of the patient to other professionals. There are reports of LGBT persons who have seen their health quickly deteriorate due to denial of health care and even cases of deaths that would have been preventable had appropriate treatment been afforded. One extreme example of denial of medical treatment was the case of Robert Eads, a trans man from the United States who was diagnosed with ovarian cancer. It was reported that at least twelve medical professionals refused to treat him because they feared that "treating this case of gender variance would hurt the reputation of their medical practices."  

G. Violence related to attempts to “change” sexual orientation and gender identity  

200. The IACHR has received reports of violence against LGBT persons, or those perceived as such—especially children, adolescents and young adults—that aims at attempting to modify their sexual orientation or gender identity. The information received points to instances in which LGBT persons or those perceived as such are subjected to purported psychotherapeutic treatment, internment in "clinics" or camps, and physical abuse. Further, women are also subject to rape and other acts of sexual violence, with the purpose to punish  

596 Lambda Legal, When Health Care Isn’t Caring Lambda Legal’s: Survey on Discrimination against LGBT People and People Living with HIV, 2010, p. 10.  
597 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Paraguay, No. 1079/13/MPP/OEA dated December 26, 2013, p. 2.  
598 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013 dated November 20, 2013, received by IACHR Executive Secretariat on November 20, 2013, p. 17.  
them because of their real or perceived sexual orientation and gender identity. In a joint statement with UN independent experts and the UN Committee on the Rights of the Child, the IACHR found that ‘young LGBT persons are subjected to harmful so-called ‘therapies’ intended to ‘modify’ their orientation or identity. Such therapies are unethical, unscientific and ineffective and may be tantamount to torture.’

201. The Pan-American Health Organization (PAHO) and UN human rights experts have questioned purported psychotherapeutic treatment aimed at changing a person’s sexual orientation or gender identity, asserting that such treatments have “no medical indication and represent a severe threat to the health and human rights of the affected persons.” In this regard, PAHO has affirmed that “[b]esides the lack of medical indication, there is no scientific evidence for the effectiveness of sexual re-orientation efforts. While some persons manage to limit the expression of their sexual orientation in terms of conduct, the orientation itself generally appears as an integral personal characteristic that cannot be changed. At the same time, testimonies abound about harms to mental and physical health resulting from the repression of a person’s sexual orientation.” Moreover, some OAS Member States, as well as several professional health associations, have provisions either restricting or prohibiting these so-called “therapies.”

In this regard, see previous section of this chapter which addresses rape and other forms of sexual violence against women.


202. The IACHR has received information on the existence of centers for “treating” LGBT persons in Ecuador, Peru, the Dominican Republic, and the United States. The person under “treatment” is confined to a center, a boarding school or “clinic,” most times against their will or through deception, and subject to very strict regimes. These regimes usually include inhumane or degrading treatment and even sexual abuse as part of the “procedure” to attempt to change their sexual orientation or gender identity.

203. Since 2008, Ecuadorian civil society organizations have informed the IACHR about the existence of “clínicas de deshomosexualización.” Local organizations have reported the existence of these clinics since at least 2002, and have alleged that the State has failed to take appropriate action to close them. According to the information received by the Commission, these “clinics” are privately run but remain under the control of either the National Council for Narcotics and Psychotropic Substances (“Consejo Nacional de Estupefacientes y Sustancias Psicotrópicas,” “CONSEP”) or the Ministry of Health, or under the control of both entities simultaneously. Reports indicate that authorities failed to control the appointment of professionals in these clinics, many of whom were not health professionals but religious extremists, failed to control housing conditions, and failed to supervise the legality of procedures through which “patients” were committed to residential clinics. When organizations tried to access information on the clinics, official data from different governmental agencies showed discordant information, incomplete or defective data, and lack of awareness of reports of mistreatment filed against several “clinics.”

204. Although there have been reports about young gay men or men perceived as gay being committed to these clinics, civil society reports indicate that young


609 Advocate.com, Abuse in the Name of Christianity, October 10, 2013; Newsweek, Where American Teens were Abused in the Name of God, July 7, 2014. Information also presented in the context of a public hearing held on the human rights situation of LGBT persons in the Dominican Republic, 156th Period of Sessions, October 23, 2015.


613 Information submitted to the IACHR by “Taller de Comunicación Mujer,” dated May 10, 2011, received by the Executive Secretariat on May 24, 2011, p. 4; See also: Taller de Comunicación Mujer, “Análisis estadístico de clínicas de ‘rehabilitación’ en el Ecuador,” January 2012.

614 El Telégrafo, “El maltrato reina en centros de ‘deshomosexualismo’,” August 29, 2011 (available only in Spanish); El Universo, “Ignorancia, silencio y ceguera sociales que aún destrozan vidas,” June 27, 2011 (available only in Spanish); El Universo, “‘Me declararon incapacitada mental y me torturaron porque soy...”
women have been the main targets. Family members try to have the victim institutionalized once becoming aware of his or her sexual orientation or gender identity. Family members often deceive or even kidnap the victim; there have been cases in which victims were allegedly handcuffed or drugged so that they would not resist. It has also been reported that family members have paid considerable amounts of money to these centers.

Accounts of survivors indicate that once interned, they were: exposed to systematic verbal abuse, yelling, humiliation, and rape threats; housed in overcrowded rooms; held in isolation for long periods of time; deprived of food for several days or forced to eat unsanitary food or drink water from wells infested with dead toads, cockroaches and other insects; forced to “dress and behave like prostitutes to learn feminine behavior” and have sexual relations with other male interns by order of their “therapists”; kept in handcuffs for more than three months or chained to toilets that were being used by other persons; awakened with cold water buckets or urine being thrown on them; subjected to
electroshock therapy;\textsuperscript{626} and touched, molested and even raped by custodial personnel.\textsuperscript{627} There have also been reports of “clinics” in which victims were forced to feed livestock and operate a slaughterhouse.\textsuperscript{628}

\textbf{206.} The IACHR has received information on the existence of these centers in Ecuador over the years.\textsuperscript{629} In 2009 the UN Human Rights Committee urged the Ecuadorian State to take measures to prevent the detention of persons in these centers and to investigate and provide reparations.\textsuperscript{630} According to estimates by civil society organization, at least 361 of these “clinics” had been identified between 2005 and 2014.\textsuperscript{631}

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It is reported that Clara was waiting to go home with her parents when three men approached her, grabbed her by her hands and told her that “anything she said could be used against her.” Her mother was just behind them. Clara demanded to see an arrest warrant, but the men instead threw her into a car and tried to handcuff her. Clara’s mother approached the car and told the men not to handcuff her. During the ride, Clara realized she was being “arrested” by her own family. Her father followed the car in a taxi behind them. She was in the backseat held at gunpoint by two men, each holding one of her legs. Minutes later they arrived at the “Julio Endara” psychiatric hospital. Clara saw her father and one of the men talking to a hospital guard. She was taken to a room where a female doctor injected a sedative which made her feel numb and incapable of reacting. She was then taken to a “clinic” in Chone, in the Ecuadorian province of Manabí, where she was locked up.\textsuperscript{632}
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\textbf{208.} In 2013 the State of Ecuador informed the IACHR that its Health Ministry was addressing the closure of these “clinics” and that by 2011 approximately 30 of them had been shut down. It also indicated that electroshock therapy and administration of medication were among the procedures carried out in these

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\item El Universe, “Igno\textsuperscript{626}rac\textsuperscript{626}a, sil\textsuperscript{626}ncio y ce\textsuperscript{626}gura sociales que a\textsuperscript{626}ún destro\textsuperscript{626}zan vidas,” June 27, 2011 (Available only in Spanish); El Tiempo, “Liberan a 17 personas retenidas en cl\textsuperscript{626}nica cl\textsuperscript{626}andente en Quito,” November 8, 2013 (Available only in Spanish).
\item Fundación de Desarrollo Integral “Causana,” “Clínicas de Deshomosexualización: ¿Delito Común o Violencia Estructural?”, February 20, 2014, p. 3.
\item See e.g., IACHR, Press Release No. 23A/2013, “Annex to the Press Release issued at the close of the 147\textsuperscript{th} Session,” April 5, 2013.
\item Human Rights Committee, Concluding observations by the Human Rights Committee: Ecuador, CCPR/C/ECU/CO/5, November 4, 2009, para. 12.
\item Taller de Comunicación Mujer, “Violencia y Discriminación contra mujeres lesbianas en el Ecuador: Informe Sombra para la Convención sobre la Eliminación de Todas las Formas de Discriminación hacia Mujeres (CEDAW),” 2014, p. 5.
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The State of Ecuador created a special commission ("Comisión Técnica Interinstitucional Nacional por la lucha de los Derechos Humanos," "CTIN") to investigate clandestine centers. The membership of this commission comprises staff from the Ministry of Health, the Office of the Ombudsman, and the Attorney General's Office. Additionally, according to the information received, the Ministry of Health issued Ministerial Agreement No. 767 prohibiting the administration of any treatment aimed at "curing" sexual orientation or gender identity. The IACHR recognized the State’s efforts in this regard, and encouraged it to adopt all measures necessary to prevent the existence of these clandestine centers and to investigate them, as well as to punish those responsible.

However, civil society organizations have alleged that once a few cases had gained notoriety through the media, these “clinics” no longer advertise their “services of modification” of sexual orientation, but instead began to run their programs under the façade of rehabilitation for alcohol or drug abuse. They have also alleged that due to lack of effective State control, some of the “clinics” that had been shut down quickly reopened under different names and continued to operate freely; others received the help of informants from the Ministry who leaked information about inspections and controls.

The Inter-American Commission has been informed that most victims are extremely reluctant to come forward and officially report these brutal acts to the authorities, for a variety of reasons. In many cases, this is either because family members were involved in the abductions, or because law enforcement officials were involved in the wrongdoing and victims feared reprisals. More generally, victims are deterred by lack of protections for those who report these crimes and a pervasive perception of impunity. In many cases the perpetrators were able to obtain written "consent" from the victims, and the victims believed that the existence of these documents precluded their possibilities of seeking justice. According to information received by the Commission, at least 20 formal reports...
were filed prior to November 2013,\textsuperscript{641} and several writs of habeas corpus have been successful in releasing victims from involuntary internment.\textsuperscript{642} However, there have also been reports of undue delays in releasing victims.\textsuperscript{643} Further, in a 2013 case the CITN investigated one of the centers\textsuperscript{644} and it was reported that the owner of the clinic was a public official working for the Ministry of Health.\textsuperscript{645} According to the information received by the IACHR, the investigation finally concluded in February 2014. Three of the defendants — one of whom is reported to have fled the country in violation of court orders — were found guilty of hate crimes. All three were sentenced to ten days in prison and ordered to pay a fine.\textsuperscript{646}

211. Since these “therapies” have no medical indication and represent a severe threat to the health and human rights of the affected persons, the IACHR recommends OAS Member States to adopt measures for the regulatory entity of the state health services to guarantee effective processes of regulation and oversight of doctors and health care professionals that offer these services. In general terms, practices that harm the physical, mental and social health should not be accepted as medical therapy. Further, the IACHR recommends that OAS Member States disseminate information based on scientific and objective evidence about the negative impact that these “therapies” have on health.

212. Finally, linked to the attempts to change sexual orientation and gender identity, the Commission has been informed that sometimes attacks against LGBT persons are religiously motivated, particularly attacks targeting young gay men. For example, in Brazil, three men attacked a 19-year-old gay man. Two of the men punched the victim repeatedly while the third prayed for the victim to be saved from his “sins.” Then, one of the attackers then wrapped the victim’s arm in a cloth and set it on fire. The attackers allegedly abandoned the victim with a note in his pocket that read: “the fire of purification was set upon he who declared his bestial lover.”\textsuperscript{647} In the United States, five members of an evangelical church were charged


\textsuperscript{642} Fundación Regional de Asesoría en Derechos Humanos “INREDH,” “Análisis del Habeas Corpus: caso de privación de la libertad en clínicas o centro terapéuticos de “deshomosexualización,” p. 2; Fundación Ecuatoriana Equidad, “Informe sobre la situación de los derechos humanos de las poblaciones LGBTI (Ecuador),” 2013, p. 40.

\textsuperscript{643} Asociación Silueta X, “Acceso a la Justicia y Derechos Humanos de los TILGB en Ecuador 2010-2013,” November 2013, p. 86.


\textsuperscript{647} O Tempo, “Homossexual é agredido em ritual de ‘purificação de gays’,” September 20, 2014 (Available only in Portuguese); O Tempo, “Policia investiga motivação religiosa em agressão a gay,” September 26, 2014 (Available only in Portuguese).
with the kidnapping and assault of a young gay man. According to available information, the victim stated that the attack “was meant to rid him of homosexual demons.”

H. Hate Speech and Incitement to Violence

213. The Inter-American Commission has received information that indicates that violence against LGBTI persons in the region is fueled by the dissemination of “hate speech” targeted at this community in different contexts, including through public debate, manifestations against events organized by LGBTI persons, such as pride parades, the media and the internet. Although there is a need for further study this phenomenon, evidence shows that when crimes against LGBTI persons occur, they are frequently preceded by a context of heightened dehumanization and discrimination.

214. In a democratic society, States should protect freedom of expression while also guaranteeing equality and the safety of others. In this complex task, States are called to, on the one hand, identify and adequately respond to these incidents, with a view to effectively guaranteeing the rights to personal integrity and security of LGBTI persons. On the other hand, all measures must be respectful of the right to freedom of expression, according to Article 13 of the American Convention. Similar to Article 13.1 of the American Convention, Article IV of the American Declaration establishes that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Unlike the American Convention, this provision does not include the conditions to be met by any restriction to this right. However, the Commission has historically interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, since this instrument was first adopted, and with due regard to other rules of international law applicable to members states.

215. In recent years, several countries in the Americas have proposed legal initiatives to promote equality, sanction discrimination and prohibit “hate speech.” However, the IACHR has received information that in many cases these legislations do not meet the principle of legality. Some of the definitions are vague, which could

649 The Office of the Special Rapporteur on Freedom of Expression drafted this section of the Report.
compromise the effective enjoyment of the right to freedom of expression on issues of public interest. Hence, the growing need to ensure that measures adopted to discourage intolerance and respond to hate speech against LGBTI persons, are part of a policy aimed at promoting the right to freedom of expression of everyone, without discrimination.

216. In order to elaborate on these points, this section of the report provides an overview of the Inter-American legal framework concerning hate speech and incitement to violence. This section also identifies and analyses various non-legal measures and good practices that can contribute to prevent and counter hate speech. The overall goal of this section is to establish the basis for an understanding of the scope of hate speech and allow for the development and implementation of effective responses. This report primarily addresses the obligations of States, but additionally examines the significant role that media can play in the implementation of varied strategies to prevent and combat hate speech.

1. Freedom of expression and equality

217. Pursuant to the American Convention, all human beings are entitled to equal enjoyment and exercise of all rights, without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, birth, or any other social condition. As has been recognized by the Inter-American Court, the prohibition of discrimination due to sexual orientation should include, as protected rights, “the conduct associated with the expression of homosexuality.”652 The Commission and the Office of the Special Rapporteur for Freedom of Expression are of the opinion that this rationale also applies to the expression of one’s gender identity. The IACHR’s Office of the Special Rapporteur for Freedom of Expression has stated that Article 13 of the American Convention encompasses the right to express one’s own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.653

218. The rights to equality and freedom of expression are “mutually supportive”654 and have an “affirmative relationship,” as they make a “complementary and essential contribution to the securing and safeguarding of human dignity.”655 In this regard, the Inter-American Commission and the Inter-American Court have systematically

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reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination. This importance stems from the role of freedom of expression both in its own right and as an essential tool for the defense of all other rights, and as a core element of democracy.

219. The right to freedom of expression is key in the redress by vulnerable groups of the balance of power among the components of society. Further, this right is useful in promoting intercultural understanding and tolerance, deconstructing stereotypes, facilitating the free exchange of ideas, and offering alternative views and counterpoints. Inequality results in the exclusion of certain voices from the democratic process, undermining values of pluralism and diversity of information. The individual members of the social groups that have been traditionally marginalized and discriminated against, or that are in a situation of helplessness, are systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions, or to be informed of the issues that affect them. This process of exclusion has simultaneously deprived the rest of society of knowledge of the interests, needs, and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence. When members of vulnerable or marginalized groups are excluded from public debate, “their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalization.”

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220. According to a report examining the media in five countries in the Caribbean region, media outlets tend to completely ignore LGBTI persons and their specific issues in their coverage. When reported, matters related to LGBTI persons are frequently covered in a “sensationalized and demeaning” way. Further, according to the information received, in some of the countries included in that report, “the generalized ridicule of LGBTI persons,” in combination with threats and violence against LGBTI activists and supporters, leads to a limited pool of individuals willing to be publicly associated with promoting non-discrimination and an end to violence. According to this study, this results in the general public having a distorted view of LGBTI individuals and reinforces an erroneous belief that not many people are willing to publicly defend their rights. Moreover, the report concludes that this situation in turn “has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contributes directly to an environment that encourages discrimination and violence.”

221. In light of the above, the Commission and the Office of the Special Rapporteur for Freedom of Expression reiterate that the promotion and protection of the right to freedom of expression should coincide with efforts to combat intolerance, discrimination, hate speech, and incitement to violence. Particularly, with the promotion of proactive public policies to ensure social inclusion in the media, as a means to guarantee that LGBTI persons and communities can exercise their right to freedom of expression, without discrimination. All these efforts should be in strict conformity with international human rights law in general, and freedom of expression standards in particular.

2. Definition of Hate Speech

222. While the Inter-American System of Human Rights has developed certain specific standards, there is no universally accepted definition of “hate speech” under international law. According to a recent UNESCO report that surveyed different definitions of hate speech in international law, the concept of hate speech usually refers to “expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks.”

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663 UNESCO, Countering Online Hate Speech. 2015, pp. 10 -11.
223. In its report UNESCO states that, notwithstanding the aforementioned, the concept of hate speech does not consist of broad and abstract ideas, such as political views and ideologies, faiths, or personal beliefs. Nor is it correct to automatically label as hate speech any insult or derogatory or inflammatory expression regarding an individual. When the concept is defined vaguely, the prohibition of hate speech can be easily manipulated to encompass expressions that are deemed offensive to others, particularly those in power, leading to misapplication of the law in attempts to curb dissenting and critical speech. Further, hate speech needs to be differentiated from “hate crimes” based on expressive conducts, such as threats and sexual harassment, which are outside of the protection of the right to freedom of expression.

224. A lack of clear definition of hate speech is also evident in terms of national legislation. In this regard, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed concern about the “continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices.” These laws are characterized by vague and overbroad legal provisions prohibiting incitement to hatred, and are abused in order to censor discussions that are in the public interest.

225. As explained below, under the principles established under the inter-American human rights system, States are only mandated to prohibit hate speech in certain circumstances, this is, when the speech constitutes “incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin.” (Article 13(5) of the American Convention).

226. In other cases, even though the inter-American legal framework allows States to limit by legal measures the right to freedom of expression, under strict compliance with the requirements of legality, necessity and proportionality (Article 13(2) of the American Convention), the IACHR considers it necessary to highlight that censorship of the debate of controversial issues will not address structural inequalities and prejudice that affect LGBTI persons in the Americas. On the contrary, as a principle, instead of restricting, States must encourage more and richer debates as a means of exposing and addressing negative stereotypes.

3. Freedom of Expression and the prohibition of hate speech: Inter-American Law and Standards

227. In principle, all forms of speech are protected by the right to freedom of expression, independently of the content and the degree of government and social acceptance of the speech in question. The State has a primary duty of content-neutrality and, as a consequence, it must guarantee that there are no persons,

228. Notwithstanding this strong protection of free speech, the right to freedom of expression is not an absolute right and can be subject to limitations. Such limitations are specifically established in Articles 13(2) and 13(5) of the American Convention. First, the American Convention establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights of other persons. Article 13(2) of the American Convention prohibits prior censorship, but allows for the subsequent imposition of liability. The establishment of such limitations must be exceptional in nature, and in order to be permissible must be subject to three basic conditions, also set forth in Article 13(2) of the American Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

229. Further, Article 13(5) of the American Convention states that \textquoteleft\textquoteleft[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.	extquoteright\textquoteright The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the view that, according to general principles of treaty interpretation, \textquoteleft\textquoteleftadvocacy of hatred\textquoteright\textquoteright that is directed against individuals on the basis of their sexual orientation, gender identity, or bodily diversity, and that constitutes incitement to lawless violence or \textquoteleft\textquoteleftto any other similar action,\textquoteright\textquoteright falls within the scope of this provision and is therefore a violation of Article 13 of the American Convention.\footnote{IACHR. \textit{Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression., Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. IACHR, \textit{Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report}, para. 238.}}
230. There is a distinction between Articles 13(2) and 13(5) of the American Convention. In interpreting Article 13(5) of the American Convention, the Commission has indicated that States are required to adopt legislation to punish advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action,” while also noting the limits to these sanctions, as explained below. In contrast, as per Article 13(2) of the American Convention other intolerant expressions or comments that do not strictly amount to “incitement to violence,” could be subject to the imposition of subsequent liability to ensure the rights to dignity and non-discrimination of a particular group in society, including LGBTI persons. The International Covenant on Civil and Political Rights (ICCPR) provides a similar approach. The United Nations “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (“UN Rabat Plan of Action”), adds a third type of speech that while not punishable, raises a concern in terms of tolerance and civility. As such the UN Rabat Plan of Action establishes that it is important for States to make a clear distinction between: (i) expressions that constitute a criminal offence, (ii) expressions that are not criminally punishable but may justify a civil suit or administrative sanctions, and (iii) expressions that are not legally punishable “but still raise[e] a concern in terms of tolerance, civility and respect for the rights of others.”

231. In interpreting similar standards in the universal human rights system, the UN Special Rapporteur on minority issues, Rita Izsák, has expressed that “in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech. As experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate speech.” Indeed, several United Nations human rights bodies have highlighted that the application of criminal sanctions on hate
speech should be seen as a last resort measure to be applied only in "strictly justifiable situations,” in accordance with the requirements set out in Article 20.2 of the ICCPR.673

232. To combat hate speech, experts have suggested that “civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and other remedies should also be considered, including those identified and put in force by various professional and regulatory bodies.”674 The IACHR and its Office of the Special Rapporteur for Freedom of Expression are of the opinion that expressions that openly denigrate, stigmatize, or discriminate against a person or a group of persons on the grounds of perceived or actual sexual orientation or gender identity, but that do not reach the threshold of advocacy of hatred that incites lawless violence according to Article 13(5) of the American Convention (“hate speech”), may be subject to the imposition of subsequent sanctions of a civil or administrative nature, or to remedies such as the right of correction and reply. Notwithstanding this, the IACHR and its Office of the Special Rapporteur for Freedom of Expression highlight that such sanctions cannot be aimed at inhibiting or restricting the dissemination of information and ideas concerning issues of public interest. Further, as with any other restriction on freedom of expression, the imposition of subsequent sanctions must satisfy the requirements set forth in Article 13(2) of the American Convention and be applied by an independent state entity.

233. Negative or derogatory portrayal and other expressions that stigmatize LGBTI persons are certainly offensive and hurtful and they increase the marginalization, stigmatization, and general insecurity of LGBTI persons. However, the IACHR is of the opinion that the legal prohibition of this type of speech will not do away with the stigma, prejudice, and hatred against LGBTI persons that is deeply rooted in the societies of the Americas. In many contexts, given the structural social inequalities, discriminatory views and prejudice in public discourse cannot be eradicated through legal sanctions. As will be explained below, more should be done to promote a comprehensive approach that goes beyond legal measures and includes preventive and educational mechanisms and measures implemented by States, media, and society in general.

freedom of expression as protected by international human rights law.” The workshops resulted in the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,” a document containing a series of recommendations to States, United Nations bodies and other stakeholders on implementing the prohibition of incitement to discrimination, hostility or violence contained in Article 20 of the International Covenant on Civil and Political Rights. The Rabat Plan of Action was subsequently supported and adapted by other international bodies in the fulfillment of their mandates.


674 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, paras. 14 - 19.
234. The Commission and its Office of the Special Rapporteur for Freedom of Expression deem of particular importance that States take action to guarantee the exercise of the right to freedom of expression of LGBTI persons and to empower those affected and made invisible by hate speech. As observed by the Office of the Special Rapporteur for Freedom of Expression, “speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less.”

However, in order to enable a vigorous debate it is necessary to guarantee that members of groups affected by hate speech can fully exercise their freedom of expression, which includes fostering greater diversity and pluralism in access to the media.

235. In light of the foregoing, the Commission has stated that the imposition of sanctions under the charge of advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action” – as defined and prohibited by Article 13(5) of the American Convention – requires a high threshold. Such sanctions must be backed by truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had: (a) the clear intention of promoting lawless violence or any other similar action against LGBTI persons; and (b) the capacity to achieve this objective and create an actual risk of harm to LGBTI persons.

236. Complementary requirements or “threshold tests” have been proposed by different international bodies and civil society organizations in order to clearly differentiate between speech that constitutes “incitement to lawless violence or to any other similar action,” allowing for the separation of speech warranting the imposition of criminal sanctions from speech that is intolerant or offensive. For instance, the UN Rabat Plan of Action sets forth the following criteria that should be taken into account by legislators, prosecutors and judges when assessing expressions which are criminally prohibited: (i) the social and political context...
prevalent at the time the speech was made and disseminated; (ii) the position or status of the speaker in the society, including the individual’s or organization’s standing in the context of the audience to whom the speech is directed; (iii) the intent of the speaker; (iv) the content or form of the speech, which may include “the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed;” (v) the extent of the speech, including elements such as the reach of the speech, its public nature, magnitude and the size of its audience; and (vi) the likelihood, including imminence, that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

237. It is important to recognize that any limit on freedom of expression, especially limits that could bring serious sanctions such as prison sentences, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch and that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must be accompanied by sanctions that are proportional. In any case, as has been repeatedly held by the Inter-American Commission and the Inter-American Court, any restriction imposed on the right to freedom of expression should be established in advance, expressly, restrictively, unambiguously and clearly in law – in the formal and material sense. The restriction must also serve compelling

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679 “Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation.” Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Adopted on October 5, 2012, para. 22.

680 “Negligence and recklessness are not sufficient for an article 20 situation which requires ‘advocacy’ and ‘incitement’ rather than mere distribution or circulation. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech as well as the audience.” Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, para. 22.

681 “Further elements are whether the speech is public, what the means of dissemination are, considering whether the speech was disseminated through one single leaflet or through broadcasting in the mainstream media or internet, what was the frequency, the amount and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public.” Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, para. 22.

682 “Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless some degree of risk of resulting harm must be identified.” Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, para. 22.

objectives as set out in the American Convention, be necessary to serve the compelling objectives pursued in a democratic society, be strictly proportionate to the objective pursued, and be appropriate to serve said compelling objective.684

238. When limits on freedom of expression are established by criminal law, the Court has established that they must further satisfy the principle of strict legality. The Court has held that should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the principle of legality. The Court has indicated that this principle is understood as the requirement to use strict and unequivocal terms, clearly restricting any punishable behavior, which in turn requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”685

239. With regard to implementation of Article 20.2 of the ICCPR, the “Rabat Plan of Action” recommends that definitions of hate speech, especially of a criminal nature, incorporate robust definitions of key terms used, for example: hatred, incitement, and advocacy.686 Similarly, the Camden Principles on Freedom of Expression and Equality, developed by a civil society organization on the basis of discussions involving a group of high-level UN and other officials, as well as civil society actors and academic experts, recommend that “[n]ational legal systems should make it clear, either explicitly or through authoritative interpretation, that: (i) The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; (ii) The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group; (iii) The term ‘incitement’ refers to statements about national, racial or [religious] groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.”687

240. The IACHR and its Office of the Special Rapporteur for Freedom of Expression believe that independent “watchdog” bodies can serve an important role in identifying and reporting hateful content and promoting the application of the...
highest ethical standards. While doing so, however, they must adhere to international human rights standards. Examples of non-punitive administrative remedies employed by independent “watchdog” bodies can be found in measures recently adopted by the Ombudsperson of the Audience of Broadcasting Services in Argentina [Defensoría del Público de Servicios de Comunicación Audiovisual] to promote the right to equality and non-discrimination on broadcasting services programming.688 For instance, in December 2014 the Ombudsperson of the Audience recommended that a certain radio station adopt a code of ethics or style manual incorporating guidelines on the principle of non-discrimination that reflect progress made by national legislation in this regard. The Ombudsperson also mandated that its own legal department “process, prepare and distribute a guide on responsible press coverage of sexual diversity in the audiovisual media services.”689

241. Finally, the IACHR recognizes that other international and regional human rights instruments and treaties prohibit “promotion or incitement of hatred” with different implications for conceptualizing and defining the varied forms of hate speech. The IACHR notes the adoption in June 2013 of the Inter-American Convention against All Forms of Discrimination and Intolerance, which as of the date of release of the instant report is yet not in force690. Once this Convention enters into force, the Inter-American Commission and Court are called to, in accordance to international law principles, interpret the relationship between this Convention and the American Convention.

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For example, Article 4 of the Inter-American Convention against All Forms of Discrimination and Intolerance establishes that “[t]he states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including: i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that: a. advocate, promote, or incite hatred, discrimination, and intolerance; b. condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts; […] Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions, based on any of the criteria set forth in Article 1.1 of this Convention.” OAS General Assembly, Inter-American Convention against all Forms of Discrimination and Intolerance, adopted on June 5, 2013 at the 43rd Regular Session. Further, The International Convention on the Elimination of All Forms of Racial Discrimination obligates States to condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination” (art. 4). Further, three situations constitute offences punishable by law: (a) all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) organizations, organized and all other propaganda activities which promote and incite discrimination—which must be declared illegal and prohibited—, and participation in such organizations or activities; (c) promotion or incitement of racial discrimination by public authorities or public institutions, national or local. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly on December 21, 1965 (entered into force January 4, 1969).
4. **Hate Speech and Public Officials**

242. The Inter-American Court has established that even when official speech might not have authorized, instructed, or directly incited violence, it may often put potential victims of violence in a situation of greater vulnerability before the State and some sectors of society.\(^{691}\) The Inter-American Commission and the Court have reiterated that given the State's obligations to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored.\(^{692}\)

243. In this regard, the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding LGBTI persons.\(^{693}\) For example, the IACHR received information regarding the use of expressions of stigmatization and intolerance by the President of the Human Rights Commission of the House of Representatives in Brazil in 2013. According to the information received, he has publicly indicated that LGBT people "want to impose a gay dictatorship in the country, in order to expel God out of Brazil" and that "the putrefaction of gay feelings leads to hate, crime and rejection."\(^{694}\) Similarly, in 2013 the President of the Human Rights Commission of Congress, in Costa Rica, made a series of intolerant and discriminatory remarks regarding the congressional debate of a bill to protect LGBTI people from discrimination. He reportedly said to the press "[b]ut who is bothering them? Who is bothering them? We cannot tell who they are. If they are not 'fruity' and they do not declare themselves 'as such', in reality one does not know who they are."\(^{695}\)

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694 FELGTB. “La FELGTB denuncia la homofobia del presidente de la Comisión de Derechos Humanos de Brasil”. April 15, 2013 (Available in Spanish only); Tribuna da Bahia. “Marco Feliciano põe o projeto sobre a “cura gay” para ser votado na Câmara.” May 2, 2013 (Available in Portuguese only).

695 The original quote in Spanish: "si a ellos no se les ve el plumero y no se declaran así, en realidad uno no sabe quiénes son." Dos Manzanas. “Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas”. March 4, 2013 (Available in Spanish only); El
244. In similar terms, a Councilman in La Candelaria, Bogotá, Colombia, indicated in 2013 that LGBT people “are involved with the judges and they are perverse or perverted ... [they] sleep with 5, 20 or 30 people. They sleep with children. They sleep with girls ... because the ones who are buying children are judges of the Republic, senators and magistrates. And we have a big problem. People run for office and they do not say whether or not they are LGBTI. Gay and bisexual men are being elected, but if the voters knew what kind of people [they are], they would not vote for them. But here, people are being lied to.”\(^{696}\) Colombian civil society organizations have claimed that the Inspector General has also publicly expressed negative and demeaning views of LGBTI people. For example, the Inspector General considers same-sex relationships or couples to be “aberrations,” and equates them to bestiality.\(^{697}\) Along these lines, on August 13, 2013, a Member of the House of Representatives for the Partido Socialista Unido de Venezuela (PSUV), used homophobic slurs while in a parliamentary session, when he referred to a State governor as “maricón” [Spanish equivalent to “faggot”] and a “homosexual.”\(^{698}\)

245. Further, the Commission calls on authorities to not only refrain from disseminating hateful messages against LGBTI people but also to contribute decisively to the building of a climate of tolerance and respect in which all people, including LGBTI persons and those who defend their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.\(^{699}\)

246. Likewise, the UN Special Rapporteur on Freedom of Expression has warned that when high-level officials engage in hate speech, “they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy.” Consequently, States should “take appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials.”\(^{700}\)

247. In this regard, the UN Special Rapporteur on Freedom of Expression has noted that public officials have a special responsibility to clearly and formally denounce hate speech.\(^{701}\) Similarly, the UN Rabat Plan of Action affirms the crucial role of political
and religious leaders in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.\textsuperscript{702} For its part, the UN Committee against Racial Discrimination has found that the formal rejection of hate speech by high-level public officials and the condemnation of hateful ideas expressed can work as a preventive measure to combat incitement to violence and discrimination.\textsuperscript{703}

5. Non-legal measures to counter hate speech

248. The Commission and its Office of the Special Rapporteur for Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.\textsuperscript{704} As previously stated by the Office of the Special Rapporteur on Freedom of Expression, these types of measures strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism and tolerance.\textsuperscript{705}

249. In this context, preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice on the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

250. Education and awareness-raising measures should include the promotion of digital and media “literacy”. The IACHR and its Office of the Special Rapporteur on Freedom of Expression have stated that in order to ensure access to the internet, educational measures intended to promote the training of all users in the autonomous, independent, and responsible use of the internet and digital technologies is needed. This is because “full access to information and communications technologies, particularly the Internet, is closely related to the

\textsuperscript{702} Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. October 5, 2012, para. 24.


capacity to make effective use of these tools.”

The IACHR views as positive that in Argentina, the National Institute against Discrimination, Xenophobia and Racism (INADI, in Spanish) established the “Platform for an Internet Free of Discrimination.” The initiative aims to promote digital literacy among children, teenagers, and parents in order to guarantee that the Internet remains a space free from discriminatory violence that affects the rights of groups, communities, and individuals. The Platform provides information to enable users to identify and report discriminatory language on the web. Civil society also plays a role in addressing hate speech against LGBTI persons, through education and awareness-raising efforts. In Canada, for example, the non-profit organization Media Smarts is dedicated to the promotion of media and digital “literacy”. It launched an initiative on diversity, non-discrimination, and hate online that provides practical tools for a diverse audience of Internet users, including parents, teachers, and children, for identifying and facing hate speech.

**251.** A preventive policy should include the collection and analysis of data and information on hate speech. In most countries in the region, such data is not collected and analyzed. The goals of data collection and analysis could include the assessment of the various forms of hate speech; the perpetrators involved; the circumstances under which hate speech emerges; and the audiences reached or targeted. Other areas of assessment should include the impact of existing hate speech laws and the extent to which they comply with international norms, as well as the effects of counter-speech/counter-narrative techniques.

**252.** Another important measure is the promotion of proactive public policies for social inclusion in the media to ensure that LGBTI individuals and communities can realize their right to freedom of expression without discrimination. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to “address and redress the indirect censorship, powerlessness and/or alienation felt by many groups and individuals,” especially those that have been frequent targets of severe harassment and intimidation by both State and non-State actors, since “explicitly or implicitly, through such actions an illusion is created that only those with the requisite authority can speak on particular issues,” resulting in a culture of fear that

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707 National Institute against Discrimination, Xenophobia and Racism (INADI), “Plataforma por una Internet Libre de Discriminación”.

708 For more information visit: [www.mediasmarts.com](http://www.mediasmarts.com).


hampers public debate and violates the right to freedom of expression. 711 Therefore, States should “proactively facilitate counter-speech of individuals belonging to groups that are systematically targeted by hate speech.” 712

253. One example of good practice is the strengthening of the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community and promote awareness of LGBTI issues. Another example is the reservation of parts of the radio spectrum for community media outlets operated by LGBTI groups, together with the establishment of special procedures to assist those sectors in obtaining radio licenses. Efforts should also be made to provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and voice needs of LGBTI groups. These are examples of measures that are aimed toward generating equal opportunities and real equality in the exercise of the right to freedom of expression. 713

254. It is important to emphasize the role of media as channels of information, ideas, and opinions. This role is fundamental to the development of narratives that value diversity and condemn arbitrary discrimination. 714 In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons. 715 The Office of the Special Rapporteur for Freedom of Expression has expressed concern over the promotion by media outlets of openly discriminatory content that could incite violence against LGBTI persons, especially when those messages come from shapers of public opinion. 716

255. The IACHR welcomes a recent joint study by several civil society organizations monitoring media in five countries in the region (Belize, Grenada, Guyana, Jamaica

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According to this study, many media outlets reinforce negative stereotypes that can lead to violence against LGBTI persons, and overall, they create an “unbalanced, inaccurate and largely unflattering picture” of LGBTI persons. The study also found that stories depicting LGBTI persons engaged in positive activities, or important stories regarding policy issues or concerns about discrimination and exclusion, were largely ignored by the media.\footnote{International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia, 2015, p. 1.} Further, the study indicated that because much of the coverage consisted of depictions of LGBTI persons purportedly engaged in criminal activity, or negative depictions of LGBTI persons more generally, the coverage contributed to a heightened risk of violence against these persons.\footnote{International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia, 2015, p. 2.}

256. Coincidently, the IACHR has expressed concern over the “systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community” in 2013 and 2014 in Jamaica.\footnote{IACHR, Annual Report 2014: Follow-up to the 2012 Jamaica Report, May 7, 2015, para. 236.} For example, the IACHR noted\footnote{IACHR, Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), OEA/Ser.L/V/II.Doc. 13, March 9, 2015, para. 657.} that on March 23, 2014, the Jamaica Observer newspaper reportedly published a cartoon indicating “the invasion of Jamaica by homosexuals” [homos over run Jamaica], which was alleged to be comparable to the increase in crime and government corruption.\footnote{Maurice Tomlinson. March 23, 2014. More Anti-gay material from the Jamaica Observer. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.} On July 1, 2014, an article was published under the headline “Local churches vow to prevent homosexuality from dominating society,” which contained phrases such as “The local church community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society.”\footnote{Jamaica Observer. Local churches vow to prevent homosexuality from dominating society. July 1, 2014.} On July 13, 2014, it published the article “Police hunt gay murder suspect,” which contained statements like “The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment,” and “Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community.”\footnote{Jamaica Observer. Police hunt gay murder suspect. July 13, 2014.} On July 16, 2014, the same newspaper published an editorial entitled “Homosexuality: the long, painful search for workable rules of engagement,” apparently justifying that “[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination,” but also calling for tolerance and non-violence.\footnote{Jamaica Observer. Homosexuality: the long, painful search for workable rules of engagement. July 16, 2014.}
257. In its 2014 Report to follow-up to the 2012 Report on the human rights situation in Jamaica, the IACHR indicated that in the framework of the hearing “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica” held on October 28, 2014, the Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression received information on the constant stigmatizing and hate speech reproduced by the media regarding LGBTI persons. According to civil society organizations, State authorities have omitted promoting positive views to reduce the discrimination and stigma against LGBTI persons. The State reported that the government is aware of the debate in Jamaica on the rights of LGBTI persons and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State indicated that takes the position that these are issues covered by the right to freedom of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government’s control. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has warned that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.

258. The Commission recalls that principle 6 of the Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, inter alia, that journalistic activities must be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State. The IACHR notes that the adoption of voluntary professional codes of conduct for the media and journalists can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of media outlets furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner. Similarly, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that “media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism”. Further, that media outlets and journalists should establish “independent and self-regulatory bodies to elevate standards of journalism and to ensure the accountability of all media professionals.”

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727 In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. Cross-dressing teenager murdered in Jamaica; Huffington Post/AP. August 11, 2013. Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report. IACHR, Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report, para. 237.
259. Indeed, media should play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have suffer from historical discrimination (including LGBTI persons), and by giving members of these groups an opportunity to speak and to be heard.  

This is consistent with the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which recommend that “mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues.”

260. In sum, in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, stigmatizing, or offensive speech. Further, States should adopt legislation prohibiting any advocacy of hatred that constitutes incitement to violence or other similar action. The imposition of sanctions under the charge of advocacy of hatred – as defined in and prohibited by Article 13(5) of the American Convention – requires a high threshold. This is because, as a matter of fundamental principle, prohibition of speech must remain an exception. Restrictions on speech must be backed by actual, truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had the clear intention of promoting lawless violence or any other similar action against LGBTI persons, along with the capacity of achieving this objective and creating an actual risk of harm being committed against persons who are part of these groups. These elements should be made clear by national legal systems, either explicitly in the law or through authoritative interpretation by the judiciary. In other words, criminal sanctions should be seen as last resort measures, only to be applied in strictly justifiable situations, according to Article 13(5) of the American Convention. Civil and administrative sanctions and remedies should also be considered, along with the right of correction and the right of reply.

261. Further, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy. Consequently, States should adopt appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials. The media also plays an important role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by adopting voluntary professional codes of conduct.

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CHAPTER 5
VIOLENCE AND INTERSECTION WITH OTHER GROUPS
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262. The experiences of lesbian, gay, bisexual, trans and intersex persons of violence are very diverse. This diversity is a result of differing personal circumstances and characteristics, and in particular, the existence of certain factors that make LGBTI persons especially vulnerable to violence, or which worsen the consequences of such violence. For example, an afrodescendant trans woman who is internally displaced in a rural area and who lives in poverty would experience violence or its consequences differently from a wealthy Caucasian gay man who lives in a major city. In this chapter the IACHR summarizes some of the issues faced by persons at the intersectionality of their sexual orientation and gender identity and their ethnicity; sex; gender; migration status; age; status as a human rights defender; race; and socio-economic status. Since the focus of this Report is violence, it does not address discrimination at the intersections of these factors in general. However, it is important to note the interrelation between violence and discrimination, and how the acts of violence described in this section reflect a manifestation of underlying structural and historical forms of discrimination. These groups can suffer from a continuous cycle of violence and discrimination caused by impunity and a lack of access to justice. The IACHR acknowledges that there are other factors not addressed in this chapter that might make LGBTI persons more susceptible to violence and discrimination, such as disability, age (being elderly), being a parent, living in rural areas, and living with HIV.

A. Indigenous peoples

263. The IACHR has received limited information on the human rights situation of indigenous persons with diverse sexualities. The IACHR notes that such persons might not self-identify as LGBT, and instead might self-identify with another expression of diverse sexuality, for example Two-Spirit, or might not discuss their gender or sexual orientation in terms that easily translate to the concept of LGBT

as used in this Report.\footnote{IACHR, \textit{Public Hearing on Situation of Human Rights of Lesbian, Gay, Transexual, Bisexual and Intersex Indigenous Persons in the Americas}, 147\textsuperscript{th} Period of Sessions, March 16, 2013. Audio and video available at \url{www.iachr.org}.} During a public hearing held in March 2013, a group of experts presented information on the negative impact of colonization on the ancestral sexualities and spiritualities of indigenous peoples.\footnote{IACHR, Press Release No. 23/A, \textit{Annex to the Press Release Issued at the Close of the 147th Session}, April 5, 2013.} Indigenous organizations explain that when Europeans landed in America, they imposed their conceptions of the world and religion onto the native and indigenous peoples who lived there. Among those conceptions were European views on nudity, virginity, polygamy, and, above all, same-gender relationships and trans identities.\footnote{Fundación Diversencia, “\textit{Situación de Derechos Humanos de las Personas LGBTI y Diversidades Ancestrales en el contexto de los Pueblos Indígenas en Abya Yala}”, 2013, p. 4.} According to the information provided, colonization resulted in the suppression of non-heteronormative sexualities among indigenous peoples. This had devastating consequences, including loss of acceptance of people of non-heteronormative sexualities within their own societies, self-harm, and suicide.\footnote{IACHR, Press Release No. 23/13A, \textit{Annex to the Press Release Issued at the Close of the 147th Session}, April 5, 2013.}

264. Canadian civil society organizations have informed the Commission of the many challenges faced by Two-Spirit Canadians. In Canada, First Nations and Aboriginal Canadians who identify as Two-Spirit or LGBT face unacceptably high levels of violence and discrimination. A report recently produced by the National Aboriginal Health Organization (NAHO) indicated that LGBT and Two-Spirit Aboriginal youth are two times more likely to face assault than heterosexual Aboriginal youth. Facing homophobia, transphobia and violence in their communities, LGBT and two-spirited Aboriginal youth often have no supports or safeguards. This can lead to alcoholism, drug abuse, sex work and in some cases, suicide.\footnote{National Aboriginal Health Organization, \textit{Suicide Prevention and Two Spirited People}, [n.d.].}

265. The Commission underscores that indigenous persons with non-conforming sexual identities suffer from multiple and intersecting forms of violence and discrimination due to their indigenous identity and sexuality, sexual orientation and/or gender identity. The Commission notes how both the American Convention and the American Declaration protect the right of every person to be free from all forms of discrimination,\footnote{American Convention on Human Rights, November 11, 1969, Articles 1(1) and 24; American Declaration on the Rights and Duties of Man, 1948, Article II.} and that indigenous peoples in particular are protected from discrimination based on their ethnic background, race, national origin, traditions and customs.\footnote{IACHR, Report No. 40/04, Case 12.053, \textit{Maya Indigenous Communities of the Toledo district} (Belize), October 12, 2004, paras. 162-169; I/A Court H.R., \textit{Case of Inés Fernández Ortega v. Mexico}, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010, para. 200; I/A Court H.R., \textit{Case of Valentina Rosendo Cantú} v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, paras. 169-170.} The right of indigenous peoples to live free from all forms of discrimination is further protected under the universal system of human rights.\footnote{International Covenant on Civil and Political Rights, December 16, 1966, Articles 2(1) and 3; Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Articles 1, 2, and 3; Convention on the}
266. In this respect, the Commission considers it important to note the unique way in which indigenous persons with non-normative sexual orientations and gender identities experience the violence described above. Each indigenous community views themselves as a collective unit in which each individual views their independent spiritual and cultural survival as dependent on their continued connection with the collective identity of the community and its ancestral lands.\textsuperscript{742} The loss of that connection—whether it be through rejection by the collective community or exile from their ancestral lands—can constitute a form of spiritual and cultural violence for those indigenous persons with non-normative sexual orientations and gender identities, with the loss of identity and support leading in some cases to the incidents of suicide and self-harm described above.\textsuperscript{743}

267. Bearing this in mind, the Commission emphasizes the need for a holistic approach to address both the acts of violence as well as the underlying historical and structural causes of the violence within and outside of the indigenous communities. As part of this holistic approach, the Commission considers it important for States to conduct full, timely and impartial investigations of complaints of violence with an intercultural perspective to take into account the specific needs of indigenous persons with non-conforming gender identities. The IACHR calls on OAS Member States to include in their legislation and public policies the specific needs of indigenous peoples with diverse sexualities, and to adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexualities or gender identities. In order to evaluate the effectiveness of the measures implemented in this respect and to formulate any needed policy changes, States should collect and disseminate disaggregated statistics and information on cases of violence against these people.

\textsuperscript{742} IACHR, \textit{Missing and Murdered Indigenous Women in British Columbia, Canada}, OEA/Ser.L/V/II., Doc. 30/14, December 21, 2014, para. 117; IACHR, \textit{Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources}, OEA/Ser.L/V/II., Doc. 56/09, December 30, 2009, paras. 24-31, 37. I/A Court, \textit{Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua}, Judgment of August 31, 2001, series C, No. 79, para. 148: “(...) The indigenous by virtue of their existence have the right to live freely in their own land; the close relationship that the indigenous maintain with the land must be recognized and understood as a fundamental basis for their culture, spiritual life, their integrity and their economic survival. For indigenous communities the relationship with the land is not merely a question of possession and production but also a material and spiritual element for which they must fully enjoy, including to preserve their cultural heritage and to transmit it to future generations.”

\textsuperscript{743} IACHR, Public Hearing on \textit{Situation of Human Rights of Lesbian, Gay, Transsexual, Bisexual and Intersex Indigenous Persons in the Americas}, 147\textsuperscript{th} Period of Sessions, March 16, 2013. Audio and video available at \url{www.iachr.org}. See also, Annex report on \textit{Human Rights Situation of LGBTI Persons and Ancestral Diversity in the context of Indigenous Peoples in Abya Yala (“Situación de Derechos Humanos de las Personas LGBTI y Diversidades Ancestrales en el contexto de los Pueblos Indígenas en Abya Yala”)}, presented by the organizations to the IACHR in the context of this hearing.
B. Women

268. Under several international human rights instruments, including UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence against Women, and the Convention of Belém do Pará, States have a duty to respond to all forms of violence against women and girls with due diligence. This duty extends to protection, prevention, investigation, prosecution, punishment and provision of effective remedies, including reparations. In carrying out this duty, States must consider the varying needs of different groups of women, taking into account age, race, ethnicity, disability, sexual orientation, gender identity, and socio-economic position, among other factors.744

269. The IACHR has stated that in the case of crimes involving violence against women, States have obligations under the Convention of Belém do Pará that are in addition to, and that reinforce, the obligations contained in the American Convention and the American Declaration.745 Given the lack of visibility, the Commission has called for states to give attention to the principles and obligations contained in the Convention of Belém do Pará when addressing violence against lesbian women.746 The IACHR has also included reference to trans and lesbian women in press releases commemorating dates that have traditionally been conceptualized in terms of cisgender and heterosexual women, such as International Women’s Day (March 8, 2015)747 and the International Day for the Elimination of Violence against Women (November 25, 2014).748 In a 2015 joint visit to four countries in the Caribbean by the UN Special Rapporteur on Violence against Women and Tracy Robinson in her capacity as Rapporteur on the Rights of Women of the IACHR, the rapporteurs noted that “human rights issues affecting lesbian, bisexual and trans women were referred to continuously in meetings, including practices described as “corrective” violence.”749 Further, in interpreting the concept of violence “that occurs in the community,” which appears in Article 2(b) of the Convention of Belém do Pará, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), has established that “one expression of violence at the level of the

744 IACHR, Joint Press Release by UN and IACHR Rapporteurs, April 28, 2015. See also CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, October 2010, CEDAW/C/2010/47/GC.2, para. 18. See also, Article 9 of the Convention of Belém do Pará. The IACHR has stated that in the case of crimes involving violence against women, in addition to the obligations contained in the American Convention, the States have an obligation under the Convention of Belém do Pará.


746 In connection to this, see IACHR, Press Release No. 23A/13, “Annex to the Press Release issued at the close of the 147th Session,” April 5, 2013.


community is the generalized discrimination and violence directed against women as a result of their sexual orientation or gender identity.”  

270. The Commission considers it important to highlight the multidimensional nature of the acts of violence described in this section. Acts of violence against women, including lesbian, bisexual and trans women, are experienced by women as manifestations of the structural and historical sexism and inequality between men and women. As a result, the Commission notes how acts of violence against women can often take gender-specific forms, such as sexual violence or intrafamily violence. When examining the intersection of gender with sexuality, sexual orientation and/or gender identity, the Commission has found that such acts of violence are manifestations of the combined structural and historical sexism and prejudice towards non-normative sexual orientations and gender identities and, therefore, can take specific forms, such as rape aimed at punishing those orientations or identities, the puncturing of silicone implants, and genital mutilation, among others.

271. The Commission also finds that the context in which such acts of violence occur can also impact the way in which women experience certain acts of violence. In particular, the Commission has found that acts of rape perpetrated by agents of the State, while the women were under the control of those agents, constitute torture under the American Convention and the Inter-American Convention to Prevent and Punish Torture. Such a finding is based, in part, on the shared objective of rape and torture to intimidate, degrade, humiliate, punish and control the victim, as well as the power imbalance between agents of the State and the women victims of violence.

272. Lesbian women are at particular risk for violence because of misogyny and gender inequality in society, but there is significant underreporting of violence against lesbian women. This may be because many forms of violence experienced by lesbian women occur in private and are intersectional forms of violence. Of the 770 acts of violence against LGBT persons registered by the IACHR between January 2013 and March 2014 (lethal and non-lethal), 55 of those acts targeted lesbian women, or women perceived to be lesbians. In this regard, the Commission highlights that this low number is due to the invisibility and under-reporting.
regarding acts of violence against women, as well as the fact that most of these acts of violence occur in private settings. The IACHR has noted that lesbian women are a group largely absent from the legislation and policies adopted by States. As was examined in the previous chapter, according to data collected by the IACHR, lesbian women are victims of rape or sexual violence targeted to punish them because of their sexual orientation; collective beatings for public display of affection; attacks with acid; and forcible commitment to centers that offer to “modify” their sexual orientation.

According to information gathered by the IACHR, lesbian women are “disproportionately affected by violence exerted by their family members.” For example, in Ecuador a man shot his wife in her back and neck, saying that he did this because he thought she was a lesbian. The woman survived but was left permanently disabled and in charge of her five children. In Chile, a young lesbian woman was repeatedly physically attacked and stabbed by the male relatives of her ex-girlfriend. In Peru, a woman tried to defend her girlfriend from an attack by her brother that was prompted by their same-sex relationship. As a result she suffered machete wounds on her face, head and neck. According to the organization that provided her legal representation, she received discriminatory treatment at the hands of a state forensics officer (medicina legal), including repeated abusive questioning about her sex life and the statement that because she was “butch,” her son would be a “faggot.” Lesbian women are also punished for rejecting men’s sexual advances.

The IACHR has received troubling information on the high levels of violence experienced by bisexual women, when compared to both lesbian and heterosexual women. According to data from the 2010 U.S. National Intimate Partner and Sexual Violence Survey (NISVS) that concerns rape and other sexual violence committed by any perpetrator (which can be an intimate partner, acquaintance, family member, stranger, or person of authority), bisexual women suffer a significantly
higher lifetime prevalence of such violence when compared to both lesbian and heterosexual women. Its was reported that 61.1% of bisexual women had, at least one time in their lives, been victims of rape, physical violence and/or stalking by an intimate partner, compared to 43.8% for lesbians and 35% for heterosexual women.

275. Since the beginning of the establishment of the LGBTI Unit at the IACHR, the Inter-American Commission has monitored and expressed concern about violence against trans persons in the Americas. Numerous studies and reports by international agencies, civil society organizations, state authorities, activists, and academia, have focused on how pervasive violence, prejudice and discrimination in society at large and within the family hinder trans women’s possibilities to access education, health care services, shelter, and the formal labor market. In turn, homelessness and exclusion from education and the formal labor market makes trans women more susceptible to be subjected to diverse forms of violence. Violence against trans persons, particularly trans women, is the result of a combination of factors: exclusion, discrimination and violence within the family, schools, and society at large; lack of recognition of their gender identity;

Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.
Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America, received by the Executive Secretariat on April 8, 2014, p. 2.
To access the IACHR’s press releases and chapters of annual, country and thematic reports on the subject, visit www.iachr.org (Rapporteurship on the Rights of LGBTI persons).
involvement in occupations that puts them at a higher risk for violence; and high criminalization.\textsuperscript{771}

276. Some Latin American organizations report that the average life expectancy of trans women in the region is as low as 35 years of age, or even less.\textsuperscript{772} In this regard, the IACHR has noted that while it seems that gay men of all ages are targeted, in the case of trans women, it is mostly younger trans women who are victims of violence. The IACHR has expressed concern about the young age of trans victims of killings and other acts of violence. According to the data collected, 80\% of trans persons killed were 35 years of age or younger.\textsuperscript{773}

277. The IACHR has received reports of certain specific acts of violence that are present in many cases of attacks against trans women. These include: beatings targeted at the breasts; the puncturing of silicone breast implants; and genital mutilation, including even post-mortem castration.\textsuperscript{774} There have also been reports of trans women being killed after the perpetrator found out they were trans.\textsuperscript{775}

\begin{footnotes}
\item[775] For example, Diamond Williams, an African American transgender woman, was killed in July 2013 in Philadelphia, United States, allegedly after her attacker found out that she was trans. Her body was dismembered and found scattered across the city. NBC, \textit{Loved ones celebrate life of Slain transgender woman}, July 23, 2013. Further, the IACHR received information about the death of Cristóforo F., a trans person who was allegedly asphyxiated in Mexico City on September 6, 2013 (IACHR, \textit{Registry of Violence, of murders and other acts of severe violence against LGBT persons January 2013 to March 2014}), (in Spanish only). See also Regional Meeting of LGBTI Activists from CARICOM, \textit{The Unnatural Connexion: Creating Social Conflict through Legal Tools, Laws Criminalizing Same-Sex Sexual Behaviors and Identities and Their Human Rights Impact in Caribbean Countries}, 2010, Report submitted to the IACHR in November 2010, p. 30.
\end{footnotes}
278. Trans women are often attacked or killed by armed groups, including armed
groups performing neighborhood security duties, as well as illegal groups such as
gangs. For example, in 2009, in Peru, a trans woman sex worker named Techi
Paredes was shaved bald and told to jump like a frog while being beaten with clubs
by members of neighborhood councils. It was reported that one of the neighbors
leading the attack declared: “[w]e are giving them exemplary punishment and we
are determined to eradicate them.”

Also in 2009, a group of residents in a
neighborhood of the City of Buenos Aires, Argentina, is reported to have
distributed flyers advocating the “elimination” of trans women from the
neighborhood. This group referred to themselves as “an anonymous group who
decided to go to war with these men dressed as women.” Trans women in the area
reported suffering attacks with eggs, stones and bottles. In Guatemala there are
local security groups known as Juntas Locales de Seguridad, who are believed to
have been involved in the killings of three trans women in July 2011.

279. The IACHR has also received information that LGBT persons, particularly trans
women, are more vulnerable to violence by illegal armed groups and organized
crime in Central America. A regional organization reports that violence inflicted
on trans women by maras and gangs in Guatemala, Honduras and El Salvador is
particularly serious. Regarding El Salvador, the IACHR indicated in June 2015
that “[i]n the context of countries with high levels of insecurity and organized
crime, it is particularly important for States to adopt a differentiated approach to
guarantee the rights to life and integrity of LGBTI persons and defenders of human
rights of LGBTI persons, who, as informed, are particularly vulnerable to violence
by armed groups.” The IACHR has also extensively documented violence by
armed groups against trans women in Colombia, particularly those living outside
of Bogota, in areas affected by the armed conflict.

280. The IACHR has received consistent reports showing that trans women who are sex
workers are particularly vulnerable to community violence, including killings by

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776 Red Peruana de Trans, Lesbianas Gays y Bisexuales & Centro de Promoción y Defensa de los Derechos
Sexuales y Reproductivos (PROMSEX), “Informe Anual sobre Derechos Humanos de personas Trans,
Lesbianas, Gays y Bisexuales en el Perú 2009”, 2010, pp. 57, 58, 98; International Gay and Lesbian Human
Rights Commission (IGLHRC), Latin American Trans Women Living in Extreme Poverty, June 2009, p. 8;
only in French).

777 Clarín, “Villa Luro: un grupo de vecinos, en pie de guerra contra travestis,” March 28, 2009 (Available only in
Spanish); Página 12, “Un arma habla más que mil palabras,” March 26, 2009 (Available only in Spanish);
Infobae, “Un volante llama a “echar a tiros” a los travestis de Villa Luro,” March 26, 2009 (Available only in
Spanish).

778 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women

779 IACHR, Public Hearing on Forced Migration and Persecution of LGBT Defenders in Central America. 154th

780 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women

781 IACHR, Press release No. 063/15, IACHR Condemns Killing of Human Rights Defender of Trans Persons in El
Salvador, June 8, 2015.

782 IACHR, Truth, Justice and Reparation: Colombia, 2013. See also, Report of the Special Rapporteur on
to information received also concerning Mexico and Brazil).
groups, or even their own clients. Due to discrimination in the labor market and other adverse impacts, sex work is for many trans women a means for survival, with some even engaging in sex work in their early teens. One estimate indicates that 90\% of trans women in the Americas engage in sex work,\textsuperscript{783} while estimates for some individual countries are even higher: between 94\% and 95\% in Peru and Chile, respectively.\textsuperscript{784}

281. Among sex workers, trans women are the group most frequently targeted for persecution and violence both by law enforcement agents and by community members.\textsuperscript{785} They often work in unsafe areas at night. Further, they may face the additional risk of being attacked by a client who is initially unaware of their trans identity and who harbors strong prejudice against trans women. In a public hearing held in 2013, the IACHR was informed by civil society organizations that three trans women who were sex workers were kidnapped and killed in El Salvador, amidst a worrying rise in the murder rate of LGBT persons in that country.\textsuperscript{786}

282. The IACHR emphasizes that States have the obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans, and intersex women, as per the Belém do Pará Convention. The Commission highlights that the right of every woman to be free from violence, including lesbian, bisexual trans and intersex women, includes the right to be free from discrimination. This includes the right to be valued and to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination.\textsuperscript{787} In this sense, OAS Member States have the obligation to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such


\textsuperscript{784} REDLACTRANS et al., \textit{The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 25, fn. 82.


\textsuperscript{787} Article 6, Convention of Belém do Pará.
patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.\textsuperscript{788}

283. The Commission highlights the importance of transformative reparations in this respect, whereby the decisions issued by the IACHR and the Inter-American Court go beyond mere restitution in cases of violence against women in order to address the underlying context of structural and historical discrimination and inequality.

284. Finally, the IACHR urges all OAS Member States to specifically include lesbian, bisexual, trans, and intersex women in their legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence. Further, the IACHR urges OAS Member States to disaggregate data related to violence against women, by sexual orientation, gender identity, and bodily diversity (as it relates to intersex persons). In this regard, the IACHR recalls that access to information is closely tied to the attainment of other human rights and is a pre-requisite for demanding and exercising those rights.\textsuperscript{789} Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against women and formulating any needed public policy changes.\textsuperscript{790}

\section*{C. Persons in the Context of Human Mobility}

285. The IACHR has affirmed that persons in the context of human mobility, such as migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, and internally displaced persons, among others, are vulnerable to human rights violations.\textsuperscript{791} The IACHR has confirmed how the structural vulnerability of migrants is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or other social condition.\textsuperscript{792} Within this group, LGBT persons are extremely vulnerable to violence and discrimination. In many cases, the discrimination and violence faced by LGBT persons due to their sexual orientation and gender identity is what forces them to migrate. This may then lead to forms of discrimination against these persons in countries of transit and destination.

\textsuperscript{788} Article 8.b, Convention of Belém do Pará.
\textsuperscript{790} IACHR, \textit{Access to Justice for Women Victims of Violence in the Americas}, January 20, 2007, para. 42.
In many parts of the world, including in countries in the Americas, LGBT persons experience serious human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity.\textsuperscript{793} For example, during the March 2015 period of sessions, the IACHR received reports of threats and various forms of persecution that result in the forced migration of lesbian, gay, bisexual, and trans persons from Honduras, Guatemala, El Salvador, and Nicaragua. Reportedly, Costa Rica is one of the destination countries. The petitioners indicated that international frameworks on asylum do not take into account the specific circumstances of LGBT persons, and that the requirements and level of evidence required for refugee or asylum seekers are often unachievable for LGBT persons. This results in LGBT persons being unable to receive effective international protection. Further, LGBT persons are more vulnerable to extortion and violence on the part of organized crime. The petitioners in that hearing informed the IACHR that many LGBT persons arrive to countries in perilous circumstances and, as a result of their irregular migration status,\textsuperscript{794} are forced to live in hiding. The petitioners also indicated that policies related to LGBT asylum seekers and refugees in destination countries are often inadequate and inaccessible.\textsuperscript{795}

The IACHR has also received information regarding trans persons who engage in sex work outside their countries of origin, and the violence to which they are subjected at the intersection of gender identity and migration. For example, according to information that was documented by a civil society organization, on the night of December 23, 2014, in Suriname, six trans women sex workers who were nationals of Guyana and Trinidad and Tobago were approached by police for the purposes of a “passport check.” Further, they were reportedly forced to sign documents that they could not understand, because the documents were not available in English. During their detention they were allegedly subjected to inhuman and degrading treatment, including physical and verbal abuse related to their gender identity and gender expression. It was also reported that the prosecutor refused to speak at a reasonable pace in order for the interpreter to be able to adequately translate for them. Finally, it is also alleged that prison officials encouraged other inmates to assault the trans women during their detention, and

\textsuperscript{793} UNCHR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 1. The Commission notes that there is a high number of persons applying for refugee status, originating from countries in the Americas, in particular from the Caribbean. See, e.g., Washington Post, \textit{Jamaica’s gays finding refuge by applying for U.S. asylum}, article by Shankar Vedantam, February 11, 2011.

\textsuperscript{794} The IACHR will use the expression “migrant in an irregular situation” to refer to those migrants who have entered the territory of a State of which they are not nationals without the necessary documentation or have stayed past the time that they were authorized to stay in any of the OAS Member States. The Commission recommends that OAS Member States avoid the use of expressions “illegal” and “illegal migrant” to refer to migrants whose immigration status is irregular. The use of the expressions “illegal” and “illegal migrant” reinforces the criminalization of migrants and the false and negative stereotype that migrants are criminals for the simple fact of being in an irregular situation.

that they were forced to perform sex work in prison in order to access food, water, and toilet facilities.\textsuperscript{796}

\textbf{288.} Refugee claims based on sexual orientation and/or gender identity are most commonly analyzed under the grounds of “membership of a particular social group” under the five grounds for persecution established in the 1951 Refugee Convention.\textsuperscript{797} Amongst the barriers to legal protection for LGBT refugees is the difficulty of successfully undergoing an interview with an adjudicator. This is due to the reality that most LGBT refugees or asylum seekers “do not feel safe to narrate their experiences truthfully or fully during their refugee status determination.”\textsuperscript{798} LGBT refugees’ experiences “have taught them that they need to hide to survive. Speaking openly with strangers about their lives can feel shameful and dangerous.”\textsuperscript{799}

\textbf{289.} In the context of migration, in the last decade the persecution of people because of their sexual orientation and gender identity has led to an increasing number of asylum applications submitted by LGBTI persons.\textsuperscript{800} In response to this situation, UNHCR published a Guidance Note in 2008 and a Guideline in 2012, which serve as guides in addressing this issue. In the Guidance Note, UNHCR noted that:

LGBT individuals may be subjected by State authorities, their families or communities to physical, sexual and verbal abuse and discrimination, because of who they are or who they are perceived to be. This might be because of prevailing cultural and social norms, which result in intolerance and prejudice, or because of national laws, which reflect these attitudes. Where such acts of abuse and discrimination go unpunished and/or where LGBT orientation is criminalized, such individuals may, if they seek asylum on these grounds, fall within the refugee definition of the 1951 Convention relating to the Status of Refugees.\textsuperscript{801}

\textbf{290.} Further, the 2012 Guidelines include recommendations for adjudicating the refugee status of LGBT applicants, which include the recommendation that adjudicators not rely on stereotypical assumptions of LGBT persons. Some examples of these stereotypical assumptions include: that all gay men are effeminate; that if a lesbian woman or gay man has previously been in different sex

\begin{itemize}
\item \textsuperscript{796} SASOD (Guyana), \textit{Documentation on Transgender Sex Workers detained in Suriname}, received by the IACHR Executive Secretariat on July 14, 2015.
\item \textsuperscript{797} UNCHR, \textit{Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees}, HCR/GIP/12/01, October 23, 2012, para. 40.
\item \textsuperscript{798} ORAM, \textit{Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders}, February 2013, p. 12.
\item \textsuperscript{799} ORAM, \textit{Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders}, February 2013, p. 11.
\item \textsuperscript{800} IACHR, Press release No. 68/14, \textit{World Refugee Day: IACHR Emphasizes the Importance of the Right to Seek and Receive Asylum}, June 20, 2014.
\item \textsuperscript{801} UN High Commissioner for Refugees (UNHCR), \textit{Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity}, November 21, 2008, para. 3.
\end{itemize}
relationship, including marriage and having children, that he or she is not truly gay or lesbian; that bisexual persons must be attracted to both sexes at the same time or an equal attraction to both men and women, among others.\(^{802}\) Further, it is important to note that not all trans persons choose medical treatment or other steps to modify their physical appearance, and as such, it is important for decision-makers to avoid overemphasis on gender affirming surgeries.\(^{803}\) Past persecution is not a prerequisite to refugee status; instead, a well-founded fear of persecution, based on the assessment of the predicament that the applicant would face if returned to the country of origin, could be sufficient.\(^{804}\)

291. Articles 22(7) and 22(8) of the American Convention establish the right to seek and receive asylum\(^{805}\) and the non-refoulement principle,\(^{806}\) respectively. As noted elsewhere in this Report, the IACHR has held that the American Convention is a living instrument which must be interpreted according to current times and evolving conditions. The Inter-American Court has also established that Article 1(1) of the American Convention, concerning States’ obligations to respect and guarantee human rights without discrimination, includes sexual orientation and gender identity in “any other social condition.”\(^{807}\) In this regard, the IACHR hereby establishes that States have an obligation not to return refugees to places where their life or personal freedom would be in danger on account of their actual or perceived sexual orientation and/or gender identity.\(^{808}\) The Commission highlights

\(^{802}\) UNCHR, Guideline on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, para. 10.


\(^{804}\) UNCHR, Guideline on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, October 23, 2012, paras. 18, 32 and ff, citing a 2008 case from the United States and a 2012 case from Australia.

\(^{805}\) Article 22.7 of the American Convention establishes “[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”

\(^{806}\) Article 22.8 of the American Convention establishes “[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his [her] country of origin, if in that country his [her] right to life or personal freedom is in danger of being violated because of his [her] race, nationality, religion, social status, or political opinions.”


\(^{808}\) See related, OHCHR, Report: Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 2015, para. 12. The IACHR notes in this regard the Yogyakarta Principles, particularly Principle 23 on the right to seek asylum (“Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.” In this regard, “States shall: a) Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum; b) Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or...
that OAS Member States have granted refugee status to persons facing persecution due to sexual orientation and gender identity, including Argentina,\textsuperscript{809} Canada,\textsuperscript{810} Costa Rica,\textsuperscript{811} and the United States,\textsuperscript{812} among others.

292. Additionally, the IACHR has received troubling information on the human rights violations faced by LGBT asylum seekers in some countries in the region, including high rates of sexual violence and abuse experienced by trans persons in immigration detention centers. According to the information received regarding immigration detention centers in the United States, for example, although only one of every 500 detainees held in an Immigration and Customs Enforcement (ICE) facility is transgender, one of every five victims of confirmed sexual abuse in detention is transgender.\textsuperscript{813}

293. The Commission has expressed its concern over the repeated acts of violence and discrimination that LGBTI people, or those perceived as such, may face when deprived of freedom in the region, whether in prisons, detention cells, or police lock-ups and immigration detention centers. According to the information received, in several countries trans women are automatically housed with the general male population in immigration detention centers.\textsuperscript{814} The IACHR has held that the decision on where to house trans persons should be done on a case-by-case basis, with due respect to their personal dignity, and whenever possible, with prior consultation of the person concerned.

294. The IACHR heard the story of Nicoll Hernandez Polanco, a 24-year-old trans woman from Guatemala who sought asylum in the United States and who was repeatedly sexually abused and placed in solitary confinement in an all-male detention facility in Florence, Arizona.\textsuperscript{815} The IACHR has also heard of abuses faced by LGBT migrants in Mexico. According to the reports received, on October 22, 2013, Mexican immigration officials near the Guatemalan border in Tapachula, Chiapas, took an LGBT rights advocate from El Salvador into custody when he tried to cross the border.

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\textsuperscript{809} Minutouno.com, “Argentina refugió a un homosexual que escapó de Rusia por homofobia,” October 20, 2014 (Available only in Spanish).


\textsuperscript{812} The Advocate, “Guatemalan Trans Woman released after harrowing six months in immigration detention,” May 4, 2015.
to apply for asylum. According to his testimony he was not allowed to bathe, and he was forced to sleep on damp floors. Custodial staff demanded sexual favors from him in exchange for better food. Organizations working with LGBT migrants in Mexico indicate that trans persons who are seeking asylum are also vulnerable to this type of abuse and violence during detention. In this regard, the IACHR has held that States need to adopt urgent and effective measures to guarantee the life, personal security and integrity, and human dignity of LGBT persons, or those perceived as such, in the region’s places of detention, including in immigration detention centers.

295. A letter addressed to U.S. President Barack Obama, signed by more than 100 organizations in the United States in December 2014 referred to the case of Johanna, a transgender woman from El Salvador. The petitioners said that she left for the United States after she was gang-raped. “After living in the U.S. for twelve years, Johanna was apprehended by ICE and placed in an all-male detention facility. While in the facility, Johanna was beaten and sexually assaulted by another detained immigrant. Unable to bear the conditions of her detention, she elected to self-deport. Life in El Salvador quickly became too dangerous for her and she attempted to return to the U.S. She crossed the border illegally and was apprehended by the Border Patrol. After being sentenced for illegal reentry, Johanna was sent to an all-male federal prison and was held in solitary confinement for seven months before being deported back to El Salvador for a second time. Upon her arrival at the airport in San Salvador, she was kidnapped and gang-raped. When Johanna reported the crime to the police, they refused to help her and suggested that the men should have killed her. Soon after this, she fled to the U.S. for a third time and was once again arrested by Border Patrol for illegal reentry. She was sentenced and imprisoned for four and a half months in federal prison. Afterward, she was transferred to an all-male ICE detention center where she was held for six months. Johanna was ultimately granted withholding from removal due to the severe violence and persecution she experienced in El Salvador.”

296. The IACHR has also received troubling information concerning LGBT persons who are internally displaced. During a visit by Rapporteur Tracy Robinson, and then Chair of the IACHR to Colombia in October 2014, the delegation received reports on the situation of forced displacement of LGBT persons, particularly in areas of the country most affected by the presence of armed groups. These included accounts of acts by paramilitaries and armed illegal groups who specifically target LGBT persons due to their sexual orientation, gender identity, and gender expression. In fact, in its Country Report on Colombia, the IACHR indicated that

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816 Washington Blade, LGBT Migrants face abuse, discrimination in Mexico, October 30, 2014.
818 Letter signed by more than 100 civil society and community based organizations in the United States and the region addressed to President Barack Obama, signed December 16, 2014. See also, Upworthy, “They put her in solitary confinement for 7 months. Before that, she was in a prison full of men,” November 19, 2014.
819 IACHR, Press Release No. 118/14, IACHR Chair concludes visit to Colombia, October 10, 2014.
since 2007 there have been reports from various sources about specific methods of intimidation and death threats —usually targeting LGBT persons explicitly— which take place in the context of the armed conflict. These methods primarily involve the distribution of pamphlets. Pamphlets are posted in public spaces or distributed among the residents of a certain city or village, announcing that the persons listed in the pamphlet will be killed if they fail to abandon their place of residence within a certain —usually very short— period of time. It is reported that criminal bands (bacrims) or armed groups are responsible for distributing the pamphlets. These groups claim that they are implementing measures of “social cleansing.” The pamphlets refer to LGBT persons as “faggots” or “homosexuals and lesbians who degenerate morals and give a bad example to children.” In this regard, at least 49 pamphlet campaigns targeting LGBT persons were reported between 2007 and 2014.

The IACHR also notes with concern the difficulties and obstacles trans persons face in travelling and exercising their right to freedom of movement. Several trans women who are human rights defenders and activists, and who were scheduled to participate in public hearings before the IACHR in October 2013, and the OAS General Assembly in June 2015, had difficulties obtaining, or were unable to obtain, a timely visa for travel to the United States. The IACHR notes that although there are legitimate reasons for a State to deny granting a visa, there is a risk of indirect discrimination in policies and procedures which might disproportionately disadvantage trans persons, given, for example, the high criminalization of trans persons and trans women. In November 2013, the IACHR pointed out that these violations of the human right to freedom of movement have the effect of hampering access to places, such as the Commission, where victims can denounce the very human rights violations they have suffered. The discriminatory treatment that many trans women and trans persons receive when they attempt to cross national borders plays a central role in limiting their movement. These restrictions on movement heighten the socially entrenched association between gender non-conformity and danger. In exercising their power to regulate their borders, the IACHR calls on OAS Member States to have very close regard to the key importance of travel to the work of trans human rights defenders and broadening the respect for the human rights of trans persons. Secondly, since past discrimination may make many trans persons, on the face of it, seem to be less

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823 IACHR, Hearing on Reports of Violence against LGBTI persons in the Colombian Caribbean, 153rd Period of Sessions, October 27, 2014.
worthy or qualified for visas, the IACHR calls on OAS Member States to carefully review those applications to avoid the risk of indirect discrimination.

298. Finally, the IACHR has received limited but troubling information on the vulnerability of LGBT persons to become victims of human trafficking. Trans women who lack social and political protections may want to flee their home countries, and if they do not have the means to move on their own, they become easy targets for traffickers who seek to profit from and prey on their desperation.827

299. There is limited information on the extent of this problem for LGBT persons, but cases have been identified in the United States and Argentina. In 2013, civil society organizations in Argentina identified traffickers who promised transgender women job opportunities in Western Europe, but instead confiscated their passports and forced them into prostitution.828 Another report indicates that LGBT youth are particularly vulnerable to sex trafficking in Bolivia.829 The Commission recognizes the efforts conducted by countries such as the United States in gathering data on LGBT persons who are victims of trafficking.830

300. Bias and prejudice towards LGBT persons also severely hinder proper identification and access to justice for LGBT persons who are victims of human trafficking.831 The IACHR recommends that OAS Member States conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims of human trafficking.832 This training should be developed in consultation with LGBT organizations and support groups.833

829 US Department of State, Office to monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014.
830 For example, it has been reported that as part of the 2013-2017 Federal Strategic Action Plan on Services for Victims of Trafficking in the United States, agencies in this country have made a commitment to gathering information on the needs of LGBT victims of human trafficking. US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, The Vulnerability of LGBT individuals to Human Trafficking.
831 US Department of State, Office to monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, The Vulnerability of LGBT individuals to Human Trafficking.
832 In this regard, see US Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2014, The Vulnerability of LGBT individuals to Human Trafficking.
D. **Children and Adolescents**

301. Children\(^{304}\) and adolescents who are lesbian, gay, bisexual, transgender, or intersex,\(^{305}\) or who are seen as such, face stigmatization, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of female or male.\(^{306}\) According to UNICEF, the range of this discrimination and violence includes: isolation from peers at school, at home, or in the community; marginalization and exclusion from essential services like education and health care; abandonment by family and community; bullying and intimidation; and physical and sexual violence, including “corrective” rape.\(^{837}\) In the previous chapter, the Commission also made reference to the situation of violence against children and adolescents in centers that attempt to “modify” their sexual orientation and/or gender identity. In this regard, the IACHR has affirmed that children and adolescents constitute a group in society who are often defenseless in the face of the injustices committed against them,\(^{838}\) and the Inter-American Court has indicated that human rights violations in which children and adolescents are the victims are particularly serious.\(^{839}\)

302. Article 19 of the American Convention establishes that every child has the right to protection by virtue of being a minor, and this creates duties on the part of the child’s family, society, and State. States have the obligation to respect and guarantee this right (Article 19) with respect to children, and to do so without discrimination, including on the basis of sexual orientation and gender identity, per Article 1(1).\(^{840}\) Similarly, Article VII of the American Declaration affirms that every child has the right to special care and protection.

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\(^{304}\) According to the Inter-American Court of Human Rights, following the UN Convention on the Rights of the Child, the term “child” refers to any person who has not yet turned 18 years of age. I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42.

\(^{305}\) Violence against intersex children is addressed in the specific section of the Report concerning intersex persons.


\(^{840}\) As indicated in this Report, in the case of Karen Atala v. Chile, the I/A Court of Human Rights has indicated that sexual orientation and gender identity are prohibited grounds of discrimination to be interpreted under the non-discrimination obligation established in Article 1(1) of the American Convention. I/A Court H.R., *Case of Atala Rifo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24,2012. Series C No. 239.
303. Respect for the rights of the child entails offering care and protection to children, as well as recognizing, respecting and guaranteeing the individual personality of the child as a holder of rights and obligations.\textsuperscript{841} Because of their emotional and physical development, children require special measures of protection.\textsuperscript{842} According to the Inter-American Commission, that sphere of special protection is dictated by the special conditions of the child as rights bearer, which include the child's vulnerability, dependence on adults in order to exercise certain rights, maturity, growth and development, and general lack of awareness of his or her human rights and of the means by which to demand observance of those rights.\textsuperscript{843}

304. The Commission has affirmed that in order to determine States' obligations with respect to children, the American Convention is to be interpreted in light of the provisions of the UN Convention on the Rights of the Child and other UN declarations on the subject.\textsuperscript{844} as well as decisions by the UN Committee on the Rights of the Child.\textsuperscript{845} The UN Committee on the Rights of the Child has stated that any interpretation of the principle of the "best interests of the child" must be compatible with the Convention on the Rights of the Child, including the obligation to protect children from all forms of violence.\textsuperscript{846} The principle of the best of interests of the child implies that “children’s development and full enjoyment of their rights must be considered the guiding principles to establish and apply provisions pertaining to all aspects of children’s lives.”\textsuperscript{847}

305. The UN Committee on the Rights of the Child has indicated that LGBT children are among those who are most vulnerable to violence,\textsuperscript{848} and the Special Representative to the UN Secretary-General on violence against children has stated that all children should be protected from all forms of violence regardless of their sexual orientation or other status.\textsuperscript{849} Further, the UN Committee on the Rights of the Child has affirmed that sexual orientation and gender identity are prohibited


\textsuperscript{842} I/A Court H.R., Case of Servellón García et al., Judgment of September 21, 2006. Series C No. 152, para.133.


\textsuperscript{848} Committee on the Rights of the Child, General Comment No. 13: The rights of the child to freedom from all forms of violence, CRC/GC/2011/13, April 18, 2011.

\textsuperscript{849} United Nations, Human Rights Council, Annual report of the Special Representative to the Secretary-General on violence against children, A/HRC/19/64, January 13, 2012.
grounds of discrimination under Article 2 of the UN Convention on the Rights of the Child.

306. According to the information received by the Inter-American Commission, violence against LGBT children most commonly manifests itself within the family and in schools (both public and private). Thus, this chapter will focus on violence against children and adolescents who are LGBT, or who are perceived as such, in those two environments.

307. States are obliged to protect all people under their jurisdiction. This obligation is with regard not only to the State’s own exercise of power, but also to the actions of private parties insofar as the State is obliged to take measures to prevent and respond to these acts. According to the Inter-American Court, there is no room for deference to individuals acting in the private sphere, particularly regarding the full respect for the human rights of children and adolescents.

308. Under international human rights law, States must oversee the provision of services that are in the public interest, such as health or education, when those services are rendered by private entities. As such, States have the special duty to protect the life and personal integrity of persons through regulating and supervising these services, regardless of whether the entity giving them is public or private, since “under the American Convention international liability comprises the acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them.” The IACHR has further established that this obligation of supervision is “of fundamental importance when the services being supervised are those provided by public or private institutions charged with the protection, safekeeping, care and education of children.”

309. Accepting, articulating and expressing one’s sexual orientation and/or gender identity is a highly personal process, which can arise at different points in life depending on the person. Further, this process may differ from the outward and

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850 UN Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, April 17, 2013, para. 8.
open manifestation of the person’s sexual orientation or gender identity within the family or community.

310. As in the case of adults, LGBT children may be targeted either because they have publicly assumed their sexual orientation or their gender identity, or simply because they are perceived to defy traditional standards of masculinity or femininity. In other words, children suffer from discrimination and marginalization based on their gender expression, even before they have become fully aware of their sexuality or identity. In this regard, a study conducted with the cooperation of UNESCO and UNDP in three OAS Member States indicated that, for example, often harassment occurs when a boy is perceived to be feminine or does not outwardly conform to masculine stereotypes.856

311. The IACHR has received troubling reports of violent attacks perpetrated by parents, siblings, or other relatives against LGBT children, or those perceived as such, in countries across the Americas. Familial violence against LGBT persons is a constant issue. This includes persons being denied schooling opportunities, subjected to sexual violence, expelled from the home, and/or physically and psychologically abused.857

312. Children are often expelled from their homes after disclosing their sexual orientation to their parents.858 As was explained in a joint statement by the IACHR, the UN Committee on the Rights of the Child, and other international experts, LGBT children (and young people) too often face rejection by their families and communities who disapprove of their sexual orientation or gender identity, which can result in high rates of homelessness, social exclusion, and poverty.859

313. Extreme examples of this include: a mother torturing and killing her 4-year-old son because she perceived him to be gay;860 a father brutally attacking and humiliating his 16-year-old son, tying the child’s feet to a pickup truck and threatening to drag

857 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the organization Colectivo Entre Tránsitos et. al. (Colombia), received by the IACHR Executive Secretariat on November 25, 2013, p. 14. See also Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Defensores de Derechos Humanos por la Universidad Nacional Autónoma de México (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 6.
860 [United States] Oregon Live, Jessica Dutro murder trial: Jury sees Facebook message with gay slur referring to 4-year-old, March 28, 2014; Jessica Dutro murder trial: Motive for Tigard killing was 4-year-old’s perceived homosexuality, prosecutors say, March 27, 2014.
him down the street because of his sexual orientation; a sister continuously humiliating and attacking her 15 year old brother, including throwing urine on him, because he was gay (aggressions which eventually lead to the boy’s suicide); a father setting his son on fire because he discovered he was gay and was living with HIV; and a brother brutally attacking his brother and threatening to kill him because he was gay.

314. In Haiti, for example, the IACHR was informed of the case of a young man who, when he came out to his family, was attacked with a machete and beaten by his brother. When he went to the police, they told him that his brother was right to beat him if he was gay. Allegedly the police then declined to record his complaint and investigate. In Guyana a civil society organization was contacted when a father threw his gay 13-year old boy out of his home and threatened to kill him. The Child Care and Protection Agency (CCPA) intervened and placed the child with his grandmother. The father was able to continue the abuse and harassment; there was no effective legal intervention in this case.

315. The Commission has also received reports of cases in which parents or other family members exert physical violence against children because they perceive them as, lesbian, gay, bisexual, or gender non-conforming, with the intent of “correcting” the children, a brutal method referred to as “beating the gay out/away.” As examined in the previous chapter, brutal methods to “eradicate” same-sex attraction may also include sexual violence. For example, in 2014, a U.S.-based organization announced that it was providing legal aid to a “conversion therapy” survivor who alleges that “shortly after coming out in 1996, his parents turned to the local church, which ran a school it promised could “cure” him and “stop him from being gay.” According to the victim, a teacher began subjecting him to weekly “counseling” sessions in which he regularly raped the teenager to convince him that being gay was more painful than suppressing his sexual orientation.

861 [Brazil] UOL Notícias, “Pai é indiciado por torturar filho gay e ameaçar arrastá-lo pela rua em Três Lagos (MS),” August 2, 2013 (Available only in Portuguese); Correio do Estado, “Pai é indiciado por torturar e ameaçar filho gay,” August 1, 2013 (Available only in Portuguese).
865 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, Cuny School of Law, SEROVie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.
867 Huffington Post, Mary Gowans, North Carolina Mother, Allegedly Instructed Son To ‘Beat The Gay’ Out Of Older Brother, August 28, 2013; Gay Star News, Ohio man sentenced to 2½ years for trying to beat the gay out of disabled brother, April 15, 2014.
868 National Center for Lesbian Rights (NCLR), NCLR Representing Conversion Therapy Survivor who Alleges Sexual Abuse by School Leader After Coming Out, August 27, 2014.
316. With respect to family violence against children who are lesbian, gay, bisexual and trans or perceived as such, the IACHR wishes to highlight that the adoption of special measures to protect children is a responsibility of the State and of the family, community, and society to which the children belong. As such, the State, society, and family “must prevent and avoid, by every means possible, any form of violence against children, in every realm and by any method.” Further, according to the Inter-American Court, there must be a fair balance between the interests of the individual and those of the community, as well as between the interests of children and those of their parents. Further, the authority of the family does not entitle it to exercise arbitrary control over a child where such exercise of control could pose a threat to the child’s health or development.

317. School bullying is a specific type of violence that takes place in educational environments. A review issued by UNESCO in 2012 indicated that bullying is characterized by a set of key features, namely: the intention of the perpetrator to cause harm or fear; the systematic nature of the violence; its repetition over time; power imbalance between the victim and the bully; and resulting harm. The UN Human Rights Committee has expressed concern about reports of discrimination against LGBT persons in the education system and the UN Secretary General in 2011 affirmed that bullying based on sexual orientation or gender identity is a grave violation of human rights.

318. Children who are LGBT or are perceived as such suffer higher levels of victimization as a group and are exposed to greater risk of being bullied than other children at school. In fact, various studies from the Americas indicate that school bullying based on sexual orientation or gender identity or expression is a cause for grave concern in the hemisphere. States such as Honduras and the United States have acknowledged this problem.

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875 UN News Centre, Homophobic bullying represents grave violation of human rights – Ban, December 8, 2011
319. In Canada, a report showed that almost 40% of trans students and 20% of lesbian, gay or bisexual students reported having being physically harassed or assaulted because of their real or perceived sexual orientation or gender identity. One gruesome case involved teens on a school bus trying to stuff batteries down the throat of a young boy because he was a figure skater; who had committed suicide due to the bullying he faced. In Chile, a survey showed that educational environments rank among the most common places where discrimination and violence against LGBT persons are found present.

320. In the United States, a 2011 report indicated that nearly half of trans students (44%) said that they had been punched, kicked, or injured with a weapon on at least one occasion in the previous year. Also in the United States, there have been several lawsuits in which acts of bullying based on sexual orientation escalated to acts of brutal violence against the victims, mainly because milder manifestations of violence or discrimination were either ignored or not taken seriously by school and district authorities. These cases involved relentless teasing, name-calling, and verbal abuse which escalated to more severe attacks, including: repeated molestation or touching of the victim’s genitals while the perpetrators hurled derogatory epithets; dragging the victim behind a pickup truck with a lasso around the victim’s neck; punching, kicking, and throwing the victim into a urinal; spraying water and dumping hot melted cheese on the victim’s head; urination and mock rape; throwing bottles and pushing the
victim down the stairs;\textsuperscript{888} continuously shoving the victim into lockers and spiting on the victim;\textsuperscript{889} and continuous harassment culminating in a sexual assault in the school locker-room;\textsuperscript{890} among others.

321. In a joint statement issued by the IACHR, the UN Committee on the Rights of the Child, and independent human rights experts, these agencies affirmed, “LGBT children are often bullied by classmates and teachers, resulting in some students dropping out. They may even be refused school admission or expelled on the basis of their actual or perceived sexual orientation or gender identity.”\textsuperscript{891}

322. The Inter-American Commission was informed that in many OAS Member States, school bullying based on sexual orientation or gender identity or expression can be so severe that it is one of the main reasons behind school absenteeism and dropout rates of lesbian, gay, bisexual, and trans students. This problem has been acknowledged by state agencies\textsuperscript{892} and has been extensively documented by organizations across the Americas. For instance, the State of Argentina informed the IACHR that a local survey estimated that 64% of trans women had been unable to finish their primary studies. The survey reported that 84% had been unable to attain a high school diploma.\textsuperscript{893} These worrying levels of school non-completion were consistent with the same survey indicating that 91% of trans women had been victims of violence.\textsuperscript{894}

323. Several organizations have highlighted that teachers and school authorities are often either indifferent toward or unable to effectively address school bullying based on sexual orientation or gender identity.\textsuperscript{895} Civil society organizations even report the existence of school bylaws that expressly discriminate against students.

\textsuperscript{887} Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996); The New York Times, “\textit{Suit Says Schools Failed To Protect a Gay Student},” March 29, 1996.
\textsuperscript{888} Waddington v. Holmdel Township Board of Education; Lambda Legal, “\textit{Lambda Legal Files Lawsuit on Behalf of Lesbian Student Who Left Holmdel High School in New Jersey Fearing for Her Safety},” September 7, 2005.
\textsuperscript{889} Donovan and Ramelli v. Poway Unified School District Decision; Lambda Legal, \textit{California Court of Appeals Upholds $300,000 Award to Bullied Pair of Gay and Lesbian High School Students}, October 10, 2008.
\textsuperscript{890} Patterson v. Hudson Area Schools, 551 F.3d 438, 448–49 (6th Cir. 2009).
\textsuperscript{893} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.
\textsuperscript{894} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Argentina, Note 96357/2013, dated November 29, 2013, received by IACHR Executive Secretariat on December 13, 2013, p. 16.
based on their sexual orientation and gender identity, as well as cases of students being expelled from schools for being gay, lesbian, bisexual, or trans. For instance, in a case reported in Peru, the headmaster of the school publicly announced that she would “initiate an investigation” to find out if two male students were in a relationship, in order to have them expelled from the institution to “preserve the school’s prestige and reputation.” Other sources indicate that teachers and school authorities themselves may be perpetrators of bullying against LGBT children. These serious human rights violations stigmatize LGBT persons, justify the violence in the minds of potential perpetrators, and foster further acts of bullying and violence towards LGBT children or those perceived as such.

The Inter-American Commission notes that bullying may severely hinder numerous rights, such as the right to education, the right to freedom of expression, and the right to equality and non-discrimination. Above all, bullying may cripple the psychological wellbeing and mental health of the victim. Severe and persistent bullying has led LGBT children to commit suicide. UNICEF notes, “there is robust


evidence to suggest that LGBT children and youth who are exposed to discrimination are more likely to consider or attempt suicide than their peers.”

325. The IACHR has condemned acts of intimidation or harassment in education environments based on a person’s sexual orientation, gender identity or gender expression.902 If bullying is tolerated, a strong social message is sent to LGBT persons that the open expression of their orientations or identities is not accepted. The corollary of this message is the promotion of anti-LGBT feelings among children and teachers, the fostering of bullying and discrimination, and the reinforcement of stigma and feelings of shame and inferiority among LGBT persons.903 The UN Committee on the Rights of the Child has affirmed that it is crucial to react appropriately and prevent bullying, and to ensure that the measures chosen against bullying do not exacerbate violence by taking a punitive approach that uses violence against violence.904

326. The Commission has also noted that prejudice and social stigma can be particularly harmful to LGBT children.905 According to UNICEF, States must address “social norms and practices that discriminate and marginalize children and adults based on real or perceived sexual orientation and gender identity.”906 States must ensure that their education policies are specially designed to modify social and cultural patterns of conduct, to counteract prejudices and customs, and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence based on prejudice.907

327. The IACHR has held that in meeting their international obligations vis-à-vis the protection of children, States must ensure that the exercise of rights by parents, guardians, and other persons responsible for the care and education of children and adolescents does not mean that the rights of those children and adolescents are not given the protection required.908 As such, States are obliged to adopt all positive measures required to ensure the protection of children against mistreatment, whether in their relationships with public authorities or in relationships among individuals or with non-governmental entities.909

[References]

901 UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 3.
904 Committee on the Rights of the Child, General comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC/13, para. 27.
909 I/A Court H.R., Resolution of January 27, 2009, in response to the Request for an Advisory Opinion submitted by the Inter-American Commission on Human Rights, citing: I/A Court H.R., Juridical Status and Human
328. Sexual and gender-based violence against students is facilitated by the State’s failure to enact and implement laws and policies that provide students with explicit protection from discrimination and violence.\textsuperscript{910} In the developments of these laws (and public policies), States must ensure that children “have their voices and viewpoints heard and are able to participate fully and meaningfully.”\textsuperscript{911} In a 2014 position paper, UNICEF stated that non-discriminatory legislation, a change in social norms, and greater awareness and access to knowledge on the issue of sexual orientation and gender identity are essential components of an enabling environment to protect LGBT children from discrimination and support the realization of their rights.\textsuperscript{912}

329. Finally, the IACHR has affirmed that “States are obliged to create effective mechanisms for preventing and punishing acts of violence against children and adolescents, both at home and in the educational system, as well as in other areas of social life where such threats may arise. Consequently, it is clear that the Member States are under the obligation of adopting strict oversight programs to monitor the situation of children and of taking the steps necessary to uphold the rights of children, particularly those that are victims of violence.”\textsuperscript{913} Further, the Inter-American Court has highlighted that the obligation enshrined in Article 2 of the American Convention demands that States eliminate any norms and practices that in any way violate the guarantees provided under the Convention, and enact legislation and develop practices that are conducive to effective observance of those guarantees.\textsuperscript{914}

330. The IACHR calls on OAS Member States to fulfill their obligations to respect, guarantee, and adopt measures at the domestic level to fully guarantee the rights of LGBT children, or those perceived as such, to a life that is free from discrimination and violence, both within the family and school. These measures include: eradication from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities; oversight and control of school regulations which discriminate against LGBT students; comprehensive policies to prevent, investigate and sanction violence against LGBT children, regardless of where it takes place; special measures aimed at documenting and producing data related to violence against children based on perceived or actual sexual orientation and gender identity; the establishment of effective complaint mechanisms regarding, and the investigation with due diligence of, instances of violence against LGBT children whether in the

\textsuperscript{911}UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 4.
\textsuperscript{912}UNICEF, Position Paper No. 9: Eliminating Discrimination and Violence against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, p. 3.
home or school; the training of state institutions that are charged with overseeing the well-being of children so that they are able to identify abuse and violence related to sexual orientation and gender identity against children in the home and provide appropriate measures to protect them for such violence; and adoption of public awareness campaigns featuring LGBT children and diversity in families so as to promote respect and acceptance of this diversity; among other measures.

E. Human Rights Defenders

331. The IACHR reiterates that the work of human rights defenders915 is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracy. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.916 The IACHR understands that the exercise of the right to defend human rights implies the possibility of freely and effectively promoting and defending any right the acceptance of which is unquestioned,917 as well as any new rights or components of rights which is still a matter of debate.918

332. In this regard, the Commission recalls that States should continue or initiate dialogue processes with LGBTI human rights defenders, with the aim of learning about the problems they face and facilitate their active participation in the adoption of public policies.919 These spaces for dialogue should be established in accordance with the rights of freedom of assembly and freedom of association as guaranteed in Article XXI of the American Declaration and Article 15 of the American Convention, as well as other international instruments.920 It is through the rights of freedom of assembly and freedom of association that LGBTI human rights defenders can fully participate in the political and social life of their respective countries.921
333. The IACHR has stated that members of organizations that promote and defend the rights of LGBTI persons play a fundamental role in the region. This role manifests itself both in terms of public oversight — to ensure compliance with the States’ obligations — and, in general, in the process of furthering equality for LGBTI persons.922 Since 2009, OAS Member States have committed, through six General Assembly Resolutions, to ensuring adequate protection for LGBTI human rights defenders.923 In this section of the Report, the IACHR highlights some of the main obstacles that LGBTI defenders face in the Americas, discusses cases of killings and attacks on human rights defenders in various countries in the region, and examines the impact of these factors on the defense and promotion of the rights of LGBTI persons.

334. Human rights defenders who are advocating for the rights of LGBTI individuals face serious challenges in carrying out their work, including threats, attacks, and criminalization of their activities.924 Special Procedures of the UN Human Rights Council have noted that LGBTI human rights defenders face great risks because their work “challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups.”925 The UN Special Rapporteur on Torture has indicated that human rights groups and individuals who are active on issues of sexuality, sexual orientation, and gender identity, are often very vulnerable to prejudice, marginalization, and public repudiation, not only by State forces but also by other social actors.926 The UN Special Rapporteur on Human Rights Defenders has expressed concern over continuing smear campaigns and violent threats against LGBTI human rights defenders.927 The IACHR has received reports of acts of violence and hateful graffiti.

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that target LGBT organizations, as well as death threats sent via text messages to these human rights leaders.

335. In this respect, the Commission observes that LGBT human rights defenders are more vulnerable to violence due to three factors. As this Report indicates, in the case of defenders who identify as LGBT, they are already vulnerable because of their sexuality, sexual orientation and/or gender identity. In addition, the IACHR underscores that human rights defenders who work to protect and promote the human rights of LGBT persons experience additional forms of vulnerability to violence because of their role as human rights defenders and because of the specific causes that they champion. Human rights defenders who both identify as LGBT and who work to protect and promote the human rights of LGBT persons, experience alarming levels of vulnerability created by the intersection of their sexual orientation and gender identity, role as defenders and issues on which they work.

336. Among the most vulnerable to violence are trans women who are human rights defenders and who also engage in sex work. A regional report on the situation of trans women human rights defenders carried out by the Network of Trans Persons from Latin America (REDLACTRANS) pointed to a link between sex work, on the one hand, and activism regarding HIV and human rights, on the other hand. Trans women in Latin America, especially those who engage in sex work, usually feel particularly concerned about HIV. This concern about HIV is often how trans women first come into contact with trans human rights organizations, because of the work such organizations do in the areas of HIV prevention and access to HIV programs. One trans human rights defender in San Pedro Sula, Honduras, said that the police knew her because of her activism, and when she was spotted at night, she was arrested and subject to police abuse for “no reason.” Another trans human rights defender in Cali, Colombia, stated that the police “constantly ask us for identification when we’re working on the street, despite the fact that they know about our defense work or participate in cross-agency meetings with us. For them it’s as if we stop being defenders when we are on the streets.” According to REDLACTRANS, combining both activities clearly puts trans human rights defenders in a more vulnerable position because, although violence against them can happen anywhere and at any time of the day, the fact that they engage in sex

928 See e.g., Emol, “Movilh denuncia atentado homofóbico contra sede: Frontis fue rayado con fuertes epítetos,” May 19, 2014 (Available only in Spanish).
929 For example, since March 2014, an organization called Grupo Matizes in Piauí, Brazil, started received death threats through text messages. Further, the IACHR Rapporteur on the Rights of LGBTI Persons was informed in October 2014 by several LGBT and lesbian human rights leaders in Colombia that they received death threats via text messages.
932 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 27.
933 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 27.
934 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 27.
935 REDLACTRANS et al., The Night is Another Country, Impunity and violence against transgender women human rights defenders in Latin America, 2012, p. 28.
work at night and on the street gives the police greater opportunities "to take action against them with impunity."936

337. In 2011, the IACHR noted with concern an increase in the number of acts of aggression, harassment, threats, and campaigns to discredit waged by State and non-State actors alike against persons who defend the rights of LGBTI persons, compared to 2006, when the IACHR issued its first regional report on the situation of human rights defenders in the Americas.937 Among the problems faced by LGBTI human rights defenders in particular, is that their work is not necessarily recognized as legitimate. This heightens the atmosphere of hostility toward, and condemnation of, the activities of these organizations.938

338. The IACHR has also received troubling information about acts of verbal and physical violence committed against LGBT human rights defenders by other groups in the context of the 45th OAS General Assembly in 2015.939 Further, on June 2, 2014, various social commentators and activists for the rights of LGBTI persons alleged that they were attacked by security agents during a demonstration in front of the building where the 44th General Assembly of the OAS was taking place in Asuncion, Paraguay.940

339. The IACHR has affirmed that attacks on the lives of human rights defenders have a multiplier effect, which goes beyond the victim in question. When an assault is committed in reprisal for a defender's actions, it produces a chilling effect on those connected to the defense and promotion of human rights, which directly diminishes the possibilities of carrying out this activity.941 The IACHR has reiterated that the killing of a LGBTI human rights defender, as for any human rights defender, instills fear both among those who defend and promote rights and those whose rights are promoted and defended, which serves to perpetuate the violations committed against vulnerable groups and their advocates.942 The Inter-American Court has indicated that the fear caused by such violence "can directly reduce the possibility of human rights defenders exercising their right to perform their work."943 Organizations have stressed that killings of LGBT leaders have proved to be powerful deterrents of the activities of defenders in the region.944 This fear is exacerbated by the impunity which such attacks usually enjoy; an


939 Information sent by the Coalition of LGBTTTI Organizations working within the framework of the OAS, June 2015 (on file with the IACHR Executive Secretariat).


impunity that only serves to perpetuate such human rights violations.\textsuperscript{945} The IACHR has observed that when human rights defenders bring cases to court, especially ones related to attacks or killings of LGBT persons, the threats against them intensify.\textsuperscript{946}

340. Moreover, the attacks on the lives of human rights defenders also have society-wide consequences. The Commission notes that the same fear that discourages other human rights defenders also sends “an intimidating message to society as a whole, putting it in a defenseless situation.”\textsuperscript{947} The chilling effect reaches the individual people and discourages victims from filing denunciations, claims and grievances for human rights violations, reinforcing the impunity that perpetuates the violence.\textsuperscript{948}

341. Regarding killings of LGBT human rights defenders, the IACHR has identified that there are serious problems with their investigation, mainly because many attacks against LGBT human rights defenders take place within a generalized context of violence against persons with non-normative sexual orientations and gender identities. This makes it difficult to ascertain whether the killing was committed because of his or her work defending human rights, or because of his or her sexual orientation or gender identity. The failure on the part of the authorities to conduct a diligent and exhaustive investigation, which considers all relevant theories of the crime and thus establishes whether or not the motive for the crime was the victim’s promotion and defense of human rights, or his or her sexual orientation and gender identity, remains a serious problem.\textsuperscript{949}

342. During the last years, the Commission has granted eleven precautionary measures to protect defenders of LGBTI persons in Belize,\textsuperscript{950} Honduras,\textsuperscript{951} Jamaica,\textsuperscript{952} Mexico,\textsuperscript{953} and Guatemala.\textsuperscript{954} In February 2014, the Commission issued a press release expressing its concern about the worrying number of attacks against LGBTI organizations and their members that took place between October 2013 and

\textsuperscript{945} IACHR, Press Release No. 23/14, \textit{IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas}, February 27, 2014.


\textsuperscript{950} IACHR, \textit{Precautionary Measure 155/13: Caleb Orozco}, Belize, granted on May 29, 2013.

\textsuperscript{951} IACHR, \textit{Precautionary Measure 457/13: Members of “Asociación para una Vida Mejor de Honduras” (APUVIMEH)}, Honduras, granted on February 22, 2014; IACHR, \textit{Precautionary Measure 18/10: Indyra Mendoza Aguilar et al.}, Honduras, granted on January 29, 2010; \textit{Precautionary Measure 196/09 Amplification of Precautionary Measures}, Honduras; \textit{Precautionary Measure 210/08 Marlon Cardoza and other members of the CEPRES Association}; IACHR, \textit{Precautionary Measure 621/03: Elkyn Johalby Suárez Mejía and Members of the Comunidad Gay Sampedrana}, Honduras, granted on September 4, 2003. See summaries of these precautionary measures at \url{www.iachr.org}.


\textsuperscript{953} IACHR, \textit{Precautionary Measure 222/09: Agustín Humberto Estrada Negrete y otras}, Mexico, granted on April 7, 2010.

\textsuperscript{954} IACHR, \textit{Precautionary Measure 3/06: Kevin Josué Alegria Robles and members of OASIS}, Guatemala.
January 2014 in the Americas, making reference to serious incidents in Haiti, Honduras, Nicaragua, Chile, and Peru.955

343. With respect to Brazil, the IACHR was informed of the June 21, 2009 killing of Gabriel Henrique Furquim,956 a member of the Dignity Group for the Defense of the Rights of Gay Persons and of the Brazilian Association of Gays, Lesbians, Bisexuals and Trans Persons,957 and the November 23, 2010 murder in Jacareí of Iranilson Nunes Da Silva, a member of the organization Revida.958 In June 2014, the IACHR was informed that a group called “Irmandade Homofóbica” had issued serious threats against LGBT human rights defenders in the state of Piauí, Brazil, through pamphlets, text messages, and messages through social media sites. The IACHR sent a letter to the State of Brazil on July 9, 2014 requesting information on the measures adopted to investigate threats against Marinalva de Santana Ribeiro, a lesbian human rights defender and founder of the LGBT organization Grupo Matizes in Teresina, Piauí. The State of Brazil responded to the request and noted the measures adopted to investigate the threats, as well as the State’s inclusion of de Santana Ribeiro in the national program for the protection of human rights defenders, in order to protect her from the attempted violence and provide her with psychological treatment.959

344. Regarding Colombia, the IACHR has regularly received information regarding killings of LGBT human rights defenders in various parts of the country. In 2009, a trans woman960 and a gay man961 were killed. Both had been LGBT human rights defenders who had publicly denounced instances of violence, including police abuse. In 2010, four lesbian leaders were killed within days of each other in the region of Antioquia962 and Medellin,963 as was a gay political leader in Córdoba.964
In 2011, a trans leader was killed in Pasto after receiving numerous death threats. Further, the IACHR received information about the killing on July 23, 2013 of Wizy Romero, a 21-year-old trans woman known because of her leadership of the LGBTI movement in Barranquilla. Additionally, Guillermo Garzón Andrade, founder of Somos Opción LGBT, was murdered in November 2014. His body was found gagged and with signs of brutal wounds inflicted with a bladed weapon.

At the conclusion of her visit to Colombia in October 2014, Commissioner Tracy Robinson noted having received information regarding threats by armed groups against LGBT persons, defenders, and activists, including through text messages and pamphlets. Further, she expressed concern about claims that the domestic mechanisms of protection are not effective in safeguarding the lives and personal integrity of LGBT community leaders and activists who do not fall under the established definition of “defenders.” According to civil society organizations, armed groups specifically target LGBT persons and LGBT human rights defenders. The IACHR was also troubled by information regarding the impact of violence perpetrated by armed actors against LGBT rights defenders and leaders, in particular trans women leaders, in the Caribbean region of Colombia. For example, the IACHR received information that between 2011 and 2014, six trans women were murdered in La Guajira and Sucre. It is thought that the killers were members of criminal groups that exercise territorial control in the area. Four of the victims were leaders of the Global Fund to Fight AIDS. On January 9, 2015, Corporación Caribe Afirmativo reported the murder of 35-year-old trans activist Camila Flores, who had been a leader of the organization Mecanismo Coordinador as well as of the Global Fund to Fight AIDS and had already been attacked with a firearm on March 9, 2014. LGBT organizations in the region affirm that “the higher the visibility, the greater the risk.” They say that LGBTI persons are showing increasing leadership in the Caribbean region of Colombia and that this...
visibility in defense of the human rights of LGBTI persons has prompted a backlash of even more violence on the part of actors in the armed conflict.972

346. In the last few years, the IACHR has received troubling information regarding killings of trans human rights defenders and alleged acts of police abuse against trans human rights organizations and leaders in El Salvador. Francela Méndez, a 29-year-old trans woman and defender who was a member of the Salvadorean Human Rights Defenders Network, was killed on May 30, 2015.973 Following her death, the IACHR affirmed that in the context of countries with high levels of insecurity and organized crime, it is particularly important for States to adopt a differentiated approach to guarantee the rights to life and integrity of LGBTI persons, and defenders of the human rights of LGBTI persons, who are particularly vulnerable to violence by armed groups. 974

347. In May 2013, Tania Vazquez, a trans woman leader of a trans organization in El Salvador, was killed.975 According to information received by the IACHR in May 2015, there is an ongoing investigation, which has not yielded any results.976 Following Vazquez’s death, a local trans human rights organization called COMCAVIS denounced the police for entering their premises with a search warrant that made reference to COMCAVIS as a place where “illegal activities” and prostitution were conducted. Further, they denounced the aggressive way in which the police officers acted against members of the organization. The IACHR was also informed that on February 20, 2015, members of the police attempted to enter the premises of Asociación Solidaria para Impulsar el Desarrollo Humano (ASPIDH-Arcoiris Trans), another trans human rights organization in El Salvador, without a warrant. Allegedly, members of the police insulted members of the organization using epithets related to their gender identity and expression. The IACHR sent a letter to the State requesting information on the measures being taken to investigate these acts of alleged abuse and to prevent further instances of police abuse against trans human rights defenders and organizations.977 The State responded to this request informing the IACHR of different measures adopted by the State to prevent and address violence against trans persons, such as the Sexual

972 Corporación Caribe Afirmativo says that acts of violence against LGBTI persons in the Caribbean region of Colombia are mainly committed by criminal groups such as Las Águilas Negras, Los Países, Los Urabeños, Los Nevados, Los Tayronas, and Los Rastrojos, which chose not to apply for the benefits of the Justice and Peace Law, as well as by Fronts 19, 37 and 59 of the FARC, a number of holdouts of the National Liberation Army (ELN), and many demobilized members of the AUC. Corporación Caribe Afirmativo and Global Rights, written information submitted during the public hearing Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia, held by the IACHR on October 27, 2014.


977 IACHR, Letter requesting information sent to the State of El Salvador, on the basis of Article 41 of the American Convention, concerning the situation of ASPIDH-Arcoiris Trans, sent on April 27, 2015 (on file with the IACHR Executive Secretariat).
Diversity Unit within the Ministry of Social Inclusion, and the establishment of a Permanent Roundtable for the Human Rights of LGBTI persons within the Office of the Attorney General for the Defense of Human Rights. The State also indicated that the police department did not have any record of the complaint, but that given the information sent to the IACHR, an investigation of the police action was initiated.978

348. According to information received by the Commission, LGBTI human rights defenders in Haiti “are targets of serious assaults, harassment and threats.”979 For example, a group of teenage peer counselors were attacked in July 2011 at a festival in central Haiti while conducting outreach on HIV prevention for gay men and men who have sex with men. A mob burned down their tent, chased them, and threatened to kill them.980 In 2012, it was reported that members of an LGBTI organization were leaving a party when police officers on patrol got out of their car and proceeded to beat and harass them. The victims were heavily bruised and some sustained swollen and black eyes. Due to fear of reprisals, no one reported the assault.981

349. In 2013, the IACHR was informed of a spike in threats against Kouraj—a Haitian LGBTI organization—982 following the announcement of a “March against Homosexuality” that was scheduled for July 26, 2013. Charlot Jeudy, Chair of Kouraj, has been targeted in some of the threats; he has also received anonymous calls accusing gay persons of causing the 2010 earthquake that killed 200,000 people in Haiti.983 According to Amnesty International, on November 21, 2013, three men armed with machetes and handguns forced their way into the offices of Kouraj and threatened, beat, and tied up two of the organization’s members. Computers with sensitive information were stolen. It was reported that a justice of peace went to Kouraj to make a report, and that the organization’s members reported the incident to the police.984

979 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al.,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 9.
980 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Madre et. al.,” (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.
981 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Madre, ILGHRC, CUNY School of Law, SEROVie and FACSDIS, (Haiti), received by the IACHR Executive Secretariat on November 25, 2013, p. 2.
982 Kouraj works to raise awareness regarding the rights of LGBTI persons and to create public debate about the stigma surrounding homosexuality in Haiti. Other Worlds, Amnesty International Alert: Support LGBTI Activists at Risk in Haiti, July 19, 2013.
983 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
Regarding Honduras, the IACHR was informed that at least 12 LGBT human rights defenders have been killed in Honduras between 2006 and 2013. The IACHR has condemned killings of LGBT human rights defenders in Honduras, in 2009, 2011, and 2012. In July 2013, the body of Herwin Chamorro Alexis Ramirez, 24-year-old trans woman and Afro-Honduran, was found with multiple gunshot and stab wounds. Herwin was a young leader, active in her community, who volunteered with organizations focused on HIV prevention and the rights of Afro-Honduran communities. In its December 2014 visit to Honduras, the IACHR was informed that LGBT human rights defenders are constantly attacked and harassed by groups seeking to discriminate against them through violence. Reportedly, defenders of LGBT rights have been subject to arbitrary detentions by the police for posing a threat to “morals and good customs.” One trans woman human rights defender told the IACHR; “in Honduras, you’re criminalized for the simple fact of being trans, for being a human rights defender, for being part of this society.” Another organization reported that out of the seven trans women who founded the organization Colectivo Unidad Color de Rosa in 2001, six have been killed, and out the 27 trans women who were killed in Honduras between 2009 and 2012, 15 were activists from that organization.

Amongst the most notorious cases in Honduras is the killing of 27-year-old Walter Trochez in December 2009. Trochez was a human rights defender who had given testimony to the IACHR three months prior to his death, during the Commission’s 2009 onsite visit, and who had, following the coup d’état, begun compiling information on the killings of LGBT persons in Honduras. A few days prior to his killing, he had allegedly been kidnapped by four masked men in civilian clothes who beat him, ordered him to divulge the names and addresses of other

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985 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Cattrachas, (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 26.
987 IACHR, Press Release No. 4/11, “IACHR deeply concerned about murders of members of transgender community in Honduras,” January 10, 2011 [condemning the killings of seven trans persons in Honduras which occurred between November 2010 and January 2011, and also making reference to the killings of LGBT human rights defenders: Neraldys Perdomo, Imperia Gamaniel Parson and Walter Trochez, among others].
989 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
activists, and told him “we have orders to kill you.” In March 2015, a criminal court in Tegucigalpa handed down a sentence acquitting a friend of Trochez who had been accused of killing him, and who had been in pretrial detention for two years, during the course of which, he was allegedly raped several times due to his sexual orientation. The civil society organization Red Lésbica Cattrachas alleged that Trochez’s friend (who was later acquitted) was in Mexico with his mother when Trochez was killed, and that he was a scapegoat, intended to cover-up the alleged involvement of the police in Trochez’s murder. The State, in turn, has denied any police involvement. The organization Red Lésbica Cattrachas has indicated that this case is emblematic of the impunity surrounding cases of killings of LGBT persons, and that the investigation conducted was deficient since it did not take into account Trochez’s activities as a human rights defender, and instead depicted Trochez’s killing as a “crime of passion,” because of his sexual orientation.

352. Mexican organizations have informed the IACHR about several assassinations of LGBT human rights defenders. Amongst the most notorious are the 2011 killing in the city of Chilpancingo, Guerrero, of Quetzalcóatl Leija Herrera, president of the Center for Studies and Projects for Integral Human Development (CEPRODEHI), and the killing of Agnes Torres Sulca, a trans woman human rights defender, whose burnt body was found on March 10, 2012 in Puebla. According to media reports, four men confessed to having killed Torres Sulca. In 2014, Edgar Sosa Meyemberg, a gay teacher and reproductive rights activist, was found dead with clear signs of torture and his skull destroyed by a blunt object.

353. In 2004, Brian Williamson, co-founder of the organization Jamaican Forum for Lesbians, All-sexuals and Gays (J-Flag), was found murdered in his home. He was...
stabbed 70 times and his body was mutilated.\textsuperscript{1004} Within an hour after the discovery of his body, a Human Rights Watch researcher witnessed a crowd gather outside his home, some of the members of which were reportedly chanting, “that’s what you get for sin,” and “let’s kill all of them.”\textsuperscript{1005} Williamson’s killer confessed and received 25 years in prison, with the possibility of parole after 15 years.\textsuperscript{1006} On February 14, 2007, in Kingston, a group of gay men including gay-rights activist Gareth Williams were stoned by a mob of over 2,000 people when they were shopping in a mall. The IACHR received information that the police failed to arrest anyone for the attack and instead took the gay men into custody and subsequently abused them even as they sought to secure them from the mob.\textsuperscript{1007}

354. The IACHR has received reports that LGBT organizations in The Bahamas\textsuperscript{1008} and Dominica\textsuperscript{1009} are afraid to conduct human rights defense work because of generalized violence against LGBT persons in these countries. In Saint Lucia, one of the leaders of the organization United & Strong informed the IACHR about several death threats that she has received, including one instance in which two men threatened to kill her if she did not stop her work. The offices of United & Strong have also been burned down. The case is reportedly still under investigation.\textsuperscript{1010} According to the information received, participation in strategic litigation before national courts in the Anglophone Caribbean region against laws and regulations which discriminate against, or have negative effects on, LGBT persons, has exposed human rights defenders to worrying levels of violence, including death threats, intimidation, and violent attacks. In Belize, gay activist Caleb Orozco has received numerous death threats after he brought a challenge against the buggery law in the Supreme Court.\textsuperscript{1011}

355. States have specific obligations to protect human rights defenders and the defense of human rights, including the duty to: provide the necessary means for human rights defenders to conduct their activities freely; protect them when they are subject to threats in order to ward off any attempt on their life or safety; refrain from placing restrictions that would hinder the performance of their work; and conduct serious and effective investigations of any violations against them, thus

\textsuperscript{1004} The Jamaica Gleaner, \textit{Remembering Brian Williamson}, June 9, 2011.


\textsuperscript{1006} Jamaica Cleaner, \textit{Gay Rights activist’s killer gets life}, May 21, 2006.


\textsuperscript{1009} Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative, \textit{Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Dominica for the 19\textsuperscript{th} Session of the Universal Periodic Review}, May 2014, para. 17.

\textsuperscript{1010} The Star Newspaper, \textit{Gays Say ‘We Are Here to Stay’}, March 8, 2012.

\textsuperscript{1011} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013.
preventing impunity.\textsuperscript{1012} States should also undertake measures to support recognition of the important role that these defenders play in the protection and defense of human rights.\textsuperscript{1013}

356. The IACHR has also affirmed that States must not tolerate any attempt by public officials to question the legitimacy of the work of human rights defenders and their organizations.\textsuperscript{1014} Public officers must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations are acting illegally or improperly, simply due to the fact that they work in the promotion and protection of human rights.\textsuperscript{1015} Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.\textsuperscript{1016} Finally, States are called on to guarantee the security of human rights defenders who are especially vulnerable by adopting specific measures of protection based on the activities of those defenders and the risks they routinely encounter.\textsuperscript{1017}

\section*{F. Afro-descendant Persons and other Persons Who are Affected by Racial Discrimination}

357. The IACHR has received troubling information concerning the high levels of discrimination and violence against lesbian, gay, bisexual, and trans (LGBT) persons of African descent in the Americas.\textsuperscript{1018} To date, such information has been limited to specific countries, such as Brazil, Colombia, Nicaragua, and the United States, as explained below. The Commission has received information regarding violence against LGBT persons in Commonwealth Caribbean countries, where a large percentage of the population is Afro-descendant. However, as explained by the IACHR Rapporteur on Afro-descendants and against Racial Discrimination, “in Caribbean countries where populations tend to have majority Afro-descendant populations, the problem of race is more complex and more subtle.” In this regard, Commissioner Antoine noted that “while there is less overt racism in the


\textsuperscript{1018} IACHR, Press Release No. 31/15, \textit{IACHR Calls on OAS Member States to Bring an End to Racial Discrimination in the Americas}, March 20, 2015. The IACHR has yet to receive information regarding intersex persons of African descent.
Caribbean countries, indirect discrimination remains a problem, in addition to strong structural paradigms that exacerbate inequality between the races.”

358. In the context of geographic areas where the afro-descendant population is not a minority, like the Caribbean, the IACHR also considers how persons of African descent can face discrimination depending on the darkness of the person’s skin—a concept referred to as “colorism.” The Commission notes how the darker the person’s skin is, the fewer opportunities of personal and economic development they may have, reflecting the impact of the colonial past. Thus, in areas like the Caribbean, racial discrimination towards afro-descendant people is linked to the darkness of the skin, poverty, and the control of economic resources. Bearing this in mind, persons of African descent with non-normative sexual orientations and gender identities can face violence and discrimination based on their race, ethnicity, gender, sex, sexual orientation, darkness of skin and/or situation of poverty, which can be exerted by persons not of African descent and persons of African descent.

359. The IACHR has noted how, given the close link between race, socio-economic class, and poverty, the Afro-descendant population is adversely affected by multiple levels of discrimination. Additionally, the Commission has expressed concern about the special vulnerability of Afro-descendant women, who have suffered triple historical discrimination based on their sex, gender, extreme poverty, and race. In this respect, the IACHR points out how afro-descendant women face discrimination within their own communities based on their sex. The Commission received information referencing the phenomena of “hypermasculinity” or “reinforced male chauvinism” by some Afro-descendant men. Such attitudes can result in the limitation of Afro-descendant women’s access to education and work and perpetuate the subordination of women, which is exacerbated in the case of afro-descendant women with non-normative sexual orientations and gender identities. As a writer and activist in the United States explained, “trans women are targeted because we exist at vulnerable intersections of race, gender, and class.”

360. In a public hearing held in October 2014, the IACHR received information regarding the particular vulnerability to violence, in the context of armed conflict in Colombia, of LGBT persons who are Afro-descendants (in this case, the information concerned Afro-descendant populations known locally as palenqueros.)

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and raizales).1029 The civil society organization Caribe Afirmativo reported that since 2007 there have been 114 violent deaths of LGBT persons in the Caribbean region of Colombia, of which 58 have occurred in areas of armed conflict (Serranía del Perijá, Montes de María, Golfo de Morrosquillo, La Mojana Sucreña, Bolívar, south of Cesar and Momposina). The victims were mainly trans women and gay men, and were mostly persons who identified as, or were recognized as living in areas mostly populated by, people of African descent (otherwise known as negras, palenqueras, or raizales).1030 In particular, the Commission was informed of the case of “Alias el Oso,” a member of a Colombian paramilitary group, who ordered the torture of gay men, especially those who were “effeminate,” and of Afro-descendants. The torture was to be carried out in the homes of the victims, and was intended to terrorize the population. The victims were subsequently forced to leave their communities.1031 The information provided to the IACHR indicates that, in the context of the civil conflict in Colombia, LGBT Afro-descendants are victims not only of guerrilla groups, but also of criminal groups (BACRIM).1032 With respect to Afro-Colombian lesbian women, for example, in addition to the triple discrimination they face on the grounds of sex, ethnicity, and poverty, the IACHR was informed that lesbian Afro-descendant women also face violence because of their sexual orientation, including so called “corrective rape.”1033 During her visit to Colombia in October 2014, Rapporteur Tracy Robinson received the testimony from three lesbian Afro-descendant women who were raped by different armed groups as a form of punishment due to their sexual orientation, and who were, as a consequence, internally displaced.1034 These testimonies indicated that the rapes were committed with high levels of brutality, cruelty and physical violence, in addition to the reiterated and prolonged verbal humiliation about their sexual orientation.

361. According to the National Human Rights Institution of Nicaragua (Procuraduría para la Defensa de los Derechos Humanos), LGBT persons from Creole communities face greater risk of discrimination and violence both on the basis of ethnic origin and on the basis of sexual orientation and/or gender identity. Debasement, humiliation, and instances of stoning of LGBT persons from Creole communities have been reported in the city of Bilwi on the Atlantic coast of Nicaragua.1035

362. In the United States, several organizations have reported that Afro-descendant LGBT persons suffer high levels of violence, particularly Afro-descendant trans
women, as do trans women of color more generally.\textsuperscript{1036} For example, according to the National Coalition of Anti-Violence Programs (NCAVP), a non-profit organization, 55% of the killings of lesbian, gay, bisexual, trans and queer (hereinafter “LGBTQ”) persons in 2014 targeted trans women, and 50% of the killings of LGBTQ persons in 2014 targeted trans women of color.\textsuperscript{1037} Further, 80% of all LGBTQ homicide victims in 2014 were persons of color.\textsuperscript{1038} According to the NCAVP, this trend of disproportionate impact of deadly violence on LGBTQ persons of color, and particularly trans women of color, has persisted every year since 2009.\textsuperscript{1039} For example, in 2013, the NCAVP reported that almost 90% of all LGBTQ homicide victims were people of color, 72% of all LGBTQ homicide victims were trans women, and 67% of all LGBTQ homicide victims were trans women of color.\textsuperscript{1040} Regarding intimate partner violence, the IACHR has been informed that LGBTQ persons of color are more likely to experience violence perpetrated by their intimate partners, and are more likely to experience intimate partner violence that occurs in public.\textsuperscript{1041} Further, persons of color living with HIV, and lesbian, gay, and bisexual persons of color, are at least twice as likely as white persons to report experiencing abusive treatment by medical specialists.\textsuperscript{1042}

363. With respect to alleged instances of abuse by law enforcement agents in the United States, the IACHR has received information indicating that LGBT persons of color are at higher risk of being subjected to police abuse, due to both violence motivated by race and violence motivated by sexual orientation and/or gender identity. For example, one study in the United States found that compared to white cisgender persons, trans persons of color are six times more likely to experience physical violence at the hands of the police.\textsuperscript{1043} Further, the Commission has received troubling information regarding neighborhoods in certain U.S. cities with a large presence of persons of color (and, by implication, LGBTQ persons of color) that are disproportionately impacted by racial profiling, harassment, and violence

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\textsuperscript{1036} Human Rights Campaign, Research Overview: Hate Crimes and Violence against Lesbian, Gay, Bisexual and Transgender People, United States, 2009, p. 39.
\textsuperscript{1038} According to the U.S.-based professor Salvador Ortiz, the term persons of color collectively refers to various racial and ethnic minority groups, and is frequently used in contemporary popular, activist, and academic debates, mostly in the United States. This term is slowly replacing terms such as racial and ethnic minorities. People of color is considered to be an all-inclusive term that encompasses African Americans, Latinos, Latinas, Asians and Pacific Islanders, and Native Americans. Vidal-Ortiz, Salvador. 2008. “People of Color.” Pp. 1037-1039 in Encyclopedia of Race, Ethnicity, and Society, Richard T. Schaefer, editor. Sage Publications, at pp. 1037-1038. National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition, 2014.
\textsuperscript{1041} National Coalition of Anti-Violence Programs, Media Alert, An Open Letter from LGBTQ Organizations in the United States Regarding the Epidemic Violence that LGBTQ People, Particularly Transgender Women of Color, Have Experienced in 2015, 1 March 2015.
\textsuperscript{1042} Lambda Legal, When Health Care Isn’t Caring: Lambda Legal’s Survey on Discrimination against LGBT People and People Living with HIV, 2010, p. 12.
\textsuperscript{1043} National Coalition of Anti-Violence Programs, A Report of Lesbian, Gay, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014, p. 10.
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perpetrated by the police.\textsuperscript{1044} Trans persons of color have also reported being wrongfully profiled as sex workers, with the police using such persons’ possession of condoms as evidence of involvement in sex work.\textsuperscript{1045}

364. In Brazil, a country with a large Afro-descendant population (often referred to locally as \textit{pretos} and \textit{pardos}),\textsuperscript{1046} Afro-descendants are especially vulnerable to violence based on prejudice against non-normative sexual orientations and gender identities.\textsuperscript{1047} At a 2013 thematic hearing on the rights of Afro-descendant trans women in Brazil, the Commission received troubling information regarding the high level of violence and excessive use of force against, and numerous cases of arbitrary detention and torture of, Brazilian trans people of African descent.\textsuperscript{1048} According to the State, in 2011, 41% of LGBT victims of violence self-identified as Afro-descendants (\textit{pretos} and \textit{pardos}), in comparison with 27% of LGBT victims of violence who self-identified as white persons.\textsuperscript{1049} That being said, one civil society organization indicated that, even though the State does gather data on violence against LGBT persons, and such data-gathering includes important demographic indicators such as sexual orientation, gender identity, age, and geographical region, there is minimal information collected regarding the racial identity of LGBT victims of violence. In particular, there is no racial breakdown within the separate categories of lesbian, gay, bisexual, or trans, within the overall category of “LGBT persons”\textsuperscript{1050}.

365. The IACHR has also received information concerning the significant social and economic inequalities faced by Afro-Brazilian trans women, including limited access to health services, little or no access to state benefits and to government programs at the local and federal level, and high levels of illiteracy. It is reported that an estimated 90% of trans women in Brazil are functionally illiterate due to social exclusion.\textsuperscript{1051} During a public hearing before the IACHR, the State of Brazil described different measures that it had been using to address violence against LGBT persons, including the 2012 National Report on “Homophobic Violence.” This report, which gathered data regarding the race of LGBT victims, demonstrated that most LGBT victims of violence in Brazil are young Afro-descendants. The State emphasized the coordinated work to address violence against LGBT persons that

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\textsuperscript{1044} Make The Road New York. \textit{Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights}, October 2013, p. 4.
\textsuperscript{1045} Make The Road New York. \textit{Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights}, October 2013, p. 4.
\textsuperscript{1046} The 2010 Census in Brazil, was the first census in which the majority of the Brazilian population self-identified as other than Caucasian or white. See Oglobo “Censo 2010: população do Brasil deixa de ser predominantemente branca” November 3, 2011.
\textsuperscript{1048} Global Rights and Rede Negra LGBT de Brazil. \textit{Human rights situation of trans people of African descent in Brazil}, presented at a public hearing during the 149\textsuperscript{th} Period of Sessions of the IACHR, October 29, 2013.
\textsuperscript{1050} Global Rights Partners for Justice. \textit{Report on the Human Rights Situation of Afro-Brazilian Transgender Women: “I Don’t Want to Die Like This! Why Do People Have to Die Like This? Why Do We Have to Be Beaten and Stabbed to death?”}, 2013, p. 16.
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was being carried out jointly by the Presidency’s Commission of Human Rights and the National Council against LGBT Discrimination. The State also highlighted the recommendations that had been issued by the Third National Program for Human Rights to various Brazilian states and municipalities. These recommendations concerned the establishment of services for the receipt of complaints of violence perpetrated against LGBT Afro-descendants, and the creation of specialized police units to address violence against vulnerable groups. The State also highlighted public education campaigns that were being undertaken to prevent violence against LGBT persons.1052

366. The IACHR reiterates the need for OAS Member States to adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and non-normative sexual orientation, gender identity and expression, as well as bodily diversity, affects LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.

367. The Commission considers it essential for States in the region to adopt effective measures to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons and those affected by racial discrimination. To that end, the States must collect disaggregated information, and allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Prevention efforts must be part of a comprehensive strategy to provide reparations regarding acts of violence and discrimination, as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.

368. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and other LGBTI persons affected by racial discrimination.

G. Persons Living in Poverty

369. The IACHR notes that there is a strong link between poverty, exclusion, and violence. The UN Special Rapporteur on extreme poverty and human rights has indicated that “persons living in poverty are more likely to fall victim to criminal or illegal acts, including sexual or economic exploitation, violence, torture and murder.”1053 The Rapporteur has further stated that, for persons living in poverty,
“crime and illegality are also likely to have a great impact on their lives as it is hard for them to obtain redress and as a result they may fall further into poverty.”  

Further, the UN Office on Drugs and Crime has pointed out that there is “a consensus, both among scholars and the international community, that lethal violence is often rooted in contexts of paucity and deprivation, inequality and injustice, social marginalization, low levels of education and a weak rule of law.”

Structural discrimination against LGBTI persons may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination. The UN Special Rapporteur on extreme poverty and human rights has indicated: “patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination.” Moreover, the United Nations High Commissioner for Human Rights has stated that discrimination against LGBT persons is often exacerbated by other factors, such as poverty. Further, the OHCHR also cites studies undertaken in the Americas region that suggest that rates of poverty, homelessness, and food insecurity are higher among LGBT individuals. In addition, the World Bank has documented the negative impact of violence and discrimination based on prejudice (referred to as “homophobia”) on economic growth and development of countries.

LGBTI persons, especially trans persons and trans persons from racial minority groups, are immersed in a cycle of exclusion and poverty that makes them more vulnerable to violence. In Latin America, discrimination and structural exclusion in the labor market, based on sexual orientation, gender identity, and gender expression, is one of the triggers that “sets into motion an endless cycle of
continued poverty.” Further, as addressed earlier in this Report, persons at the intersection of having diverse sexual orientations and gender identities and being migrants face an increased risk of discrimination and violence, particularly persons who are forced to leave their countries, or who are internally displaced in their own countries, and who, as a consequence of their displacement, live in situations of poverty in their cities and countries of destination.

372. The IACHR has stated that discrimination and violence against children and young persons with non-normative sexualities and identities starts at home and in schools, where families, community members, teachers, and school administrators disapprove of their sexual orientation and/or gender identity. LGBT persons are expelled from their families and schools and in some instances cannot even obtain jobs paying minimum wage. As a result, LGBT persons often face poverty, social exclusion, and high rates of homelessness. This pushes them into the informal economy or into criminal activity. Some LGBT persons in such situations engage in sex work, or in survival sex, which is the exchange of sex for money, food, shelter, or other material goods needed for survival. As a result, LGBT persons living in poverty are vulnerable to police profiling and harassment, and consequently to higher rates of criminalization and imprisonment. One Colombian activist and academic indicates that some trans persons have even “budgeted” for time spent in jail, that is, have assumed that they will be incarcerated at some point in their lives.

373. Exclusion of trans persons from income-generating opportunities and social welfare programs results in high rates of poverty and unemployment, which

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1065 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJiglBlbU.


1067 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJiglBlbU. See also Conner, Brendan; Banelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyl, Mora; Ritchie, Andrew; Yahner, Jennifer; Yu, Lily. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex, 2015.


1069 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJiglBlbU.

1070 Spade, Dean. The Laura Flanders Show, GRITTV, 2015. Available at: https://www.youtube.com/watch?v=eQJiglBlbU.

frequently causes trans persons to turn to sex work.\textsuperscript{1073} According to information received by the IACHR, 90\% of trans women in Latin America and the Caribbean are engaged in sex work as their only means of subsistence\textsuperscript{1074} and thereby face direct or indirect criminalization.\textsuperscript{1075} Further, “regardless of socio-economic origins, a large number of trans women who are thrown out of their family homes at an early age end up among the high number of trans women who are severely impoverished most of their lives.”\textsuperscript{1076} Trans women are often expelled from the family at early ages, engage in sex work when they are young, and face “a chronic lack of access to educational and health services, work opportunities and adequate housing.”\textsuperscript{1077} Trans women who are involved in sex work often work, and even live, in the streets, where they face constant harassment, persecution, and threat of detention.\textsuperscript{1078}

374. Several studies have shown that LGBT persons are more vulnerable to homelessness. In one Canadian study, 1 in 5 respondents to a survey of youth shelter occupants self-identified as LGBTQ (lesbian, gay, bisexual, trans or queer).\textsuperscript{1079} In the United States, NGOs estimate that 20-40\% of the homeless youth population is LGBT. These persons are at particularly high risk of being forced into prostitution.\textsuperscript{1080} Similarly, the IACHR received information that approximately 40-50\% of homeless youth living on the streets in New York City identify as LGBT. Reports indicate that most of them were expelled from their homes because of their sexual orientation or gender identity, or ran away to escape violence within their families.\textsuperscript{1081}

375. The Commission identifies a close relationship between homelessness, sex work or survival sex, and violence. Youth in New York with diverse sexual orientations, gender identities, and gender expressions identified homelessness as one of the most common reasons for engaging in commercial sex. These youth also indicated that they would rather engage in survival sex than experience potential violence in
youth shelters or foster care.\footnote{1082} According to one study, trans youth in New York City are eight times more likely to trade sex for a safe place to stay than are non-trans youth.\footnote{1083} The IACHR also notes that according to this same study, 48\% of trans persons involved in sex work reported being homeless.\footnote{1084}

376. The IACHR has received troubling reports of persecution by police officers in Jamaica of homeless gay men and men who have sex with men.\footnote{1085} According to a civil society report, LGBT-identified youth in Jamaica comprise up to 40\% of the country’s homeless youth population.\footnote{1086} Another report indicates that a significant number of LGBT persons affected by violence in Jamaica “were from families in the [lower] socio-economic strata.”\footnote{1087} It is reported that homelessness among LGBT persons “is almost always the result of discrimination or violence.”\footnote{1088} LGBT persons are displaced from their homes, families, communities, and sometimes their country, by their families, landlords, and neighbors.\footnote{1089} The IACHR welcomes statements made by the Youth Minister of Jamaica, indicating that the government is developing programs focused on LGBT youth.\footnote{1090} At the Panos Caribbean Stakeholder Conference, the Minister acknowledged that stakeholder consultation was necessary and was being pursued in order to gain a better understanding of the issues facing LGBT youth, given the lack of data in this area.\footnote{1091} The Youth Minister acknowledged the State’s duty not only to provide shelter and protection for abandoned and abused children, but also to provide therapeutic intervention to address the physical and psychological harm these children have suffered.\footnote{1092} The IACHR has praised a government-led response to

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1082 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 5. Citing New York City Association of Homeless and Street-Involved Youth Organizations (NYCAHSIYO), State of the City’s Homeless Youth Report 2009, New York, 2010.

1083 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 5. Citing Freeman, Lance, and Darrick Hamilton. A Count of Homeless Youth in New York City: 2007, New York: Empire State Coalition of Youth and Family Services, 2008.

1084 Conner, Brendan; Banuelos, Isela; Dank, Meredith; Madden, Kuniko; Mitchyll, Mora; Ritchie, Andrea; Yahner, Jennifer; Yu, Lilly. Urban Institute, Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSSW Engaged in Survival Sex, 2015, p. 7. Citing Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

1085 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by International Human Rights Clinic at Santa Clara University School of Law (Study on Jamaica), November 25, 2013, received by IACHR on November 15, 2013, p. 1; Jamaican LGBT News, Police Raid Homeless Gay Men, YouTube (Oct. 18, 2013), http://www.youtube.com/watch?v=4d2ICYwg5KO.


1090 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.

1091 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.

1092 Jamaica Gleaner, Government To Develop Programmes For Homosexual Youth, 2014.
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assist LGBT youth, and stresses the paramount importance of the State referring the issue of homelessness to the National Committee on Homelessness, and including reference to the specific issues faced by homeless LGBT persons in that response.

377. Homelessness heightens the risk of LGBT persons being subjected to violence, including sexual violence. According to one source, homeless LGBTQ youth experience higher rates of physical and sexual assault and higher incidence of mental health problems, as well as unsafe sexual behaviors than heterosexual homeless youth. For example, it is reported that lesbian, gay, and bisexual homeless youth are twice as likely to attempt suicide as their heterosexual homeless peers.

378. The IACHR notes that LGBT persons experience discrimination and violence in homeless shelters and foster care group homes. The high rates of homelessness among LGBT persons are due in large part to the shelter systems being generally unsafe for LGBT persons. Further, the IACHR notes with concern that these institutions are usually segregated by gender (male or female), which increases violence and discrimination against trans persons and other gender non-conforming persons.

379. Poverty and exclusion also make LGBTI persons more vulnerable to violence in health care settings. As the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pointed out: “[s]tructural inequalities, such as the power imbalance between doctors and patients, exacerbated by stigma and discrimination, result in individuals from certain groups being disproportionately vulnerable to having informed consent compromised.” This has a specific and concrete impact on the lives of intersex persons and their families. For example, when intersex persons are born into impoverished families or to parents lacking access to formal education, the power imbalance that is normally present in the doctor-patient relationship tends to be exacerbated, with a consequent negative impact on intersex persons’ right to informed consent.

380. For example, the IACHR has received troubling information regarding how the socioeconomic status of parents in Mexico may influence whether or not doctors tell a family that their child is intersex. According to one study in Mexico, when doctors perceive a more "equal" relationship between themselves and patients and
their families, the doctors strive to translate medical terminology into layperson’s terms and fully explain the child’s intersex or possible intersex status. However, in other hospitals or with respect to other patients where this perception of an equal relationship is not present, doctors tend not to communicate an intersex diagnosis to parents because the parents lack an “advanced school education.” According to this study, there is a pervasive belief amongst medical staff that lower socioeconomic status or limited education of parents or relatives are unsurmountable barriers to understanding an intersex diagnosis. Further, in public hospitals where high demand for medical care must be met with scarce human resources, doctors cannot spend more than ten or twenty minutes with each patient. This hinders an effective and open dialogue with families about children who are born intersex, which in turn affects informed consent regarding genital surgeries and medical interventions. This study also shows, however, that families and fellow community members of intersex persons sometimes demonstrate a more open attitude toward the anatomical diversity of intersex children and adults than do medical specialists.

381. The Pan American Health Organization has addressed the problem of discrimination against, and exclusion of, LGBT persons in the health care sector. Research points to the fact that LGBT persons face barriers to accessing appropriate patient-centered health care and fail to make early and opportune use of health care services, or use them at all. Further, the World Health Organization has stated that there is widespread stigma “against homosexuality and ignorance about gender identity, both within mainstream society and within health systems.”

382. Further, the socioeconomic status of trans persons determines the quality of medical services that they receive, including gender affirmation surgeries and other related body modifications. The prevalence in Latin America of informal and risky body transformations procedures, which are deemed necessary for the construction of the gender identity and expression of some trans persons, causes a high number of (preventable) deaths of trans women. In one study conducted in Bogotá, Colombia, 96% of trans women interviewed had resorted to informal providers to transform their bodies. Specifically, 55% of these medical interventions were done in the house of a friend and 14% in garages or unlicensed private “clinics.” Further, 62% of trans women interviewed reported that they had obtained informal body transformation procedures in the process of construction of their gender identity and expression, on more than one occasion, and as many as four times. Regarding breast augmentation procedures carried out by unlicensed providers, the study cites the high incidence of complications and even death. The Pan American Health Organization has addressed the problem of discrimination against, and exclusion of, LGBT persons in the health care sector. Research points to the fact that LGBT persons face barriers to accessing appropriate patient-centered health care and fail to make early and opportune use of health care services, or use them at all. Further, the World Health Organization has stated that there is widespread stigma “against homosexuality and ignorance about gender identity, both within mainstream society and within health systems.”

1102 WHO, Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people, Department of HIV/AIDS, June 2011.
providers, the survey responses indicated that the most common substances used to fabricate breast implants were cooking oil, Johnson’s baby oil, industrial oil used for aircraft, paraffin, animal fat, and, the most popular, liquid silicone.\textsuperscript{1104} There are increasingly frequent reports of trans women dying as a result of these unlicensed, informal interventions. For example, the IACHR has received troubling information regarding a 20 year old trans woman in Valencia, Venezuela, who died in 2015 due to complications arising from silicone injections in her buttocks that were carried out in a hotel room,\textsuperscript{1105} and a trans woman in Cartagena, Colombia, who died in 2014 following a procedure in a “spa” that involved the injection of seven liters of liquid silicone into her buttocks.\textsuperscript{1106} 

\textsuperscript{383.} The IACHR urges Member States to adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and to continue to devote efforts and resources to eradicate poverty. OAS Member States must address discrimination based on sexual orientation, gender identity, sex characteristics and bodily diversity when designing and implementing actions and programs to tackle poverty. Further, States must act to protect all children and young adults from violence – including LGBT youth who are homeless – and ensure that effective child protection and support systems are in place, including shelters and other safety mechanisms for those in need of protection.\textsuperscript{1107}

\textsuperscript{1104} Pachón, N. E. and Cruz, K. J. “Uso De Modelantes Estéticos, Como Proceso de la Trasformación Corporal De Mujeres Transgeneristas”, Bogotá, 2013. Obtained from “Tábula Rasa: Revista de Humanidades.”


\textsuperscript{1106} Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex para América Latina y el Caribe, “Muere mujer trans en Cartagena, luego de practicarse una cirugía artesanal,” 2014 (Available only in Spanish).

CHAPTER 6

STATES’ RESPONSE TO VIOLENCE, AND ACCESS TO JUSTICE
STATES’ RESPONSE TO VIOLENCE, AND ACCESS TO JUSTICE

384. In the instant Report, the Inter-American Commission addresses states’ obligations to prevent, investigate, punish, and provide reparations for acts of violence committed against persons based on their sexual orientation, gender identity, or bodily diversity. The Inter-American Human Rights System has yet to develop significant case law and jurisprudence interpreting States’ obligations, through the petition and case system.1108 Thus, the IACHR takes into account the international and regional developments in this regard, as well as its own decisions on violence in other contexts, as guidance to examine the States’ obligations regarding cases involving violence based on prejudice against persons with non-normative sexual orientations and gender identities and diverse bodies.

385. States have a duty to apply due diligence in order to prevent, investigate, punish, and redress human rights violations, including killings and other acts of violence.1109 According to the UN High Commissioner for Human Rights, this obligation includes: taking legislative and other measures to prohibit, investigate, and prosecute all acts of violence, and incitement to violence, motivated by prejudice and directed at LGBTI persons; providing remedies to victims and protection against reprisals; publically condemning such acts of violence; and recording statistics of such crimes and the outcomes of investigations, prosecutions, and remedial measures.1110 The European Court of Human Rights has also affirmed that the obligation to prevent “hatred-motivated violence” by third parties, as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence, can fall under the obligation to put processes in place to prohibit torture (Article 3), and may also be seen to form part of the authorities’ positive responsibilities under the prohibition of discrimination (Article 14).1111

1108 In November 2015, the IACHR deemed admissible a petition on alleged acts of torture that were committed against a gay man in Peru based on his sexual orientation. IACHR, Report No. 90/14, Petition 406-99. Admissibility. Luis Alberto Rojas Marin. Peru. November 6, 2014.
386. In cases of violence against women, the Inter-American Human Rights System has established that the failure of a State to exercise due diligence to prevent and investigate violence against women is a violation of the State’s international obligations,\textsuperscript{1112} based on article 7(b) of the Convention of Belém do Pará, which establishes that States must by all appropriate means and without delay apply due diligence to prevent, investigate and impose penalties for violence against women,\textsuperscript{1113} This is closely related to the State’s obligation to prevent and respond to violence based on gender.

387. This chapter addresses the main human rights obligations of States with respect to violence against LGBTI persons. First, the Commission examines the obligation to prevent human rights violations against LGBTI persons and those perceived as such, and to investigate, prosecute, and guarantee victims’ access to justice when such violence does occur. Next, the IACHR addresses the issue of reparations for LGBTI persons and their next-of-kin who are victims of violence based on prejudice.

388. In complying with its obligation of due diligence, States must take into account the different and intersecting forms of violence experienced by LGBTI persons, which are based on multiple forms of discrimination. As examined in the previous chapter, LGBTI persons are more likely to experience violence, and are more vulnerable to certain types of violence, when their non-normative sexual orientation and/or gender identity is combined with other factors such as ethnicity, sex, gender, migration status, age, work as human rights defenders, race, socioeconomic status and deprivation of liberty. States are urged to be aware of these multiple factors, and are called on to include these perspectives in all State measures aimed at preventing, investigating, prosecuting, and providing reparations regarding acts of violence against LGBTI persons.

\textbf{A. States’ obligation to Prevent Violence}

389. States have a fundamental duty to prevent the violation of human rights of persons subject to their jurisdiction, an obligation that derives from the duty to guarantee human rights under Article 1(1) of the American Convention on Human Rights,\textsuperscript{1114} as well as the rights and freedoms set forth in the American Declaration.\textsuperscript{1115} The


\textsuperscript{1113} OAS, General Assembly, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted at Belém do Pará, Brazil, on September 6, 1994, article 7(b).

\textsuperscript{1114} Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Judgment of July 29, 1988, Series C, No. 4, para. 175.

\textsuperscript{1115} The Inter-American Commission has stated that developments in the corpus iuris of international human rights law are relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, and which may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See e.g., I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the
obligation to prevent human rights violations implies the adoption of all legal, political, administrative measures, and those regarding cultural changes, which ensure that a potential violation of human rights will be effectively addressed as a punishable offence. In cases of violence against women, the IACHR and the Inter-American Court of Human Rights have indicated that, in order to effectively prevent such violence, States’ strategies should be comprehensive, should be aimed at addressing known risk factors for the violence, and should strengthen institutions that can provide an effective response.

390. States are not immediately responsible for every human rights violation committed by private individuals under their jurisdiction. The obligation to adopt measures to prevent human rights violations committed by private individuals, where it exists, arises when a state knows or should know of current or imminent risk to an individual or group in a situation in which the State has a reasonable opportunity to prevent or avoid that risk. The obligation of due diligence requires that States ensure the protection of persons who are at particular risk of violence, including those targeted because of their sexual orientation or gender identity. As discussed in this Report, LGBTI persons are particularly vulnerable to violence because they do not conform to socially-constructed gender expectations and norms, because they are outside the male/female binary, or because their bodies do not fit the standard definition for male and female bodies.

391. The IACHR notes that, in order to fully comply with the duty to prevent violence against LGBTI persons, States must develop cross-cutting strategies which include, but are not limited to: establishing data collection mechanisms to study and assess the extent and tendencies of these types of violence; enacting legal provisions criminalizing violence based on prejudice against non-normative sexual orientations and gender identities, as well as against bodily diversity; pursuing community-based prevention; and designing and implementing comprehensive public education policies and programs to eradicate stereotyping and stigmatization of LGBTI persons. All of these measures should involve State institutions at both the national, state and local level and in various sectors, ranging from the police and justice system to the education, health, and labor sectors.

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1. Data Collection

392. On multiple occasions, the IACHR has urged OAS Member States to implement data collection policies in order to better document particular categories of violence, especially violence and discrimination against women and Afro-descendants. The OAS General Assembly has encouraged States to produce data on violence that is based on sexual orientation and gender identity, with a view to fostering public policies that protect the human rights of LGBTI persons. The IACHR has highlighted the crucial importance of adequate data collection mechanisms to the design of effective public policies aimed at combatting these forms of violence and discrimination, and has urged OAS Member States to ensure that such data “is disaggregated by factors such as race and ethnicity.”

393. The UN High Commissioner for Human Rights has expressed concern about deficient or non-existent mechanisms for collecting data regarding violence against LGBTI persons, and has recommended that States put in place such mechanisms. At the Council of Europe, the Committee of Ministers recommended to European States that they gather and analyze relevant data on the prevalence and nature of discrimination and intolerance on the grounds of sexual orientation or gender identity.

394. In the context of the State’s obligation to prevent and respond to human rights violations, data collection procedures are required in order to uniformly and accurately measure the prevalence, trends, and other aspects of violence in a given State or region. Detailed analysis of this data provides authorities with the information and insights that are needed in designing public policies to prevent further acts of violence. Additionally, dissemination of data begins to make visible
the prevalence of violence against LGBTI persons. The data may also reveal patterns of violence and determine whether specific communities face higher risks of victimization. This information in turn is useful in assessing the need for stronger preventative action, enhancing and targeting public outreach by law-enforcement agencies, and improving training efforts and services for victims and witnesses.

395. Various OAS Member States\textsuperscript{1127} and numerous civil society organizations\textsuperscript{1128} from across the Americas report that either no information is collected or, where information is collected, it is not properly disaggregated according to the victim’s sexual orientation or gender identity. On the other hand, the IACHR has also been informed that various OAS Member States have put in place data collection mechanisms in order to address such deficiencies.

396. For example, the Hate Crime Statistics Act in the United States\textsuperscript{1129} — as amended in 2009 by the “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act” (hereinafter “Matthew Shepard and James Byrd, Jr. Act”)\textsuperscript{1130} — requires that the Attorney General collect data on crimes committed due to the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In this regard, the Commission recognizes that the United States has established a comprehensive data collection mechanism, administered by the U.S. Department of Justice, in which two different but complementary

\textsuperscript{1127} [Ecuador] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013 dated December 2, 2013, received by IACHR Executive Secretariat on December 2, 2013, p. 13; [Guatemala] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013, received by IACHR Executive Secretariat on December 2, 2013, p. 5; [Uruguay] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 dated December 20, 2013, received by IACHR Executive Secretariat on December 20, 2013, p. 1; [Paraguay], Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay, March 17, 2015, 154\textsuperscript{th} Period of Sessions.


\textsuperscript{1129} FBI, Hate Crime Statistics Act 28 U.S.C. § 534 (HCSA)

\textsuperscript{1130} This act is named after Matthew Wayne Shepard and James Byrd Jr., both of whom were victims of hate crimes. Matthew Shepard was a 22-year-old gay student who was beaten, tortured, and murdered in the State of Wyoming in 1998. James Byrd was an American afro-descendant man who was brutally killed by white supremacists in the State of Texas, also in 1998. His killers tied him to a truck, dragged him for three miles along an asphalt road, and decapitated him. Full text of the law is available at: Public Law 111-84 - Oct. 28, 2009, p. 647.
statistical programs measure the prevalence and impact of crime: the National Crime Victimization Survey (NCVS) of the Bureau of Justice Statistics; and the Uniform Crime Reporting Program (UCR) of the Federal Bureau of Investigation (FBI). There are other departments, including the Department of Education and the Department of Health, that have further mechanisms in place to collect data from specific environments. From 2010 to 2012 the Department of Justice collected information, via the NCVS, on 126,040 violent crimes against persons aged 12 or older that were motivated by the sexual orientation of the victim. These crimes included rape and other sexual assault, robbery, simple assault, and aggravated assault. According to the information provided to the IACHR, the FBI’s UCR Program has modified the way in which data is collected, following the passage of the Matthew Shepard and James Byrd, Jr. Act of 2009, by using new and revised definitions and by issuing new Hate Crime Data Collection Guidelines and a Training Manual for police forces and other agencies that collect data on these crimes.

Since 2011, the State of Brazil has developed the “Report on Homophobic Violence in Brazil,” an annual report that compiles information on acts of violence against lesbians, gays, bisexuals, and trans persons. The United Nations Development Program (UNDP) has also contributed to that report. This report is divided into two parts: the first features data collected by the Federal Government, through the "Dial 100" and "Dial 180" hotlines and through the Complaint Mechanism of the Health System (“Ouvidoria do Sistema Único de Saúde”). The second part presents information collected from newspapers and other media sources. The Federal Government has sought to improve its system for collecting information related to homicides. To this end, in 2014 the Ministry of Health began to request

1131 For detailed information about these two mechanisms, visit: US Dept. of Justice, The Nation’s Two Crime Measures, September 2014 | NCJ 246832.
1132 The National Crime Victimization Survey (NCVS) is a survey that collects data from a nationally representative sample of persons in US households who are aged 12 or older. The NCVS includes questions about crime based on sexual orientation, whether or not it has been reported to the police. However — as explained by the United States in its response to the IACHR — the NCVS does not collect information about violent crimes that are committed by state agents. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.
1133 Through the Uniform Crime Reporting Program (UCR), the FBI collects data from police reports regarding criminal offences that were motivated, in whole or in part, by the offenders’ biases against the victims’ race, religion, sexual orientation, ethnicity/national origin, or disability. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.
1134 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), received by IACHR Executive Secretariat on April 8, 2014, p. 5.
1136 The methodology was designed by a working group composed of members of the National Council against LGBTI Discrimination (“Conselho Nacional de Combate à Discriminação contra Pessoas LGBT”), scholars from various universities, experts from the Brazilian Health Ministry, and experts from the Secretariat for Women Policies.
1137 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.
1138 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.
information about sexual orientation and gender identity as part of the mandatory notifications of violent deaths that it receives.\textsuperscript{1139}

398. In response to the IACHR questionnaire on violence against LGBTI persons in the Americas, the State of Guatemala indicated that the Ombudsman for Human Rights (“Procurador de los Derechos Humanos”) had been able to generate statistics on violence against LGBT persons.\textsuperscript{1140} However, it also informed the IACHR that in the database used by the prosecution service (“Ministerio Público”) there were no data fields in which information on sexual orientation or gender identity could be entered.\textsuperscript{1141} Moreover, a Guatemalan organization reported in 2010 that officials had expressly stated that they did not record the victim’s sexual orientation, except in “well-known cases.”\textsuperscript{1142} Nevertheless, Guatemalan civil society organizations informed the Commission that, as of December 2014, the form used to report crimes to the police included a field marked “LGBTI population,” next to the field in which “male” or “female” can be selected.\textsuperscript{1143}

399. The IACHR has made a recommendation to the State of Colombia that it design and put in place information and registration systems, to gather official data at a national level which allow to give visibility and to effectively address human rights violations committed against LGBTI persons.\textsuperscript{1144} In December 2014, the State informed the IACHR that its plan was to include the design and implementation of such systems within a broader overhaul of public policy.\textsuperscript{1145} A local NGO indicates, however, that although both the Office of the Inspector General (Procuraduría General de la Nación) and the Ombudsman’s Office have the possibility of recording data on sexual orientation and gender identity in case files and forms, officials in those agencies have not been properly trained on the subject, and thus there is significant underreporting.\textsuperscript{1146} That said, the IACHR recognizes the State’s efforts since 2012 to collect and provide disaggregated data on the sexual orientation and gender identity of victims via two of the main data collection tools used by the “Victim’s Unit” (SNARIV).\textsuperscript{1147}

\textsuperscript{1139} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, received by IACHR Executive Secretariat on October 9, 2014, p. 4.
\textsuperscript{1140} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note 1262-2013 dated December 2, 2013, received by IACHR Executive Secretariat on 2 December 2013, p. 3.
\textsuperscript{1141} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Guatemala, Note SAIC 1388-2013, received by the IACHR Executive Secretariat on December 2,2013, p. 5.
\textsuperscript{1144} IACHR, Truth, Justice and Reparation: Colombia, 2013.
\textsuperscript{1146} Colombia Diversa, Información sobre situación de derechos humanos de personas LGBTI en Colombia, received on December 11, 2014.
400. The Commission stresses that, in order to be able to generate data on violence based on prejudice, States must take steps to create IT systems and reporting mechanisms that expressly incorporate variables of sexual orientation and gender identity. If systems in place do not allow for this information to be included when crime data is recorded, States should make the necessary adaptations to include them. In this regard, the IACHR welcomes the information submitted by the Venezuelan Office of the Ombudsman, which indicated that, in 2007, forms used to file complaints were revised to incorporate the fields of “sexual orientation” and “gender identity” of the victim, and in 2009 the corresponding database was updated to display this information.\textsuperscript{1148}

401. The Inter-American Commission also received reports of challenges in collecting data relating to acts of violence against LGBT persons in Chile and Peru. In Chile, for example, besides from having legislation against discrimination which will be addressed below, there is no legislation establishing hate crimes regarding sexual orientation, gender identity and expression. Consequently, as the State informed the IACHR at the end of 2013, statistics in this regard are not collected.\textsuperscript{1149} Local organizations have reported that the Office of the Ombudsman in Peru has explained that its database does not contain any reference to the sexual orientation or gender identity of victims “because that information is private to the victim.”\textsuperscript{1150} Regarding this concern, the Commission is of the view that this question of privacy should not be allowed to interfere with States’ duty to collect this information for statistical, policy development, and crime fighting purposes. That said, the IACHR acknowledges that there are inherent risks in identifying oneself as lesbian, gay, bisexual, or trans, particularly to the police. Therefore in collecting this information, States need to put in place systems that respect the privacy of LGBT persons as much as possible, and need to give assurances that privacy will be respected, so that the collection of such data does not result in further victimization or stigmatization.

402. The IACHR urges OAS Member States to create national mechanisms, which may take the form of working groups, coordinating offices, or specific protocols among offices of statistics, so that the situation of violence against LGBT persons can be measured at the national level. It is crucial that data is gathered in a standardized manner, so that information from different regions can be compared and aggregated in order to reveal trends at the national level. In this regard, the State of Mexico indicated that, although some information had been collected at the federal level, data collection at the state level was not systematic.\textsuperscript{1151}

\textsuperscript{1148}Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Venezuela, Note AGEV/000373 dated December 20, 2013, received by IACHR Executive Secretariat on December 26, 2013, p. 3.

\textsuperscript{1149}Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 3.

\textsuperscript{1150}PROMSEX, “Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2013-2014”, May 2014, p. 34.

\textsuperscript{1151}Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 8.
acknowledges that federated States may face additional challenges when setting up a national coordinated mechanism of data collection. In these cases, the Commission urges federal States to strengthen efforts to generate tools or enter into agreements with local governments to collect data in a cooperative and coordinated manner.

403. In many other OAS Member States, numerous civil society organizations collect data on human rights violations, which would otherwise go undocumented. Data collected by civil society organizations and other non-state actors, while useful, are often times not comprehensive, because of limited access to information. The State not only has the duty to collect this data, but is in a better position to do so, through its different government agencies.

404. Most of the aforementioned mechanisms for collecting data are contingent on reporting by victims. Consequently, the IACHR highlights that States must make special efforts to collect data from sources which do not depend on formal reports being brought to the attention of authorities. To this end, national statistics agencies or other relevant agencies such as National Human Rights Institutions should carry out surveys to collect data on acts of violence suffered by lesbian, gay, bisexual, trans, or intersex persons, or those perceived as such. These complementary mechanisms are especially useful to collect information on certain types of violence not typically reported to the authorities, such as domestic violence and police abuse. States should also consider entering into agreements with civil society organizations that collect data through their own means.

405. Data collection efforts need to be matched with training of state officials in adequately documenting and recording the violence. According to the UN High Commissioner on Human Rights, “prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting.”1152 State agents must receive adequate training in order to be able to enter accurate information in recording mechanisms, to pay due attention to specific variables regarding LGBT people when receiving reports, and to have a proficient command of the mechanisms in place. Insufficient training of police agents, prosecutors, and forensics authorities is another factor that can lead to inaccurate reporting. For example, when trans victims are registered according to their sex assigned at birth, their gender identity is not reflected in the records. Trans women are frequently identified in public records as “men dressed in women’s clothes.”1153 Lack of knowledge and training may also lead police officers or prosecutors to conflate the notions of sexual orientation and gender identity and thereby identify trans women as “gay men.”1154 In some States, organizations have reported that authorities register gay, trans, lesbian, or bisexual persons under umbrella terms

1152 OHCHR, Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, May 4, 2015, para. 25 [original footnotes omitted].
like “LGBT” or “gay” — even if they are trans persons — without specifying their orientation or identity.  

406. Further, the IACHR stresses that data must be disaggregated as much as possible, so as to reflect the particularities and tendencies of this violence. Disaggregation of data becomes a key factor when violence against LGBTI persons is the result of the intersection of discrimination based on sexual orientation, gender identity and bodily diversity with discrimination based on other grounds, such as race, ethnicity, disability, age, nationality, and socio-economic status of victims, among many other aspects. In 2013, the IACHR welcomed Brazil’s efforts to produce disaggregated data regarding crimes motivated by the victim’s actual or perceived sexual orientation or gender identity.  

407. The IACHR notes with concern that there is almost no data collected with respect to intersex persons. According to the Council of Europe “[t]o date there is little information about the legal and social situation of intersex people in many European countries and around the world.” For these reasons, on March 15, 2013, the IACHR convened of its own accord a hearing to learn from intersex persons and human rights defenders about the main human rights violations faced by intersex persons. For example, as explained in this report, medical and other types of violence against intersex persons remains highly invisible. During the fifteen-month review period discussed at various points above in this Report, the IACHR did not receive any reports of cases of violence against intersex persons. This not because such violence did not occur, but because violence against intersex persons is often carried out under State-approved medical protocols, and is seldom reported in the media or denounced by victims, their families, or civil society organizations. One intersex activist from Costa Rica explained to the IACHR that the situation of intersex persons is not talked about in public or private
hospitals or medical associations, and also that the families of intersex persons do not talk about these issues because discussions related to the genitals or to sexuality are considered taboo.\textsuperscript{1161} The IACHR urges OAS Member States to conduct data collection efforts to assess the prevalence of non-medically necessary interventions on intersex children. This is the first step in identifying a practice that is widely accepted among the medical communities of some Member States, but which is in clear violation of international human rights law, as explained in the previous chapter.

408. In sum, the IACHR urges all States to make serious efforts to systematically collect data on violence against LGBTI persons. These efforts must be carried out in coordination with all branches of government. Additionally, in States where Offices of the Ombudsperson, Public Prosecution, or Public Defense are autonomous or independent, special cooperation mechanisms should be put in place to ensure that their data is also considered as input for statistics at a national level. States also need to collect data on access to justice. Data comparing how violence is addressed at different stages in the proceedings, from reporting through trials and sentencing (and whether hate crime legislation was applied), will allow States to better identify the challenges to access to justice, and the reasons why the rate of impunity is so alarmingly high, as examined later in this chapter. OAS Member States should make serious efforts to establish data collection systems capable of gathering information from a wide variety of sources, including but not limited to: information contained in records kept by police forces, forensic agencies, tribunals and courts, prosecution and public defense offices, all other relevant agencies of the justice system, offices of ombudspersons, agencies providing assistance to victims, public hospitals, public schools, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans, and intersex persons.

2. Legislative Measures to Prevent Violence

409. As examined in chapter four, violence and discrimination against LGBTI persons, committed by both state and non-state actors, are ubiquitous across the Americas. Societal discrimination combined with impunity, lack of effective investigations, and the absence of a differentiated approach to the investigation and prosecution of crimes committed against LGBTI persons, have the effect of condoning the violence, and results in failure to curtail it. The absence of legal recognition of sexual orientation, gender identity, and bodily diversity as grounds on which violence is committed renders this violence invisible in the eyes of the law, erasing the enhanced risk of violence faced by LGBTI persons. Even beyond this, there are countries in which violence is fueled by legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

\textsuperscript{1161} Testimony and information by Natasha Jimenez, MULABI, presented to the IACHR, \textit{Public Hearing on the Rights of Intersex Persons}, March 15, 2013. Audio and video available at \url{www.iachr.org}. 
a. **Enhanced legal protection from violence based on prejudice**

410. The IACHR notes that there is a growing consensus about the legal recognition of crimes motivated by the perception of the victim’s sexual orientation or gender identity as an aggravating factor in the sentencing of crimes, when there is evidence that these factors played a role in the crimes. This consensus includes international and regional human rights experts, international and regional human rights bodies, and an increasing number of OAS Member States. The UN Human Rights Committee has urged States to specifically criminalize acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity). The Committee of Ministers of the Council of Europe has recommended that States “ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.”

Civil society organizations have vocally advocated for the enactment of such legal provisions. For the Office of the High Commissioner for Human Rights, these “laws can play an important role in facilitating the prosecution and punishment of perpetrators of hate-motivated violence and in establishing homophobia and transphobia as aggravating factors for the purposes of sentencing.” As such, in its 2015 Report, the High Commissioner recommended that States address violence by “[e]nacting hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing.”

411. Analogously, in 2011, the IACHR highlighted the positive step taken by States to eradicate violence against women by the enactment of laws that send a social message that violence against women will not be tolerated and will be punished. The UN General Assembly stressed the need to treat all forms of violence against women and girls as a criminal offence, punishable by law.

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1164 Human Rights First, *Ten-Point Plan for Combating Hate Crimes*, (n.d). Civil society organizations have recommended to OAS Member States in numerous public hearings held before the IACHR that they adopt hate crimes laws. For example, during the hearing on the human rights situation of LGBT persons in the Dominican Republic held on October 23, 2015, civil society organizations present indicated that despite years of requests by NGOs, the latest reform of the criminal code passed in February 2015, did not include hate crimes based on sexual orientation or gender identity. Hearing requested by Diversidad Dominicana, Funceji, RevASA, Amigos siempre Amigos, GAYP and Cariflags. Public Hearing “Human Rights Situation of LGBT Persons in the Dominican Republic,” 156th Period of Sessions, October 23, 2015. Audio and video available at [www.iachr.org](http://www.iachr.org).
Along these same lines, in 2011, the IACHR recommended that OAS Member States adopt legislation that punishes acts of racial discrimination.1169

412. The IACHR acknowledges legal measures adopted by various OAS Member States, including: establishing aggravating circumstances in sentencing for crimes committed on the basis of sexual orientation and/or gender identity; incorporating hate or bias-motivated crimes into their legal systems; adopting new anti-discrimination laws that explicitly include sexual orientation and gender identity; and extending the protection of existing non-discrimination legislation to include sexual orientation and gender identity. For example, countries including Argentina, Bolivia, Chile, Canada, Colombia, Ecuador, United States, El Salvador, Honduras, Mexico, Nicaragua, Suriname, and Uruguay have either enacted hate crime legislation or included sexual orientation and/or gender identity as aggravating factors in sentencing. Brazil does not have federal legislation in this regard, but several Brazilian states criminalize acts of violence based on sexual orientation, gender identity, and/or gender expression.1183

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1171 Bolivian Criminal Code, Art. 40bis; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13 dated May 19 2013, received by IACHR Executive Secretariat on December 23, 2013, p. 7.
1172 Chilean Criminal Code, Article 12(21); Information submitted to the IACHR by the Chilean Public Ministry, received by the IACHR Executive Secretariat on December 19, 2013, p. 2.
1175 The Ecuadorian Criminal Code contemplates hate crimes based on, among other grounds, sexual orientation or gender identity, including incitement or perpetration of any kind of physical or moral violence. Código Orgánico Integral Penal (COIP), Art. 177 (2014); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Ecuador, Note 4-2-380/2013, received by IACHR Executive Secretariat on December 2, 2013, p. 7.
1176 United States Code, Title 18, Chapter 13, §249 - “Hate Crimes Acts;” Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the United States of America (USA), p. 24.
1178 The IACHR was informed that the President of El Salvador signed these reforms into law on October 5, 2015.
1179 Honduran Criminal Code, Article 27; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 4.
1179 Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.
1180 Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4.
1181 According to information received by the IACHR in August 2015, Suriname modified Article 175 of the Criminal Code to include an increase in penalties for crimes committed on the basis of sexual orientation.
1182 These states include Mato Grosso, Sergipe, Pará, São Paulo, and Rio de Janeiro. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Casarão do Brasil, Brazil, received on November 25, 2013. The Commission was informed by civil society organizations that the main obstacle to approving federal legislation criminalizing violence against LGBT persons is the presence and
413. The IACHR takes note that some countries have included *sexual orientation* — sometimes referred to as *sexual preference* — but have failed to include *gender identity* in these legal protections. The Inter-American Commission stresses that States should expressly include *gender identity* as a ground for protection in legislation and public policy. The Commission is cognizant of the arguments by some States that protection for trans persons can be subsumed in the terms *sex* or *gender* in the wording of laws or legal provisions. Although progressive interpretation by analogy and the use of open-ended clauses may be a useful tool for the construction of laws and regulations, the IACHR recommends the specific inclusion of the term *gender identity*, for the purposes of legal certainty and visibility. The IACHR is not aware of any legislation in OAS Member States that has specifically outlawed violence against intersex persons, or which includes bodily diversity or the fact of being intersex as a prohibited category regarding discrimination, or aggravating factors in the sentencing of a crime.

414. Even in countries that have passed hate crime laws and enhanced penalties for crimes based on prejudice, the poor implementation of such legal measures has been criticized by members of academia and civil society organizations, for a variety of reasons. Once these laws are passed, States sometimes fail to adopt further, complementary measures to address violence based on prejudice. Further, implementation of these laws is often weak, because of inefficiencies and obstacles in accessing justice for these crimes, including the prevalence of biased investigations, and the lack of training of police, forensics specialists, prosecutors, and judges. Despite these shortcomings in implementation, there seems to be consensus that the enactment of these provisions has a symbolic impact in recognizing these types of violence and in sending a strong message to society as a whole that the State takes these crimes seriously.

415. For instance, the Commission has noted that, notwithstanding that Article 58 of the Colombian Criminal Code recognizes the sexual orientation of the victim as an influence of radical religious groups and politicians in Congress. Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humanista Secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.

1184 The IACHR is of the view that the correct terminology is *sexual orientation* and not *sexual preference*. See I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*, Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

1185 [Canada] Canadian Criminal Code (R.S.C., 1985, c. C-46), article 718.2(a)(i); [Colombia] Colombian Criminal Code, Article 58(3) (Ley 599 of 2000), published on July 24, 2000; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Colombia Diversa,” received by IACHR Executive Secretariat on November 26, 2013, p. 72; [Nicaragua] Nicaraguan Criminal Code, Article 36(5); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Nicaragua, received by IACHR Executive Secretariat on November 20, 2013, p. 4; [Mexico] Federal Criminal Code of Mexico (as amended by Decree published in Official Gazette June 14, 2012), Article 149ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by IACHR Executive Secretariat on December 4, 2013, p. 3.

1186 In this regard, see *e.g.*, the recognition and criticism made from the academy to legislation against hate crimes in the United States, in Gómez, María M. *Chapter 2: Prejudice-based Violence*, in Motta, Cristina and Sáez, Macarena (eds.), *Justice’s Gaze: A Casebook on Diverse Sexualities and Jurisprudence in Latin America*. Vol. 2, Bogotá, Colombia: Siglo del Hombre Editores, Red Alas, 2008, pp. 108 and ff. [Free translation by the IACHR].
aggravating factor, a civil society organization reported that this criminal provision is not being enforced due to prevailing prejudices in the administration of justice system.\textsuperscript{1187} The IACHR recommended that the State of Colombia adopt measures to ensure that prosecutors and judges properly implement the existing legal provisions in cases of violence against LGBT persons. In December 2014, the IACHR was informed by one organization that out of the 730 murders of LGBT persons documented between 2006 and 2014, "so far, not a single conviction has recognized sexual orientation or gender identity as a motive or aggravating circumstance."\textsuperscript{1188} The IACHR reiterated its concern over lack of implementation of this provision, in its 2014 Annual Report.\textsuperscript{1189}

416. Regarding intersex persons, the Commission has recommended that States take steps to prohibit medical or surgical treatment or interventions of intersex people when these are medically unnecessary and are conducted without the prior, free and informed consent of intersex persons themselves.\textsuperscript{1190} These interventions can result in severe, long-term physical and psychological suffering, affecting intersex children’s rights to physical integrity, health, privacy, and autonomy, and in some cases may constitute torture or ill treatment.\textsuperscript{1191} The UN High Commissioner for Human Rights, the Committee on the Rights of the Child, the UN Committee against Torture, the special procedures mandate holders on the right to health, and the special procedures mandate holders on torture, have all called for an end to this practice.\textsuperscript{1192} In this regard, the Commissioner for Human Rights of the Council of Europe recommended in a 2015 report that “[s]ex characteristics should be included as a specific ground in equal treatment and hate crime legislation or, at least, the ground of sex/gender, should be authoritatively interpreted to include sex characteristics as prohibited grounds of discrimination.”\textsuperscript{1193}

\textsuperscript{1187} IACHR, \textit{Truth, Justice and Reparation: Colombia}, 2013.
\textsuperscript{1188} Colombia Diversa, “\textit{Información sobre situación de derechos humanos de personas LGBTI en Colombia},” received on December 11, 2014.
\textsuperscript{1189} IACHR, \textit{Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia}, para. 292.
\textsuperscript{1190} Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples’ Rights, and the Commissioner for Human Rights of the Council of Europe. \textit{Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights}, May 17, 2015.
\textsuperscript{1191} Joint Statement on International Day against Homophobia, Biphobia and Transphobia by the IACHR, the UN Committee on the Rights of the Child, UN Independent Experts, the Special Representative of the UN Secretary-General on Violence against Children, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples’ Rights, and the Commissioner for Human Rights of the Council of Europe. \textit{Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights}, May 17, 2015.
417. The IACHR takes into account the symbolic impact, positive social message, and improved prevention that arise from legislation that specifically protects LGBTI persons from violence. The IACHR calls on OAS Member States to extend legal protection from violence so that such protection explicitly recognizes and punishes crimes based on the victim’s sexual orientation, gender identity, bodily diversity or sex characteristics.

b. Enactment of legislation protecting and recognizing the rights of LGBTI persons

418. The UN Human Rights Committee has urged the adoption of “comprehensive legislation to combat discrimination, including provisions that provide protection against discrimination on grounds of sexual orientation and gender identity.” 1194 States must recognize in their legislative framework the human rights of all persons, without discrimination on the basis of sexual orientation, gender identity, or bodily diversity. The IACHR is of the opinion that in order to prevent and address violence against LGBTI persons, States must adopt a legal framework to specifically protect persons from discrimination based on sexual orientation, gender identity, or bodily diversity (due to being intersex), given the inherent link between violence and discrimination that was examined in the second chapter of this report.

419. In the context of this report, the IACHR notes that this obligation includes the adoption of gender identity laws. In recent years, the IACHR has consistently called on OAS Member States to adopt gender identity laws, which recognize the right to identity of trans persons in a way that does not pathologize trans persons. The best practice in the region is the Gender Identity Law in Argentina, which does not require any type of medical intervention or procedure, judicial proceeding, or psychiatric or medical certification, in order for persons to have their gender recognized. One study indicates that the prevalence of violence and discrimination against trans persons in Argentina has diminished since the passing of the gender identity law in 2012.1195 However, the IACHR continues to receive information on killings and other acts of violence against trans women in different provinces in Argentina. The IACHR takes note that Uruguay has also passed a gender

1196 See, e.g., Cáscara Amarga, “La Federación Argentina LGBT pide justicia para una mujer transexual asesinada,” January 12, 2015 (making reference to the killing of Pamela Moreno, trans woman in Santiago del Estero) (Available only in Spanish); Clarín, “Con odio y saña, castran y asesinan a una chica trans en Córdoba,” July 27, 2015 (making reference to the killing of Laura Moyano in Córdoba) (Available only in Spanish); BBC, Argentina transgender killing sparks outcry, October 15, 2015 (making reference to the killing of Diana Sacayán in Buenos Aires, whose body was found on October 13, 2015); Office of the High Commissioner for Human Rights, Regional Office for South America, “Oficina Regional repudia muertes de personas transgénero en Argentina,” October 21, 2015 (making reference to the killing of Marcela Chocobar in Santa Cruz on September 26, 2015, and that of Fernanda “Coty” Olmos in Santa Fe, whose body was found on September 14, 2015) (Available only in Spanish).
identity law, which became the first country to do so in 2009\textsuperscript{1197} and that there is a gender identity bill pending in Congress in Chile.\textsuperscript{1198}

420. Furthermore, in July 2015, the IACHR congratulated Mexico and Colombia for the adoption of decrees that allow for the sex component or gender marker on identity documents to be changed through simple administrative procedures. These procedures are available in Mexico City and throughout Colombia. The Commission noted that prior to these measures, changing the sex component on official forms could only be achieved through lengthy and onerous judicial procedures. These procedures called for psychiatric diagnoses and/or medical tests that pathologized trans persons. At the same time that the IACHR recognized these positive steps regarding administrative decrees, the IACHR urged both Mexico and Colombia to enact gender identity legislation.\textsuperscript{1199}

421. The IACHR notes that there are certain countries in the region, such as Bolivia\textsuperscript{1200} and Honduras,\textsuperscript{1201} among others, that have specifically outlawed discrimination on the basis of sexual orientation and gender identity. In Chile, an anti-discrimination law was passed following the brutal and prejudice-motivated killing of Daniel Zamudio, referred to in chapter four of this Report.\textsuperscript{1202} These legal initiatives have failed in other countries, either because they have not been proposed,\textsuperscript{1203} or because once bills have been introduced, they have not been successful after years of debate.\textsuperscript{1204} The IACHR does not have any information as to the specific impact

\textsuperscript{1197} Redlactrans, “Informe sobre el Acceso a los Derechos Económicos, Sociales y Culturales, de la Población Trans en Latinoamérica y el Caribe.” December, 2014 (p. 14), making reference to Uruguay’s Gender Identity Law “N° 18.620 Derecho a la Identidad de Género y al Cambio de Nombre y Sexo en Documentos Identificatorios,” Uruguay, Published on November 17, 2009 - Nº 27858.

\textsuperscript{1198} IGLHRC, Chile’s Gender Identity Bill: two years later, May 8, 2015. See also, Frente de la Diversidad Sexual (Chile), Declaración Pública del Frente de la Diversidad Sexual, principal red de organizaciones LGBTI del Chile, sobre el anuncio del Ministro Secretario General de Gobierno Marcelo Díaz sobre darle suma urgencia al proyecto de Ley de Identidad de Género, September 19, 2015 (Available only in Spanish).

\textsuperscript{1199} IACHR, Press Release No. 075/15, IACHR congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons, July 1, 2015.

\textsuperscript{1200} In 2012, the Criminal Code of Bolivia was revised to criminalize acts of discrimination based on, among other grounds, sexual orientation and gender identity. Additionally, it constitutes an aggravated offense when such discrimination is committed with violence or when the discrimination is perpetrated by a State agent. Bolivian Criminal Code, Art. 281ter; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Bolivia, Note MPB-OEA-NV261-13, received by IACHR Executive Secretariat on December 23, 2013, p. 7.

\textsuperscript{1201} In 2013, Honduras amended its criminal code to criminalize acts of discrimination based on sexual orientation and gender identity. Honduran Criminal Code, Art. 321 (as amended by Decreto Legislativo 23-2013, February 21, 2013); Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by IACHR Executive Secretariat on November 20, 2013, p. 6. According to information received by the IACHR, however, the proposed reform of the criminal code of 2015 would include amendments to this provision. Information presented by Red Lésbica Cattrachas, August 2015.

\textsuperscript{1202} Chilean National Congress, Law No. 20.609 that establishes measures against discrimination. Published on July 24, 2012.

\textsuperscript{1203} For example, according to information received by the IACHR, there are no laws that prohibit discrimination on the basis of sexual orientation or gender identity in the Dominican Republic. IACHR, Public Hearing Human Rights Situation of LGBT Persons in the Dominican Republic, 156\textsuperscript{th} Period of Sessions, October 23, 2015.

\textsuperscript{1204} For example, according to information received by the IACHR, a bill against discrimination that was presented before the Paraguayan Congress was rejected in November 2014, after seven years pending
that the passing of these laws has had on preventing and curtailing violence. However, these laws also have a symbolic impact, since they explicitly recognize the particular risks of discrimination that people face due to their sexual orientation, gender identity or bodily diversity.

c. Ensuring that laws do not discriminate or fuel violence based on prejudice

422. The Commission has reiterated that the right to equality and non-discrimination in Article II of the American Declaration1205 and Article 24 of the American Convention1206 is a fundamental principle of the inter-American system of human rights. States are not only obligated to provide equal protection under the law for persons subject to the State's actions,1207 but they must also adopt the legislative, public policy, and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration,1208 and under the American Convention.1209 The Inter-American Court has indicated that the general obligation set forth in Article 2 of the American Convention implies the adoption of measures to eliminate norms and practices that entail the violation of the guarantees set forth in the Convention, and the issuance of norms and the development of practices leading to the effective observance of those guarantees.1210

423. The Commission and the Inter-American Court have repeatedly established that the right to equal protection under the law and the principle of non-discrimination together imply that States are obliged to: (i) abstain from introducing into their

approval. See Abc Color, “Proyecto de Ley contra toda forma de discriminación” January 26, 2015. Information also received in the context of a public hearing held before the IACHR in March 2015. IACHR, Public Hearing Reports of Violence against Trans Persons and Impunity in Paraguay, 154th Period of Sessions. March 17, 2015.


1209 IACHR, Report No. 4/01, Case 11.625, Maria Eugenia Morales de Sierra, Guatemala, January 19, 2001.

1210 Inter-American Court of Human Rights, Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants, Mexico, September 17, 2003 para. 167. The Inter-American Commission has stated that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention. See e.g., I/A Court H. R., Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, July 14, 1989, para. 37; I/A Court H. R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, October 1, 1999, para. 115; IACHR, Report No. 12/14, Case 12.231, Merits (Publication). Peter Cash, Commonwealth of The Bahamas, April 2, 2014, paras. 58, 60.
legal frameworks regulations that are discriminatory or that have discriminatory effects on certain groups of the population; (ii) eliminate discriminatory regulations; (iii) combat discriminatory practices; and (iv) establish norms and adopt the necessary measures to acknowledge and guarantee the effective equality of all people under the law. These obligations apply to both States that have ratified the American Convention and States that have yet to ratify the American Convention.

424. As explained in Chapter 3 of this Report, there is a link between criminalization of certain types of sexual relations between consenting adults, and violence against LGBT persons, or those perceived as such. Further, in this Report, the IACHR has also examined the link between laws aimed at safeguarding “public morals,” or laws against soliciting, vagrancy, and loitering, and violence against LGBT persons or those perceived as such, which is mostly perpetrated by State agents, particularly violence in response to public displays of affection between same-sex couples and trans women, and against trans sex workers. As has been established by the IACHR, the right to equality before the law requires that the law be applied equally to all and without discrimination. This means that States must assess the potential discriminatory impact of laws and policies, even when their formulation or wording appears neutral.

425. The IACHR urges the States of the region that still have laws criminalizing consensual sex between adults of the same sex, “serious indecency” and “gross indecency” laws –aimed at criminalizing same-sex intimacy- and legislation criminalizing cross-dressing, to repeal those laws, or, in the interim, to impose an explicit and formal moratorium on enforcement of those laws. The IACHR also urges OAS Member States to revise any domestic legislation that includes vague language on “public morals” (buenas costumbres), which can be used to justify discriminatory targeting of LGBT persons, particularly trans persons. The IACHR also urges all States to issue specific directives to all law enforcement agents,

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reaffirming that violence, abuse, and discrimination based on sexual orientation, gender identity, or gender expression, will be punished.

3. Eradication of stigma and negative stereotypes

426. As explained in chapter two of this Report, violence perpetrated against LGBT persons is rooted in pervasive social prejudice present in societies across the Americas. An important component of a State’s response to violence against LGBT persons is addressing the underlying social discrimination against such persons. Further, as examined in the previous chapter, violence against intersex persons stems from the lack of acceptance towards bodily diversity. Achieving increased understanding and respect toward diverse sexual orientations, gender identities and bodies will consequently reduce and eventually eradicate acts of violence against LGBTI persons. States need to implement measures to address and eradicate prejudice at all levels and through various mechanisms. The UN Human Rights Committee has indicated that States should prioritize the implementation of programs to eliminate stereotyping and discrimination and guarantee respect for diversity.1216

427. The Inter-American Commission notes that there is a prevailing culture of tolerance where acts of violence and attacks against LGBT persons are deemed normal. It has even been alleged that many people feel “entitled” to attack LGBT persons.1217 One state informed the Commission that violence against LGBT persons tends to be “accepted” by society, and is sometimes even treated in a humorous way by the mass media.1218

428. The IACHR has indicated that standards and principles of human rights are both a guide and a roadmap for designing, implementing, and evaluating public policies.1219 State policies directed at educating the public about human rights with a gender and diversity perspective should not be restricted to educational environments. Rather, they should be crosscutting in every field in which the State operates. The principles of equality and non-discrimination, with a special focus on sexual, gender and bodily diversity, should be a key element of such policies.

429. The Commission takes note of an increasing number of public policies and other measures, such as those taken by National Human Rights Institutions, that have been adopted in the past ten years by OAS Member States in favor of LGBTI persons. Since 2004, the State of Brazil has implemented initiatives to combat violence at the national level, such as “Brazil without Homophobia” (Brasil sem Homofobia), “General Secretariat for the Promotion of Rights of Lesbian, Gay, Bisexual, and Trans Persons” (Coordenação-Geral de Promoção dos Direitos de

1218 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268, received by IACHR Executive Secretariat on October 9, 2014, p. 3.
Lésbicas, Gays, Bissexuais, Travestis e Transexuais), and the "National System to Face Violence against LGBT persons and to Promote Rights" (Sistema Nacional de Enfrentamento à Violência contra LGBT e Promoção dos Direitos).\textsuperscript{1220} Further, civil society has highlighted the National Campaign for “a country free from homophobia” ("Campanha Faça do Brasil um País Livre da Homofobia"), which aims at promoting the rights of LGBT persons and raising the awareness of NGOs and State agents regarding the situation of violence against LGBT persons.\textsuperscript{1221}

430. The IACHR also acknowledges the creation of a specialized Office of the Ombudsperson on Sexual Diversity in Nicaragua\textsuperscript{1222} and an Office of the Ombudsperson on the Rights of LGBTI Persons in Guatemala.\textsuperscript{1223} Further, the Commission values that the State of Guatemala included the development and promotion of public policies focused on “sexual diversity” issues in its Human Rights Action Plan (2007-2017).\textsuperscript{1224} Guatemalan civil society organizations\textsuperscript{1225} and the Guatemalan State\textsuperscript{1226} have indicated that, following a public hearing that took place before the IACHR in November 2012, the State began a process of dialogue with civil society organizations through an “Inter-Institutional Technical Group” ("mesa técnica interinstitucional"), with the objective of designing and adopting public policies that are respectful of the rights of LGBTI persons, in consultation with civil society.\textsuperscript{1227} Further, the Commission was informed that in 2010 the State of El Salvador created a Sexual Diversity Division at the Secretary of Social Inclusion, within the Executive Branch.\textsuperscript{1228} Its objectives include awareness-raising campaigns to eliminate stereotypes and prejudices.\textsuperscript{1229} Further, former First Lady of El Salvador, together with the Secretary for Social Inclusion, has launched a 24-hour hotline that provides legal assistance and counseling to the LGBTI people.\textsuperscript{1230}

431. The IACHR notes as well that numerous National Human Rights Institutions in the Americas have carried out actions in favor of LGBTI persons, whether in the form of public statements in support of LGBTI persons, or specific actions to raise

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\textsuperscript{1220} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Brazil, Note 268 dated October 9, 2014, received by IACHR Executive Secretariat on October 9, 2014, p. 1.

\textsuperscript{1221} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Liga Humana secular do Brasil [Brazil], received by the IACHR Executive Secretariat on December 24, 2013.

\textsuperscript{1222} El Nuevo Diario, "Procuradora especial de diversidad sexual" November 30, 2009 (Available only in Spanish).

\textsuperscript{1223} Office of the Ombudsperson, "Defensoría de la Diversidad Sexual," functioning since April 2014.


\textsuperscript{1226} IACHR, Press Release No. 86/14, IACHR Wraps Up its 152\textsuperscript{nd} Special Session, August 15, 2014.

\textsuperscript{1227} Information presented to the IACHR at the hearing regarding Guatemala, during the extraordinary period of sessions held in Mexico City in August 2014.


\textsuperscript{1229} Information presented to the IACHR at the hearing regarding Guatemala, during the extraordinary period of sessions held in Mexico City in August 2014.


\textsuperscript{1230} Social Inclusion Secretariat “SIS lanza call center 131 para atención y asistencia en diversidad sexual”. May 17, 2013 (Available only in Spanish).
awareness about their human rights violations. For example, the Commission has received information regarding actions by these institutions in Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Peru, and Venezuela.

The IACHR has acknowledged that in recent years Colombia has adopted positive and meaningful measures in support of LGBTI persons, and is close to adopting a comprehensive national public policy in this regard. The IACHR notes also the activities of the National Human Rights Commission of Mexico (CNDH), which in 2008 and 2010 published reports regarding crimes based on sexual orientation and gender identity, and organized a series of conferences beginning in 2012 to promote awareness of the issues affecting LGBTI persons. The IACHR has also recognized the efforts made by the National Center for Sex Education (CENESEX), a Cuban state entity under the Ministry of Health that addresses issues of sexual diversity with a view to promoting and protecting the rights of LGBTI persons. According to Mariela Castro, the director of CENESEX, there is political will in Cuba to address the issues facing LGBTI persons. This has facilitated the implementation of a national sex education program that is helping to change the “patriarchic, homophobic mindset.” The Argentinean National Institution against Discrimination, Racism and Xenophobia (INADI) has also been very active in promoting the rights of LGBTI persons.

The UN Human Rights Committee has recommended to several OAS Member States that they publicly state that they will not tolerate social stigmatization,
discrimination, or violence based on a person’s sexual orientation or gender identity. The IACHR stresses that this message should permeate every State action and should be reflected in how State agents respond to such violence, including also violence directed at intersex persons. The IACHR has affirmed that positive public statements by State authorities are key in combating stigmatization of LGBTI persons, since States play a crucial role in leading social change to combat discrimination and social prejudices.

In November 2013 and May 2014, the IACHR highlighted a series of positive statements issued by high level authorities—including Heads of State and Ministers— in various Commonwealth Caribbean countries where same-sex intimacy between consenting adults is criminalized. These included statements made by heads of state, in countries such as Belize, Barbados, Jamaica, The Bahamas, and St. Kitts and Nevis. The IACHR greatly values the commitment of State officials who take a public stance in favor of equality in

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1244 IACHR, Press Release No. 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.

1245 IACHR, Press Release No. 89/13 IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons, November 21, 2013.

1246 The IACHR noted that the Prime Minister of Barbados, the Honorable Mr. Freundel Stuart, recalled the importance of the Universal Declaration on Human Rights and supported “the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation.” IACHR, Press Release No. 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.

1247 The IACHR noted that the Honorable Youth Minister in Jamaica, Lisa Hanna, announced at the beginning of 2014 that the government was developing programs focused on LGBTI youth. IACHR, Press Release No. 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014. Further, the IACHR highlighted that the Minister of Justice in Jamaica condemned the 2013 killing of a trans teenager, Dwayne Jones, and called upon Jamaicans to “embrace the principle of respect for the basic human rights of all persons.” IACHR, Press Release No. 89/13 IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons, November 21, 2013.

1248 The IACHR noted that the Honorable Mr. Frederick Mitchell, Minister of Foreign Affairs and Immigration of The Bahamas, said that the sexual orientation of a person seeking elected office should not be relevant. He added that “there must be tolerance at a minimum and we must uphold the principle that the general rights for which we fought [are] rights for all people... [and] cannot be derogated from because of someone’s sexual orientation.” IACHR, Press Release No. 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.

1249 The IACHR welcomed the statement delivered by the Prime Minister of St. Kitts and Nevis, Denzil Douglas, speaking against discrimination and stigmatization of LGBTI persons. IACHR, Press Release No. 89/13 IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons, November 21, 2013.
contexts in which prejudice, discrimination, and violence against LGBT persons are widespread.\footnote{IACHR, Press Release No. 89/13 \textit{IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons}, November 21, 2013.}

\textbf{435.} The IACHR has launched two social media campaigns to raise awareness of the rights of LGBTI persons and the human rights violations that are committed against them. On December 17, 2014, the IACHR launched a ten-day campaign on various social media platforms concerning violence against LGBTI persons. This included graphics\footnote{IACHR, \textit{Social Media Campaign}, to raise awareness of the human rights situation of LGBTI persons (December 2014) (only available in Spanish).} and three videos,\footnote{These videos (with Spanish, English and Portuguese subtitles) are available at: \url{https://www.youtube.com/user/ComisionIDH}.} featuring a compilation of clips of IACHR hearing testimony by victims and human rights defenders regarding the human rights situation of LGBTI persons. The second weeklong social media campaign was launched to coincide with the 2015 International Day against Homophobia, Biphobia and Transphobia, celebrated each year on May 17.\footnote{IACHR, \textit{Second Social Media Campaign}, launched in May 2015, in commemoration of the International Day against Homophobia, Biphobia and Transphobia.} The two campaigns together reached approximately 1,760,000 users of Spanish-language Facebook and Twitter in the Americas. International human rights mechanisms have also carried out awareness-raising campaigns. For example, in July 2013, the UN High Commissioner on Human Rights launched a global education campaign to combat violence and discrimination against LGBT persons,\footnote{UN Free & Equal Campaign, available at: \url{www.unfe.org}.} which, according to the UN, has reached more than a billion people around the world.\footnote{OHCHR, \textit{Discrimination and violence against individuals based on their sexual orientation and gender identity}, A/HRC/29/23, May 4, 2015, para. 6.}

4. Prevention of violence in specific contexts

a. Prevention of violence in the context of law enforcement

437. Under international law a State is responsible for the acts and omissions of its agents, even when those agents act illegally or otherwise outside the permitted sphere of their authority.1258 Thus, any violation of the rights that are recognized by the American Convention (or the American Declaration) that is carried out by an act of public authority or by persons who use their position of authority is imputable to the State.1259

438. In order to prevent violence, States need to ensure that their justice systems are able to fully and effectively investigate all instances of police abuse and all instances of torture, and cruel, inhuman, or degrading treatment. States must exercise due diligence in investigating violence that is based on prejudice, since impunity for human rights violations fosters their repetition. The IACHR has repeatedly highlighted the need for States to train their police and law enforcement agents regarding human rights.1260 Such training must take into account the rights of persons with non-normative sexual orientations and gender identities.1261 Further, States must ensure that all ranks of police officers and law enforcement agents participate in the training.1262 The lack of sensitivity training for police and law enforcement agents on the topics of gender and sexuality is one of the most serious challenges in the efforts to eradicate prejudice-based violence by State actors in the Americas.

439. According to the information received by the IACHR, training sessions for security and police agents on sexual and gender diversity have been carried out in various

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1261 See, for example, IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc.12, 10 August 2012, para. 305(d).

1262 IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc.12, OEA/Ser.L/V/II.144 Doc. 12, August 10, 2012, para. 305(d). Further, the IACHR has received information concerning the challenges of implementing Directive 006/2010, which is aimed at preventing police abuse in Colombia. According to the information provided by civil society organizations, officers who were designated as the link between the police forces and members of the LGBTI community, pursuant to the Directive, were often low-ranking agents. Further, reportedly, training was provided to “desk agents” but not to those agents who conduct street patrols. Meetings between then-IACHR President, Tracy Robinson and LGBT organizations from the Caribbean region of Colombia (and from Cali and Tumaco). Meetings held on Cartagena, Colombia. October 3, 2014. See also, IACHR, Annual Report 2014: Chapter V: Follow-up Report to Truth, Justice and Reparations: Fourth Report on Human Rights Situation in Colombia, May 7, 2015.
OAS Member States. This includes a series of police trainings that have taken place in Caribbean countries in recent years, namely Barbados, Jamaica, St. Kitts and Nevis, St. Lucia, and Suriname.

440. The Inter-American Commission urges OAS Member States to enhance their efforts in training law enforcement personnel to refrain from abuses and violence based on prejudice. This training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing. Trainees should become familiar with local trends of violence that are based on prejudice, and should be made aware of the existence of groups, where they are present, that may specifically target people with non-normative sexual orientations or gender identities. Further, the IACHR urges OAS Member States to conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBTI persons who are deprived of liberty. Further, States must ensure that there are independent mechanisms to receive complaints in cases of torture, cruel, inhuman and degrading treatment, police abuse and other acts of violence by law enforcement agents and to ensure that they are effectively investigated.

b. Prevention of violence in the health sector

441. As highlighted in the previous chapter, the IACHR has received information on violence in the context of health care settings. The IACHR stresses that the reality of violence perpetrated by medical and non-medical personnel in public hospitals is a matter of serious concern. These are places in which persons in need of medical care should be able to obtain assistance, and should not be the setting of further violence. The UN Human Rights Committee has expressly recommended that States guarantee equal rights to access health care to all individuals regardless of their sexual orientation or gender identity.


1264 Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.

1265 Jamaica Observer, Police sharpen to work with vulnerable groups, June 22, 2015. See also, response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Jamaica, Note 6/80/1 dated December 3, 2013, received by IACHR Executive Secretariat on December 16, 2013, p. 3.

1266 SKNVibes, Security personnel participate in LGBT sensitivity training, June 14, 2015.


1268 Information about these trainings presented to the IACHR by Canadian HIV/AIDS Legal Network.
sexual orientation; and has called for awareness-raising programs to be launched to combat social prejudice.1269

442. The Pan American Health Organization has developed important blueprints to guide clinicians and health administrators in Latin America and the Caribbean, in both the general health sector as well as within specialized health clinics, in order to strengthen the ability of health care providers to address the distinct health needs of gay men (and other men who have sex with men),1270 as well as trans persons,1271 within the context of health promotion and health care delivery. These guidelines also address prevention, detection, and general measures to address violence against gay men, men who have sex with men, and trans persons.

443. Health care professionals should receive continuous training on matters of sexual, gender and bodily diversity. States should ensure that principles of medical ethics are respected and that health services are provided without discrimination, including on the basis of sexual orientation, gender identity, or gender expression. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.

444. With respect to “therapies” which attempt to change the sexual orientation or gender identity of persons with non-normative sexualities or gender identities or expression, often in the absence of their informed consent, the IACHR recommends that OAS Member States undertake measures to ensure that the regulatory entity of the health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer these services. Further, States shall adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject. In general terms, practices that cause harm to the physical, mental and social health should not be accepted as medical therapy.

445. Regarding the rights of intersex people, the IACHR welcomes the position adopted in 2013 by the National Institute Against Discrimination, Xenophobia and Racism of the Ministry of Justice, Security and Human Rights of Argentina, which has affirmed that intersex persons have the right to physical integrity and to self-determination of their own bodies, and that all medical protocols must ensure the right to free, prior, and informed consent.1272 The Commission also welcomes a set of guidelines issued by the Ministry of Health of the Province of Buenos Aires (Argentina, which specifically address the issue of surgeries on intersex children and expressly incorporates conclusions from the First International Intersex

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1269 Human Rights Committee, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007, para. 16.
1270 PAHO, Blueprint for the Provision of Comprehensive Care to Gay Men and Other Men who have sex with Men (MSM) in Latin America and the Caribbean (based on a consultation conducted in July 2009, Panama), at p. 20.
1271 PAHO, Blueprint for the Provision of Comprehensive Care to Gay Men and Other Men who have sex with Men (MSM) in Latin America and the Caribbean (based on a consultation conducted in July 2009, Panama).
Forum as recommendations.\textsuperscript{1273} According to information received by the Commission, the Ministry of Health has conducted trainings in hospitals based on these guidelines.\textsuperscript{1274}

446. The IACHR takes note of positive developments in jurisprudence in several countries in the Americas. For example, in its most recent consideration of issues relating to intersex persons, the Constitutional Court of Colombia held that intersex children should decide themselves, via their free and informed consent, whether or not they want to undergo surgery, given the right “to free development of one’s personality, sexual identity and personal autonomy.”\textsuperscript{1275} Among other recommendations, the Court urged the Ministry of Health to “develop guidelines and official medical protocols” to effectively address the birth of intersex persons, including the mandatory establishment of a multidisciplinary team including a social worker and a psychologist to provide assistance to intersex persons and their families.\textsuperscript{1276} In the United States, a local intersex organization filed lawsuits in state and federal courts in South Carolina on behalf of “M.C.,” a 16-month-old intersex boy who had been subjected to irreversible genital surgery while in state custody in an effort to make his body appear female. The organization alleges that, following the state’s actions, “M.C. has since grown into a healthy 8-year-old boy, although he will never get back the phallic and testicle that were removed.”\textsuperscript{1277}

447. Since 2013, the OAS General Assembly has urged OAS Member States to afford appropriate protection to intersex people and to implement policies and procedures, as appropriate, to ensure that medical practices are consistent with applicable human rights standards.\textsuperscript{1278} The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also called upon all States to repeal any law allowing intrusive and irreversible treatments, including forced “genital-normalizing” surgery, when enforced or administered without the free and informed consent of the person concerned.\textsuperscript{1279}

448. The IACHR notes that the principle of autonomy, expressed through full, free, and informed decision-making, is embodied in human rights law.\textsuperscript{1280} The UN Special Rapporteur on the right to health referred to the importance of informed consent

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\textsuperscript{1274} Health Ministry of the Buenos Aires Province, “\textit{Más de 40 profesionales se capacitaron sobre diversidad sexual en el hospital Carrillo},” September 19, 2012 (Available only in Spanish).

\textsuperscript{1275} Colombian Constitutional Court, \textit{Decision T-622/14}, August 28, 2014, first paragraph of 2.4 (Available only in Spanish).

\textsuperscript{1276} Colombian Constitutional Court, \textit{Decision T-622/14}, August 28, 2014, seventh resolution (Available only in Spanish).

\textsuperscript{1277} Advocates for Informed Choice (AIC), \textit{AIC announces important first victory in MC case!}, August 26, 2013.

\textsuperscript{1278} AG/RES. 2807 (XLIII-O/13), \textit{Human Rights, Sexual Orientation, And Gender Identity And Expression}, adopted at the fourth plenary session, held on June 6, 2013.

\textsuperscript{1279} \textit{Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment}, A/HRC/22/53, 1 February 2013, para. 88.

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for intersex persons and recommended that health-care providers strive to postpone non-emergency invasive and irreversible interventions until the child has sufficient maturity to provide informed consent. Further, in a 2015 Report the Commissioner for Human Rights of the Council of Europe stated that “sex assignment treatment should be available to intersex individuals at an age when they can express their free and fully informed consent.”

449. The Commission notes that specific safeguards for intersex children must be incorporated into legal instruments and medical protocols to protect and ensure the right of intersex children to informed consent. Further, training must be conducted with relevant stakeholders. A 2014 statement by several UN agencies affirmed that health-care professionals should be “educated and trained about bodily diversity as well as sexual and related biological and physical diversity, and that professionals should properly inform patients and their parents of the consequences of surgical and other medical interventions.”

450. The IACHR recommends that OAS Member States and protocols that call for non-medically necessary interventions on intersex children without their full, prior and informed consent. These surgeries should be postponed until the concerned person is able to provide full, prior, and informed consent, and a decision to not undergo such procedure should be respected. Non-intervention should not hinder or delay registration of birth with relevant State authorities. Further, given the need to eradicate stigma around intersex persons, OAS Member States should strive to raise awareness around human rights violations faced by intersex persons, through policies and programs that sensitize the general public and the medical community. The Commission recommends that medical classifications that pathologize all intersex persons or all variations in sex characteristics be revised and modified with the purpose of ensuring that intersex persons effectively enjoy the highest attainable standard of health and other human rights.

451. Further, OAS Member States must respect the right to privacy of intersex persons. As such, intersex persons should not be a constant target of medical photography and unnecessary genital exams for non-consensual research. Additionally, OAS Member States must provide support to intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood. The IACHR strongly recommends that OAS Member States consult with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.

452. Therefore, the IACHR urges all OAS Member States to take steps to design and implement public policies that ensure the right of lesbian, gay, bisexual, trans and

1281 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, August 10, 2009, para. 46.
intersex persons to access health care services without being subject to discrimination, violence, or ill-treatment.

c. **Prevention of violence in the education sector**

453. The Commission has condemned acts of intimidation and harassment in educational environments, and has urged OAS Member States to adopt and enforce effective measures to prevent violence and discrimination against LGBTI persons in both public and private educational institutions.\(^{1284}\) The UN Committee on the Rights of the Child has expressed concern about discrimination against children on the basis of sexual orientation and gender identity and has urged States to ensure that educational programs address the situation of discrimination against children based on sexual orientation and gender identity.\(^{1285}\)

454. States must ensure that their education policies are designed to change social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them.\(^{1286}\) Indeed, the IACHR has reaffirmed the key role that education plays in the promotion and protection of human rights, by encouraging cultural change that fully embraces diversity and promotes acceptance of diverse sexual orientations and gender identities.\(^{1287}\)

455. One of the key measures that States should implement is comprehensive sexuality education in school curricula, which includes a perspective on bodily, sexual and gender diversity. The UN High Commissioner on Human Rights has affirmed that limiting or obstructing information related to sexuality, or using materials that contain stereotypes and prejudices concerning LGBTI persons, can contribute to violence. Conversely, comprehensive sexuality education can be a tool to combat discrimination.\(^{1288}\) The UN Special Rapporteur on the Right to Education has stressed that comprehensive sexuality education is a basic tool for ending discrimination against LGBTI persons and that it “must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity.”\(^{1289}\) In this regard, UNESCO has added that “information should cover non-discrimination, equality and gender roles, and sexual diversity.”\(^{1290}\)


\(^{1290}\) UNESCO, *Education Sector Responses to Homophobic Bullying*, 2012, p. 42.
456. As is the case with violence prevention in general, data collection is a key element in the design of policies to prevent violence in educational environments. Consequently, UNESCO has urged States to strengthen their evidence base by collecting data on the nature and scale of the problem of bullying in educational institutions that is based on sexual orientation and gender identity, and its impact on educational goals. The IACHR has been informed of some initiatives in this regard that have been undertaken by the ministries of education in countries such as Brazil and the United States. Further, in 2008, several ministries of education in the region signed a declaration on “Preventing through education.” This declaration expressly contemplates the implementation of multi-sectoral strategies of comprehensive sexuality education with a broad human rights perspective, including gender aspects as well as topics related to the diversity of sexual orientations and gender identities.

457. The Commission notes that UNESCO has recommended a crosscutting strategy to prevent bullying of this nature, including using evidence to raise the awareness of key stakeholders (education officials, teachers’ associations, community leaders, and parents) about the nature, scale, and impact of bullying against LGBTI persons. UNESCO has identified a number of key skills in which teachers and school authorities should be specifically trained, which include teaching skills to address bullying, and the facilitation of age-appropriate classroom discussion of sexuality, among others. The IACHR emphasizes that sensitization and training play a key role in the prevention of violence against LGBTI persons in educational environments.

**B. The State’s Obligation to Investigate, Prosecute and Punish Crimes committed against LGBTI Persons**

1. The obligation to Ensure Access to Justice

458. The IACHR has defined access to justice as a *de jure* and *de facto* access to judicial bodies and remedies for protection. The Commission has stated that the right to an effective judicial remedy must be understood as the right of every person to
access a tribunal when any of his or her rights “have been violated (whether a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial, and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.”

459. Access to justice is essential to the eradication of violence against LGBTI persons. It is a necessary component of States’ compliance with their international obligation to apply due diligence in responding to human rights violations. In this regard, the IACHR acknowledges certain initiatives aimed at ensuring access to justice that have been undertaken by OAS Member States. For example, the City of Buenos Aires created a specific office within the Observatory of Gender Issues with a mandate to propose initiatives to remove obstacles to access to justice for LGBTI persons. In Colombia, the “Group for Urgent Cases” was created in 2012 to identify and follow up on cases of violence against LGBTI persons. In Chile, the Office for the Prevention of Crime (“Subsecretaria de Prevención del Delito”) within the Ministry of the Interior expressly included a section on sexual diversity in the plan of action for its Program for the Support of Victims (“Programa de Apoyo a Víctimas”), as a result of an agreement with civil society.

460. However, in general terms, the IACHR has found that LGBT persons encounter numerous specific barriers — in addition to difficulties that they face in common with the general population — when they seek justice. These include: lack of adequate attention and treatment when they attempt to report crimes; negligent and biased attitudes of law enforcement personnel; stereotyped assumptions about the motives for crimes, based on the victim’s sexual orientation, gender identity, or gender expression; increased fear of further victimization or retaliation, which acts as a serious deterrent against reporting crimes; lack of specialized legal aid programs; existence of legislation criminalizing same-sex intimacy between consenting adults; existence of legislation or judicial precedent which condones or justifies violence against LGBT persons; discriminatory attitudes of judges and other officials within the justice system; and high risk of victims having their credibility questioned or their allegations disbelieved; among others.

461. With respect to intersex persons, the IACHR takes notes of a statement by the UN High Commissioner for Human Rights indicating that “violations [of the rights of intersex persons] are rarely discussed and even more rarely investigated or prosecuted. The result is impunity for the perpetrators; lack of remedy for victims;
and a perpetuating cycle of ignorance and abuse.”

Also in 2015 the Commissioner for Human Rights of the Council of Europe made reference to the International Intersex Forum’s Public Statement, which called for “adequate redress, reparation, access to justice and the right to truth.” To this end, the Commissioner for Human Rights has recommended that “national human rights structures such as ombudspersons, equality bodies, human rights commissions and children’s ombudspersons should be active in their outreach towards intersex people, including children. They should be clearly mandated to work on issues related to intersex people and to provide victim-support services to them. There is a need to facilitate intersex persons’ access to justice.”

Further, the statutes of limitations in many countries prevent intersex persons to access justice as they grow up and gain awareness of the harmful practices they were subjected to as children. Additionally, intersex persons in the Americas often experience difficulties in accessing their own medical records. This unavailability of medical records is another factor that hinders intersex persons’ access to judicial remedies.

### a. Inadequate treatment when reporting crimes

Various civil society organizations and States from across the region indicate that LGBT persons avoid reporting crimes out of fear of further

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1302 Opening remarks by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights at the Expert meeting on ending human rights violations against intersex persons, September 16, 2015, Geneva.
1305 Information received by the IACHR during an expert meeting on the rights of intersex persons convened by the OHCHR. Geneva, September 16-17, 2015.
victimization. According to many of these sources, this is especially the case with persons who have not revealed their sexual orientation or their gender identity to their family or community members. Further, trans persons whose documentation does not reflect their gender might be reluctant to report crimes committed against them. In fact, several sources indicate that when LGBT victims do decide to come forward and report acts of violence committed against them, their claims are frequently dismissed at the outset, without their being able to effectively report the crime, and they are often mistreated, verbally abused, harassed, or even physically attacked by police agents or other authorities.\footnote{1309} Further reports show that the reliability of testimony that is provided by lesbian, gay, bisexual, trans, and intersex persons is often questioned, and their reports are not taken seriously.\footnote{1310} Fear of retaliation or victimization may also affect witnesses, who are thereby deterred from providing valuable information that would assist the investigation of crimes against LGBT persons.\footnote{1311}

463. According to the UN High Commissioner for Human Rights, victims are often reluctant to report their experiences for fear of extortion, breach of confidentiality, or reprisals.\footnote{1312} The UN Special Rapporteur on Torture has stated that discriminatory attitudes toward LGBT persons “can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal
standard of protection, including protection against violence carried out by non-State agents.”

464. States must put in place the safeguards needed to ensure that LGBT persons will not be deterred from reporting crimes because of obstacles attributed to State agents, such as ill or discriminatory treatment. LGBT victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBT victims, because they may fear further victimization following the disclosure of their sexual orientation or gender identity in public. In fact, such disclosure may even put them at great risk of violence in places where prejudice against persons with diverse sexual orientations and gender identities is pervasive.

465. State programs should ensure that victims and witnesses are not subjected to attacks by non-State parties and that the State institutions that investigate and prosecute crimes do not victimize them. Victims, witnesses, and those accompanying them, should always be treated with respect. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints. In the case of trans persons, agents should respect the gender identity of such persons and use their preferred pronouns. If uncertain about how to address a particular victim, State agents should respectfully ask which name, pronouns, and other language the person would prefer. The IACHR has received information on best practices in this regard. In sum, special efforts must be made to eradicate deeply rooted practices of mistreatment and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime.

b. Protection of victims and witnesses in criminal proceedings

466. The IACHR has previously stated that victims’ participation in the various procedural stages of criminal cases, where applicable under domestic legislation, guarantees the right to truth and justice, is part of the complex structure of checks and balances in criminal proceedings, and encourages public oversight of government actions. During the investigation stage and the judicial proceedings that follow, the victims of human rights violations, or their next of kin, should have meaningful opportunities to participate and be heard, in the clarification of the facts, the setting of punishment for those responsible, and the seeking of fair compensation.

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1314 For example, in Argentina, the Ministry of Security issued a resolution instructing federal security forces to refer to trans persons according to their gender identity. Ministerio de Seguridad, Resolución 1181/2011, 24 November 2011.
The IACHR has received reports that fear deters many witnesses and survivors of prejudice-based violence from reporting or coming forward with information that is key to securing arrests.\textsuperscript{1317} This is particularly alarming in places where LGBT persons are specifically targeted by gangs or illegal armed groups. A 2012 civil society report on the situation of trans women in the Americas affirmed that even if such cases do reach the trial stage, witnesses are often threatened, and consequently the cases do not advance.\textsuperscript{1318} Further, the IACHR has been informed that LGBT persons who have suffered violence at the hands of police or law enforcement, particularly trans women who engage in sex work, are often intimidated and threatened into not reporting abuses.\textsuperscript{1319} The IACHR calls on OAS Member States to adopt measures to guarantee the life and personal integrity of those who report killings and other instances of prejudice-based violence, whether against State or non-State agents.

c. Legal Aid Programs

The IACHR views effective legal counsel and representation as being essential to ensure victims’ access to justice, especially in the case of persons who are members of groups that have been subjected to historic discrimination and exclusion, including lesbian, gay, bisexual, trans, and intersex persons. The Commission has received reports that lack of access to legal assistance is another obstacle that may dissuade LGBT persons from filing complaints. For example, the IACHR has been informed that in Haiti, lawyers are reluctant to represent LGBT persons “due to their strong religious affiliations or unwillingness to be associated with, or be perceived as allies of, the LGBT community.”\textsuperscript{1320} Further, it is reported that lawyers who are willing to represent LGBT individuals or those perceived as being LGBT may substantially increase their rates, which acts as a significant additional barrier to legal representation.\textsuperscript{1321}

The IACHR refers to the discussion in the previous chapter of the link between structural discrimination faced by LGBTI persons, particularly trans women, and poverty. The organization REDLACTRANS found that trans activists who file complaints generally do so without the assistance of a lawyer, in part because the trans organizations that support them do not have the financial means to provide them with legal assistance.\textsuperscript{1322} Even in instances in which lawyers are available, such assistance can be ineffective due to lack of sensitivity to, or awareness of,
issues faced by trans persons.\footnote{Redlactrans, \textit{The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 22.} Taking this into account, the IACHR is of the view that legal aid programs are crucial to ensure the right of LGBTI persons to have access to justice and due process of law. The IACHR recommends State efforts to establish public legal aid programs that specifically serve LGBTI victims.\footnote{The IACHR notes developments in Argentina, where the General Defender’s Office agreed in 2013 to provide legal aid and legal representation to LGBTI persons, in particular trans women victims of police abuse. Information submitted by the Office of the General Defender of the Nation (Commission on Gender Issues) - Ministry of Public Defense (Argentina), received by the IACHR Executive Secretariat on 30 June 2014, p. 4; Resolution DGN 276/2013.} The IACHR urges all OAS Member States to strengthen their public legal aid services — including legal advice, assistance, and representation — and ensure that LGBTI victims of crime are afforded access to justice.

d. Training for Justice Operators

470. The IACHR has used the concept of “justice operators” to refer to State officials and employees who play a role in the administration of justice system, and who perform functions that are essential to respecting and ensuring the rights to due process and access to justice. The term “justice operators” include judges, prosecutors, and public defenders.\footnote{IACHR, \textit{Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas}, OEA/Ser.L/V/II. Doc. 44, December 5, 2013 (hereinafter, IACHR, \textit{Guarantees for the Independence of Justice Operators}, 2013), para. 15.} In its Report on Guarantees for the Independence of Justice Operators, the Commission stressed that proper training ensures that justice operators’ decisions effectively and properly satisfy legal requirements.\footnote{IACHR, \textit{Guarantees for the Independence of Justice Operators}, 2013, para. 128.} The Commission also determined that such training should place special emphasis on human rights, so that all public officials involved in prosecuting cases can properly apply the relevant national and international norms, thereby avoiding acts or omissions that may result in a State’s failure to discharge its international human rights responsibilities.\footnote{IACHR, \textit{Guarantees for the Independence of Justice Operators}, 2013, para. 145.}

471. In that Report, the Commission also urged States to prioritize the implementation of specialized training for judges, prosecutors, and public defenders regarding the rights of groups that, due to their characteristics, require specialized treatment.\footnote{IACHR, \textit{Guarantees for the Independence of Justice Operators}, 2013, para. 145.} This is especially important with respect to lesbian, gay, bisexual, trans, and intersex persons. In this regard, the Commission specified that justice operators should receive specialized training to enable them to respect the dignity of members of such groups when they have been victims of human rights violations, give them adequate participation in processes that may involve them, and ensure their full access to justice, so that the acts of violence against them are prevented, investigated, and punished according to the requirements of international law.\footnote{IACHR, \textit{Guarantees for the Independence of Justice Operators}, 2013, para. 145.}

472. The IACHR was informed that in various OAS Member States, training courses on sexual orientation, gender identity, and issues related to sexual diversity, have
been provided to judges and other justice operators, including public prosecutors, public defenders, and other public officials.\textsuperscript{1330} The State of Colombia, for example, informed the IACHR that the National Directorate of Prosecution Offices (“Dirección Nacional de Fiscalías”) has implemented the Comprehensive Plan of Action for the Defense of People’s Rights (“Plan integral de acción para la defensa de los derechos de la población”), which includes certain measures with regard to LGBTI people. These measures include the identification and prioritization of LGBTI cases under investigation by the Office of the Procurator General (“Fiscalía General de la Nación”), as has been done in the cases of trans women who were killed in Sincelejo and Maicao.\textsuperscript{1331} However, the IACHR has received information demonstrating that in other Mexican states, despite the progress being made in terms of legislation that ensures a certain degree of equality for LGBTI persons, justice operators lack training in sexual diversity matters, thereby hindering governmental efforts to eradicate violence and discrimination.\textsuperscript{1332}

473. As stated by the UN Special Rapporteur on the independence of judges and lawyers, prosecutors play an essential role in ensuring full equality with regard to access to justice, and thereby in preventing the recurrence of violence.\textsuperscript{1333} In this regard, the IACHR notes that training on sexual and gender diversity should also be conducted for public prosecutors — and members of their teams — given that most of the time the effectiveness of an investigation will depend heavily on the ability and willingness of these particular officials to effectively identify elements which may reveal that a crime was based on prejudice.

474. This training should include a clear explanation of concepts central to sexual orientation, gender identity, and bodily diversity. It should acknowledge and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities. The IACHR has also recommended that States “give those within the criminal justice system information and training on issues around sexuality,
gender identity, and HIV/AIDS.” The IACHR stresses that judges should receive continuous training on sexual and gender diversity issues. Special courses should not only aim to keep judges apprised of new legislative developments, but should also focus on the eradication of prejudice in the justice system against LGBTI persons. It is vital that this training not be limited to judges and that judicial employees at all levels receive appropriate training.

2. The Obligation to Investigate, Prosecute and Punish with Due Diligence

a. Impunity for Violence

475. OAS Member States have the duty to prevent and combat impunity, which has been defined as “an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights” that are protected by the inter-American human rights instruments. The Inter-American Court has established that if the State apparatus “acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the rights of those subject to its jurisdiction.” The IACHR has indicated that impunity signals that violence and discrimination are acceptable, which in turn, fosters repetition.

476. Accordingly, when States fail to conduct exhaustive and impartial investigations into cases of violence against LGBTI persons, the resulting impunity for these crimes sends a social message that the violence is condoned and tolerated, which in turn fuels further violence and leads to mistrust of the victims in the justice system. During the past ten years the IACHR has been consistently receiving information concerning serious deficiencies in the investigation of cases of violence based on prejudice toward non-normative sexual orientations and gender identities. This hinders the possibility of bringing perpetrators to justice. For example, the UN Human Rights Committee has expressed concern over the lack of investigation and the high levels of impunity for acts of violence perpetrated.

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against LGBT persons in various OAS Member States, and has urged States to ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim be duly investigated, prosecuted, and punished.

477. The Commission notes that accurate statistics on conviction rates in cases of violence against LGBT persons in countries in the region range from limited to non-existent. In many States, as examined earlier in this Report, there is no data collection on violence against LGBTI persons, while in others there is some collection but no centralized unit or division at the national level for aggregating statistical data from the different agencies in the country. Further, in States in which such data collection mechanisms do exist, data produced by different state agencies may be contradictory and incongruent. Lack of judicial statistics further complicates the analysis of situations of impunity in cases of violence against LGBTI persons. Nevertheless, several States and civil society organizations have compiled enough information to contrast the number of killings with the number of cases in which investigations were opened and sentences have been handed down. For example, the State of Honduras informed the IACHR that the Office of the Attorney General registered at least 122 killings of LGBT persons between 2009 and 2013, out of which only 24% had reached the judicial stage, and in only 4% of which a final decision had been rendered by the courts. The State of Nicaragua informed the IACHR of a civil society report that indicated that, out of 17 killings registered between 1999 and 2013, only three convictions had been handed down. Figures reported in the 2013 Annual Report of the Bolivian Office of the Ombudsman show that in a ten-year period, at least 55 killings had been reported, but in only 12 had an investigation been opened, and in none of them had the courts issued a judicial decision. The State of Uruguay informed the IACHR that as of the close of 2013, civil society had reported at least 5 killings of trans women in 2012, without any of the investigations resulting in the identification of any of the perpetrators.

478. Civil society organizations also report high levels of impunity. Brazilian organizations affirm that the perpetrators had not been arrested in 67% of

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1340 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 4.
1341 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Nicaragua, received by the IACHR Executive Secretariat on November 20, 2013, p. 10.
1343 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Uruguay, Note 0141/2013 dated December 20, 2013, received by the IACHR Executive Secretariat on December 20, 2013, p. 1; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Amnesty International, received by the IACHR Executive Secretariat on November 25, 2013, p. 8. See also, Committee against Torture, Concluding observations: Uruguay, CAT/C/URY/CO/3, June 10, 2014, para. 21.
homicides committed against LGBT persons in 2013.\textsuperscript{1344} In 2011 a local organization in Guatemala — which analyzed its own records as well as information gathered from official governmental agencies and media reports — indicated that perpetrators had not been identified in 66% of reported cases of violence against trans women.\textsuperscript{1345} Organizations from Peru point out that, in 2011, the Peruvian National Police and the Public Ministry decided to open investigations in only 15% of the cases of killings of gay men and trans women registered that year.\textsuperscript{1346} In Guyana, civil society organizations report that no charges had been brought in any of the three killings of LGBT persons registered in 2013.\textsuperscript{1347} In December 2014, a Colombian organization informed the IACHR that the investigations in the cases of the 2008 and 2009 killings of human rights defenders Fredys Darío Pineda, Álvaro Miguel Rivera, and Wanda Fox, had stalled.\textsuperscript{1348}

479. The IACHR notes that there is a tremendous difference between the number of cases in which investigations were opened with the number of those in which a final decision was handed down. The results that have been brought to the attention of the Commission speak of alarming levels of impunity. The IACHR will next examine more closely what are some of the factors that are related to these high levels of impunity.

b. Deficiencies in Investigation and Prosecution

i. Prejudice in the conduct of investigations, and lack of a differentiated approach

480. In 2000, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that “acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims. Measures should include policies and programs geared towards overcoming hatred and prejudice against [gay persons] and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.”\textsuperscript{1349}

481. The IACHR welcomes measures adopted in recent years by countries in the Americas to effectively investigate crimes committed against LGBT persons. For example, the IACHR notes that some OAS Member States have either established specialized prosecutorial units or appointed a dedicated prosecutor to investigate


\textsuperscript{1347} Society Against Sexual Orientation Discrimination (SASOD) & Sexual Rights Initiative (SRI), On Devil’s Island: A UPR Submission on LGBT Human Rights in Guyana, June 2014, para. 8.

\textsuperscript{1348} Information submitted to the IACHR by “Colombia Diversa,” received by the IACHR Executive Secretariat on December 11, 2014.

of crimes committed against LGBT persons. These countries include Brazil (states of Paraná, Espírito Santo, and Pernambuco), Colombia, Mexico (for example, Mexico City and Oaxaca), Honduras, and Nicaragua. Some of these specialized units are also responsible for guaranteeing the rights of LGBT persons in their jurisdictions, fostering educational programs, and promoting the formulation of public policies. Other administrative entities focused on issues of interest for LGBT persons may also contribute to the work of the judiciary or prosecution offices. For example in Honduras, the National Commissioner for Human Rights has a network of offices throughout the country that receive reports of crimes against LGBT persons, and has the competence to refer such cases to the Public Ministry for prosecution.

482. In 2014, the IACHR welcomed the launching of a protocol by the Supreme Court of Mexico that aids judges in deciding cases involving the rights of LGBTI persons. Although not binding, this instrument offers key principles to guide the adjudication of cases involving sexual orientation, gender identity, and bodily diversity. The Protocol identifies common stereotypes and misconceptions about LGBTI persons that hinder their right to access to justice without discrimination, especially in relation to their right to the recognition of gender identity, family life and relationships, work and employment, health and education, freedom of expression and association, the right to liberty, and to be free from violence. In this

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1350 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.
1351 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.
1353 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014. According to the information provided by the State of Honduras, the “Special Unit for Killings with Social Impact” also deals with cases regarding aliens and journalists. See: Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by the State of Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11; Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by “Red Lésbica Catrachas” (Honduras), received by the IACHR Executive Secretariat on December 1, 2013, p. 2.
1355 IACHR, Press Release 60/14, The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), May 20, 2014.
1356 Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Honduras, Note DC-179/2013, received by the IACHR Executive Secretariat on November 20, 2013, p. 11.
1357 IACHR, Press Release 95/14, IACHR Congratulates Mexican Supreme Court for Adoption of Protocol Involving Sexual Orientation and Gender Identity, August 29, 2014; See also, Supreme Court of Justice of Mexico, “Protocolo de actuación para quienes imparten justicia en casos que involucren la orientación sexual o la identidad de género,” August, 2014 (Available only in Spanish).
regard, the Protocol calls on judges to question the neutrality of the law when it is applied to cases involving persons who are disadvantaged on account of their sexual orientation or gender identity, and to evaluate evidence without using stereotypes regarding sexual orientation or gender identity.

483. The IACHR has received copious information regarding prejudice and bias in investigations of crimes against LGBT persons, both from States and civil society organizations. The IACHR has expressed concern over the tendency of state agents in the justice systems of countries in the Americas to make biased assumptions, from the very beginning of an investigation, with regard to the motives, possible suspects, and circumstances of crimes, based on the victims’ perceived or actual sexual orientation or gender identity. The usual consequence of these biased assumptions is that — instead of thoroughly collecting evidence and conducting serious and impartial investigations — police officers and other justice system agents direct their actions toward finding evidence that confirms their prejudiced theory of events, which in turn frustrates the purpose of the investigation and may lead to the invalidation of the proceedings.

484. Problems with the investigations of crimes against LGBT persons involve, in part, failure to investigate whether or not the crime was committed by reason of the victim’s gender identity or sexual orientation. Hence, in most cases, the victim’s sexual orientation or gender identity is completely disregarded in the investigation, despite its potential usefulness in identifying possible motives or suspects. In other instances, such discriminatory assumptions or prejudice may

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1358 See, for example, Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Mexico, received by the IACHR Executive Secretariat on December 4, 2013, p. 8. See also, Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres (CONAVIM) (Mexico), “Estudio nacional sobre las fuentes, orígenes y factores que producen y reproducen la violencia contra las mujeres,” 2012, p. 434.


1360 IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011, para. 337. The IACHR has been informed of these biased investigations in several public hearings held since 2011. The IACHR has made reference to this issue in several press releases in recent years. See, among others, IACHR, Press Release 79/13, IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGBTI Persons, October 24, 2013.

1361 See, for example, Cattrachas et. al., written submission presented in the context of a public hearing before the Commission. IACHR, Public Hearing Homicides of [LGBT] Persons and Impunity in the Americas 146th Period of Sessions, November 1, 2012.
also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all.\textsuperscript{1362}

485. The IACHR has received information establishing that, due to prejudice in the justice systems in countries in the region, killings of lesbian, gay, and bisexual persons are not categorized as often as they should be as hate crimes or crimes motivated by prejudice. Instead they are characterized from the outset as crimes resulting from emotions, jealousy, or reasons related to a preexisting relationship. When crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim (i.e., the prejudice may result in the crime being excused or less grave on the basis of the actions or conduct of the victim). This shift renders invisible the power structures that reproduce the homophobic stereotypes that underpin the prejudice.\textsuperscript{1363}

486. According to the trans activist organization Redlactrans, authorities in the countries of the region do not have a comprehensive framework for conducting investigations into killings of trans women. Rather, their collective approach seems to be limited to reproducing prejudices. For example, it is reported that a police representative in Central America affirmed that “there are three motives why [trans women] are killed: one, for standing on the corner [implying sex work]; two because they steal from a client; and three, because they belong to criminal groups. Oh! And they also kill each other.”\textsuperscript{1364}

487. These biases and prejudices that are present in the handling of these cases render the investigations ineffective. This ineffectiveness of the justice system fosters high rates of impunity, which in turn lead to the chronic repetition of such crimes, leaving the victims and their families in a state of absolute defenselessness.\textsuperscript{1365} All of these circumstances play a major role in the obstruction of justice, and perpetuate barriers to adequate prosecution of, and reparations for, crimes against persons with non-normative sexual orientations and gender identities.

488. Violence that takes place in the context of an intimate relationship can also be based on prejudice, whether the relationship is same-sex or different-sex. When someone who is lesbian, gay, bisexual, or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims, regardless of whether there is indicia to indicate that the victim had an intimate relationship with the alleged perpetrator.

489. As examined in the second chapter of this Report, not all acts of violence against LGBT persons can be characterized as violence based on prejudice. The IACHR


\textsuperscript{1364} Redlactrans, \textit{The Night is Another Country: Impunity and violence against transgender women human rights defenders in Latin America}, 2012, p. 21. Translation by the IACHR.

\textsuperscript{1365} IACHR, Press Release No. 51/12, \textit{IACHR urges States to End Homophobia and Transphobia}, May 17, 2012.
notes the difficulties in determining whether or not such violence is based on prejudice. Such a determination requires an exhaustive investigation of the reasons for the violence, carried out with due diligence. Notwithstanding the fact that not all acts of violence against LGBT persons are motivated by prejudice, remedying existing levels of impunity and the prevalence of crimes of violence against LGBT persons requires that such crimes receive full and unbiased investigation.

   ii.  Acquittal or mitigated sentencing due to the sexual orientation or gender identity of the victim

490. The IACHR is highly concerned about information it has received regarding judicial decisions that accept legal defenses justifying murder or other acts of violence. The Commission has been informed that courts in the region have partially or fully excused crimes such as murder or assault against LGBT persons, because the attacks in question were supposedly committed in response to same-sex sexual advances, or because of the gender identity of the victim. In these cases, the courts effectively blame the sexual orientation or gender identity of the victim for the accused’s acts of violence.

491. In the United States, for example, defendants accused of murdering LGBT persons have attempted to justify the killing by arguing that the violence was prompted by alleged sexual advances made by the victim (commonly referred to as “gay panic defense”),1366 or by the realization that the person with whom the perpetrator was having or had had a sexual encounter or relationship was trans (commonly referred to as “trans panic defense”);1367 which have in some cases resulted in a mitigated sentence.1368 According to the American Bar Association (ABA), the “gay panic” and “trans panic” defenses have been used by defendants facing trial in U.S. courts as a reason to “claim insanity or diminished capacity,” “to bolster a defense of provocation,” or “to strengthen their case for self-defense.”1369

492. In August 2013, the ABA House of Delegates passed a resolution urging “federal, state, local and territorial governments to take legislative action to curtail the availability and effectiveness of the ‘gay panic’ and ‘trans panic’ defenses.” According to the ABA, this legislative action should include: (a) requiring courts, upon request of a party, to instruct the jury not to let bias or prejudice influence its decision about the victims or defendants based upon sexual orientation or gender identity; and (b) specifying that neither a non-violent sexual advance nor the

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1367 These cases include the killings of 17-year-old Gwen Araujo, in California, and Jorge Steven López Mercado, in Puerto Rico. GLAAD, Gwen Araujo Murdered Ten Years Ago Today, October 13, 2012; Pink News, Suspect in Puerto Rico teen’s murder ‘may use gay panic defense’, November 20, 2009.

1368 See for example, case of killing of Lawrence King. CBS News, California teen Brandon McInerney sentenced to 21 years for point-blank murder of gay classmate, December 19, 2011. See, related, the killing in the case of Gwen Araujo. Gwen Araujo Murdered Ten Years Ago Today, October 3, 2012.

discovery or someone’s sex or gender identity constitutes legally adequate provocation to mitigate the crime. In this regard, the Inter-American Commission welcomes the State of California’s groundbreaking bill passed in September 2014, reported to be the first bill to ban the use of “gay panic” and “trans panic” defenses in U.S. courts.

493. The IACHR has received a report about the mitigation of a sentence in the case of a killing of a gay man in Colombia, based on a defense of sudden “rage and intense pain” (atenuante de ira e intenso dolor). On a different but related topic, the Commission was informed of a ruling issued by an appellate court in Argentina in 2015, which considered the purported sexual orientation of a 6-year-old male sexual abuse victim, to be extenuating circumstances that justified a lesser sentence for his abuser than would otherwise be proportionate to the crime. On that occasion, the IACHR emphasized that “a person’s sexual orientation or gender identity or expression should not be considered relevant to extenuate or justify the seriousness of criminal conduct committed against that person.”

494. Further, the IACHR has been informed that several courts in the Commonwealth countries of the Caribbean have accepted a “same-sex sexual advance defense” either as a partial defense resulting in a conviction for a lesser offense, for example, reducing a crime from murder to manslaughter, or as a full defense leading to acquittal, for example, cases in which homicide was deemed “justified.” The IACHR has received reports of cases of violence against LGBT persons in which such defenses led to mitigation or acquittal in Barbados, Dominica, Jamaica, The Bahamas, and Trinidad and Tobago. In one of the cases in The Bahamas, the judge affirmed, “one is entitled to use whatever force is

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1371 The Advocate, California becomes First State to Ban Gay, Trans “Panic” Defenses, September 29, 2014.
1375 Harewood v The Queen BB 2009 CA 22 (December 21, 2009) (CA, Barbados).
1377 See also, R v Bartley (1969) 14 WIR 407 (CA, Jamaica) 411.
1378 Penal Code of The Bahamas, Art. 107(4)(j). For the prevention of, or for the defense of himself or any other person against any of the following crimes, a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing, namely: […] forcible unnatural crime. Pink News, Nassau man freed after using gay panic defence at murder trial, February 2, 2009.
1379 Marcano v The State Cr. App. No. 2 of 2002 (July 26, 2002) (CA, Trinidad and Tobago).
necessary to prevent one’s self being the victim of a homosexual act,” making reference to a non-violent sexual advance and not to a sexual assault.

495. In these countries, a finding of justifiable homicide is a full defense to murder that leads to acquittal, and justifiable homicide includes a homicide committed to prevent “a forcible and atrocious crime,” which includes a non-violent same-sex sexual advance. Mitigation of a crime is the result of the judge or jury accepting a partial defense to murder, finding that the defendant lost his or her self-control as a result of provocation by the victim’s actions or words. According to a recent study of these cases in the Commonwealth Caribbean, the defense of provocation has been raised in homicide cases “where (1) the defendant killed his female partner after discovering that she was involved in a sexual relationship with another woman [Trinidad and Tobago, 2008], (2) the defendant killed the deceased and argued that the killing was a response to a ‘homosexual advance’ by the deceased [Trinidad and Tobago, 2002], and (3) the defendant and the deceased were in a same-sex relationship which ended in the defendant’s killing of his partner [Barbados, 2009].”

496. The aforementioned study calls for the “abolition of the defence of justifiable homicide and for reform of the defence of provocation to exclude the availability of the defence of provocation where the homicide occurred in response to a non-violent sexual advance.” The study recommends the inclusion of sexual orientation as a prohibited ground of discrimination in judicial codes and in guidelines for judicial conduct, given that such codes derive from a judicial responsibility to observe standards of equality and fairness.

497. The Commission notes that the acceptance of these defenses that are based on the sexual orientation or gender of the victim contributes to the reinforcing of harmful stereotypes against LGBT persons. These defenses also serve to shift the blame from the perpetrator to the victim. The IACHR urges OAS Member States to undertake the necessary legal and public policy changes to expressly establish that the sexual orientation, gender identity or gender expression of victims can never be used to establish a partial or full justification of crimes committed against them.

1381 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 18.
1383 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013, p. 20 (footnotes omitted).
1384 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013.
1385 Se-shauna Wheatle, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean, Faculty of Law University of West Indies Rights Advocacy Project, 2013.
c. The Due Diligence Standard

498. The Commission urges States to take all necessary measures to apply due diligence in preventing, investigating, and sanctioning violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, which includes education and health facilities.\textsuperscript{1386} Regarding the investigation of crimes against LGBT persons or those perceived as such, the Commission has also urged States to investigate the possibility that the violent acts were committed because of the victim’s sexual orientation, gender identity, and/or gender expression.\textsuperscript{1387}

499. The Commission and the Inter-American Court have affirmed that States have the obligation to investigate human rights violations in order to ensure the enjoyment of the rights established in the American Declaration and the American Convention.\textsuperscript{1388} The obligation to investigate is an obligation of means rather than results. Nevertheless, States must take seriously the obligation to investigate and “must not treat it as a mere formality, preordained to be ineffective.”\textsuperscript{1389} In this regard, in pursuing or considering whether to pursue investigative procedures, the State must not rely solely on the initiative of the victims or their next of kin, or on their offer of proof.\textsuperscript{1390} In light of this obligation, once State authorities are aware of a killing, for example, they should initiate \textit{ex officio} (on their own accord) and without delay, a serious, impartial, thorough, and effective investigation, in accordance with international standards in this field.\textsuperscript{1391} This investigation must be carried out using all available legal means, with the aim of discovering the truth\textsuperscript{1392} and prosecuting, bringing to trial, and punishing all the perpetrators of

\textsuperscript{1386} IACHR, Press Release No. 60/13, \textit{IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas}, August 15, 2013.

\textsuperscript{1387} IACHR, \textit{Annual Report 2012} (Chapter IV, Cuba, LGBTI), para. 136.


the acts. The obligation to carry out an effective, independent investigation is especially important when State agents are, or could be, involved, given the potential for the State’s direct culpability in such cases and the risk that State agents may protect other State agents from facing justice.\textsuperscript{1393} That said, the Court has noted that States are equally under this obligation when third parties commit human rights violations, “because, if their acts are not investigated genuinely, they would, to some extent, be assisted by the public authorities, and this would entail the State’s international responsibility.”\textsuperscript{1394}

500. The Court has also affirmed that if the State fails to comply with its obligation of due diligence in a criminal investigation, this “may lead to the absence of sufficient evidence to clarify the events that are being investigated, to identify the possible perpetrators and participants, and to determine the eventual criminal responsibilities [under national law].”\textsuperscript{1395} In developing the concept of due diligence, the Inter-American Court has defined the guiding principles that must be observed in criminal investigations of human rights violations, and these include, \textit{inter alia}: recovering and preserving probative material; identifying possible witnesses; obtaining witness statements; and determining the nature, cause, place, and time of the act that is under investigation. In addition, competent professionals, using the most appropriate procedures, should thoroughly examine the scene of the crime and perform rigorous forensic tests.\textsuperscript{1396} Further, the Inter-American Court has clearly outlined the State’s obligation to investigate with due diligence killings of, and acts of sexual violence against women,\textsuperscript{1397} taking into account the causes and consequences of gender-based violence.

501. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity are investigated, and that the


perpetrators are brought to justice.\textsuperscript{1398} To this end, States should strengthen their national institutions with a view to: preventing and investigating acts of violence and human rights violations against LGBT persons; ensuring judicial protection for victims; and bringing perpetrators to justice.\textsuperscript{1399}

502. The IACHR has been informed that in many countries in the region where there is legislation that increases penalties for crimes committed on the basis of the sexual orientation or gender identity of the victim, the legislation is hardly ever applied to specific cases, and hate crimes are more often addressed as common crimes, disregarding the prejudice with which they were committed.\textsuperscript{1400} In this regard, the IACHR has been informed of the difficulties in prosecuting hate crimes in the United States.\textsuperscript{1401} Concerning Colombia, an NGO informed the IACHR that in all of the 730 cases of killings of LGBT persons documented between 2006 and 2014, no court had ever made a finding of aggravating circumstances, that would lead to an increased penalty, based on the crime having been motivated by prejudice.\textsuperscript{1402} In Chile, organizations have indicated to the Commission that the wording of the “motive” provisions in hate crimes legislation, which require that the crime be motivated by hate or prejudice, create an element of the crime that is too subjective and very difficult to prove. It has been argued that in these jurisdictions, the wording of these provisions makes it extremely challenging for hate crimes legislation to be effectively applied.\textsuperscript{1403}

503. The IACHR recognizes that the subjective element of motivation may be difficult to establish in many cases. It may not be easy to establish with certainty whether a crime was the result of prejudice on the part of the perpetrator, particularly in the

\textsuperscript{1398} OAS, AG/RES. 2863 (XLIV-O/14), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 5, 2014, res. para. 3; OAS, AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression, Adopted at the fourth plenary session, held on June 6, 2013, res. para. 3; OAS, AG/RES. 2721 (XLII-O/12), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the second plenary session, held on June 4, 2012, res. para. 3; OAS, AG/RES. 2653 (XL-I/O/11), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 7, 2011, res. para. 2; OAS, AG/RES. 2600 (XL-O/10), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 8, 2010, res. para. 2; OAS, AG/RES. 2504 (XXXIX-O/09), Human Rights, Sexual Orientation, and Gender Identity, Adopted at the fourth plenary session, held on June 4, 2009, res. para. 2. All the resolutions are available in the section “links” of the LGBTI Rapporteurship’s web, accessible through the IACHR page: www.iachr.org.

\textsuperscript{1399} OAS, AG/RES. 2807 (XLIII-O/13), Human Rights, Sexual Orientation, and Gender Identity and Expression, adopted at the fourth plenary session, held on June 6, 2013.

\textsuperscript{1400} [Colombia] Colombia Diversa, “Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia,” 2010-2011, p. 31. [Honduras] Cattrachas et. al., “Audiencia de Homicidios de Personas LGTTBI e Impunidad en las Américas ante la CIDH,” November 1, 2012, p. 27. [Mexico] Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by Human Rights Defenders of the National Autonomous University of Mexico (Mexico), received by the IACHR Executive Secretariat on December 20, 2013, p. 64; Notiese, “A pesar de reformas constitucionales, aún restan pendientes para comunidad LGTTBI,” August 16, 2011 (Available only in Spanish).


\textsuperscript{1402} Information submitted to the IACHR by “Colombia Diversa,” received by the IACHR Executive Secretariat on December 11, 2014.

\textsuperscript{1403} Response to the IACHR questionnaire provided by ‘Movimiento de Liberación e Integración Homosexual – ‘MOVILH’ (Chile) dated November 20, 2013, p. 15; Response to the IACHR questionnaire provided by ‘Fundación Igualtes’ (Chile), received on January 29, 2014, p. 6.
absence of a confession of a prejudice-based motive. However, certain other evidence or the presence of certain circumstances may be valuable indicia of the existence of such motivation. In the United States, for example, the FBI has issued a set of guidelines for the investigation of bias-based crimes. The FBI indicates that while no single fact is likely to be conclusive, certain elements, particularly when found in combination, are supportive of a finding of bias. The FBI warns that these elements “are not all-inclusive of the types of objective facts which evidence bias motivation,” and emphasizes the need to conduct case-by-case assessment of the facts to determine bias motivation. Civil society organizations, such as Colombia Diversa, have attempted to establish criteria for distinguishing crimes committed based on the perceived or actual sexual orientation or gender identity of the victim, from crimes committed with other motivations. These criteria include factors relevant to the alleged perpetrator (if known), the alleged motive, the level of brutality exerted, and the place where the violence occurred.

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1404 The following elements were included, which make reference not only to sexual orientation and gender identity, but also to race and ethnicity, among other factors: (1) the offender and victim being of a different sexual orientation and/or gender identity; (2) bias-related comments aimed at the victim; (3) bias-related drawings, markings of symbols left at the scene or objects used by the perpetrators; (4) elements related to the neighborhood where the crime took place (either because the victim is a member of a group overwhelmingly outnumbered by other residents; the crime took place in a neighborhood where previous hate crimes took place; several incidents occurred in the same locality at our about the same time and all the victims were of the same sexual orientation or gender identity); (5) a substantial portion of the community where the crime occurred perceive it as motivated by bias; (6) the victim was an activist or defender or participated in activism to defend or promote the rights of LGBT persons, even if the victim was not a member of the targeted group; (7) the incident coincided with a day of significance to the LGBT community; (8) the perpetrator was previously involved in a similar bias motivated crime or there is indication that a hate group was involved; and (9) a historically-established animosity based on bias existed between the victim and the offender. CJIS Division, UCR Program, Hate Crime Data Collection Guidelines and Training Manual, February 27, 2015, pp. 6-7.

1405 However, as one civil society organization indicated, given the historical discrimination to which this group has been subjected, prejudice is likely to be the motive for the majority of such crimes. Lleras, Catalina, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa, “Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011,” Bogotá, 2013, p. 17.

1406 In the case of lesbian women, the criteria included: (i) the acts occurred in places where [gay and lesbian persons] socialize; (ii) they were killed with their partner; (iii) the victims were human rights defenders; (iv) they had received discriminatory threats from, or statements by, the perpetrator; and, (v) the alleged perpetrators were members of illegal organizations. In the case of gay men, the criteria included: (i) they were assassinated as a couple; (ii) the incidents occurred in places where gay men socialize; (iii) the incidents took place at the victims’ residence; (iv) the excessive nature of the violence used to kill them; (v) the purported participation of homophobic groups; (vi) the purported participation of paramilitary groups; and (vii) the type of weapon used. In the case of trans women, the factors that determined the classification of these as homicides due to prejudice were: (i) the occurrence of the incidents in places where [gay and lesbian persons] socialize or in places where sex workers are known to meet clients; (ii) the excessive violence with which the homicides were committed; (iii) the existence of reports on risk in the Early Warning System (Sistema de Alertas Tempranas) of the Office of the Human Rights Ombudsman that warned of the risk to these persons in light of earlier threats; (iv) the alleged responsibility of trans-phobic groups; (v) the alleged responsibility of illegal armed groups; and (vi) the status of the victims as human rights defenders or LGBTI activists. Lleras, Catalina, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio in Colombia Diversa, “Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011,” Bogotá, 2013, p. 19, cited in IACHR, Truth, Justice and Reparation: Colombia, 2013, paras. 995-996.
failure to apply due diligence in the investigation is often the reason these factors are not investigated.

504. The IACHR calls on OAS Member States to effectively and impartially investigate all crimes committed against LGBTI persons, and to develop guidelines or protocols that include indicia or elements that would assist police officers, prosecutors, and other investigators in determining whether a particular crime was committed based on prejudice against the victim’s actual or perceived sexual orientation and/or gender identity. In this regard, the IACHR considers that the following elements, among others, may be indicative of a crime based on prejudice, particularly when found in combination: (i) statements or declarations by the victim or alleged perpetrator that the crime was motivated by prejudice; (ii) the brutality of the crime and signs of animosity (including cases of homicide in which the nature and level of violence appeared to go beyond a mere intent to kill and were directed at punishing or “erasing” the identity of the victim); (iii) insults or comments made by the alleged perpetrator(s) that made reference to the sexual orientation and/or gender identity of the victim(s); (iv) the victim’s status as an activist in LGBT issues or a defender of LGBT persons and their rights, or the victim’s participation in events to recognize the diversity of LGBT people; (v) the presence of a known bias against LGBT persons on the part of the perpetrator, or situations in which the perpetrator is part of a group which is considered to be biased against LGBT persons; (vi) the nature or significance of the place where the violence or incident took place, or from where the victims were lured (for example, a place known to be frequented by LGBT persons, or an area where sex work involving trans persons is known to take place); and (vii) the victim or victims having been part of a pair or group of LGBT persons at the time the violence occurred.

505. The IACHR wishes to stress that the list of elements in the preceding paragraph is not exhaustive, and a crime can be prejudice-motivated in the absence of any of these elements. In other words, not all crimes against LGBT persons or those perceived as such will have all or even some of these characteristics. When a crime is committed against LGBT persons, States must ensure from the very beginning of the investigation that there is an examination into the motives of the attack, and that this examination includes consideration of the relevance of the victim’s sexual orientation or gender identity, real or perceived. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.

506. The IACHR urges OAS Member States to take into account the specific circumstances of how violence based on prejudice is manifested in their countries, and to consult civil society organizations and LGBT activists in order to adequately craft protocols that set out the indicators of potential prejudice-motivated crimes that are relevant to investigations in the given country. The IACHR highlights that this recommendation is not limited to OAS Member States that already have in place hate crime legislation or aggravated penalties for crimes committed based on prejudice against the sexual orientation and/or gender identity of the victims. Rather, this recommendation is directed to all OAS Member States, because the right to truth, in this case, the right to know whether or not an act of violence was motivated by prejudice against LGBT persons, is a key component of the right to
access justice and reparations. As the IACHR has established, “the right of a society to have full knowledge of its past is not only a form of reparation and clarification into what has happened, but is also aimed at preventing future violations.”

507. The European Court of Human Rights affirmed in a recent decision that “[w]hen investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives.” The European Court further indicated that this obligation implies that the State make its best efforts to do “whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by gender-based discrimination.”

508. The European Court affirmed that “[t]reating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights... and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes.” The European Court further stated that the absence of a meaningful investigation, which includes diligent efforts to unmask motives of prejudice, undermines public confidence in a State’s anti-discrimination policy.

509. The IACHR recalls that both the Commission and the Court have issued guidelines on how to conduct effective and thorough investigations into violent deaths, including the need to identify victims and witnesses, recover probative material, exhaustively search the crime scene, and adequately preserve evidence throughout the chain of custody. The Commission highlights that, in addition to opening lines of investigation from the very outset that take into account the possibility of prejudice-based motives, and conducting investigations that are free from stereotypes related to sexual orientation and gender identity of the victim, OAS Member States must take into account the general context of bias, prejudice, and violence against LGBTI persons in their countries, which may be more profound in places outside of the major cities. Further, in conducting these investigations, State authorities should rely on expert witnesses who are able to identify the often-

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1409 This case concerns the ill-treatment of a group of people detained following a LGBT-Pride March, which was disrupted by counter-protesters, held in Tbilisi, Georgia on May 17, 2002.

1410 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, para. 67.

1411 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, paras. 67, 77.

1412 European Court of Human Rights, Identoba and others v. Georgia, (Application no. 73235/12), May 12, 2015, para. 80.

nuanced discrimination and prejudice against diverse sexual orientations and
gender identities, which is pervasive and embedded in the societies of the region.
The investigation into killings and other acts of violence against LGBTI persons
must begin promptly and without undue delay, and must constitute an effort by
the State to take all necessary measures in the search for the truth, in order to
clarify what happened and unmask possible discriminatory motives.

C. States’ obligation to provide reparations for human
rights violations

510. Every violation of an international obligation to respect and protect human rights
which results in harm creates a duty of the State to make adequate reparations.1414
The word *reparation* is an umbrella term that covers the various ways in which a
State may make amends for its failure to comply with its international human
rights responsibilities.1415 The obligation to investigate, as examined in the
previous section, also constitutes a form of reparation, given its link to a victim’s
right to know the truth of what occurred, including the right to know the accused’s
motives regarding the crime committed. This extends beyond the victim, or the
victim’s next of kin, to society as a whole. This is because one purpose of
recognizing a right to know the truth is the prevention of the repetition of the
wrongdoing that occurred.1416 The IACHR has also affirmed that the State can
adopt means of reparation that are both judicial and non-judicial.1417

511. The Inter-American Court has further established a link between victims’ access to
justice and the right to truth, affirming that States must ensure that “victims or
their next of kin have full access and legal standing at all the stages of the
investigation and prosecution of those responsible.”1418 In this regard the IACHR
has been informed that trans women who are killed often do not have relatives
who will come forward and claim the body or seek justice on behalf of the
deceased. Due to the loss of ties with immediate family and other relatives that
trans persons often experience, it may fall to the deceased’s “social family,” which
often comprises other trans women, to seek justice. However, such persons may be
barred from acting on behalf of the deceased, in the absence of a blood
relationship, and may themselves face discrimination in their attempts to seek
justice in the name of the deceased. It is very likely that this situation hinders
access to justice in cases involving victims who are trans women.

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1414 See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs (Art. 63.1

1415 See, *inter alia*, I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations (Art. 63.1 American
Right to Truth in the Americas*, 2014, para. 122.

1416 IACHR, Report No. 37/00, *Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador*, April 13,

1417 IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19,

1418 IACHR, *The Right to Truth in the Americas*, 2014, para. 126, citing several Inter-American Court decisions.
512. The Commission wishes to highlight that adequate reparation for human rights violations resulting in harm includes measures that are tailored to the individual victim or next of kin and are calculated to provide adequate restitution, compensation, and rehabilitation for the victim, and also includes general measures of satisfaction (medidas de satisfacción) and guarantees of non-repetition. \textsuperscript{1419} The Inter-American Court has further stated that in the context of structural discrimination, “the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”\textsuperscript{1420}

513. Specifically with respect to reparations regarding intersex persons, the IACHR notes that the International Intersex Forum’s Public Statement has called for the provision of “adequate redress, reparation, access to justice and the right to truth.”\textsuperscript{1421} Additionally, the Council of Europe has acknowledged the position of the German ethics council, indicating that there should be “at least symbolic compensation especially to those who, on account of what would now be seen as incorrect medical treatment, are afflicted with physical or psychological suffering and often also incur expense that would not have arisen without this treatment.”\textsuperscript{1422} The UN Committee on the Rights of the Child has also affirmed that intersex persons and their relatives who are victims of these medical interventions should receive reparation and compensation.\textsuperscript{1423}

514. The IACHR has received reports of measures adopted by various OAS Member States seeking to provide reparations for harm caused by violations of human rights. In Argentina, for example, a Buenos Aires court ordered the local government to pay the minimum wage to five elderly trans women—not in exchange for work performed, but as a government compensation to those individuals—as “extraordinary and reparative subsidies,” given the historical situation of marginalization and discrimination they had suffered.\textsuperscript{1424} These reparations were also granted to compensate for the women having suffered under the situation of generalized institutional violence and police abuse against the trans women community in Buenos Aires, Argentina.\textsuperscript{1425} Accordingly, the Argentinean Agency against Discrimination, Xenophobia and Racism (“INADI,” in


1423 ONU, Comité de Derechos del Niño, Observaciones Finales del cuarto informe periódico de Chile, CRC/C/CHL/CO/4-5, 15 de octubre de 2015, paras. 48-49.


Spanish) stated that the State had a duty to correct decades of invisibility and exclusion affecting trans persons.\textsuperscript{1426} The Commission has also been informed that there is a bill pending in the Argentinean Congress, presented by several trans civil society organizations, which would mandate the provision of reparations to trans persons, due to institutional violence experienced in the past by many trans persons in Argentina because of the enforcement of legal provisions against cross-dressing and sex work, among others.\textsuperscript{1427} The IACHR encourages the Argentinean State to pass this law.

515. LGBTI persons in Colombia have been prioritized to receive comprehensive reparations as victims of human rights violations, through Resolution 0223, which came into force in 2013. As of September 2014, at least 1,152 LGBTI persons had been registered as victims under this Resolution.\textsuperscript{1428} Further, the State has informed the IACHR that its reparations program for victims of the armed conflict has benefited 880 internally displaced persons who are LGBT.\textsuperscript{1429} The Commission was also informed that the Center for Historical Memory project now includes special attention to the historical memory of LGBT persons.\textsuperscript{1430} Regarding Ecuador, the IACHR was informed by a civil society organization that the national law on truth, justice, and reparation for persons who have suffered serious crimes applies to LGBT persons.\textsuperscript{1431}

516. The Commission calls OAS Member States to adopt measures to guarantee that LGBTI victims of human rights violations and their next of kin have effective access to reparations, in accordance with international legal standards. States must design and implement reparations programs that take into account the specific needs of lesbian, gay, bisexual, trans, and intersex persons, and which are the result of consultative processes with civil society organizations.


\textsuperscript{1427} INADI (National Institute against Discrimination, Xenophobia and Racism), “Proyecto de Ley de reparación histórica para la comunidad trans”, 11 de noviembre de 2014.

\textsuperscript{1428} IACHR, Annual Report 2014, Chapter V: Follow-Up of Recommendations issues by the IACHR in its country on thematic reports: Colombia, citing: State of Colombia, Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report. Note S-GAIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, p. 351.

\textsuperscript{1429} State of Colombia, Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report. Note S-GAIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, p. 352.

\textsuperscript{1430} State of Colombia, Situation of Human Rights 2013-2014 and follow up to recommendations in the IACHR IV Country Report. Note S-GAIID-14-094783, received by the IACHR Executive Secretariat on December 29, 2014, pp. 353-354.

\textsuperscript{1431} Response to the IACHR Questionnaire on Violence against LGBTI Persons in the Americas submitted by ‘Fundación Manos que Construyen Paz’ (Colombia), received by IACHR Executive Secretariat on December 20, 2013 p. 14.
CHAPTER 7
CONCLUSIONS AND RECOMMENDATIONS
CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

517. In this Report the Inter-American Commission has highlighted pervasive violence in the Americas against lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, in all spheres of public and private life, and even in countries where there have been significant advances in law and policy regarding the rights of LGBTI persons. The Commission has described multiple forms of violence – often involving high levels of cruelty – that are aimed at punishing non-normative sexual orientations and gender identities, or persons whose bodies are different from standard female and male bodies. The IACHR has also examined the diversity of this violence and the specific and differentiated impact it has on groups or sectors of the population that have traditionally been subject to discrimination. At the root of this violence is widespread discrimination and intolerance regarding diverse sexual orientations, gender identities, gender expressions and persons whose bodies defy socially body presentations. States, through their action and inaction, enable this discrimination and intolerance, and in some instances even fuel it.

518. Societies in the Americas are dominated by principles of heteronormativity, cisnormativity, and the sex and gender binaries. Further, there is widespread intolerance toward LGBTI persons or those perceived as such, as well as the failure of States to effectively and adequately investigate and punish violence based on prejudice. In this Report, the IACHR concludes that the generalized context of social discrimination and intolerance regarding this diversity, combined with lack of effective investigations, and the absence of a differentiated approach to investigate, prosecute, punish, and provide reparations to crimes committed against LGBTI persons, are elements that have the effect of condoning and tolerating the violence, resulting in impunity and repetition.

519. The IACHR recognizes certain positive steps taken by States in the region in the areas of law and policy, but highlights that, by and large, States in the region have not integrated a differentiated approach that takes the rights of LGBTI persons into account in the domestic legal framework, public policies, and Executive-led initiatives and programs. The Commission notes that impunity regarding extrajudicial executions, killings, torture and other acts of cruel, inhuman, and degrading treatment, and other serious acts of violence against LGBTI persons is widespread. Even beyond this, there are countries in which violence is fueled by
legislation itself, for example laws criminalizing same-sex intimacy between consenting adults in private, laws against loitering, laws protecting “public morality,” and State-sanctioned medical protocols that permit medical violence against intersex persons.

520. Since 2009, the OAS General Assembly has urged States to ensure that acts of violence and human rights violations committed against individuals motivated by the prejudice against their sexual orientation and gender identity are investigated, and that the perpetrators are brought to justice. To this end, States are urged to strengthen their national institutions with a view to preventing and effectively investigating acts of violence and human rights violations against LGBTI persons, ensuring judicial protection for victims, bringing perpetrators to justice, and providing adequate reparations to victims.

521. Based on the findings of this Report, the Inter-American Commission on Human Rights issues the following recommendations to OAS Member States in order to protect and guarantee the rights of lesbian, gay, bisexual, trans and intersex persons, or those perceived as such, to a life free from violence in the countries of the Americas.

GENERAL RECOMMENDATIONS

1. Undertake efforts and allocate sufficient resources to systematically collect and analyze data on the prevalence and nature of violence and discrimination based on prejudice against LGBTI persons, or those perceived as such. Access to disaggregated data and statistics is an important tool for evaluating the effectiveness of measures to prevent, punish, and eradicate violence against LGBTI persons, and for formulating any needed policy changes. In collecting this data, States must take into account the following:

   a. Data collection efforts must be carried out in coordination with all branches of government, and, where applicable, with Offices of the Ombudsperson, Offices of Public Prosecution, and Public Defender’s Offices. Data collection systems must be capable of gathering information from a wide variety of sources including, but not limited to, police, forensic agencies, tribunals and courts, prosecution and public defender offices, all other relevant agencies of the justice system, ombudspersons’ offices, agencies providing assistance to victims, hospitals, schools, shelters, prison administration agencies, and other relevant governmental agencies and public institutions which may provide useful data on violence against lesbian, gay, bisexual, trans and intersex persons.

   b. Data collected must include information on the impact of legislation criminalizing same-sex intimacy between consenting adults in private, legislation against cross-dressing, legislation against loitering, and legislation aimed at protecting “public morality” (moral pública), and “buenas costumbres”. Data collection in this regard must include
disaggregated information on complaints and prosecutions related to the targeted application of these laws to LGBT persons, or those perceived to be LGBT.

c. States must collect data on human rights violations against intersex persons, including the prevalence of medical treatment of and surgeries performed on intersex persons, particularly surgical interventions aimed at altering the appearance of the genitals to make them more “female” or “male”. Data in this regard must include the review of medical protocols and practices in public and private hospitals.

d. States must undertake efforts to collect data on violence against LGBTI persons that is disaggregated as much as possible according to multiple factors, such as: ethnicity; race; sex; gender; migration status and situation of displacement; age; status as a human rights defender; situation of deprivation of liberty; socio-economic status; among others.

e. Data collection systems must collect information in order for States to be able to understand the underlying causes of violence against LGBTI persons, as well as which groups within the overall LGBTI population are more vulnerable to certain types of violence. The collected information must include data on any patterns among LGBTI victims, such as: lack of access to education; lack of access to the formal labor market; lack of access to adequate housing; barriers to access other rights; the places where the acts of violence or discrimination took place; and the occupation of the victim. Regarding the occupation of the victim, the data must also record whether the act of violence or discrimination took place while the person was working, including carrying out sex work or survival sex. The characterization of the perpetrators must include, among other information, their relationship with the victim, if any. Other elements –such as the place where the violence took place- are also important to understanding violence based on prejudice.

2. Adopt the necessary measures to prevent torture, cruel, inhuman and degrading treatment or any form of police abuse against LGBTI persons, including protocols and guidelines directed toward law enforcement agents, and sensitization and training in: human rights; non-normative sexual orientations and gender identities and diverse bodies; and the rights of LGBTI persons.

3. Design and implement policies and programs to eliminate stigmatization, stereotyping and discrimination against LGBTI persons, or those perceived as such. Adopt comprehensive measures to encourage respect for the rights of LGBTI persons and social acceptance of diversity in sexual orientations, gender identities and persons who view themselves outside of the man/woman binary or whose bodies do not coincide with the socially accepted standard for male and female bodies.
4. Adopt measures to eradicate social stigma regarding intersex persons, which includes urgent measures to raise awareness, through policies and programs that sensitize the general public and the medical community, of human rights violations faced by intersex persons.

5. National Human Rights Institutions (NHRIs) are urged to strengthen their work on the promotion and protection of the human rights of LGBTI persons, including specific measures to counteract prejudices and to eradicate practices that are based on stereotypes of LGBTI persons and which may legitimize or exacerbate violence against them. NHRIs are also urged to conduct outreach to intersex children and their families, to provide victim support services, facilitating contact with other intersex persons and with peer support groups.

6. Establish or strengthen specialized departments or units within Offices of the Ombudspersons, as well as other State institutions, to address the situation of violence and discrimination faced by LGBTI persons.

7. Adopt measures, including legislation, public policies, and State-run programs, to address the underlying causes of violence against trans and gender non-conforming persons. These measures must ensure, among other things, that trans persons have access, without discrimination, to formal employment, education, health care, and housing.

8. Review legislative frameworks that criminalize and stigmatize sex workers.

9. Make necessary amendments to law and public policy to prohibit medically unnecessary procedures on intersex persons, when such procedures are administered without the free informed consent of the person concerned.

10. Undertake all necessary measures to ensure compliance with the obligation to adequately redress human rights violations and provide reparations to LGBTI persons and their relatives who are victims of human rights violations.

11. Ensure that non-governmental organizations, civil society actors, and LGBTI persons and support groups, have direct participation in, and are systematically consulted and made part of decision-making processes regarding the development of legislation, public policies, and programs to address the human rights of LGBTI persons.

12. Undertake measures to follow-up on the commitments made by OAS Member States via resolutions passed at the OAS General Assembly, concerning human rights, sexual orientation, gender identity, and gender expression.

13. Undertake efforts to sign and ratify the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted by the OAS General Assembly on June 5, 2013.
RECOMMENDATIONS AIMED AT THE EXECUTIVE BRANCH

14. Take immediate steps to impose an explicit and formal moratorium on the enforcement of legislation that criminalizes consensual sex between persons of the same sex, laws against "gross indecency" and "serious indecency" - in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse- and legislation criminalizing cross-dressing.

15. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that protect "public morality" and "good conduct" ("buenas costumbres") on vaguely defined grounds, are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.

16. Adopt comprehensive and countrywide public policies that guarantee the rights of LGBTI persons to be free from violence and discrimination with the participation of LGBTI persons.

17. Condemn and take a public stand against acts of violence and discrimination based on sexual orientation, gender identity and expression, and bodily diversity. Publicly call for effective and impartial investigations, sending a strong social message from the highest political level, that violence based on prejudice is not tolerated. Issue, whenever possible, positive public statements regarding the importance of defending, protecting, and promoting the human rights of LGBTI persons.

18. Undertake Executive-led approaches and responses to violence and discrimination against LGBTI persons, such as measures to initiate and maintain public debate around the underlying causes of violence against LGBTI persons and measures to prevent and combat it.

19. Adopt measures to ensure that public officials respect the rights of persons with diverse sexual orientations and gender identities and expressions. Public officials must respect human rights defenders and the spaces where their claims are debated, considered, and decided. Where these spaces do not exist, States must promote their existence as a means of ensuring democratic and pluralistic societies across the Americas.

20. Design and conduct educational campaigns, in coordination with ministries of education, in order to eliminate stereotypes, stigma, and invisibility surrounding intersex persons in school curricula. Ensure that education policies are specifically designed to modify harmful social and cultural patterns of conduct. The principles of equality and non-discrimination, with a special focus on sexual, gender, and bodily diversity, should be key elements of such policies.

21. Conduct awareness-raising and sensitization campaigns at the national level concerning the short-term and long-term effects of so-called "normalizing" interventions on intersex children.
22. Ensure that programs and policies designed to protect and promote the rights of LGBTI persons are sufficiently funded and staffed with personnel trained in the specific fields of non-normative sexual orientations, gender identities and expressions, and human rights.

RECOMMENDATIONS AIMED AT THE LEGISLATIVE BRANCH

23. Take measures to repeal laws that criminalize consensual same-sex intimacy, laws prohibiting “gross indecency” and “serious indecency,” in order to ensure that they are not applied to criminalize same-sex intimacy short of intercourse, and legislation criminalizing cross-dressing. In the meantime, take immediate steps to support an explicit and formal moratorium on the enforcement of these laws.

24. Adopt measures to modify or repeal legal provisions that penalize public conduct on vaguely defined grounds related to the protection of “public morals.” Such provisions have a disproportionate impact on LGBT persons, or those perceived as such.

25. Enact anti-discrimination legislation or amend existing legislation in order to prohibit all forms of discrimination, that include sexual orientation, gender identity and gender expression, sex characteristics or intersex status.

26. Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates.

27. Enact hate crimes legislation – either through amendments to existing legislation or through the adoption of new laws – to identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity.

28. Adopt laws and national regulations expressly prohibiting non-medically necessary surgery and related medical intervention for intersex children and intersex persons, when administered without their full and informed consent.

29. Adopt legislation to punish hate speech, in accordance with the American Convention on Human Rights and the standards established by the Inter-American Commission and Court, as developed in Chapter 4 of this Report.

30. Undertake the necessary measures to ensure that LGBTI persons are not excluded from the legal frameworks that seek to protect people from violence within the families, domestic unit or any intimate relationship.
RECOMMENDATIONS REGARDING ACCESS TO JUSTICE

31. Take all necessary measures to apply due diligence in preventing, investigating, punishing and providing reparations regarding violence against LGBTI persons, regardless of whether the violence occurs in the context of the family, the community, or the public sphere, the latter of which includes education and health facilities.

32. Undertake effective, prompt and impartial investigations into killings, torture, and acts of cruel, inhuman and degrading treatment, as well as other acts of violence against LGBTI persons.

   a. The investigation into killings and other acts of violence against LGBTI persons must begin promptly and without undue delay, and must constitute an effort by the State to take all necessary measures in the search for the truth, in order to clarify what happened and establish possible discriminatory motives.

   b. In conducting these investigations, State authorities should rely on experts who are able to identify the often-nuanced discrimination and prejudice against LGBTI persons which is pervasive and embedded in the societies of the region.

   c. Investigations should not be limited to disciplinary proceedings. Rather, criminal proceedings should be initiated in all instances of human rights violations against LGBTI persons committed by police and other law enforcement agents.

33. Take measures to ensure from the very beginning of the investigation that there is an examination into the motives of the act of violence, and that this examination includes consideration of the relevance of the victim’s sexual orientation or gender identity, real or perceived.

34. Establish specialized prosecutorial units or appoint specialized prosecutors to investigate and prosecute crimes committed against LGBT persons. Staff them with trained personnel in the fields of human rights and non-normative sexual orientations and gender identities.

35. Adopt measures to: (i) address deficiencies in the investigation and prosecution of cases of violence based on sexual orientation and/or gender identity; and (ii) tackle the many specific obstacles and barriers faced by LGBTI persons when they seek justice.

36. Ensure that investigations are not permeated by prejudice based on the real or perceived sexual orientation and/or gender identity of the victim or the perpetrator.

37. Undertake the necessary legal and policy changes to expressly indicate that the sexual orientation, gender identity, or gender expression of victims can
never be used to establish a partial or full justification of crimes committed against them.

38. Strengthen public legal aid services —including legal advice, assistance, and representation — and ensure that LGBTI victims of crime are afforded access to justice. This includes adopting measures to ensure that victims of discrimination and violence are aware of and have access to effective legal remedies.

39. Issue guidelines and protocols to assist law enforcement agents and judges to ensure that legal provisions that penalize public conduct on vaguely defined grounds related to the protection of “public order,” are not applied or enforced in ways that criminalize LGBT persons, or those perceived as such.

40. Adopt measures to guarantee the life, security, and personal integrity of those who report killings and other instances of prejudice-based violence, particularly if the alleged perpetrators are state agents or member of illegal armed groups or gangs.

41. Adopt protocols and prioritize specialized training for “justice operators” (including judges, prosecutors, and public defenders), regarding the human rights of LGBTI persons, in accordance with international human rights law and standards on sexual orientation, gender identity, and bodily diversity, particularly taking into account the following:

   a. Protocols and training must ensure that justice operators do not subject victims, witnesses, and those accompanying them to ill or discriminatory treatment. Law enforcement agents should respect the gender identity of every person and refer to persons with their preferred pronouns.

   b. Victims and witnesses should be able to report crimes in spaces where privacy can be guaranteed. Privacy is especially necessary in the case of LGBTI victims, because they may fear further victimization following the disclosure of their sexual orientation, gender identity or bodily diversity in public.

   c. Protocols and training should include a component on how to identity elements or indicia that may be key in identifying whether crimes were committed based on prejudice toward sexual and gender diversity.

   d. Training should be frequent and periodic and include clear explanations of concepts that are central to sexual orientation, gender identity, and bodily diversity. Protocols and training should acknowledge, and raise awareness regarding the discrimination and violence faced by LGBTI persons, and the general context of prejudice against non-normative sexual orientations and gender identities.
Training should also include information on local trends concerning violence based on sexual prejudice, and should be made aware of the existence of groups, where they are present, that may specifically target LGBTI persons.

Protocols and training should be directed not only at judges and prosecutors, but at all state employees in the justice sector.

SPECIFIC RECOMMENDATIONS: CONTEXTS OF VIOLENCE

FREEDOM OF EXPRESSION

42. Undertake all necessary measures in order to ensure that LGBTI persons are able to exercise their right to freedom of expression without discrimination.

43. Establish an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and expressive needs of LGBTI individuals and groups.

44. Take appropriate steps to combat hate speech against LGBTI persons on the basis of the principles and standards developed in this Report. Ensure that these measures form part of a comprehensive approach that goes beyond legal measures and includes preventive and educational measures to address and respond to hate speech. Preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice regarding the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

45. Adopt legislation to punish hate speech that constitutes incitement to lawless violence against LGBTI persons, in accordance with Article 13(5) of the American Convention on Human Rights and the principles and standards established by the Inter-American Commission and Court, as set out in Chapter 4 of this Report.

46. Raise awareness among public officials at all levels of their responsibility to publicly reject hate speech against LGBTI persons whenever it occurs and refrain from statements which may reasonably be understood as legitimising hatred or discrimination against them. When appropriate, establish appropriate sanctions for hate speech that constitutes incitement to lawless violence.
47. Take appropriate measures to strengthen the role of public broadcasters to serve the informational and expressive needs of the LGBTI community, as well as to promote awareness of issues that concern this community.

48. Regarding the media, the IACHR recommends the following:
   
a. States should encourage media to play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to affected groups and by giving members of these groups an opportunity to speak and to be heard.

b. States should promote that journalistic activities be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State.

c. States should stimulate the adoption of voluntary professional codes of conduct for the media and for journalists, because these actors can play a fundamental role in combating discrimination and in promoting equality principles. These codes can include being alert to the danger of the role media outlets can play in furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.

**LAW ENFORCEMENT**

49. Undertake all measures to prevent instances of extrajudicial executions, torture, and other cruel, degrading and inhuman treatment against LGBTI persons by the police and other law enforcement agents.

50. Adopt the necessary measures to reduce police profiling, selective pat downs and arbitrary arrests of trans women, trans women of color, and LGBT persons engaged in sex work. Ensure that police and other law enforcement agents do not detain persons because of their race, socioeconomic status, and/or the perception of their sexual orientation, gender identity, or gender expression.

51. Eradicate deeply rooted practices of ill-treatment, abuse and disrespect by police agents with regard to LGBT persons who are victims or witnesses of crime. Protocols in this regard need to explicitly indicate that State agents should refrain from making biased assumptions in their receipt, processing, and investigation of complaints.

52. Undertake the necessary measures to ensure that there are effective mechanisms to denounce and investigate cases of torture, cruel and inhuman treatment, police abuse and other acts of violence perpetrated by law enforcement agents.

53. Establish protocols and conduct trainings of police and law enforcement agents regarding human rights and the rights of persons with non-
normative sexual orientations and gender identities, in order to curtail abuses and violence against LGBTI persons, taking into account the following:

a. Protocols and training should include information on how to adequately and respectfully respond to victims of violence, and how to prevent ill treatment and discriminatory policing.

b. Law enforcement officials should be trained to avoid derogatory language related to sexual orientation, gender identity, or gender expression. Law enforcement agents should respect at all times the gender identity of all persons, and refer to them using their preferred pronouns.

c. Attention protocols, including those related to mechanisms and processes to present a complaint against these human rights violations must be public, and States must ensure that they are known by the general population, and in particular, by people under State custody.

HEALTH

54. Design and implement public policies that ensure the rights of LGBTI persons to access health care services, without being subject to discrimination, violence, or mistreatment of any kind, whether in public or private health care settings. Health care professionals should receive continuous training on matters of diversity around sexual orientation, gender identity, and sex characteristics. These principles should be clearly incorporated into domestic legislation and regulations governing the health care sector, as well as in the internal governing regulations of health care institutions and the healthcare professions.

55. Undertake measures to ensure that the regulatory entity of the state health services guarantees effective processes of regulation and oversight of doctors and health care professionals that offer “therapies” that attempt to “modify” sexual orientation and gender identity. Further, to adopt measures to raise the population’s awareness, particularly that of the families of potential victims about the negative impact of these practices on LGBT persons, or those perceived as such, based on available evidence on the subject.

56. Regarding intersex persons,

a. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision
not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.

b. Incorporate specific safeguards for intersex children into legal instruments and medical protocols to protect and ensure their right to informed consent, particularly in the context of non-necessary medical interventions and surgery.

c. Adopt measures to ensure that professionals properly inform patients and their parents of the consequences of surgical and other medical interventions.

d. Undertake training of medical personnel and members of the medical community in order to provide adequate treatment and support to intersex persons and their families. Support intersex persons and their families via interdisciplinary teams during all stages of development, from infancy through childhood and adolescence to adulthood.

e. Ensure intersex persons have access to their medical records.

f. Adopt measures to prevent medical photography and unnecessary genital exams for non-consensual research concerning intersex persons and infants.

g. Ensure effective consultation with intersex activists, organizations, peer-support groups, and other intersex advocates, in the design and implementation of all state measures to prevent violence against intersex persons.

EDUCATION

57. Adopt measures to prevent violence against LGBTI students and teachers, or those perceived as such.

58. Ensure that education policies and curricula are specially designed to change harmful social and cultural patterns of conduct, counteract prejudices and discriminatory customs, and eradicate practices that are based on stereotypes of LGBTI persons and that may legitimize or exacerbate violence against them.

59. Implement a comprehensive program of education concerning human sexuality in school curricula, at all levels, inclusive of a perspective of diversity around issues of gender, sexual orientation, gender identity, and bodily diversity. Comprehensive sexuality education can be a tool to combat discrimination and violence based on prejudice.
60. Revise school and university internal regulations and manuals, in both the public and private education systems, to prohibit discrimination on the basis of sexual orientation, gender identity, gender expression, or sex characteristics. Manuals must avoid punishment or sanction for using garments or accessories that are not socially associated with the sex assigned to the person at birth. Restrictions on same-sex displays of affection should not be more onerous than those included for different-sex couples.

61. Undertake measures to effectively prevent, investigate and sanction bullying and violence in the context of education, including on the basis of sexual orientation, gender identity, and bodily diversity, whether committed by peers, teachers, or school administrators.

**SPECIFIC RECOMMENDATIONS: PARTICULAR GROUPS OF LGBTI PERSONS**

**INDIGENOUS PEOPLES**

62. Undertake measures to address the violence as well as the underlying historical and structural causes of the violence against indigenous persons with diverse sexual orientations and gender identities.

63. Incorporate into legislation and public policy the specific needs of indigenous peoples with diverse sexualities, and adopt all measures necessary to guarantee freedom from discrimination and violence to indigenous peoples with non-normative sexual orientations and gender identities.

64. Conduct research with a gender and intercultural perspective to take into account the specific needs of indigenous persons with non-normative sexual orientations and gender identities, and two-spirited persons.

65. Collect and disseminate disaggregated statistics and information on cases of violence against indigenous persons with non-conforming gender identities.

**WOMEN**

66. Undertake measures to progressively modify the social and cultural patterns of conduct of men and women, including the manifestations of such patterns of conduct in educational programs, in order to counteract prejudices, customs, and practices that are harmful to lesbian, bisexual, trans, and intersex women.
67. Adopt measures to specifically include lesbian, bisexual, transgender, and intersex women in legislation, public policies, and all government-led efforts regarding the rights of women to be free from discrimination and violence, including sexual violence.

68. Adopt measures to address the underlying causes of violence affecting trans women, including affirmative actions to provide formal employment; safe and accessible shelter; and access to education. Undertake specific measures to address violence against trans persons within the family.

69. Undertake actions to study and assess the pervasiveness of violence against lesbian, bisexual, transgender and intersex women. Adopt specific measures to prevent and investigate this type of violence, with a differentiated approach that takes into account power relations at the intersection of sex, gender, sexual orientation and gender expression.

70. Adopt measures to protect lesbian, trans, and bisexual women from violence, including sexual violence, perpetrated by gangs and illegal armed groups.

PERSONS IN THE CONTEXT OF HUMAN MOBILITY

71. Adopt measures to specifically include LGBTI persons in legislation, public policies, and all government-led efforts regarding the rights of migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, internally displaced persons, and other persons who might be more vulnerable to human rights violations in the context of human mobility. Sexual orientation and/or gender identity are factors which may make persons more vulnerable to being internally displaced or trafficked.

72. Adopt the necessary measures to comply with the obligation not to return refugees to places where their life or personal integrity would be in danger on account of their actual or perceived sexual orientation and/or gender identity.

73. Undertake measures to ensure that the processes for the determination of refugee status are accessible to persons who flee because of reasons related to their sexual orientation or gender identity, real or perceived. Further, to design and develop guides and protocols, as well as trainings of agents that make the assessment and determination of refugee status, so that LGBTI persons seeking asylum are treated adequately and respectfully. These guides and trainings must include guidelines to ensure that decisions on the granting of refugee status are not based on stereotypes or inaccurate presumptions regarding LGBTI people. The IACHR urges States to take into account the guidelines and manuals published in this regard by the UN High Commissioner for Refugees (UNHCR).

74. Conduct training of law enforcement officials and service providers to improve victim identification procedures and to adapt victim assistance services to meet the specific needs of LGBT victims. This training should be
developed in consultation with LGBT organizations and support groups. States are urged to take into account existing guidelines on the subject issued by the UN High Commissioner for Refugees.

75. Adopt specific guidelines and policies to ensure that asylum seekers and other migrants who are deprived of liberty are effectively protected from discrimination and violence, whether from custodial staff or other detained persons. This includes ensuring that the decision on where to house trans persons is done on a case by case basis, with due respect for the person’s dignity, and whenever possible, with prior consultation with the trans person concerned.

CHILDREN AND YOUTH

76. Undertake measures to fulfill the obligations to respect and guarantee the rights of LGBTI children and adolescents, or those perceived as such, to a life that is free from discrimination and violence, including in the context of the family, health facilities, and educational environments. Such measures include, among others, adopting comprehensive policies to prevent, investigate, and sanction violence against LGBTI children, regardless of where it takes place. Guides developed by UN agencies, such as UNESCO, can support such measures.

77. Eradicate from the school curricula any biased, non-scientific and incorrect information that stigmatizes diverse sexual orientations and gender identities. Further, ensure that school curricula and textbooks include material that promotes respect for and acceptance of diversity.

78. Adopt measures to ensure that school regulations do not include discriminatory provisions against LGBTI students, or rules which could be used to discriminate against them.

79. Establish complaint mechanisms to enable the effective investigation of instances of violence against LGBTI children, regardless of where they occur.

80. Conduct trainings of state institutions, school and university authorities, and teachers, so they are able to identify abuse and violence against children in the home that is related to sexual orientation and gender identity, and provide appropriate measures of response. Training should also be geared toward promoting respect and tolerance regarding LGBTI persons.

81. Prohibit non-medically necessary interventions on intersex children without their full and informed consent. Non-medically necessary surgeries on intersex infants should be postponed until the concerned person is able to provide full, prior, and informed consent. A decision not to undergo medical procedures should be respected. Non-intervention should not hinder or delay registration of birth by relevant State authorities.
82. Create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood. Ensure that intersex persons and activists are consulted.

83. Adopt public awareness campaigns featuring LGBTI children and diversity in families so as to promote respect and acceptance of diverse family configurations, among other measures.

84. Adopt measures to protect all LGBTI children and young adults from violence – including LGBTI youth who are homeless – and ensure that effective child protection and support systems are in place, including shelters and other safety mechanisms for those in need of protection.

85. Adopt specific programs to provide support and protection to LGBTI children and their families. These programs, geared toward pregnant couples and families with both younger and older children, should incorporate positive models of raising children, as well as awareness-raising and sensitization with respect to non-normative sexual orientation, gender identity/expression and bodily diversity.

86. Ensure that children are consulted and take part in decision-making related to public policies and other State measures to prevent and address violence and discrimination against them.

**HUMAN RIGHTS DEFENDERS**

87. Adopt measures to prevent, investigate, punish, and provide reparations for violence aimed at LGBTI human rights defenders, who face heightened vulnerability due to the intersection of their sexual orientation and/or gender identity or expression, their role as defenders, and the issues they address in their work. Specific measures should be designed and adopted, in consultation with defenders and activists, to effectively address violence against trans activists who are engaged in sex work. These measures also need to take into account the specificities of violence exerted against LGBTI human rights defenders by law enforcement agents, as well as gangs and members of illegal armed groups.

88. Undertake measures to ensure that effective investigations into killings and other acts of violence against LGBTI human rights defenders are carried out. Authorities must conduct an exhaustive analysis of every possible theory of the crime and thus establish whether or not the motive for the crime was the victim’s promotion and defense of human rights and/or the sexual orientation or gender identity of the victim.

89. Continue or initiate dialogue with LGBTI human rights defenders, with the aim of learning about the problems they face with respect to violence or the threat of violence. Facilitating their active participation in the adoption of public policies in this regard.
90. Undertake measures to ensure that any attempt by authorities to question the legitimacy of the work of human rights defenders and their organizations will not be tolerated. Public officials must refrain from making statements that stigmatize human rights defenders and they must adopt specific measures of protection for LGBTI human rights defenders. Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.

91. Adopt measures to take into account the particular vulnerability to violence of LGBTI human rights defenders, within the broader group of human rights defenders, in the design and implementation of all State policies that are intended to protect human rights defenders.

AFRO-DESCENDANT PERSONS AND THOSE AFFECTED BY RACIAL DISCRIMINATION

92. States are obliged to undertake comprehensive reviews of their domestic legislation and police practices with the goal of identifying and abolishing provisions or practices that entail direct or indirect discrimination or police profiling against LGBTI persons of African descent and LGBTI persons of color.

93. Adopt measures to make visible the particular ways in which the intersection of race, socioeconomic status, poverty, and diverse sexual orientation, gender identity, and gender expression affect LGBTI persons, and particularly, how these intersections result in persons of color and Afro-descendants with non-normative sexualities and identities being at an increased risk of violence.

94. Undertake effective actions to eradicate racial discrimination and its differentiated impact on LGBTI persons, and to effectively guarantee the rights of Afro-descendant persons, and all those affected by racial discrimination.

95. Allocate sufficient and specific human and financial resources to prevention and awareness-raising efforts aimed at eliminating cultural practices, prejudices, and racial stereotypes, and improving the living conditions of LGBTI persons of African descent with respect to health, housing, education, and work. Such preventive efforts should be part of an overall holistic strategy to provide restitution for acts of violence and discrimination as well as to rectify the underlying structural and historical discrimination that perpetuates violence against persons of African descent, incorporating a gender and intercultural perspective.
PEOPLE LIVING IN POVERTY

96. Adopt comprehensive measures to effectively address the discrimination and violence faced by LGBTI persons living in poverty and extreme poverty, and to continue to devote efforts and resources to eradicate poverty.

97. Undertake measures to address discrimination based on sexual orientation, gender identity, and sex characteristics when designing and implementing actions and programs to tackle poverty.

98. Ensure that the programs provided by the State for low income, homeless or unemployed persons are accessible to LGBTI persons. Persons should be able to decide their shelter based on their gender identity, and gender neutral shelters should be available.

PERSONS DEPRIVED OF LIBERTY

99. Adopt urgent and effective measures to guarantee the life, personal security, and integrity of LGBT persons, or those perceived as such, in the region’s places of detention, including prisons and immigration detention centers. This includes the development of comprehensive and differentiated policies and guidelines for adequate treatment of LGBT persons deprived of liberty.

100. Ensure that measures aimed at protecting LGBT persons who are deprived of liberty do not place undue restrictions on such LGBT persons. Restrict the indiscriminate and prolonged use of solitary confinement of LGBT persons in places of detention, including immigration detention centers and prisons.

101. Adopt measures to prevent violence against LGBT persons deprived of liberty, including, but not limited to: effective and independent complaint procedures to report rape and abuse; tailored risk assessment at intake and appropriate allocation within the prison or detention system; careful collection of data on LGBT persons deprived of liberty and the violence exerted against them, respecting principles of confidentiality and privacy; and sensitization and diversity training of custodial staff, immigration officials, and police officers, as well as other detainees.

102. Implement effective measures to ensure due diligence in the investigation, prosecution, and punishment of acts of torture and degrading and inhuman treatment of LGBT persons.

103. Conduct training of police and of custodial staff in prisons, police lock-ups, immigration detention centers, and other places of detention, to ensure that such agents adequately protect the life and personal integrity of LGBT persons who are deprived of liberty.

104. Adopt the necessary measures to ensure that the decision on where to house trans persons in detention (including prisons, police lock-ups and migration detention centers), is conducted on a case by case basis, with due respect to
the person’s personal dignity, and whenever possible, with prior consultation of the person concerned.
TAB 9
Stakeholder Submission to the United Nations Universal Periodic Review for the 2nd-Cycle Review of Trinidad & Tobago, during the 25th Session
Submitted: 21 September 2015

Joint NGO Submission by:

1. CAISO (Coalition Advocating for Inclusion of Sexual Orientation)
   47 Norfolk St, Belmont, Port of Spain, Trinidad & Tobago • caisott@gmail.com • +1 868-322-7373 • gspott.wordpress.com • Contact: Colin Robinson, Executive Director • CAISO (est. 2009, inc. 2012, Trinidad & Tobago) works to make sex/gender diversity part of T&T’s national identity through: a multi-organizational casework programme using law and social work to prevent and redress violations of human rights and dignity related to sexual orientation, gender identity and expression, and to strengthen human rights self-efficacy and advocacy by LGBTI persons; advocacy leadership to strengthen national human rights machinery and mobilize collaborative civil society use of human rights mechanisms; and work to shift public understanding, discourse and policy on sexuality, gender, citizenship and rights.

2. CariFLAGS (Caribbean Forum for Liberation and Acceptance of Genders and Sexualities)
   47 Norfolk St, Belmont, Port of Spain, Trinidad & Tobago • cariflagssecretariat@gmail.com • +1 876-844-9366 • www.facebook.com/groups/cariflags • Contact: Dane Lewis, Co-Chair • CariFLAGS (est. 1997, Curaçao; inc. 2014, Trinidad & Tobago) incorporates national NGOs in Belize, the Dominican Republic, Grenada, Jamaica, St. Lucia, Suriname and Trinidad & Tobago as directors of a regional network whose mission is to build Caribbean nations where LGBTI people enjoy full fruits of citizenship, and to strengthen cultural understanding, policy, litigation, leadership and domestic movements that enable that.

3. Family Planning Association of Trinidad & Tobago
   79 Oxford St, Port of Spain, Trinidad & Tobago • ed.fpat@gmail.com • +1 868-623-4764 • www.ttfpa.org/fpa • Contact: Dona Da Costa Martinez, Executive Director • FPATT (est. 1956, Trinidad & Tobago) has a mission to advance sexual and reproductive health and rights, through advocacy and the provision of quality services to men, women and young people in Trinidad and Tobago. FPATT is an affiliate of the International Planned Parenthood Federation.

4. Friends for Life
   47 Norfolk St, Belmont, Port of Spain, Trinidad & Tobago • friendsforlife-tt@live.com • +1 868-379-1952 • Contact: Luke Sinnette, Social Worker • FFL (est. 1997, inc. 1999 Trinidad & Tobago), Trinidad & Tobago’s oldest LGBTI NGO, is a grassroots organisation with a focus on working-class issues, trauma and resilience, Trans MTF sex work, and transformative social work pedagogy. A founding partner in Wholeness & Justice (a casework and advocacy initiative which blends clinical practice with critical consciousness and therapeutic social action), FFL also runs a volunteer hotline and HIV outreach programme, provides group and family counseling, and finds emergency housing for those made homeless by discrimination.

5. Silver Lining Foundation
   thesilverliningfoundation@gmail.com • www.silverliningtt.com • Contact: Jeremy Steffan Edwards, Chairman • SLF (est. 2012, inc. 2013 Trinidad & Tobago) is an NGO which primarily acts as a guardian body for marginalized youths seeking to prevent suicide and discrimination. The focus, while on bullying and discrimination, is centered on youth with regards to LGBT issues and those of gender identity and expression.
Submission Focus & Goals

1. This joint thematic submission focuses on human rights practice and protection related to fulfilment of sexual and reproductive rights (with the exception of violence against women and children, which deserves its own thematic focus) in Trinidad and Tobago.

2. It reviews implementation steps and assesses achievements by Trinidad & Tobago with regard to each recommendation accepted and voluntary commitment made by the state, at all stages of the UPR first cycle, that are related to the submission theme.

3. It assesses the development of normative and institutional frameworks for ensuring and protecting human rights in Trinidad & Tobago, in particular state machinery and initiative.

4. In the course of the review and framework assessment, it highlights relevant developments in domestic law, policy and international cooperation since March 2012, and identifies challenges and constraints they present in domesticating human rights norms.

5. It makes recommendations with specific indicators for achieving unmet commitments and outstanding obligations.

Review of First-Cycle Commitments

6. Six recommendations on the theme of our submission were described by the state during the first cycle as already “implemented or in the process of implementation” (A/HRC/19/7, para. 87). One additional first-cycle recommendation on this theme enjoyed the support of the state (A/HRC/19/7, para. 86.10). We reproduce these in blue italics, indented, along with the paragraph number from UPR documents in which they appear, and review each in the paragraphs that follow it.

7. 87.17. Continue to develop and implement measures aimed at protecting the rights of all children, particularly those in vulnerable situations (A/HRC/19/7)

8. 87.26. Continue and strengthen current efforts to increase the accessibility and quality of health services and education for all its citizens (A/HRC/19/7)

9. New child protection legislation and improvements in health and education services leave critical gaps in sexuality education, maintain laws enabling child marriage, and radically increase criminal penalties for same-sex sexuality between minors, while decriminalizing similar conduct between children of opposite sexes.

10. Important pieces of child protection legislation have been passed since March 2012, and a Children’s Authority has accomplished critical advances in functionality. Sections of the landmark Children Act of 2012 which became law in May 2015 revised and expanded the regime of sexual offences against children, with generally enhanced penalties, raised the age of sexual consent to 18 years, and decriminalised non-coercive sexuality between minors close in age in non-familial or -custodial relationships. It explicitly withheld this decriminalisation provision when children are of the same sex (paragraphs 20(1)(c), 20(2)(c) and 20(3)(c)), and by repealing previously age-scaled penalties for sexual offences when committed by minors, makes non-
coercive sexual activity between minors of the same sex subject to life imprisonment, regardless of their ages.¹ The age of criminal responsibility in Trinidad & Tobago is effectively seven years. Further, although “GOTT has recognized that this is a specific human rights issue which must be addressed” (A/HRC/19/7/Add.1, para. 8), the Children Act not only fails to repeal legislation that drew attention in the first cycle permitting marriage of girls as young as 12 and boys at 16—it provides exemptions from criminalisation for sexual offences against minors for the spouses of minors. Overall, the Act deliberately seeks to entrench pre-existing laws known to be violations of human rights; e.g., excluded from the child marriage exemption is “buggery” (anal intercourse), because it is criminalized even when consensual. Every Independent (non-political) member of the Senate withheld support for the legislation, and members of that bench forced a voice vote on the unequal decriminalization provision.

11. Statistics on teenage pregnancy and HIV in Trinidad & Tobago underline the link between inadequate education, early sexual activity and negative sexual health outcomes. These include data from the Central Statistical Office that since the turn of the century teen pregnancy rates have not declined. Little “debate” remains¹²,¹³,¹⁴,¹⁵ regarding children’s right to access age-appropriate comprehensive sexuality education as a norm. The August 2008 Mexico Declaration on Comprehensive Sexuality Education in Schools (“Prevention through Education”) united Ministers of Health and Education across Latin America and the Caribbean to commit to reducing “by 75% the number of schools [administered by the Ministries of Education] that do not provide comprehensive sexuality education” and “reduce by 50% the number of adolescents and young people who are not covered by health services that appropriately attend to their sexual and reproductive health needs”.¹⁶ Yet, the Minister of Education who took office in September 2015, at his swearing-in, addressed efforts to access to sexual education and health services for those of school-age with “religious education must form a part of the curriculum in all our schools. Sex education is something we need to discuss and we feel it is the responsibility of the parent to educate his or her child with respect to their sexual well-being, so although it might form part of our social studies curriculum it is largely a matter of the parents to deal with that.”¹⁷,¹⁸

12. 87.25. Further action to reduce maternal mortality (A/HRC/19/7)

13. Maternal mortality rates rose 40% over a three-year period. Media reports on the Third Annual Report 2014—Making Progress, Strengthening a Nation,¹⁹ laid in Parliament in April 2015, quote the then Planning minister that the maternal mortality rate rose from 46 per 100,000 births in 2010 to 64 in 2013. “That means that this is something that we did not do well. And this is an issue of major concern,” he acknowledged.²⁰ He also told Parliament, the mortality rate was among indices that “fell below their targets, and therefore require immediate and urgent attention”²¹

14. 87.5. Adopt measures so that traditional stereotypes referring to the roles of men and women in society and family can be overcome (A/HRC/19/7)

15. 87.3. Continue its significant efforts to promote gender equality, in particular the implementation of the “Draft National Gender Policy” (A/HRC/19/7)

16. With the September 2015 change in Government, a six-year-old document criticized by human rights advocates as weak will displace the policy referenced, which was never
enacted. The gender portfolio moves to its fourth ministry in five years, as a sub-unit of a broad social development and family services umbrella, after gender rights machinery with a Ministry-level champion had been put in place over four years.

17. Between May 2010 and September 2015, a suite of gender-focused programmes (including Defining Masculine Excellence, addressing stereotyping of masculinities) has been shifted across four different government ministries (community development, gender, planning, social development). A gender-centred ministry, established in June 2011, with a “gender development” mission to “provide expertise and support to government agencies and other stakeholders or focal points, as well as institutionalizing gender in the planning process”, in response to human rights frameworks, had a defined mandate that included masculinity, femininity, sexual orientation and gender and special interest groups. After four years, that Ministry of Gender, Youth & Child Development (cited four times by the state during the first cycle) is currently in the process of being split and decommissioned and the gender units are reportedly being merged into a new Ministry of Social Development and Family Affairs.

18. Cabinet twice deferred action on an omnibus national gender policy before it, which had been the subject of considerable consultation and resources, and intended to achieve domestication of CEDAW. It languished without action for close to three years of the last Government’s term, which ended without its enactment. Religious opposition to recognition of the rights to LGBTI persons, to decriminalization of abortion, and to recognition of gender as a social construct were widely reported as the barriers to government leadership in moving it forward. However, even when the media reported that “God still reigns supreme in T&T, according to the Constitution, and gay rights will not be a part of the Government’s draft national policy on gender and development…Minister of Gender, Youth and Child Development Marlene Coudray, finally breaking her silence on the controversy…said”\(^{14}\), the Policy still failed to be implemented. Whether the policy proposed measures related to workplace discrimination based on sexual orientation was the subject of a media dispute between Coudray\(^{15}\) and a former minister of state in the Gender ministry\(^{16}\). In September 2015, a new government took office and has adopted its manifesto\(^{17}\) as government policy. That manifesto declares an intention to enact an older, 2009 gender policy document\(^{18}\) which states explicitly in its executive summary that it “does not provide measures dealing with or relating to…same-sex unions, homosexuality or sexual orientation” (p. 5).

19. 87.23. Increase measures to ensure that violence and discrimination against members of vulnerable groups, such as women and lesbians, gay, bisexual, and transgender persons, are both prevented and prosecuted (A/HRC/19/7)

20. 86.10. Undertake proactive policies to promote the rights of individuals, especially with regard to their sexual orientation and HIV/AIDS status (A/HRC/19/7)

21. No new measures or policies have been adopted, despite recommendation by other state bodies. The first clear institutional framework for doing so will be weakened.

22. No new measures or policies related to promotion of rights or prosecution or prevention of violence or discrimination with respect to LGBT persons or sexual orientation have been implemented since 2011. Proposals by arms of the state to do so have not yet been enacted by Government or Parliament (see paras. 24 & 43).
23. A Gender ministry with a clear mandate to “provide expertise and support to government agencies and other stakeholders or focal points”, accountability to human rights frameworks, and an explicit responsibility for sexual orientation will be subsumed into a Ministry of Social Development & Family Affairs (see para. 17).

24. The Equal Opportunity Commission, an independent state body created by legislation, has recommended to Government, pursuant to its mandate to keep the legislation under review, (see paras. 43 & 50) that it be amended to include sexual orientation as a protected status on the basis of which discrimination is prohibited in employment, education and the provision of housing, goods and services. That recommendation does not have the force of policy, and no amendment to the legislation has yet been introduced.

25. Trinidad & Tobago made several additional written statements of commitment at adoption. We again reproduce these in blue italics, indented, along with the paragraph number from UPR documents in which they appear, and review each in the paragraphs that follow.

26. One of these has come to life as a repeated policy statement of majoritarianism in recognizing human rights of LGBTI persons and other rights. Others have been undermined by policy and practice.

27. The Government seeks to recognise the human rights of all citizens, which includes the LGBT community,…The development of law is a dynamic process which adapts to the development of any given society. The law must evolve and grow to suit the needs of a continually developing society,…GOTT recognised the need for a definitive debate on the protection of same sex couples. (A/HRC/19/7/Add.1)

28. The intention to afford rights recognition was repeated by the then Justice minister for an audience of representatives of other states and international organizations in March 2013, and reported in the local media19. No legislative developments have been enacted; the last legal measure recognizing LGBT-related rights came into force in January 2012. Parliamentary debate on the LGBT community and the protection of the law has been ongoing and encouraging, but led in almost all instances by non-Government Parliamentarians.

29. Of greater concern, “the need for a definitive debate” is repeatedly framed by Government and political parties as a need for debate and assent of a majority of citizens as to whether members of the LGBT community should enjoy human rights and their protection. Most recently, in August 2015, this was articulated by the then Prime Minister as: “Our position is…that that is not a decision that could be made by us or the Cabinet sitting. It is a matter that requires tremendous…stakeholder consultations to arrive at the consensus view…Gay rights…with the greatest of respect is not my decision to make, but is one that will require full consultation with the national population.”20

30. In relation to incidents of violence against a member of the LGBT community, Section 4 of the Constitution enshrines fundamental rights and freedoms, namely, the right of the individual to life, liberty and security of the person. (A/HRC/19/7/Add.1)

31. A University of the West Indies Faculty of Law report, Adjudication in Homicide Cases involving Lesbian, Gay, Bisexual and Transgendered (LGBT) Persons in the Commonwealth Caribbean21, after “a close examination of how justifiable homicide and provocation doctrines have been applied by
courts in the Commonwealth Caribbean”, finds “significant tensions between the constitutional rights [to life, due process and equality] and obligations and the law as applied to homicide cases involving LGBT persons” “in which a ‘homosexual advance defence’ has been raised by the defendant in a homicide case”. It concludes “the relevant criminal law shows insufficient regard for the life of a deceased LGBT person; the law fails to respect the criminal law principles of reasonableness and proportionality; and the law reflects a perception of the LGBT person as criminal.” A pair of Trinidad & Tobago cases, Cox v The State and Marcano v The State, are at the core of the analysis.

32. With particular reference to violence against the LGBT community, the definition of rape in the Sexual Offences Act, 1986 was amended by Act 31 of 2000 to reflect a gender neutral position with regard to the complainant and the victim. This amendment serves to include protection for victims of violent same sex activity. (A/HRC/19/7/Add.1)

33. Sexual violence involving a perpetrator’s mouth and a victim’s penis are not covered in the 2000 amendments to the definitions of rape and grievous sexual assault in the Sexual Offences Act. They are prosecuted using section 16 “serious indecency”, which carries a far lesser sentence if both parties are adults, of five years (ten for a subsequent offence).

34. Further, buggery (section 13) is still routinely used to prosecute anal rape because of the ease of conviction without needing to prove a lack of consent, since buggery criminalizes all anal intercourse, regardless to age, gender or consent. Buggery carries a maximum sentence of 25 years, compared to life for rape, so such prosecutions deny justice to both victim and accused.

35. Further commitments and statements of policy were made by the state during the interactive dialogue in November 2011. These include:

36. It clarified that laws criminalizing same-sex activity were not enforced… (A/HRC/19/7)

37. This remains accurate as a description of prosecutorial practice. However, prosecutorial policy is the province not of the executive but an independent Director of Public Prosecutions. A policy statement/moratorium by that Office with regard to ending prosecution of consensual adult sexuality should be recommended during the 2016 UPR.

38. It explained that the immigration laws were being reviewed and it was not yet clear what the result of the review would be. Moreover a new policy to afford easier access to HIV care and services for migrants was being developed. (A/HRC/19/7)

39. Notwithstanding the review, the immigration law provisions with respect to homosexuals, persons living off their earnings, persons reasonably suspected of coming to the state for the purposes of living off the earnings of homosexuals or of attempting to bring persons into the state for homosexual purposes, and persons who practise, assist in the practice or share in the avails of homosexualism, remain on the books. They have been challenged in the Caribbean Court of Justice under the freedom of movement provisions of the Revised Treaty of Chaguaramus of the Caribbean Community. Despite conflicting testimony at times, the acting Chief Immigration Officer told the court that Trinidad & Tobago would not apply the law, in breach of the Treaty, to CARICOM nationals. Counsel for the state, however, told the Court the
state had no plans to repeal the legislation, but saw an interest in keeping it, and twice made reference to its role with regard to terrorists from other states.\textsuperscript{25}

40. In July 2015, the then Health minister announced that one of the explicit goals of introduction of a new national health card was to make it harder for migrants to access HIV care and services.\textsuperscript{26,27,28,29,30} In September 2015, following a change in government, the new Health minister promised to review this policy and told the media that at present “Anyone can go to any health care facility and receive treatment.” He announced plans for a universal health insurance system “especially for vulnerable groups… regardless of their personal financial circumstances.”\textsuperscript{31} (Trinidad & Tobago also indicated a first-cycle recommendation to 87.33. \textit{Endeavour to sustain the maximum humane care for “illegal immigrants” and assist them to utilise, on a timely basis, the prevailing legal system in the country to address their situation (A/HRC/19/7) was already in the process of implementation.}

41. In both \textit{A/HRC/19/7/Add.1} and during the interactive dialogue at adoption, Trinidad & Tobago made a number of bold assertions about its human rights leadership. Two of note, regarding domestic human rights legislation and human rights dialogue with civil society, it has honoured in the breach:

\textbf{42. 479. Trinidad and Tobago's domestic legislation dealing with discrimination was in the process of being amended to include a person’s HIV/AIDS status, as one of the recognized categories under which a person is protected from discrimination. This legislative recognition is not only necessary but pioneering in the region. It noted this maverick attitude towards the protection of human rights of all would propel national debate and eventual change in Trinidad and Tobago, in relation to issues such as sexual orientation. (A/HRC/19/2)}

\textbf{489. Trinidad and Tobago reiterated its appreciation for the active and constructive exchange... throughout the UPR process... as well as its continuing dialogue with non-governmental organizations at the consideration of its UPR report to the Government which prides itself on dialogue and transparency in the amendment of all legislation. (A/HRC/19/2)}

43. Legislation introduced in Parliament in 2011 to include HIV/AIDS status in the protections of the Equal Opportunity Act lapsed in June 2012\textsuperscript{32} without being brought to the floor for debate, and was never reintroduced. The legislation was re-drafted to frame HIV/AIDS status as a disability; however, non-governmental HIV/AIDS organizations (who object to this) were not consulted on this step. When sent the legislation for comment, the HIV/AIDS Advocacy & Sustainability Centre at the Labour ministry requested permission to include one HIV NGO with which it partners in its response. No sexual orientation NGOs have been included in dialogue on amendment of the equal opportunity legislation. In March 2015, after repeated requests “since 2007” to “Parliament, the Attorney General, and the Chief Parliamentary Counsel…to offer input on behalf of the citizens” they “represent in improving the Equal Opportunity Act”, and “[in June of 2013]” writing “the state urging an IACHR hearing on some of the issues”, without a response, HIV, sexual orientation and other NGOs requested a hearing at the InterAmerican Commission on Human Rights (IACHR) to, among other goals (see paras. 51–52), engage in dialogue with the state on adding HIV status and sexual orientation to equal opportunity legislation. The state failed to appear.\textsuperscript{33,34} Trinidad & Tobago’s mission to the Organization of American States made a telephone apology, but the state has not followed up with the NGOs who requested the hearing in any other way. A written submission sent by the Equal Opportunity Commission to the IACHR has not been shared with the NGOs.
Normative & Institutional Framework:
Progress in Strengthening Human Rights Machinery, Promoting Human Rights, and Achieving Paris-Principles Compliance

44. During the interactive dialogue

45. Trinidad and Tobago further indicated that the Ministry of the Attorney General in conjunction with the Equal Opportunity Commission was in the process of developing a nationwide human rights awareness campaign. A feasibility study was conducted to determine the most effective mechanism to reach the widest demographic by the International Law and Human Rights Unit of the Ministry. (A/HRC/19/7)

46. In late 2015, such a campaign has not yet materialized.

47. As part of Parliamentary reforms, new Standing Orders have been adopted for both houses of Parliament, which in November 2014 established a standing Joint Select Committee (JSC) on Human Rights, Diversity, the Environment and Sustainable Development—an important development in engaging the Parliament with oversight over human rights. The Committee has “the duty of considering from time to time, and reporting whenever necessary on all matters related to…the compatibility of Acts of Parliament with human rights, and any matters relating to human rights in Trinidad and Tobago (but excluding consideration of individual cases)”35 LGBTI advocates met with the Committee in March 2015 through the aegis of a global parliamentary organization, briefed it on LGBTI matters and the forthcoming equal opportunity hearing (see para. 43), and made themselves available to the JSC on legislative and other matter. The Committee established domestic violence as its first priority and produced a June 2015 report examining programmes and services which provide support to victims of domestic violence. It invited 28 NGOs to make submissions. LGBTI NGOs were not among them, and the report makes no recognition of the gaps in services for victims of same-sex domestic violence and the stigma they face in existing programmes.

48. Trinidad & Tobago does not have a Paris Principles-compliant NHRI. In Cycle 1, the state indicated that

49. “seeking technical expertise via the Special Procedure Mechanism of Human Rights Council would be a matter for consideration in the future (A/HRC/19/7/Add.1)

50. and that it was “reviewing the process of” the constitutionally constituted Office of the Ombudsman “becoming accredited under the Paris Principles” (para. 10, A/HRC/19/7/Add.1). A focus on the Equal Opportunity institutions—a Commission and quasi-judicial Tribunal—established through 2000 legislation that extends rights protections beyond those in the Constitution and creates horizontal rights would provide an institutional framework with greater potential, and allow the Government greater legislative agility, for establishing a compliant NHRI. They meet seven of eight key characteristics of NHRIs,36 and enjoy greater functional power, compared to the Office of the Ombudsman, described in the Government Constitutional Reform Commission report as “viewed as an ineffective institution” and “Parliament does not take it seriously” (para. 225, p. 36)37.

51. Human rights defenders requested a hearing with Government at the InterAmerican Commission on Human Rights in March 2015 (para. 43) “to dialogue with dutybearers…about
how we strengthen relatively weak, but promising, human rights machinery in Trinidad and Tobago”, noting that “new opportunity exists for state institutions outside of the political branch to seize and fulfil our human rights obligations”. We noted that “Section 5(2)(h) of our Constitution enumerates a ‘right to such procedural provisions as are necessary for the purpose of giving effect and protection’ to its Bill of Rights” and quoted parliamentarian Wade Mark’s comment that “If there are no institutions available to give effect to…fundamental rights, they become meaningless.” Government did not participate.

52. Post-colonial, small-island developing states like Trinidad & Tobago, with still-maturing institutions and long colonial cultures of inequality, have a heightened obligation to strengthen human rights machinery and protect minority rights. Rightsbearers in such states (where extrajudicial punishment of difference is likely, impunity common, social interdependence high, stigma amplified, redress machinery admittedly weak, and state regimes of evidence-based sexuality education underdeveloped), especially those who are sexual minorities, are well documented to be vulnerable to victimization, violence and other rights violations, and single violations can effect multiple ruptures to safety, dignity and livelihood. Other than the IACHR, Trinidad & Tobago affords rightsbearers no access to supranational human rights adjudication mechanisms, which are expressly designed to backstop failures, negligence or weaknesses in domestic mechanisms. In 1998 the state renounced the jurisdiction of the InterAmerican Court of Human Rights, to which it had acceded in 1991. It declined to embrace several recommendations in the first cycle regarding the adoption of convention optional protocols to provide such access, and demurred on greater embrace of special procedures.

53. Strengthening of national machinery and accountability, beyond the facile rhetoric of the first cycle, and use of technical assistance and special mechanisms in this regard, must be an outcome of the second-cycle review.

54. Trinidad & Tobago in its bloc-voting with other CARICOM states also plays a dangerous role in retarding global progress in norming and development goal-setting on sexual and reproductive health and rights. CARICOM, which votes according to the lowest common denominator of the Caribbean bloc, repeatedly resists advances on sexual and reproductive rights norms, often in tandem with the OIC and Holy See. This voting not only undermines the maturation of global human rights norms, but holds Trinidad & Tobago’s own rightbearers to a lower standard than the state’s commitments. In December 2013, the executive director of UNFPA visited the Caribbean to convene a high-level summit in response to the crisis of teenage pregnancy (see para 11). Trinidad & Tobago, as the host nation, wrote UNFPA to resist inclusion in the working document of the terms “sexual and reproductive health”, “sexual education”, “contraception” and “contraceptives”. A letter from the Ministry of Foreign Affairs noted “the term ‘sexual’ is vague and open to different interpretations and may incorporate issues of Lesbian, Gay, Bisexual and Transgender” and that “It is also unclear if the term ‘sexuality education’ includes references to sex between men and men or sex between women and women.” This behaviour has done particular harm within the InterAmerican system, which leads the globe in advancing sexual rights norms. Trinidad & Tobago has joined other Caribbean states in attaching footnotes to consensus resolution on human rights, sexual orientation and gender identity and expression. In 2014, the state noted: “In the context of existing policy and legislation, the Republic of Trinidad and Tobago is unable to support the resolution. However, Trinidad and Tobago is signatory to the Universal Declaration of Human Rights. The Equal Opportunity Act 2000 which aims to ‘prohibit certain kinds of discrimination, to promote
equality, opportunity between persons of different status’, ensures that persons cannot be
discriminated against in employment, education, health, protection and other social good based
on characteristics including their religion, race, class, sex and socio-economic status. Under the
Sexual Offences (Amendment) Act (No. 31 of 2000) the act of sodomy whether between same
sex partners or heterosexual partners is illegal. However, this legislation is rarely enforced.”

55. A testament to the right to public participation, during recently concluded Parliamentary
elections, a well-known transgender woman ran for a seat. Though her right to do so was
challenged in a front-page newspaper story that interviewed only clergymen, her campaign was
largely well received.42

Recommended Indicators For Fulfilment of Recommendations,
Voluntary Commitments & Outstanding Obligations

56. The Government, in partnership with state institutions—the Office of the President, the Office
of the Ombudsman, the Equal Opportunity institutions, the Parliamentary Joint Select
Committee on Human Rights &c—and human rights advocates, develop and implement from
2016 onward a national campaign of human rights and anti-discrimination education in the
national media, in schools and in local communities, that explicitly includes sexual and gender
diversity and NGOs and representatives from LGBTI communities.

57. In consultation with the Judiciary and a broad range of human rights stakeholders, and with the
technical assistance of the Office of the United Nations High Commissioner for Human Rights
and others, a Joint Select Committee of Parliament draft, introduce and bring to a debate by
2017 enabling legislation to amend the authority and functions of the Equal Opportunity
institutions and the Office of the Ombudsman to establish therefrom a Paris Principles-
compliant national human rights institution.

58. The Government and Opposition jointly pass legislation to amend the Constitution’s Bill of
Rights (currently Section 4) to protect sexual orientation and gender from discrimination.

59. The Government introduce and bring to a debate in Parliament a legislative amendment to the
Equal Opportunity Act to add sexual orientation, age and HIV to statuses protected from
discrimination under Section 3.

60. The Government introduce and bring to a debate in Parliament legislation to repeal paragraphs
8(1)(a), (c), (f) and 9(4)(a) of the Immigration Act.

61. The Director of Public Prosecutions declare a formal moratorium on prosecutions of consensual
sodomy (including under Sections 13 and 16 of the Sexual Offences Act, and paragraphs
20(1)(c), 20(2)(c) and 20(3)(c) of the Children Act).

62. The Police Service and the Director of Public Prosecutions end use of Section 13 of the Sexual
Offences Act (buggery) to prosecute anal rape.

63. The Government, the Equal Opportunity institutions and other state institutions make requests
of special procedures mandate-holders and enter into technical cooperation and assistance
agreements with neighbouring governments, regional and international institutions (e.g. Brazil’s
64. The Office of the Prime Minister fund and staff for a minimum of 24 months a desk dedicated to policy development, training and capacity-building on sexual orientation, gender identity and expression and sexual and bodily diversity.

65. The Ministry of Labour & Small Enterprise Development bring to Cabinet for adoption a simple policy statement on nondiscrimination in public employment, including all uniformed services, on the basis of sexual orientation and gender identity. The Ministry of Labour & Small Enterprise Development negotiate a Decent Work joint initiative with the International Labour Organisation, Joint Trade Union Movement, domestic labour unions and chambers of commerce focused on “promoting structures and programmes to reduce discrimination” against LGBTI persons.

66. The Children’s Authority, Cabinet Ministers responsible for Health, Children & Youth, and health training institutions develop and promulgate protocols for the clinical care and counseling of intersex children and their families that delay gender assignment, foster autonomy of gender identity, and permit adults to make legal adjustments to gender markers on identity documents.

67. The Government ensures that women have universal access to equitable, quality health care, including reproductive health services.

68. Cabinet Ministers responsible for Education, Health and Gender ensure delivery of accurate, developmentally-appropriate sexuality and gender education to all schoolchildren; programmes to equip parents and teachers and other school personnel to perform these roles and manage their faith beliefs; initiatives to prevent bullying and bias violence and promote school cultures of diversity and tolerance; and to promote public education and knowledge-based discourse about sexuality, sexual diversity and sexual citizenship.

69. The Government ratify the InterAmerican Convention Against All Forms of Discrimination & Intolerance.

70. The Government convene a CARICOM working group and summit meeting to engage in political dialogue and mutual cooperation on human rights, sexual orientation and gender identity/expression.
References


13. Hansard (unrevised). 12 May 2015 sitting of the Senate of Trinidad & Tobago, p. 9


19 “Moore hints at Govt backing for gay rights”, *Newsday*, 6 March 2013. [http://www.newsday.co.tt/politics/0,174448.html](http://www.newsday.co.tt/politics/0,174448.html)


22 TT 2008 CA 15 (March 13, 2008) (CA, Trinidad and Tobago)

23 Cr. App. No. 2 of 2002 (July 26, 2002) (CA, Trinidad and Tobago)

24 Tomlinson v Belize and Trinidad & Tobago (CCJ OA 001/002 of 2013)


InterAmerican Commission on Human Rights video of the hearing: [https://www.youtube.com/watch?v=fybgG2xwTs](https://www.youtube.com/watch?v=fybgG2xwTs)


independence of appointment; multipartite representation; legal establishment; human rights monitoring; advisory role to government; adjudication function; public education


See 33, supra


TAB 10
March 21, 2018

“I Have to Leave to Be Me”

Discriminatory Laws against LGBT People in the Eastern Caribbean

Summary

Every day I fear for my safety living in this country because of my sexual orientation. I am alive but if anyone ever find out and wanted to find out, they can kill me … I am an easy target for
anything.
—Peter, Dominica, February 21, 2017

The majority believes: “absolutely, kill them before they reproduce.” The average man would think to kill, they probably won’t do it because it is murder.
—Michaela, Grenada, February 21, 2017

The main fear is the fear of disclosure. The fear of being found out. They would lose the favor of their family. They may be displaced in church. People would lose respect for them in their work spaces. They have a whole lot to lose.
—Stella, retired nurse from Antigua, February 9, 2017

This report focuses on the experiences of lesbian, gay, bisexual, and transgender (LGBT) people in small island states of the Eastern Caribbean. It demonstrates, through individual testimony, how existing discriminatory legislation negatively impacts LGBT populations, making them ready victims of discrimination, violence, and abuse. 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.
Paradise Lost

LGBT people in the Eastern Caribbean face a toxic homophobic culture, intensified by laws that make same-sex conduct between consenting adults illegal. Despite this, each island has a core group of LGBT activists leading the fight for equality.

HERE ARE THEIR STORIES

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. They are rarely enforced by way of criminal prosecutions but all share one common trait: by singling out, in a discriminatory manner, a vulnerable social group they give social and legal sanction for discrimination, violence, stigma, and prejudice against LGBT individuals.

The English-speaking Caribbean is an outlier in the region. The fact that buggery and gross indecency laws are still on the books there is in stark contrast with recent developments in Latin America where states including Bolivia, Chile, Ecuador, Mexico, and Uruguay have been progressive in enacting non-discrimination policies and anti-bias legislation. Latin American countries, including Argentina, Brazil, and Chile have taken an international lead advocating for the rights of LGBT people at the United Nations. Several, including Costa Rica, Mexico, and Uruguay, are members of the Core Group of LGBT friendly states at the United Nations and of the Equal Rights Coalition, a group currently composed of 33 states committed to the rights of LGBT people.

All countries featured in this report are members of the Organization of American States and the Caribbean Community (CARICOM). Except for Barbados, all also belong to the Organization of Eastern Caribbean States (OECS). CARICOM and the OECS seek regional integration through economic cooperation and shared administrative functions.

Activists and civil society organizations have been at the forefront of efforts to advance the rights of LGBT people in the region, including by challenging discriminatory laws and exposing human rights violations. In some countries, activists have participated in LGBT awareness training for law enforcement agents. In others, civil society groups have challenged discriminatory legislation including by petitioning the Inter-American Commission on Human Rights (IACHR). Regionally groups have participated in strategic litigation initiatives.
In the Eastern Caribbean, family and church are cornerstones of social life. The fear of harassment, rejection, stigmatization, and even physical violence begins in the home and translates to key social spaces, including church and school. Interviewees said that they were afraid to come out in their typically close-knit communities, where social networks are tight and information travels fast. They also face the risk of being ostracized by their own families.
All interviewees described having been harassed by family at some point in their lives because they are LGBT or merely suspected to be. Fear of isolation has led many LGBT people to live in the closet, and prompted some to enter heterosexual marriages. Some report being thrown out of their home or cut off from financial support. Many have experienced homelessness and life at the margins of society, rendering them vulnerable to violence and ill health.

The church plays an especially important role in social welfare, communal life, socialization, and in shaping social attitudes and moral ethics. Many interviewees said that family rejection was often couched in moralistic terms, echoed in local church rhetoric.

Discrimination and stigma against LGBT people seeps into everyday activities, whether it be availing oneself of services such as health care, school, or riding a bus, or social activities such as going to the movies or shopping. Ordinary social encounters can be menacing. Some LGBT individuals described changing their lifestyle and behaviors to avoid contact with hostile members of their family, church, or community, while others described having to endure physical attacks. Some people opted to socialize only with a few trusted friends in the safety of their homes.

Verbal abuse and harassment can quickly escalate into physical assault. Testimonies show that LGBT people are vulnerable to abuse and attacks by neighbors and acquaintances. Interviewees described being stabbed, struck, pelted with bottles and bricks, beaten, slapped, choked and, in one instance, chased with a harpoon. Transwomen are particularly vulnerable to attacks by their partners, as well as strangers.

Discriminatory laws, including buggery and gross indecency laws, inhibit LGBT people from reporting abuse, and strengthen the hand of abusers. Many of those interviewed by Human Rights Watch explained that they did not trust the police enough to report incidents of abuse against them. Those that did described negative experiences, including inefficiency, inaction, and antipathy. The normalization of violence against LGBT people results in the continued marginalization and exclusion of LGBT people from the most basic protections of the law.

Verbal and physical abuse can also have serious long-term consequences by instilling in LGBT people feelings of fear, shame, and isolation, and lowering their self-esteem. Interviewees said they often experienced depression, suicidal thoughts, and self-inflicted harm. Support systems that exist in an increasing number of countries where same sex relations are not or are no longer criminalized do not exist in these seven countries. As a result, LGBT people tend to fall through the cracks, as neither government agencies nor civil society organizations have developed services that can fully address their health or psychosocial needs.

The difficult and extreme nature of the experiences endured by LGBT individuals has led many to consider fleeing their countries. As one interviewee put it “when push came to shove” relocating became a desirable and sometimes the only alternative. One interviewee conveyed the general sentiment by stating: “I have to leave to be me.”

International law protects LGBT persons by prohibiting discrimination on the basis of sexual orientation. International human rights law establishes that matters of sexual orientation and gender identity, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one's private and family life and one's reputation or dignity. Criminalizing same-sex intimacy violates these international obligations.
Countries featured in this report have ratified international and regional treaties that require them to protect human rights without discrimination based on sexual orientation and gender identity. The details of exactly which treaty each country has signed onto vary, and are included in the appendices.

Eliminating laws that discriminate based on sexual orientation is a human rights obligation. Living up to this obligation could go a long way toward freeing part of the Eastern Caribbean population from violence and fear, while affirming human rights and dignity.

Related Content

March 21, 2018 | News Release
Eastern Caribbean: LGBT People Face Bias, Violence
Key Recommendations

To the Governments of Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines

- Repeal all laws that criminalize consensual sexual activity among persons of the same sex.

- Ensure that criminal laws and other legal provisions are not used to punish consensual sexual activity among persons of the same sex.

- Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.

- Consistent with the principle of non-discrimination, ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.

- Pass comprehensive anti-discrimination legislation that prohibits discrimination, including on grounds of gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

- Introduce and implement a gender recognition procedure in accordance with international standards and good practices to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

- Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

- Conduct awareness-raising campaigns for the general public, journalists, and public officials, including law enforcement officials and medical professionals, that promote tolerance and respect for diversity, including gender expression, gender identity, and sexual orientation.

To the Offices of the Ombudsman

- Establish confidential means whereby LGBT individuals can report abuse, publicize how individuals can report abuse without fear of reprisal, and investigate all such reports.
• Develop plans and allocate adequate resources to ensure systematic documentation and monitoring of human rights violations of LGBT people, including through collection of accurate data on acts of violence and discrimination due to real or perceived sexual orientation or gender identity.

• Act as a source of human rights information for the government and the public to raise awareness of the human rights impact of buggery and gross indecency laws.

To the Organization of Eastern Caribbean States

• Acknowledge the impact that current laws have on the lives of LGBT people in member states by denouncing and condemning the provisions criminalizing consensual sexual activity among adult people of the same sex, such as buggery laws and serious or gross indecency laws.

• Begin to address LGBT issues head on, in an open and constructive way, by encouraging member states to decriminalize same-sex sexual relationships, and in the meantime, to issue a de facto moratorium to prevent the application of existing laws that criminalize same-sex sexual relationships.

• Offer support to politicians and religious leaders in member states to engage with civil society organizations in the region to work on reviewing, updating, amending, and creating laws on social protection for LGBT vulnerable youth.

• Recognize the role of LGBT organizations as platforms for advancement of human rights in Member States by engaging in dialogue and consultation with them in areas of health, education, and employment protections for LGBT people.

To the Commonwealth Secretariat

• Consistent with the 1971 Singapore Declaration of Commonwealth Principles, which affirms “the liberty of the individual,” “equal rights for all citizens,” and “guarantees for personal freedom,” condemn and call for the removal of all remaining British colonial laws that criminalize consensual sexual activity among people of the same sex.

• Promote the decriminalization of consensual, homosexual conduct.

• Develop models for gender-neutral legislation on rape and sexual abuse and for the protection of children.

• Integrate issues of sexual orientation and gender identity into all human rights educational and training activities, including the Commonwealth Human Rights Training Programme for police.
Methodology

This report is based on field research conducted by Human Rights Watch over a four-week period in the countries of Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines in February 2017, as well as prior and subsequent desk-based research. Interviews took place in the capital cities of the islands: St. John’s, Bridgetown, Roseau, St. George’s, Castries, Kingstown, and Basseterre.

Human Rights Watch researchers interviewed 41 self-identifying LGBT people between the ages of 17 and 53. The interviewees were identified primarily through the Eastern Caribbean Alliance (ECADE) and local LGBT organization networks. Most interviews were conducted individually and in English. Human Rights Watch conducted only one group interview with seven gay men in Kingstown, St. Vincent and the Grenadines. We spoke to people in a variety of settings, including their homes, bus stations, the LGBT group's office in the capital city of each country, and the homes of their friends.

All persons interviewed provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. Interviewees have been given pseudonyms and in some cases other identifying information has been withheld to protect their privacy and safety. No one was compensated for their participation. In some cases, funds were provided to cover travel expenses. The interviewees were mostly economically disadvantaged young adults.

I. Background

All seven states covered by this report criminalize same-sex intimacy between consenting persons. Most of the laws use the terms “buggery” or “gross indecency,” though some outlaw “unnatural connexion” or sodomy. For simplicity's sake, this report uses “buggery laws” and “gross indecency laws” as shorthands for the laws in all seven jurisdictions.

The reasons for selecting the targeted countries are twofold. First, they are neighboring countries that influence one another and that, as part of regional systems such as CARICOM and OECS, share an overarching judicial review system. Second, as small island states, they are often overlooked.

Buggery and gross indecency laws are seldom enforced against consenting persons. And the specific legal provisions vary from country to country. But they share one common trait: they all give social and legal sanction for discrimination, violence, stigma, and prejudice against lesbian, gay, bisexual, and transgender (LGBT) individuals.

Buggery and gross indecency laws are a residue of British colonialism. They are vaguely worded and enacted with broad latitude. They help create a context in which hostility and violence directed against LGBT people is legitimized, operating as an effective tool to ostracize and single out a vulnerable sector of the population.

In the seven countries covered in this report there is no consistent definition of “buggery” or the penalties imposed. Antigua and Barbuda and Dominica define buggery as “anal intercourse by a male person with a male person or by a male person with a female person.”[1] Most countries, including Barbados, St. Lucia and St. Vincent and the Grenadines, leave it undefined, specifying only the prison terms to be imposed.[2] St. Kitts and Nevis criminalizes “sodomy and bestiality” and defines the term by referencing “the abominable crime of buggery, committed either with mankind or with any animal.”[3] Grenada has the most open-ended provision, criminalizing “unnatural connexion,” which is undefined and has been interpreted in past case law to include consensual anal intercourse between same-sex persons.[4] Barbados has the most severe punishment: life imprisonment.[5] Dominica grants courts the power to order that “the convicted person be admitted to a psychiatric hospital for treatment” and St. Kitts and Nevis allows courts to add “hard labor” in the final judicial decision.[6]

Buggery laws do not distinguish between consensual and non-consensual sex. And rape laws in four of the seven island nations featured in this report define rape narrowly as non-consensual penile-vaginal sex. This means that existing rape laws fail to protect people against non-consensual anal or oral sex. There is a gap in the law to protect people both male and female from forced sex, both anal and oral. This is sometimes used as flawed rationale to retain the “buggery laws.” For example, in 2016 Prime Minister Stuart of Barbados claimed that buggery laws are exclusively aimed at non-consensual sex. He said: “The law of buggery has to do with abuse, where A abuses B without his consent... I want you to just equate in your own mind, buggery with rape. Rape is the offence committed against in a heterosexual relationship and buggery is the offence committed in a same-sex relationship. At the kernel of both is the absence of consent and therefore a protesting party who wants to ensure that he or she gets justice through the courts.”[7] This is not the case. Buggery laws draw no distinction between consensual and non-consensual sex, and do not require lack of consent, as noted by Elwood Watts, principal Crown counsel in a buggery case in Barbados.[8]
Indeed, the buggery laws of all seven countries analyzed in this report are silent on consent, thus encroaching on the rights to non-discrimination and the right to privacy of individuals engaging in consensual same sex activity. Indeed, the broad wording of the laws and the way they are interpreted by police, courts, and the public means that consensual sex between members of the same sex is, according to the law, akin to rape. What is needed is a gender-neutral rape law, and a repeal of the buggery laws.

The “gross indecency” provision was introduced in British Law in 1885 to cover all acts of sexual intimacy between men short of anal intercourse. Gross indecency was not defined, but left to court interpretation. Similarly, in the states included in this report, the act of “gross indecency” or in some instances “serious indecency,” is defined in broad terms, if at all. For example, Antigua and Barbuda, Dominica, and St. Lucia define gross or serious indecency as: “any act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.” The vague wording of the law means that LGBT persons are susceptible to arrest and prosecution for a wide range of sexual acts.
Buggery Laws and Gross Indecency Laws in the “Commonwealth Caribbean”

by Westmin R. A. James

The Origin

The “Commonwealth Caribbean” refers to those states in the Caribbean Sea and in Central and South America that were British colonies. The independent states in the Commonwealth Caribbean include Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago. It also refers to “British Overseas Territories” (territories that have chosen to remain subordinate to Great Britain rather than becoming formally independent) in the Caribbean and North Atlantic: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands.

Anti-sodomy laws were a colonial import imposed on the colonies by the British rulers as there was no pre-existing culture or tradition in the Caribbean that required the punishment of consensual same-sex sexual conduct. The first recorded mentions of “sodomy” in English law date back to two medieval treatises called Fleta and Britton.[12] The texts prescribed that sodomites, together with sorcerers, Jews and renegades, should be burnt alive. In the 16th century, a statute of 1533 provided for the crime of sodomy punishable by death. Although this statute was repealed during the reign of Mary I, it was re-enacted by Parliament in the reign of Elizabeth I in 1563, and the statutory offence, so expressed, survived in England in substance until 1861. The Offences Against the Person Act 1861 included the offence of “buggery,” dropping the death penalty for a prison term of (10) years to life.

The movement for codification of the criminal law, particularly in the British colonies, gathered pace in the early 19th century when Thomas Macaulay was given the mandate to devise law for the Indian colony. The Indian Penal Code was the first comprehensive codified criminal law produced anywhere in the British Empire. In 1870, R.S. Wright, an English barrister, was asked by the Colonial Office to draft a criminal code for Jamaica, which could serve as a model for all of the colonies. Wright’s Code was not adopted by Jamaica but it was brought into force in Belize (at the time, British Honduras) and later Tobago.[13] Thereafter the buggery law was instituted by the British colonial administration in Jamaica and other Caribbean states in the British Commonwealth in a manner similar to the 1861 British Offences Against the Persons Act.

“Homosexuality” is not a crime in the Caribbean but laws criminalize same-sex conduct. Even though colonies in the Caribbean adopted British laws outlawing same-sex intimacy, they vary in language, the types of acts prohibited, and the punishments imposed. Whatever the various incarnations they are often referred to as “sodomy” or “buggery” laws. Many times buggery and sodomy are used interchangeably.

Laws criminalizing consensual adult same-sex sexual conduct currently exist in 10 independent countries in the English-speaking Caribbean. Antigua and Barbuda, Barbados, Dominica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines have the crime of “buggery.” In 2000, the UK issued an order repealing sodomy laws in its Overseas Territories of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands in order to comply with its obligations as a Council of Europe member. After a 2016 successful constitutional challenge the High Court of Belize Supreme Court modified the law in Belize so it no longer applies to consensual sexual acts between persons in private.[14]

Savings Law Clauses

Barbados presents an added complication to any challenge to these laws. There is a provision in the Constitution of Barbados that prevents the courts from declaring these pieces of legislation criminalizing same-sex intimacy from being in breach of the human rights provisions in the Constitution. This prohibition applies to all laws passed before the Constitution of which the buggery law is one (Belize also had a savings law clause but with a limited life span of five years, which has since expired).

International Law

The English-speaking Caribbean is an outlier in the region. The continued existence of buggery and gross indecency laws there is in stark contrast with recent developments in Latin America where states including Argentina, Brazil, Chile, Mexico, and Uruguay have made rapid advances in family law, as well as in non-discrimination and anti-bias legislation.
In recent years, states including Argentina, Brazil, Colombia, and Uruguay have opted for same-sex marriage; Argentina and Bolivia have passed legal gender recognition legislation; Chile, Bolivia, and Uruguay have enacted anti-discrimination laws; and El Salvador and Peru have enacted hate-crime laws. Examples of legal measures that have been taken to address violence and discrimination include: in 2012 Argentina became the first state to pass a gender recognition law based entirely on self-identification[15]; in 2010 Brazil enacted the National Human Rights Action Plan (NHRAP), which stipulates specific measures and objectives to address violence and discrimination based on sexual orientation and gender identity[16]; similarly, in 2014 Mexico established specific teams and units to ensure that homophobic and transphobic hate crimes are investigated and prosecuted to the full extent of the law, and law enforcement officials have been trained accordingly[17]; and in 2016 Uruguay took several measures to address employment discrimination and create job opportunities for marginalized trans people, including a specific call for trans candidates for vacancies at the Ministry of Social Development and within the “Uruguay Trabaja” programme.[18]

Internationally, Latin American states have played a proactive role in protecting people from discrimination and violence based on sexual orientation or gender identity.[19] Several Latin American states, including Argentina, Brazil and Chile are members of the Core Group of LGBT friendly states.[20] The Equal Rights Coalition, a network of states aiming to advance the human rights of LGBT people, was founded in Uruguay in 2016, and includes Argentina, Chile, Costa Rica, Ecuador, Honduras, Mexico and Uruguay as members.[21]

In recent years, Latin American states have been at the forefront of enhancing protection for LGBT people at the United Nations. The Human Rights Council has adopted three resolutions that reflect the commitment and consistent support of Latin American countries on issues relating to sexual orientation and gender identity. In 2011, a South African led resolution passed by the Human Rights Council, commissioned a global study on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.[22] A follow up resolution in 2014 calling for a report on best practices for countering discrimination was introduced by Brazil, Chile, Colombia, and Uruguay.[23] A resolution in 2016 led to the appointment of an Independent Expert on Sexual Orientation and Gender Identity. Seven Latin American states[24]—Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Uruguay—and 41 additional countries jointly presented the text.[25]

The Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) have also taken steps to address human rights violations perpetrated against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in the Americas. All countries covered in this report are members of the OAS. Between 2008 and 2013 the OAS General Assembly approved six resolutions acknowledging and condemning discrimination and acts of violence against members of the LGBTI community, calling on member states, as well as the IACHR and other bodies to take appropriate measures to address the problem.

In its 2015 report “Violence against LGBTI people in America,”[26] the IACHR highlighted that laws criminalizing consensual sex between same-sex persons are incompatible with the principles of equality and non-discrimination. It also underscored the relationship between these discriminatory laws and high rates of violence and discrimination against LGBT people. The IACHR has noted that several states including Barbados, Dominica, and St. Kitts and Nevis, featured in this report, have rejected UN Universal Periodic Review recommendations to decriminalize same-sex acts, citing religious opposition (particularly from evangelical churches)[28] as well as cultural and societal opposition. [29]
Caribbean states have taken steps to increase economic cooperation and regional integration through the Caribbean Community (CARICOM) and the Organization of Eastern Caribbean States (OECS). In 1973, the Treaty of Chaguaramas established the Caribbean Community including CARICOM. And in 1981 the Treaty of Basseterre establishing the OECS economic union. In addition to economic integration, the OECS aims to increase human rights protections. All states covered in this report, with the exception of Barbados, are members of the OECS.\(^{30}\)

**Table 1 – States covered in this report and their membership of CARICOM and OECS systems**

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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.\(^{31}\) 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.\textsuperscript{[35]} 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.

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.”\textsuperscript{[33]}

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.\textsuperscript{[34]}

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.\textsuperscript{[35]} 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.\textsuperscript{[36]} 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 alleged 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. 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.

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. 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. Tomlinson has also brought a fresh challenge to Jamaica’s anti-buggery law; hearings before the Jamaican Constitutional Court started in February 2016.

In 2016 the Belize Supreme Court in the case of Caleb Orozco et al v AG of Belize became the first Commonwealth Caribbean Court to hold that laws that criminalized, 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.

In February 2017, Jason Jones, a gay rights advocate, filed a legal challenge in Trinidad and Tobago against laws criminalizing homosexual conduct. Soon thereafter, he claims to have received over 50 death threats.

Two recent referendums, one in Bahamas and the other in Grenada, addressed the prohibition of discrimination based on sex but were defeated by unfounded fears that they would open the legal path to same-sex marriage.

On January 9, 2018, the Inter-American Court of Human Rights issued Advisory Opinion No. 24[1], 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]

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 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”. It calls for gay and lesbian people to be shot in the head.

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 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’s sings, “I’m dreaming of a new Jamaica, come to execute all the gays,” and Babycham and Bounty Killer’s 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”).

Sign outside the house of an interviewee in St. George’s, Grenada, February 15, 2017.

Sign outside the house of an interviewee in St. George’s, Grenada, February 15, 2017. The sign reads “Sodomy is the work of Satan the devil. Sodomy is playing with shit. The anus is for shitting. Sodomy is uncleanness vile affections reprobate mind they which do such things are worthy of Hell fire.” © 2017 Human Rights Watch
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.”

Individuals told Human Rights Watch that discriminatory laws had a negative impact on their daily lives. Peter, a 20-year-old gay man from Dominica, said: “the buggery and gross indecency laws say that we can’t be ourselves... These laws allow the negativity towards gay people to exist, the bigotry, [the] law allows people to insult and do anything [to us].”

Florence, a 24-year-old transwoman from Barbados, told Human Rights Watch that the buggery and serious indecency laws “allow people to treat [LGBT] people badly. It steals them into thinking they can get away with it because since the law is ‘on their side’ they think they are being a ‘good’ citizen.”

Jason, a 40-year-old gay man from Barbados, said:

People don’t understand how much pressure it is not to be your true authentic self and how that is such a mental strain. To the point where that is so detrimental to you as a person. If you are living where you are constantly scolded and told that you’re not good for just being you. And it hinders our education opportunities, and work opportunities and taking part in your community, that to me is a human rights violation. It doesn’t have to be physical violence for it to be a human rights violation.

As noted above, one interviewee, a 20-year-old gay man from St. Kitts and Nevis, conveyed the general sentiment about life for LGBT people on the islands when he said: “I have to leave to be me.”

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**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:
Homosexuality 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.

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.

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.

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.”

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.”

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.

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!” 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, 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.[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.”[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.[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 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.”[77]

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.”[78]

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.[79]

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 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.\textsuperscript{80}

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.\textsuperscript{81}

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.”\textsuperscript{82}

\textbf{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.

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.”[83]

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.”[84]

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.”[85]

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.[86]

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**Statement of the Holy See, Delivered at a UN Side Event in December 2009[87]**

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 orientation and gender identity remains well known, we continue to call on all States and individuals to respect the rights of all persons and to work to promote their inherent dignity and worth.

Thank you, Mr. Moderator.

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The Reverend Philip J. Bené, J.C.D.
Legal Attaché

Permanent Observer Mission of the Holy See to the United Nations[88]

https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean
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.”[89]

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 outed 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.[90]

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.”[91]
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 was he 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.[94]

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.”[95] 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 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.”[96]

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.[97]

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.”[98]
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.\textsuperscript{[99]}

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.\textsuperscript{[100]}

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 the rug.\textsuperscript{[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.\textsuperscript{[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!”\textsuperscript{[103]} The men threatened the two women with a solid plank of wood.

Florence, 24-year-old a trans woman from Barbados, recounted how in mid-April 2016 she had taken a 5-minute walk from her house to a local store at about 9 p.m. to buy dinner when she was attacked by a group of men nearby. She said: “I heard a group yelling “bunfire pun battyman” [set her on fire]. It’s picked up from Jamaican dancehall and made its way here.”
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 skittering 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 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.’”[104]

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.[105]

Isabela, 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.’

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.

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 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.’”[14] 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.[15] Several people attributed positive interactions with the police to these trainings.[16]

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.”[17]

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.’”[18]

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?”[120]

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.[121]

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 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.”[122]

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.[123]

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.[124]

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 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{166}

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.

Because being LGBT is so strongly stigmatized, support systems that exist in an increasing number of countries where same sex relations are not criminalized or are no longer criminalized do not exist in any of the seven Caribbean countries covered in this report. LGBT people tend to fall through the cracks, as neither government agencies nor civil society organizations have developed services that can fully address their health or psychosocial needs.

Medical research suggests that poor health outcomes in LGBT populations are in part the result of persistent stigma directed toward them.\textsuperscript{129} Individuals who experience stigma because of their sexual orientation often resort to concealment behavior—hiding their identity to avoid future victimization—and this is associated with a host of negative long-term psychological consequences. According to one study, the effects include depressive symptoms, negative affect and anxiety, poor self-esteem and elevated psychiatric symptoms, and psychological strain.\textsuperscript{130} Physical health may also be affected if individuals withhold information about their sexual orientation from health care providers.

Many interviewees opened up and shared with Human Rights Watch, sometimes for the first time in their lives, personal stories of sexual violence and self-inflicted harm. Most of them were gay men. They expressed feelings of shame but had remained silent due to the pervasive homophobia in their countries. Almost all of them felt isolated, without support systems to turn to.
Nicholas, a 20-year-old gay man from St. Kitts and Nevis, said that he recurrently experienced suicidal thoughts and even once tried to commit suicide. He said: “People are reluctant to come forward. A lot of people are afraid, because of incidents that happened. It’s all about secrecy. Growing up I was always alone, always. I knew I was different, when my sister found out, I started to get beaten by my brothers and I reached that point to contemplate suicide.”\textsuperscript{131}

Arthur, an 18-year-old gay man from St Kitts and Nevis, said: “I felt isolated. I know many people are going through the same as me. In college, there are so many of us. I experienced many ways of self-harm, cutting myself and also a suicide attempt. I was actually in the process of going through with it and a friend of mine ran to my house and caught me in the act. This gave me hope.”\textsuperscript{132}

Feelings of extreme isolation can start at an early age. After long periods of constant physical and emotional bullying at school, Ernest, now 20, from Barbados, recalled contemplating committing suicide at age 13 in his own school. He said:

The previous school was an all-boys school. I went to jump off the roof [of the school]. The guidance counselors, students, everyone saw me. It was lunch time. I was on the roof, and [the guidance counselor] talked me down. Then my mom came to the school, and I went home. I was automatically admitted to the hospital.

After several suicide attempts and a stint in a psychiatric hospital, he finally found solace with a sympathetic aunt: “I called one of my aunts. She has a son who was gay and is not homophobic towards him.”\textsuperscript{133}

Peter, a 20-year-old gay man from Dominica, gave a vivid description of the intense inner conflict he experienced from family rejection. This, he said, explained his suicidal tendencies:

I have been suicidal more than one time. Depression comes from my family not accepting [me]. I was raised with family values as the most important thing. I was expected to be someone that I was not. I was going against to what the family wanted. I was 16 the first time I tried to cut my wrists. I was crying, praying, trying, and begging God to change me. When it dawned that it would not change I tried to kill myself. I blacked out.... There have been other attempts, more out of loneliness and because of family rejection, from being the black sheep of the family.\textsuperscript{134}

Augusten, a 36-year-old gay man from St. Vincent and the Grenadines, said:

I contemplated suicide many times, I don’t tell people that, especially when I was being bashed. The first time I tried to hang myself, the rope busted. After that, I tried it by buying sleeping pills. The second episode was a result of an experience I had earlier that day, when I got slapped by a random stranger in the street because of who I am. I just went to sleep and
put the pills away. As an individual, I consider myself a Christian person. I prayed a lot that particular day.\[^{136}\]

Sophia, a 35-year-old lesbian from Barbados, told Human Rights Watch that “mental and verbal abuse can be sometimes worse than physical abuse.” After fighting with her relatives over the custody of her child she sank into a deep depression. She said that due to her depression she quit her job and had to move back to living with her family. She eventually went to the hospital and received counseling.\[^{136}\]

For transgender people, social rejection intensifies as they attempt to express their gender identity. Beth, a 20-year-old trans woman from Barbados, told her story of family rejection and her struggle with depression:

In September of 2016, my mother found female clothes in my room, and she confronted me with a threat. After a short while, they found the clothes a second time. I hid the clothes. It then stopped for a while. On the last occasion they found them, I tried to explain what it is to be transgender. My father only thought it was being gay. He told me to get rid of the clothes and I gave them to a friend. Ever since I lost the clothes, I keep getting more depressed, I can’t be who I am, so I’m just stuck. When I wore the clothes, I could be who I really am.

After both incidents her sister asked her “to stop doing it” and this only exacerbated her depression, leading to several suicide attempts. She concluded “I can’t be who I am, I have to live in a cocoon.”\[^{137}\]

Lack of hope led Alanis, a 24-year-old trans woman in Dominica, to attempt suicide in March of 2016. After her mother and family told her that they wanted her out of the house, she ingested Clorox and pills and was hospitalized for a week. She recalled her deep feelings of rejection:

I felt so rejected by society. I asked myself if I’m really an abomination and shameful. I have those down days, when I just want to go.\[^{139}\]
IV. International Human Rights Law

International human rights treaties and standards require governments to protect LGBT people, including by prohibiting discrimination on the basis of sexual orientation or gender identity.\footnote{149} Core treaties—including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the American Convention on Human Rights (ACHR)—have been interpreted by courts and authoritative treaty bodies to ban such discrimination, as have a variety of other international instruments and sources of law.\footnote{140} Buggery and gross indecency laws violate these international treaties and standards and the experiences of LGBT persons documented in this report underscore how LGBT living in jurisdictions with such laws, face serious obstacles in exercising and enjoying basic rights.

As part of several regional bodies, all countries featured in this report are members of the Caribbean Community (CARICOM) and, except Barbados, of the Organization of Eastern Caribbean States (OECS), regional integration schemes aimed at bolstering the economies of 15 Caribbean nations. They are also members of the Organization of American States (OAS), a larger body of 35 states throughout North America, Central America, the Caribbean, and South America, which has a mandate to promote democracy, human rights, security, and development in the region.\footnote{141}

Ten of the 15 CARICOM member states still criminalize homosexual conduct.\footnote{142} The OAS, on the other hand, has become an outspoken proponent of equality. It has adopted several resolutions condemning “acts of violence and human rights violations perpetrated against individuals because of their sexual orientation and gender identity,” and has urged states “to adopt the necessary measures to prevent, punish, and eradicate” discrimination.\footnote{143}

The IACHR, the human rights organ of the OAS, has been particularly vocal in condemning violence and abuse based on sexual orientation or gender identity, and has urged states to eradicate discriminatory laws and policies—noting that not only do these laws and policies constitute human rights violations, they also fuel HIV in the region. In a 2015 report the IACHR stated 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.”\footnote{144}

Non-Discrimination

Discrimination on the basis of sexual orientation violates the right to equality and non-discrimination contained in the ACHR. Article 1.1 of the ACHR states that the parties to the convention “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”
In 2012 the Inter-American Court was very firm in making clear that sexual orientation and gender identity are grounds that fall within “other social condition.” The court stated:

Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention...the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.[145]

Right to Privacy

International human rights law has long held that matters of sexual orientation, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one’s private and family life and one’s reputation or dignity.[146]

In Toonen v. Australia, the Human Rights Committee held that laws in Tasmania outlawing adult consensual sexual activity based on sexual orientation or gender identity violated the ICCPR’s guarantee to the right to privacy.[147]

In Atala Riffo and Daughters v. Chile, the Inter-American Court confirmed that sexual orientation is part of the right to privacy protected under the ACHR, and therefore any interference in it must meet the standards of “suitability, necessity, and proportionality” and cannot be discriminatory.[148]

The criminalization of same-sex conduct between consenting persons and the failure to protect against discrimination based on sexual orientation therefore violate the right to freedom from discrimination and the right to privacy guaranteed under the ICCPR and the ACHR. The continued existence of buggery laws, and the failure to protect in law against arbitrary interference with an individual’s private life based on their sexual orientation and gender identity, are incompatible with the international obligations of all seven countries covered in this report.

Right to Protection against Violence

LGBT persons in these countries continue to be attacked and threatened with violence. Police complacency has led to a failure to prevent, punish, or even investigate many instances of targeted violence. Each country has failed to protect the right to life and to freedom from cruel, inhuman, and degrading treatment of LGBT people in their territory.

Articles 5 and 7 of the ACHR and ICCPR, respectively, prohibit inhuman and degrading treatment, with the ACHR explicitly providing that “[e]very person has the right to have his physical, mental, and moral integrity respected.”
Countries have positive duties to prevent physical, mental, and, in particular, life-threatening violence against LGBT people, to investigate such incidents when they do happen, and to hold responsible those who committed them—whether they are state agents or private individuals. The UN Human Rights Committee, in overseeing states’ compliance with the ICCPR, has been very clear to states that their positive obligations will only be fully discharged if individuals are protected by the State, not just against violations of ... rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights in so far as they are amenable to application between private persons or entities.[149]

The UN Office of the High Commissioner on Human Rights has noted that:

Hate-motivated violence against LGBT people is typically perpetrated by non-State actors—whether private individuals, organized groups, or extremist organizations. Nevertheless, failure by State authorities to investigate and punish this kind of violence is a breach of States' obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by article 3 of the Universal Declaration of Human Rights and articles 6 and 9 of the International Covenant on Civil and Political Rights.[150]

**Economic and Social Rights**

The Committee on Economic, Social and Cultural Rights has explicitly stated that article 2.2 of the ICESCR, which prohibits discrimination in the exercise and enjoyment of the rights guaranteed under the covenant, includes discrimination based on sexual orientation.[151] It has also emphasized this in its general comments in relation to the rights to health, work, and water.[152]

**Right to Health**

In addition to the ICESCR, the right to the highest attainable standard of health is guaranteed under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[153] Access to the right to health must be on a non-discriminatory basis and discrimination on the basis of sexual orientation and gender identity is prohibited.[154]

The Pan American Health Organization (PAHO) says stigma and discrimination are major barriers to health for LGBT people throughout the Americas, including the Caribbean. In a recent statement PAHO director Dr. Carissa F Etienne said: “by universal health, we mean that everyone—irrespective of their socioeconomic background, ethnicity, gender or race—is covered by a well-financed, well-organized health system offering quality and comprehensive health services”.[155]
Housing and Work

The Committee on Economic, Social and Cultural Rights recognizes that discrimination often occurs in the private sphere, and in particular in the private housing sector. It noted that “actors in the private housing sector (e.g., private landlords, credit providers, and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ... sexual orientation...” Similar discrimination may take place in the workplace, as has been the experience of several LGBT individuals who shared their stories with Human Rights Watch.

The committee therefore emphasized that state parties had to “adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”

Recommendations

To the Government of Antigua and Barbuda

To the Office of the Prime Minister

- Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.


To the Parliament
• Repeal article 12 and amend article 15 of the Sexual Offences Act of 1995 (Act No. 9), which criminalize consensual same-sex conduct.

• End legal discrimination against lesbian, gay, bisexual and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.

• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, and health care.

• Adopt a program to increase public awareness of the human rights principles of non-discrimination and equality.

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals. 336

• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in the definition.

To the Ministry of Legal Affairs, Public Safety, Immigration and Labor

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity. 337

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Health and The Environment

• Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.
• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Institute appropriate training for healthcare service providers on human rights, gender-based violence, and sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

• Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.

• Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.

• Develop shelter space and psychosocial support programs for LGBT homeless people.

• Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness of and cultural competency in LGBT issues and populations and adopt nondiscrimination policies for LGBT youth.

• Mandate LGBT awareness training for all staff who work in child welfare on juvenile justice issues.

• Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.

To the Ministry of Education, Science and Technology

• Ensure that teachers, counselors, and other staff receive sufficient training and support to prevent bullying and harassment and to respond appropriately when it occurs.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of sexual orientation or gender identity.

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation or gender identity.

• Establish monitoring systems to evaluate on an ongoing basis the capacity of police stations to handle matters relating to gender-based violence in a non-judgmental and efficient manner.
• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of sexual orientation or gender identity.

• Investigate all allegations of abuse or threats against individuals on grounds of gender identity or sexual orientation; ensure fair and impartial investigations of the complaints; and hold perpetrators accountable to the fullest extent of the law.

• Investigate and document reports of violence and abuse against individuals based on sexual orientation or gender identity. \[38\]

• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes. \[38\]

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity. \[38\]

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people. \[38\]

To the Government of Barbados

To the Prime Minister

• Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.

To the Parliament of Barbados

• Repeal section 9, chapter 154, of the Sexual Offences Act 1992, which criminalizes consensual same-sex conduct.

• End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.
• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

• Adopt a program to increase public awareness of human rights principles of non-discrimination and equality.

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals.

• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

• As part of its international obligations, Barbados should consider Advisory Opinion 24 of the Inter-American Court of Human Rights, with a view to taking the necessary measures in accordance with that opinion to secure the rights of same-sex couples and legal gender recognition.

To the Ministry of Health

• Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.
• Broaden the scope of the public health care policy to include access to hormone replacement therapy for transgender persons.

To the Ministry of Education

• Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

• Implement sexual education curricula, which are comprehensive, scientific and evidence based. These curricula should be inclusive in nature and reflect all sexualities, not only heterosexual individuals.

To Office of the Attorney General

• Provide sensitivity training to members of the Barbados police force regarding interaction with members of the LGBTQ+ community.

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated by sexual orientation or gender identity.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.

• Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender based violence in a non-judgmental and efficient manner.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender expression and identity and sexual orientation.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Investigate all allegations of abuse or threats against individuals on grounds of gender identity or sexual orientation, and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.

• Investigate and document reports of violence and abuse against individuals based on sexual orientation and gender identity.
• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.

To the Government of Dominica

To the Office of the Prime Minister

• Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.

To the Parliament

• Repeal section 16 and amend section 14 of the Sexual Offences Act 1998 which criminalizes consensual same-sex conduct.

• End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

• Adopt a program to increase public awareness of human rights principles of non-discrimination and equality.

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals.
• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

• Recognize the jurisdiction of the Inter-American Court of Human Rights, and in the meantime, consider Advisory Opinion 24, with a view to reforming legislation and policies on sexual orientation and gender identity.

To the Ministry of Justice, Immigration and National Security

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity.

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Health and Environment

• Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

To the Ministry of Social Services, Family and Gender Affairs

• Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.
• Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.

• Develop shelter space and psychosocial support programs for LGBT homeless people.

• Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.

• Mandate LGBT awareness training for all staff who work in child welfare or juvenile justice issues.

• Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.

To the Ministry of Education and Human Resource Development

• Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.

• Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender based violence in a non-judgmental and efficient manner.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Investigate all allegations of abuse or threats against individuals on grounds of gender identity or sexual orientation, and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.

• Investigate and document reports of violence and abuse against individuals based on sexual orientation and gender identity.

• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.
• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.  

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.  

To the Government of Grenada

To the Office of the Prime Minister

• Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.

To the Parliament

• Repeal article 431, Criminal Code of 1987 as amended in 1993, which criminalizes consensual same-sex conduct.  

• End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.

• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

• Adopt a program to increase public awareness of human rights principles of non-discrimination and equality.  

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.  

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals.  

https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean
• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

• Recognize the jurisdiction of the Inter-American Court of Human Rights, and in the meantime, consider Advisory Opinion 24, with a view to reforming legislation and policies on sexual orientation and gender identity.

To the Ministry of Education and Human Resource Development

• Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

To the Ministry of Health

• Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

To the Ministry of Legal Affairs

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity.

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.
To the Ministry of Social Development, Housing and Community Development

- Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.

- Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.

- Develop shelter space and psychosocial support programs for LGBT homeless people.

- Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.

- Mandate LGBT awareness training for all staff who work in child welfare or juvenile justice issues.

- Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.

To the National Police

- Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.

- Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.

- Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender based violence in a non-judgmental and efficient manner.

- Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

- Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

- Investigate all allegations of abuse or threats against individuals on grounds of gender expression, gender identity, or sexual orientation, and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.

- Investigate and document reports of violence and abuse against individuals based on sexual orientation and gender identity or expression.

- Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.
• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.

To the Government of St. Kitts and Nevis

To the Office of the Prime Minister

• Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.


To the Parliament

• Repeal sections 56 and 57 of the Offences Against the Person Act Revised in 2002, which criminalize consensual same-sex conduct.

• End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

• Adopt a program to increase public awareness of human rights principles of non-discrimination and equality.

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals.
• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

To the Ministry of Justice, Legal Affairs and Communications

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity.

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Community Development, Gender Affairs, and Social Services

• Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.

• Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.

• Develop shelter space and psychosocial support programs for LGBT homeless people.

• Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.

• Mandate LGBT awareness training for all staff who work in child welfare or juvenile justice issues.

• Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.

To the Ministry of Health

• Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.
• Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

To the Ministry of Education

• Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.

• Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender-based violence in a non-judgmental and efficient manner.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Investigate all allegations of abuse or threats against individuals on grounds of gender expression, gender identity, or sexual orientation, and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.

• Investigate and document reports of violence and abuse against individuals based on sexual orientation and gender identity.

• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.
• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people. \[1\]

**To the Government of St. Lucia**

**To the Office of the Prime Minister**

• Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.


**To the Parliament**

• Repeal section 133 of the Criminal Code, which criminalize consensual same-sex conduct. \[1\]

• Amend section 132 of the Criminal Code to remove the gender-specific definitions of sexual intercourse.

• End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

• Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

• Adopt a program to increase public awareness of human rights principles of non-discrimination and equality. \[1\]

• Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity. \[1\]

• Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

• Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals. \[1\]

• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or
sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

To the Ministry of Education, Innovation, Gender Relations and Sustainable Development

- Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

To the Ministry of Health and Wellness

- Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.

- Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.\cite{source1}

- Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.\cite{source2}

- Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

- Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

- Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.

- Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.\cite{source3}

- Develop shelter space and psychosocial support programs for LGBT homeless people.

- Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.\cite{source4}

- Mandate LGBT awareness training for all staff who work in child welfare or juvenile justice issues.\cite{source5}

- Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.
To the Ministry of Home Affairs, Justice and National Security

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity.  

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.  

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.  

• Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender based violence in a non-judgmental and efficient manner.  

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.  

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• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.  

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.  

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.  

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.
To the Government of St. Vincent and the Grenadines

To the Office of the Prime Minister

- Publicly affirm universal human rights and categorically condemn discrimination, including on the basis of sexual orientation and gender identity.  

To the Parliament

- Repeal sections 146 and 148 of the Criminal Code, which criminalize consensual same-sex conduct.

- End legal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by repealing all existing laws criminalizing same-sex conduct.

- Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.

- Take effective measures to combat discrimination on all grounds, including on grounds of sexual orientation or identity. Enact legislation to protect LGBT individuals from discrimination in employment, housing, access to education, health care.

- Adopt a program to increase public awareness of human rights principles of non-discrimination and equality.

- Publicly condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity.

- Recognize the vulnerability of men who have sex with men (MSM) to HIV and include reference to MSM in national HIV/AIDS prevention programs.

- Establish a National Human Rights Institution, in line with the Paris Principles, mandated to promote and protect human rights of all citizens including LGBT individuals.

- Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

To the Ministry of Health, Wellness and the Environment

- Introduce and implement a gender recognition procedure in accordance with international standards and good practice to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.
• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff working in healthcare settings are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Institute appropriate training for healthcare service providers on human rights, gender-based violence, sexual orientation and gender identity.

• Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.

To the Ministry of National Mobilization, Social Development, NGO Relations, Family, Gender Affairs, Persons with Disabilities and Youth

• Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.

• Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.

• Develop shelter space and psychosocial support programs for LGBT homeless people.

• Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.

• Mandate LGBT awareness training for all staff who work in child welfare or juvenile justice issues.

• Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.

To the Ministry of Education, National Reconciliation and Ecclesiastical Affairs

• Ensure that teachers, counselors, and other staff receive sufficient training and support to intervene in bullying and harassment when it occurs.

To the National Police

• Investigate all allegations of physical or verbal abuse or threats against individuals on the basis of gender identity and sexual orientation.

• Introduce appropriate police training at all levels on human rights and violence based on sexual orientation and gender identity.
• Establish monitoring systems to evaluate on an ongoing basis the work of police stations on their capacity to handle matters relating to gender based violence in a non-judgmental and efficient manner.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Take all appropriate measures to ensure that all police officers respect the rights to non-discrimination, equality, and privacy, and do not discriminate in the exercise of their functions, including on grounds of gender identity and sexual orientation.

• Investigate all allegations of abuse or threats against individuals on grounds of gender expression, gender identity, or sexual orientation, and ensure fair and impartial investigations of the complaints that hold perpetrators accountable to the fullest extent of the law.

• Investigate and document reports of violence and abuse against individuals based on sexual orientation and gender identity.

• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.

• Build a stronger working relationship with leading LGBT organizations. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.

To the Organization of Eastern Caribbean States

• Acknowledge the impact that current laws criminalizing same-sex sexual relations have on the lives of lesbian, gay, bisexual and transgender (LGBT) people.

• Begin to address LGBT issued head on in a more open and constructive way.

• Offer support to politicians and religious leaders to engage with LGBT groups and civil society organizations in the region.

• Recognize the role of these organizations as platforms for development and advancement of human rights records in the region.

To the Commonwealth Secretariat
• Consistent with the 1971 Singapore Declaration of Commonwealth Principles, which affirms “the liberty of the individual,” “equal rights for all citizens,” and “guarantees for personal freedom,” call for the removal of all remaining colonial laws that criminalize consensual sexual activity among people of the same sex.

• As part of Commonwealth programs to help member nations implement international obligations in domestic laws, promote the decriminalization of consensual homosexual conduct on an equal basis with heterosexual conduct.

• Also as part of these programs, develop models for gender-neutral legislation on rape and sexual abuse, and for the protection of children.

• Integrate issues of sexual orientation and gender identity into all human rights educational and training activities, including the Commonwealth Human Rights Training Programme for police.

Acknowledgments

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This report was reviewed by Graeme Reid, LGBT rights program director; Daniel Wilkinson, Americas division managing director; Aisling Reidy; and Joseph Saunders, deputy program director.

Production assistance was provided by MJ Movahedi, LGBT rights program associate, Rebecca Rom-Frank, photo & publications coordinator, Fitzroy Hepkins, administrative manager, and Jose Martinez, senior coordinator. Additional assistance was provided by Kyle Ranieri, LGBT rights program intern.
Human Rights Watch thanks all of the organizations and networks with whom we consulted, including the Eastern Caribbean Alliance (ECADE), an umbrella body for human rights groups within the countries of the Eastern Caribbean, and, in particular, groups that work to protect the rights of LGBTQI people in the region: United and Strong Inc., EQUALS, GrenCHAP, MESH, DomCHAP, VincyCHAP and SKNAFE. Special thanks go to Kenita Placide and Prof. Westmin James for their contributions, and to the individual activists, researchers, and advocates in the Eastern Caribbean who assisted in preparation of this report. Their help in shaping the conception of the project, facilitating interviews, and sourcing research materials was invaluable.

This report would not have been possible without the contributions of all of the LGBT individuals in the region who shared their personal stories with us. We express deep gratitude to them and admiration for their courage. We hope their stories will inspire others.

### Glossary

<table>
<thead>
<tr>
<th>Biological sex</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bisexual</td>
<td>The sexual orientation of a person who is sexually and romantically attracted to both women and men.</td>
</tr>
<tr>
<td>Closeted/ being in the closet</td>
<td>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.</td>
</tr>
<tr>
<td>Gay</td>
<td>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.</td>
</tr>
<tr>
<td>Gender</td>
<td>The social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers &quot;masculine&quot; or &quot;feminine&quot; conduct.</td>
</tr>
<tr>
<td>Gender-based violence</td>
<td>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.</td>
</tr>
<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 &quot;masculine&quot; or &quot;feminine&quot; in a particular social context.</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</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 &quot;female&quot; or &quot;male.&quot;</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 &quot;sexual and gender minorities.&quot; 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>
<tr>
<td>Out</td>
<td>A person who is open about their sexual orientation or gender identity.</td>
</tr>
<tr>
<td>To be outing</td>
<td>When a person’s sexual orientation is revealed either deliberately or inadvertently, with or without consent.</td>
</tr>
<tr>
<td>Sexual and gender minorities</td>
<td>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.</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>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.</td>
</tr>
<tr>
<td>Transgender (also trans)</td>
<td>The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender.</td>
</tr>
<tr>
<td>Transphobia</td>
<td>Fear of, contempt of, or discrimination against transgender persons, usually based on negative stereotypes.</td>
</tr>
</tbody>
</table>

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.

Region / Country  Americas, Antigua and Barbuda, Barbados, Dominican Republic, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines
Topic  LGBT Rights
TAB 11
TRINIDAD AND TOBAGO SCHOOL CLIMATE REPORT

BULLYING AND GENDER-BASED VIOLENCE IN SECONDARY SCHOOLS

In partnership with

UNESCO
United Nations Educational, Scientific and Cultural Organization

UNESCO Associated Schools

National Coordination
Trinidad and Tobago
TRINIDAD AND TOBAGO SCHOOL CLIMATE REPORT

BULLYING AND GENDER-BASED VIOLENCE IN SECONDARY SCHOOLS

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Executive Summary

About The Survey

In 2016 The Silver Lining Foundation conducted a baseline survey to assess the prevalence of school violence and bullying across 20 secondary schools in Trinidad and Tobago. The survey examined bullying trends from indicators including:

- Acts of gender-based violence
- Sexist language
- Sexual assault
- LGBT students’ experiences

This report discusses the major findings in relation to types of bullying experienced by all students, the potential causes and effects of bullying, experiences of sexual and gender-based violence, reporting bullying to school administrators and parents, and lastly the frequency and effectiveness of intervention strategies.

MAJOR FINDINGS

Verbal Bullying

The survey assessed the rates of Verbal Bullying from responses given by students to acts of Teasing, Harassment and Threats/Intimidation which occurred over the preceding 3 months. During this period:

- 73% of students indicated that they have been teased or harassed at least ONCE.
- 75% of respondents indicated having played an active role in teasing or harassment of classmates/schoolmates, either by themselves, or as a group.
- 33% of respondents indicated that they have been threatened or verbally intimidated at least ONCE.
- 35% of respondents reported that they have perpetrated verbal threats or intimidation to their fellow classmates.
- Appearance, Ability and Sexual Orientation/Gender Expression (in that order) were the most common causes of Verbal Teasing, Harassment or Intimidation.

Physical Bullying

The survey assessed the rates of Physical Bullying from responses given by students to acts of violence against student’s belongings (i.e. stealing or interfering) or person (i.e. hitting or pushing) which occurred over the preceding 3 months. During this period:

- 24% of students indicated that they have been pushed or hit at least ONCE.
- 20% of students indicated that their belongings were stolen, and 20% indicated that their belongings were damaged.
- 24% of students indicated that they have hit or pushed a class/schoolmate at least ONCE.
- 34% indicated that they have interfered with another’s belongings in order to harass them.
- 14% of respondents indicated that they physically intimidated someone else or physically threatened them in a face to face situation.

Sexual Bullying

The survey assessed the rates of Sexual Bullying from responses given by students to acts of sexual harassment (i.e. taunts/advances) or sexual aggression which occurred over the preceding 3 months. During this period:
• 25% of respondents made sexually explicit remarks to someone else or used such language to taunt someone else at least ONCE.
• 23% of respondents were victims of a named type of sexually-based physical bullying.
• The two most common forms of harassment made to victims were:
  • sexually explicit taunts or advances (29%)
  • being touched inappropriately by another (28%)

• Students in the 17-18 age group both experienced and engaged in more sexual bullying than other age group.

Cyber Bullying

The survey assessed the rates of Cyber Bullying from responses given by students to acts of spreading rumours via the internet or making threats or intimidating another using phone/internet messaging which occurred over the preceding 3 months. During this period:

• 37% of respondents indicated that at least ONCE they were the victim of rumours being spread via mobile phones.
• 35% indicated that at least ONCE they were victims of rumours being spread about them via the internet.
• 20% of respondents also indicated that they were threatened or intimidated at least ONCE by someone using phone messaging.
• 20% of respondents indicated that they were threatened or intimidated at least ONCE by someone using internet messaging

WHAT CAUSES BULLYING?

Family Situations

• The majority of students reported having either never or rarely experienced physical violence or verbal abuse in the home.
• Verbal aggression in the form of yelling, cussing or insults were more predominantly experienced by students in the home (17.85%) than physical aggression with 6.29% (n=35).
• This corroborates the higher occurrence of acts of verbal bullying in schools (73%) than physical bullying (24% in the highest case)

Psychological/Emotional Impact

• Emotional and Psychological effects of bullying showed predominantly negative responses (i.e. feelings of sad, angry, hurt, suicidal) from students who were both victims and instigators of bullying.
  • Girls and LGBT students showed more fear of bullying than male and non-LGBT peers.
• Parental support was more readily accessible to students at denominational schools than non-denominational.

Gender & Sexuality

• Male students were more likely to engage in bullying behaviours than female students.
• Male students experienced verbal and physical acts of bullying at slightly higher rates than female students, who were slightly more likely to experience sexual and cyber bullying.
• Boys tend to display acts of aggression arising from attacks based on their physical appearance, sexual orientation and gender expression.
• Verbal attacks based on notions of
masculinity targeted against a boy’s sexuality or gender expression were mostly heard on a daily basis than attacks made to a girl’s sexuality or gender expression.

- Students view masculinity in more positive terms (strength, independent, standing up for oneself/one’s rights) while views on femininity were more negative (shy, soft, girly, putting on makeup and talking about boys)
- LGBT students experienced bullying at higher rates than non-LGBT students.
- LGBT students also showed higher propensity in all categories for engaging in bullying.

**Group Dynamics**

- The most commonly reported acts of bullying that were committed in groups include smoking and drinking of alcohol, teasing and name-calling, fighting, social exclusion through rumours, embarrassment or isolation.
- Using or forcing others to use illegal drugs was reported fewer times.
- Vandalism and damage to belongings and school property, ‘back-chatting’ teachers or person in authority, and lying to a teacher to cover up a situation were also highlighted as acts done in groups.

**SEXUAL ASSAULT**

- 100 students reported having been molested or being unsure of their experience and 51 students were raped or were unsure of whether what happened to them would be considered rape.
- Boys and girls described assaults mainly by family members, or friends of the family, with girls additionally identifying reputed members of the community.
- Boys showed less certainty of whether what happened to them would be considered rape or molestation.
- 75% of students who were victims of sexual assault were between the age range 15-16

**REPORTING & INTERVENTION**

- 63% of students never or rarely reported incidents of bullying.
- Bullying acts at school were not reported because 43.9% of students do not want to be seen as a tell-tale or snitch, 27.1% do not trust teachers at school and 25.3% have tried to report but nothing was done.
- 25.8% of students indicated that reporting bullying acts will lead to being bullied more, either by their peers (19%) or teachers (6.8%).
- Heterosexual students were more likely to discuss or share their bullying experiences with someone than their LGBT peers.
- 71.72% of heterosexual students and 64.71% of LGBT students responded that they “Never” or “Rarely” reported their bullying experiences to a teacher or principal.
- LGBT and non-LGBT students do not report acts of bullying to a TEACHER because they fear being called a “tell-tale” or “snitch.”
- LGBT and non-LGBT students do not report acts of bullying to a PARENT/CAREGIVER because they fear the bullying experience would become worse.
- Students in the same peer group as the respondent are reported to be the most frequent interventionists, followed by older students.
- 31% of students viewed their teacher’s effectiveness in handling bullying as “inadequate.”
RECOMMENDATIONS

Recommendations are listed throughout the survey in blue text boxes. There is a need for:

• True and accurate age-appropriate sex and sexuality education including consent, rights and protections, laws, social norms, safe-sex practices, and understanding sexual diversity.
• Drug education including the role drugs can play in cycles of abuse and violence.
• Restorative justice practices that seek to repair the negative actions of students without disrupting their education, and foster accountability.
• Creating respectful classroom spaces.
• Using classroom exercises and lessons to build trust and respect in the classroom, and to empower students.
A Note on Data Analysis

The data collected from this survey was analysed qualitatively as well as using statistical tests. We utilised two-tailed t-tests with a threshold effect size of 0.50, and alpha level of 0.05.

Tests for correlation measured effect size using the correlation coefficient. This was also a two-tailed test with an effect size of 0.30, and an alpha level of 0.05.

The survey was shown to have excellent statistical power, meaning that it could detect even small or weak correlations and effects. Its statistical power is determined by the large sample size, the low alpha level (0.05), and by using parametric tests. This survey met all the necessary parameters. This means that the effects found can be substantiated, and are reflections of the real situation.

For example, we found that gender has a small effect size on the types of bullying experienced, which means that there may not be an effect in the wider population. The statistical significance of this test tells us of its generalisability beyond the survey to be applicable to the wider population. Although having a small effect on bullying behaviours, gender was shown to be statistically significant. This means that its effects are generalisable to the wider population. Male students were more prone to engaging in bullying behaviours than female students. The statistical significance of the various tests will be indicated as they are discussed.

The test for correlation between Emotional impact, Fear of bullying and Parental support to Intervention, tested at 1.00, rendering it a perfect test.

All other tests conducted had a statistical power of 0.99:

- Gender and Types of Bullying
- Gender and Bullying Engagement
- Sexual Orientation and Types of Bullying
- Sexual Orientation and Bullying Engagement
- Type of School and Types of Bullying
- Type of School and Bullying Engagement
- Age and Types of Bullying
- Age and Bullying Engagement
- Age to Emotional impact, Fear of bullying and Parental support
- Form Class and Types of Bullying
- Form Class and Bullying Engagement
- Form Class to Emotional impact, Fear of bullying and Parental support
- Religious group to Types of Bullying
- Religious group and Bullying Engagement
- Religious group to Emotional impact, Fear of bullying and Parental support

This means that the effects found are reliable and valid for the population studied, even if it may not be generalisable to the wider population. Key findings and recommendations are highlighted throughout the report.
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SECTION ONE: DEMOGRAPHICS
Six hundred and fifty-one (651) students from twenty (20) schools were surveyed. Students who participated in the survey ranged from Second Form to Sixth Form and ages 13 to 20.

These age groups were further segmented by gender, religion and sexual orientation.

**SEX AND AGE**

Of the total number of respondents, 50.85% were male (n=330), and 49.15% were female (n=319).

<table>
<thead>
<tr>
<th>Age Group</th>
<th>13 - 14</th>
<th>15 - 16</th>
<th>17 - 18</th>
<th>19 - 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the male respondents</td>
<td>20%</td>
<td>62.42%</td>
<td>1.82%</td>
<td>0.61%</td>
</tr>
<tr>
<td>Of the female respondents</td>
<td>28.21%</td>
<td>54.23%</td>
<td>16.30%</td>
<td>1.25%</td>
</tr>
</tbody>
</table>

Table 1: Age of population surveyed

Sixty-two percent of the respondents were age 15-16 at the time of the survey, mainly consisting of students from Forms 3 and 4. Students in Form 2 made-up 16.74%, while Forms 5 and 6 combined provided 17.66% of the responses.
SEXUAL ORIENTATION

Researchers in Caribbean Sexuality Studies like Kamala Kempadoo (2009), Rosamond King (2015), Krystal Ghisyawan (2015, 2016) and others, suggest that sexual identity categories are not consistently or extensively used by same-sex loving populations. Ghisyawan (2016) also points to the variety of terms used with limited popularity. Rather than providing students with identity categories they may not understand or know, this survey asked about their sexual desires.

Figure 2 shows the categorisations of students desires into three main groups. Attraction to the opposite sex, referred to as heterosexuality, is the dominant sexual disposition at 83.56%. Students who selected that they liked people of the same-sex, both or that sex does not matter to them, were grouped into the category labeled “Attraction to same-sex or both”. This group makes up 11.6% of the population surveyed. Lastly, “Asexual” (4.3%) refers to those who experience no sexual desire.

Figure 2: Sexual Orientation of population surveyed
RELIGION

Respondents came from various religious backgrounds seen in the table below. Census information was used to identify religious groups in Trinidad and Tobago. Of those surveyed, 24.20% were Pentecostal; 15.45% were Roman Catholic; 8.60% practiced Sanatanist Hinduism, 8.92% identified as ‘Other Hindu’; 8.12% practiced Islam; 23.24% belonged to other Christian sects including Seventh-Day Adventists, Presbyterian, Spiritual Baptists and ‘Other Christian’; 0.96% practiced African Spiritual Worship; while 3.5% did not believe in religion and 1.75% had no belief in God. Additionally, 5.25% identified as simply “Other”.

Figure 3: Religions practiced by surveyed population
SECTION TWO: TRENDS IN BULLYING ENGAGEMENT
Understanding Bullying

Recently, social media and smart phones have greatly increased the visibility of bullying in schools in Trinidad and Tobago, begging our attention to this growing issue. It is important to underscore that there is no universal definition of bullying nor is its existence as a social phenomenon universally recognized. Discourse around what bullying is varies relative to cultural context as well as over time. Nevertheless, the recognition of bullying, however it is defined, has tremendous implications for institutions being able to interrupt the cycle of physical and psychic violence that results.

Children in Trinidad and Tobago are also meant to be provided with the opportunity to attend schools and educational institutions without fear of violence being perpetrated against them. However in T&T’s school system, like in most countries around the world, many students suffer from school based violence on a regular basis.

School violence in these contexts usually encompasses physical violence (corporal punishment and hitting/fighting); psychological violence (verbal and mental abuse); sexual violence (harassment and rape); and bullying. Bullying is characterized by an ongoing series of events, rather than a single or isolated event. Bullying definitions are diverse but often share similar traits. An act of bullying is one that:

1. Involves aggressive behavior that is unwanted on the part of the victim;
2. Involves a pattern of activity of behavior over time;
3. Has a negative impact on an individual(s);
4. Involves an uneven balance of power.

These types of bullying often overlap and reinforce one another, as well as occur both in and around the school environment. In this survey, bullying was categorized as verbal, physical, and sexual, as well as cyberbullying as a specifically singled out criterion.
Verbal Bullying

73% of students indicated that they have been teased or harassed at least once over the preceding 3-month period (prior to taking the survey). The nature of this teasing/harassment primarily centres on name calling or teasing based on characteristics such as appearance or perceived sexual orientation. Of the 73%, 16% reported being victims of teasing/harassment often or frequently within the period (Figure 4).

Conversely, 75% of respondents indicated that they played an active role in teasing or harassment of classmates/schoolmates, either by themselves or as a group over the period. Of this, 14% indicated that this active participation was often or frequent over the period. Similarly the majority of the events were based on teasing/harassment about appearance, ability, gender expression etc. (Figure 8).

A higher order of verbal bullying takes place in the form of threats or intimidation, without the use of physical force. This often takes the form of threats of future violence and abusive language (cursing). The nature of this form of abuse often increases the relative stress and mental harm caused by verbal bullying, as the victim often lives in fear of the ‘following through’ of the threats.
33% of respondents indicated that they have been threatened or verbally intimidated at least once within the period preceding the survey. Of those reporting, 4% said they were victims of this often or frequently (Figure 6). Similarly, 35% of respondents reported that they have perpetrated verbal threats or intimidation to their fellow school or classmates within the period, with 7% doing so often or frequently (Figure 7).

Regardless of the magnitude of verbal bullying, common themes emerge in the nature of the teasing, threats or basis of intimidation. Verbal bullying, in particular, requires a ‘substrate’ or characteristic which the bully utilizes in their jokes, teasing or the foundation for intimidation. According to respondents, their physical or outward appearance was the primary cause of verbal teasing, harassment or intimidation, with ability and sexual orientation/gender expression coming in as the second and third most common reason for verbal bullying (Figure 8).
If bullying based on Sexual Orientation and Gender Expression are combined, they total 28%, taking the lead as the most common basis for teasing and harassment. Students identified the following as common insults:

Homophobic slurs: battyboy, bullerman, faggot, “you so gay” or “You like boys awa?”
You like boys.
You not nice.
She is a hoe.
She/he does smell stink.
He or she is fat.

Physical Bullying

24% of students indicated that they have been pushed or hit at least once over the preceding 3-month period (prior to taking the survey). The nature of this bullying/harassment primarily centres on physical acts of violence against students’ belongings or person. Apart from being physically assaulted, 40% of respondents indicated that their belongings were interfered with, either stolen or damaged, over the three month period. (Figure 9)

Figure 9: Frequency of victim experience of physical bullying
Similarly, 24% of respondents self-reported that they have hit or pushed a class/schoolmate at least once over the last 3 months with 34% indicating that they have interfered with another's belongings in order to harass them. In addition, 14% of respondents indicated that they physically intimidated someone else or physically threatened them in a face to face situation (Figure 10).

![Active engagement in physical bullying](image)

**Figure 10:** Active participation in physical bullying

---

**Sexual Bullying**

A higher order of physical bullying takes place in the form of sexual harassment or sexual aggression. The Caribbean in particular, and Trinidad and Tobago, is often said to suffer from cultural norms where sexual violence is sometimes lauded, for example, through the appropriation of terms such as 'stapping', 'slamming' and 'daggering' to describe physical intimacy through dancing. The sexual nature of physical bullying at work in the wider public is especially influential in the secondary school system where adolescents are now forming their perceptions and practices around sexuality.

On average 81% of all respondents indicated that they have never actively bullied or harassed someone using sexually-based actions. However, 25% of respondents indicated that they have at least once made sexually explicit remarks to someone else or used such language to taunt someone else (Figure 11).

On average, 23% of respondents indicated that they had been the victim of a named type of sexually-based physical bullying.

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over the last 3 months. Of the types of harassment, the two most common forms were having sexually explicit taunts or advances made to the victim (29%), and being touched inappropriately by another (28%) [Figure 11].

Students in the 17-18 age group experienced more sexual bullying than others - including the sending and receiving of sexually explicit texts and pictures, sexual harassment, taunting and gestures. This age group also engaged in sexual bullying at higher rates than other ages. At this age, students are approaching adulthood and more likely to begin exploring their sex lives if they haven’t already done so. Heightened sex drive and disregard for sexual boundaries can possibly contribute to increased amount of unwanted sexual advances among this age group.

Figure 11: Reception and participation in sexually-based acts of physical bullying

Cyber Bullying

Cyber bullying is a particular form of bullying that has been accorded special significance over the last few years due to the widespread usage of the internet and various modes of communication afforded by it. Cyber bullying is often thought to have exacerbated the traditional forms of bullying by creating a bullying environment that is not time or geographically limited.
Cyber bullying is similar to the definitions of traditional bullying in that it must: be intended to cause harm; perceived as harmful by the victim; have a repetitive nature; have a power imbalance; and be done primarily using online methods (which include mobile phone messaging).  

37% of respondents indicated that they experienced being the victim of rumours being spread via mobile phones at least once, while 35% indicated that they were victims of rumours being spread about them via the internet. 20% of respondents also indicated that they had been threatened or intimidated at least once over the last 3 months by someone using phone messaging and 20% indicated the same using internet messaging. On average 82% of respondents indicated that they had never undertaken any activity to cyber bully a fellow class/schoolmate (Figure 12).

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Figure 12: Frequency of active cyber bullying
SECTION THREE: CAUSES OF BULLYING
Common theories for why children and adolescents engage in bullying include:

1. They come from dysfunctional homes.
2. Bullies want to exhibit power.
3. Bullies cannot control their emotions.
4. They don’t care how others feel.
5. Bullying behaviour gets rewarded.³

This approach focuses on the bully as damaged or fawed, which can further stigmatize those who engage in bullying behaviours. But as our data demonstrates, students who were the recipients of bullying behaviours, also perpetrated acts of bullying on other students. This includes students who demonstrated f exible sexual desire or were gender-non-conforming, hereafter referred to as LGBT (Lesbian, Gay, Bisexual, Transgender), who experience higher levels of being targeted for bullying, as well as engaging in bullying behaviours themselves. There must be a lot in common between bullies and their targets. What do they share?

To answer this question, we can consider the material, ideological, and psychological conditions of both the engagers as well as the targets, in each of the recognised causes mentioned above.

³ https://nobullying.com/common-causes-of-bullying/

**Violence At Home**

Students were asked about their exposure to violence at home and in their communities. Most students report living in a relatively abuse-free household with most students never or rarely having experienced physical violence (82%) or verbal abuse (68%) in the home.

Aggression was more commonly exhibited in verbal ways, with 17.85% of students saying that yelling, cussing, or insults were heard most of the time or always at their homes. Verbal bullying was also more common in schools than other forms of bullying. Physical aggression was less common, with 6.29% (n=35) of students reporting witnessing physical violence always or most of the time. If we include those who ‘sometimes’ witnessed violence in the home (n=107; 18.2%), it still indicates that the majority of students come from homes where violence is not as common. Of those who did (n= 35), 36% listed their father as the most violent in the home, followed by the mother (11%), and then other male family members like brothers, uncles, stepfathers and grandfathers.

The data presented earlier suggests that more students engage in bullying than can be accounted for by exposure to violence in the home.

While by no means exhaustive, the snapshot that we are able to glean from this survey of the students’ interactions with violence, abuse and harsh language at home indicates the degree to which experiences at home shape and do not shape the social environment on school grounds. The somewhat large discrepancy between students’ experiences with abuse and bullying at home and at schools points to the importance of other factors.
Psychological Factors: How does bullying make you feel?

By its very nature, as a tactic meant to infantilise, demean, belittle, embarrass and insult others, bullying carries psychological effects.

A longitudinal study conducted in North Carolina, that assessed 1420 participants 4 to 6 times between the ages of 9 and 16 years, determined that childhood bullying causes serious emotional problems that last into adulthood. Targets were at greater risk of anxiety disorders, while bullies were at greater risk of antisocial personality disorder.

But those who were bullies as well as targets were at greater risk of depression and panic disorder. Men in this group had a much greater risk of suicidality; for women, the greater risk was agoraphobia [fear of the outside]. The study demonstrated that the psychological damage doesn’t just go away, but stays with a person.4

The graphic above is based on the responses students gave to the question, “How does bullying make you feel?” The size of the font indicates the frequency of that response. The most common response was ‘sad’, then ‘angry’, ‘hurt’, ‘disappointed’, ‘disgusted’, ‘horrible’, and others shown in the graphic. These responses along with ‘suicidal’, ‘unwanted’, and ‘anxious’ all corroborate the above described emotional and psychological effects.

Note that this graphic shows mainly negative responses. The responses were all compiled, and common filler words like ‘of’ ‘like’ or ‘to’ were removed. No student provided a positive response, even though they admitted to engaging in bullying behaviours. Studies have shown that students feel empowered when they can exert power over another person through an act of bullying, so how can we make students feel empowered in ways that do not cause harm to others?

Knowing that students who are targets of bullying also engage in bullying, it is clear to see that students are not just affected by bullying, but come to it with psychological and emotional problems. Studies have accounted for these problems by looking at individual dispositions to emotional problems, but also social factors, including, but not limited to, family situations, wealth, racism, and socio-political climate. These social factors are further discussed in the following section on social aspects of bullying.

What is Emotional I.Q.?

In Caribbean society, mental health issues are often ignored, under-treated, or dismissed as “madness”. Little attention is paid to emotions specifically. Even as adults we are often unable to identify specific emotions when we are experiencing them.

There is a need to teach mental health education, including emotional I.Q. from a young age so children can identify their negative feelings and seek help before they turn into larger problems.

We tested how these emotional and psychological effects varied based on gender, sexuality and type of school. Table 2, and the subsequent statistical tables, show the effect sizes of the various factors tested. The higher the number shown, the stronger the effect of the independent variable (such as gender or sexual orientation) on the dependent variable (fear of bullying). The larger effects on fear of bullying were due to differences in gender and sexuality (Table 2). Girls and LGBT students showed more fear of bullying than male and non-LGBT peers.

School type influences emotional impact and parental support, more than it does fear of bullying. Students at non-denominational schools were slightly more impacted emotionally than students in denominational schools, which had notably more parental support. Type of school had a small impact on the fear of bullying, which was more consistent across schools.

Denominational schools tend to reach out to parents more, especially partially-funded schools that rely on donations and support from students’ families. Parents have more opportunities to get involved in the schools and with students. This involvement also impacted on students’ reporting of bullying incidents and turning to parents for assistance with school-based issues.
Parental support plays an important role in combatting negative psychological and emotional dispositions. According to StopBullying.gov, suicide risk for kids who are bullied is influenced by depression, problems at home, and trauma history, with marginalised groups, including indigenous peoples, gender and sexual minorities being particularly susceptible due to lack of support. This risk increases further when these kids are not supported by parents, peers, and schools.

The Grassroots Empowerment Project suggests the use of Parent Peer Specialists (PPS), to support the parents of students facing difficulties. The PPS draws from their own experiences as parent or caregiver of a child with emotional or behavioral disorders, as well as their training, to provide information and support to other parents with children in similar situations. Parents are not trained to deal with these situations, hence the system of peer support among parents and caregivers is an evidence-based practice shown to increase parents’ confidence and capabilities in these situations.⁵

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Emotional Impact</th>
<th>Fear of Bullying</th>
<th>Parental support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>0.09</td>
<td>0.19</td>
<td>0.09</td>
</tr>
<tr>
<td>Sexual Orientation</td>
<td>0.11</td>
<td>0.22</td>
<td>0.11</td>
</tr>
<tr>
<td>Type of School</td>
<td>0.14</td>
<td>0.006</td>
<td>0.45</td>
</tr>
</tbody>
</table>

Table 2: Effect size of Gender, sexual orientation and type of school on emotional impact, fear of bullying and parental support.

Note: These results are statistically significant and thus generalisable to the wider population.

⁵http://www.grassrootspower.org/documents/PositionPaper-ReductionofStigmaintheSchoolsthroughMentalHealthEducation.pdf
Social Factors

SOCIAL EXCLUSION AND ISOLATION

Bullying carries a social aspect, in that it encompasses the behaviours of groups and individuals towards other groups and individuals, with the aim of influencing social image. This includes how a person/group portrays themselves to their peers, as well as the opinions of them as held by their peers. Thus bullying can be used to strengthen or weaken one's standing within the social hierarchy of the school.

Hierarchies within the school setting can be formed on the basis of age, race, gender, sexual orientation, wealth, athletic or other physical prowess. As demonstrated above, these factors make a real difference in how students experience bullying.

Also referred to as “relational aggression” or “alternative aggression”, these bullying behaviours seek to damage someone's relationships or social status. This can be accomplished by reducing one's access to and acceptance within social groups. All acts of bullying can contribute to this isolation by affecting the manner in which someone is perceived by peers, but also by allowing or restricting access to peers. For instance, if someone is the constant victim of bullying in the schoolyard at recess, they may find ways to stay in or away from those areas, even at the expense of making or maintaining friendships.

There are other acts that are distinctively social in focus, such as deliberately excluding someone from games or activities, and influencing others to do the same, inventing and spreading rumours, embarrassing someone.

A longitudinal study by researchers in north Georgia found that over the seven years of middle school and high school, aggression decreased until the senior year of high school. They also show that boys engaged in relational aggression more than girls, even though this behaviour was previously attributed to girls.6

Our data shows, male students were overall more likely to engage in bullying behaviours than female students. The statistical significance of this result, indicates that male students across Trinidad and Tobago ARE more likely to engage in bullying behaviours than female students are. This was especially true for verbal bullying (seen by the difference in the means of 11.64 for male students, and 8.50 for female students, Table 3 below).

Male students experienced verbal and physical acts of bullying at slightly higher rates than female students, who were slightly more likely to experience sexual and cyber bullying. (Table 3)

Women use social media more than men,7 but online can be a hostile space for women and gender minorities as men can get territorial, and can use the simultaneous distance and proximity of online interfaces to harass women.8 They can message them directly, while still being far away.

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6 Pamela Orphinas, Caroline McNicholas, Lusine Nahapetyan. “Gender Differences in Trajectories of Relational Aggression Perpetration and Victimization from Middle to High School”. Nov 2014.


“Of those who have been harassed online, 55% (or 22% of all internet users) have exclusively experienced the “less severe” kinds of harassment while 45% (or 18% of all internet users) have fallen victim to any of the “more severe” kinds of harassment... In broad trends, the data show that men are more likely to experience name-calling and embarrassment, while young women are particularly vulnerable to sexual harassment and stalking.”

**Why are boys more aggressive than girls?**

Psychological and sociological studies on male behaviour, including aggression have shown a mixture of genetic inclinations, evolutionary necessity to provide for the social unit when there are limited resources, and socialisation through media and upbringing into more aggressive gender roles.\(^9\) Research on male aggression in Caribbean communities have linked it to notions of masculinity that rely on demonstrations of virility, sexual prowess, physical strength and heterosexuality.\(^9\) Men are expected to demonstrate their control and power over others. This has led to a culture of fear, where men and boys are in constant fear of losing face, either through their inadequate embodiment of masculinity or by someone shaming them, calling into question their prowess, bravery, or sexuality.

Reflecting on the comments most commonly heard in schools, we see a prevalence of attacks based on physical appearance, sexual orientation and gender expression. Most heard on a daily basis are comments related to boys being too feminine. This was more common than comments related to girls being too masculine or not feminine enough. It shows that boys’ behaviours and gender expressions are more closely policed than girls. Boys face slightly more pressure to be the right kind of masculine, than girls do to be the right kind of feminine.

The students show adherence to strict gender binaries believing in appropriate and exclusive behaviours for each gender. Students showed a lack of understanding of the terms related to gender. When asked what was meant by “feminine” and “masculine”, many students felt each was when a person engaged in behaviours opposite to their sex. For instance, “feminine” was described as “When a boy don’t act right” or “when a boy acts like a girl”, or “when you act differently from your gender”. Fewer students thought masculinity was “when a girl behaving like a boy” or is “tomboyish”.

Most of the students understood these terms as having negative implications.

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Other descriptions of “feminine” included shy, soft, girly; putting on makeup and talking about boys; loving fashion and the colour pink; being weak and scared of insects; playing “big woman”; feeling they are too nice all the time; whiney; when you let people hit you (as a boy); being pretty.

“I think being feminine or girly simply means that you are not capable to do some of the stuff that boys do meaning you soft and not tough enough.” Only a few students thought of “feminine” in positive terms, including having strength of character and respecting oneself.

Similarly, to be “masculine” meant tomboyish, immature, “to act like a man” or grown-up while one was still a young boy. But there were overall, more positive understandings of masculinity, associating it with strength and standing up for oneself/one’s rights, to be socially and financially responsible and independent. A number of students suggested that masculinity meant being respectful of women and girls saying, “I think it mean when boys are doing things for girls like opening the door”. Another student responded, “I think it means to stand up for what you think is right… fighting these days is not worth it... because today one of my haters is six feet below and I am 6 feet above achieving all my goals.”

Students engage in gender-policing that often targets LGBT students who do not properly exhibit the dominant and expected gender traits. LGBT students experienced bullying at higher rates than non-lgbt students. While this result is not generalisable, it does reflect the clear difference in the experience of LGBT students surveyed, from their non-LGBT peers (Table 5).

LGBT students also showed higher propensity in all categories for engaging in bullying (Table 6).

<table>
<thead>
<tr>
<th>Type of Bullying</th>
<th>Mean (Male)</th>
<th>Mean (Female)</th>
<th>t-test</th>
<th>Degrees of freedom (df)</th>
<th>Significance</th>
<th>Standard Error</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal</td>
<td>11.64</td>
<td>8.50</td>
<td>4.387</td>
<td>601.987</td>
<td>.000</td>
<td>.715</td>
<td>1.732, 4.540</td>
</tr>
<tr>
<td>Physical</td>
<td>5.52</td>
<td>3.59</td>
<td>4.195</td>
<td>543.792</td>
<td>.000</td>
<td>.460</td>
<td>1.025, 2.832</td>
</tr>
<tr>
<td>Sexual</td>
<td>1.98</td>
<td>1.12</td>
<td>3.518</td>
<td>532.993</td>
<td>.000</td>
<td>.242</td>
<td>.376, 1.326</td>
</tr>
<tr>
<td>Cyber</td>
<td>2.28</td>
<td>1.47</td>
<td>2.990</td>
<td>538.038</td>
<td>.003</td>
<td>.270</td>
<td>.276, 1.335</td>
</tr>
</tbody>
</table>

Table 3: Gender and engagement in bullying behaviours. These results are all statistically significant, and thus generalisable to the wider population.
<table>
<thead>
<tr>
<th>Type of Bullying</th>
<th>Mean (Male)</th>
<th>Mean (Female)</th>
<th>t-test</th>
<th>Degrees of freedom (df)</th>
<th>Significance</th>
<th>Standard Error Difference</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal</td>
<td>8.63</td>
<td>8.19</td>
<td>.716</td>
<td>644</td>
<td>.474</td>
<td>.619</td>
<td>-.771, 1.658</td>
</tr>
<tr>
<td>Physical</td>
<td>5.74</td>
<td>4.92</td>
<td>1.752</td>
<td>602.846</td>
<td>.080</td>
<td>.465</td>
<td>-.098, 1.729</td>
</tr>
<tr>
<td>Sexual</td>
<td>1.94</td>
<td>1.95</td>
<td>-.071</td>
<td>644</td>
<td>.943</td>
<td>.256</td>
<td>-.521, 4.85</td>
</tr>
<tr>
<td>Cyber</td>
<td>2.75</td>
<td>2.86</td>
<td>-.338</td>
<td>644</td>
<td>.735</td>
<td>.317</td>
<td>-.730, 5.15</td>
</tr>
</tbody>
</table>

Table 4: Gender and experiences of bullying

<table>
<thead>
<tr>
<th>Type of Bullying</th>
<th>Mean (Non-LGBT)</th>
<th>Mean (LGBT)</th>
<th>t-test</th>
<th>Degrees of freedom (df)</th>
<th>Significance</th>
<th>Standard Error Difference</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal</td>
<td>8.32</td>
<td>9.43</td>
<td>-1.314</td>
<td>635</td>
<td>.189</td>
<td>.944</td>
<td>-2.766, .548</td>
</tr>
<tr>
<td>Physical</td>
<td>5.21</td>
<td>6.51</td>
<td>-2.040</td>
<td>635</td>
<td>.042</td>
<td>.638</td>
<td>-2.555, -.049</td>
</tr>
<tr>
<td>Sexual</td>
<td>1.88</td>
<td>2.44</td>
<td>-1.586</td>
<td>635</td>
<td>.113</td>
<td>.350</td>
<td>-1.241, 1.132</td>
</tr>
<tr>
<td>Cyber</td>
<td>2.48</td>
<td>2.97</td>
<td>-.298</td>
<td>635</td>
<td>.766</td>
<td>.435</td>
<td>-0.983, .724</td>
</tr>
</tbody>
</table>

Table 5: Sexual Orientation and experiences of bullying
<table>
<thead>
<tr>
<th>Type of Bullying</th>
<th>Mean (Non-LGBT)</th>
<th>Mean (LGBT)</th>
<th>t-test</th>
<th>Degrees of freedom (df)</th>
<th>Significance</th>
<th>Standard Error Difference</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal</td>
<td>9.94</td>
<td>10.47</td>
<td>-0.544</td>
<td>635</td>
<td>.587</td>
<td>.976</td>
<td>-2.447, 1.386</td>
</tr>
<tr>
<td>Physical</td>
<td>4.38</td>
<td>5.36</td>
<td>-1.574</td>
<td>635</td>
<td>.116</td>
<td>.626</td>
<td>-2.216, 2.444</td>
</tr>
<tr>
<td>Sexual</td>
<td>1.48</td>
<td>2.00</td>
<td>-1.568</td>
<td>635</td>
<td>.117</td>
<td>.332</td>
<td>-1.173, 1.352</td>
</tr>
<tr>
<td>Cyber</td>
<td>1.81</td>
<td>2.27</td>
<td>-1.241</td>
<td>635</td>
<td>.215</td>
<td>.368</td>
<td>-1.179, 2.666</td>
</tr>
</tbody>
</table>

Table 6: Sexual Orientation and bullying engagement

GROUP DYNAMICS

Social influence is used to compare one’s own behaviour to that of peer groups, outgroups and role models as a means of gauging whether one’s behaviour is appropriate. This becomes especially important at adolescence when children want to create their own integrated self-image apart from their parents. In other words, adolescents tend to mimic the behaviours of the group to which they hope to belong. Studies have been conducted on the effect of this on engagement in ‘risk’, including sexual habits, drug and alcohol use.

B. Bradford Brown outlined four key psychosocial tasks:
1. to stand out—to develop an identity and pursue autonomy,
2. to fit in—to find comfortable affiliations and gain acceptance from peers,
3. to measure up—to develop competence and find ways to achieve, and
4. to take hold—to make commitments to particular goals, activities, and beliefs.

Students may engage in risk behaviours that hinder or help their accomplishments of these goals.

A number of students from various schools from rural and urban areas in Trinidad and Tobago said that “most of” or “plenty” acts of bullying were committed in groups. The most commonly reported was smoking and drinking of alcohol, teasing and name-calling, fighting, social exclusion through rumours, embarrassment or isolation. Using or forcing others to use illegal drugs was reported fewer times. Vandalism and damage to belongings and school property, ‘back-chatting’ teachers or person in authority, and lying to a teacher to cover up a situation were also highlighted as acts done in groups.

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Few students reported more violent acts of shooting, robbery and ‘other violent act’, including ‘attempted homicide’. One male student (east coast Trinidad) reported a shooting in school and the ‘chopping’ of a teacher. Another student (south west Trinidad) reported shooting someone who had raped their friend who was only 10 years old at the time of the incident. The types of acts engaged in by groups is not surprising or uncommon. Initiation into cigarette, drug and alcohol use is commonly done through friends and peer groups. It is unclear which one or combination of these goals the students are trying to accomplish by their behaviour. Nevertheless, it is integral to remember the role and influence of the group on the behaviours and experiences of individuals.

To that end, a useful starting point would be to ensure that the school is properly equipped to hold successful drug awareness campaigns. The outcome is sustainable suppression of drug abuse among students.

**THE BYSTANDER EFFECT**

Bullying may happen in isolated places, but often it occurs around other students and peers, especially if these acts are intended to have social consequences for either the engager or the target. Bystanders give the bully an audience.

Those who stand-by and watch bullying occur are not without guilt or consequence. Their inaction is not passivity, but the active choice to not engage, to ignore, to pretend or even to watch on in enjoyment. Observers may choose not to do intervene because they:

- Fear the bully will make them his or her next target
- Believe it to be “none of their business”
- Feel like a “tattletale”
- Feel that intervention won’t accomplish anything, especially if they have previously told teachers who haven’t taken action
- Or due to a phenomenon called the bystander effect, onlookers assume someone else would be responsible and intervene or influence the situation, and thus do nothing.

No matter what the case, observing without intervening is harmful, and not just to the victim or bully. It is harmful to bystanders themselves, making them more likely to drink and smoke, skip school, and become anxious or depressed.14

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**Drug awareness**

Students from numerous schools reported the use of alcohol, cigarettes and illegal drugs on school compounds. There should be better education on drug use and its effects. More alarmingly, students reported witnessing coerced drug usage among their peers. Security searches, checks and monitoring are proving ineffective in eliminating this problem from schools.

We recommend a more proactive approach than interruption and punishment after students are found with banned substances. Instead effort should be at deterring the possession, use, and sharing of these substances. School administrators are encouraged to pursue the establishment of educational programs that can provide a greater deal of clarity on all aspects of drug use, including its role in patterns of violence and intimidation.

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http://mastersinpsychologyguide.com/articles/psychological-effects-bullying-kids-teens
Social Outcomes: Wealth, Crime, Delinquency

Wolke, Copeland, Angold and Costello’s study of youth in North Carolina described psychological as well as social outcomes for these youth as adults, in the areas of health, risk and illegal behaviours, financial gains and social relationships. Their participants reported being diagnosed with a serious physical illness, being in a serious accident, or of testing positive for a sexually transmitted disease. They self-reported perceived poor health, high illness contagion risk, and slow illness recovery, and engage in regular smoking. Bullies and victims showed elevated chances of psychiatric problems and regular smoking. Bullies were more likely to be involved in official felony charges, substance use, and illegal behavior. There was no evidence of elevated risk for risky/illegal behavior for victims.

Wolke et al used courts’ records to gather data on official charges, and self-reporting to assess recent police contact, lying, fighting, vandalism and breaking and entering, frequent drunkenness (described as drinking to excess at least once weekly for 3 months), recent use of marijuana or other illegal substances and one-time sexual encounters with strangers (hooking up with strangers).

Our data demonstrates engagement in illegal activities among youth, including under-aged smoking and drinking, use of illegal substances, physical and sexual assault, and attempted homicide. Wolke et al assessed financial risk based on dropout rates, educational status, job problems like being dismissed or fired from a job and quitting a job without financial preparations, failing to honour debts and poor management of finances. Their research showed that both groups were susceptible to poor financial outcomes. Similarly, both groups experienced disruptions to their social relationships with spouses, friends, parents.

SECTION FOUR: SEXUAL ASSAULT
Of the 651 students surveyed, 100 students reported having been molested or being unsure of their experience (discussed in Sex and Sexuality Education section below); and 51 students were raped or were unsure of whether what happened to them would be considered rape.

![Figure 13: Incidents of sexual assault (rape and molestation)](image)

Of the one hundred students who experienced molestation, fifty-three (53) were female and forty-seven (47) males, with fifteen (15) and twenty-eight (28) students respectively being unsure. They described these acts as forced touching of breasts and genital areas.

Seventeen girls reported being raped, with nine of them unsure. Three of them reported current and ongoing sexual assaults. Eleven girls were both raped and molested. Eleven males reported being raped, sodomised or otherwise sexually assaulted by male and female family members. Six boys experienced both.

The girls described assaults mainly by family members, friends of the family, or reputed members of the community. These girls said that their reports to parents or teachers are not taken seriously, which allows abuse to continue. Their own hesitance and that of their family to “cause a scene” also lead to low rates of police reporting (see Figure 15).

The boys showed less certainty of whether what happened to them would be considered rape or molestation, yet as Figure 13 demonstrates, the numbers of boys and girls raped and molested are almost the same. When prompted to share more, only two boys responded.
One boy stated very bluntly, “A penis was inserted in my anus”, while the second described assaults by a male and female cousin, each on separate occasions.

Citing the 2003 study by Halcon et al in nine Caribbean countries, Reid, Reddock and Nickenig (2016) purport that 47.6% of females and 31.9% of males described their first intercourse as forced or coerced and held family members or persons known to their family responsible for the act.¹⁶

**Knowing the Laws and One’s Rights**

The number of students unsure of whether or not an assault occurred indicates their lack of knowledge of what constitutes rape and molestation, including ambiguities about consent, and points to the need for mandatory age-appropriate sex and sexuality education for all students. What acts constitute rape or molestation should be made known to students. Legally and ethically, what autonomy do the students have over their bodies?

Students should be taught about consent, what it means to give consent and how consent determines whether an act is wanted or unwanted. Boys and girls need to know what constitutes consent so that neither are taken advantage or victimized, or commits acts of assault towards someone else. For instance, in describing the acts that occurred, some female students mentioned having been drinking alcohol with the person who assaulted them, or having kissed or flirted, and thought this is made them responsible for what happened.

**Figure 14: Age breakdown of students experiencing sexual assault**

Of the students who had experienced sexual assault, the majority [75%] were between the age range 15-16. This reflected the dominance of this age-group in the population surveyed [62%]. Not reflected in this graphic, are the students who were unsure of whether an assault had occurred.

![Chart showing number of incidents and reports made for rape and molestation]

**Figure 15: Rate of reporting sexual assaults (rape and molestation)**

**Sex Positive Education Initiatives**

The under-reporting of sexual assault is linked to poor follow-up, investigating and justice procedures, as well as the social stigma attached to sexual assault. An education that is sex positive can potentially stem the continuation of these and other harmful narratives of shame attached to sex, whether consensual or not. This can work to stem rape culture wherein victims are blamed for their being assaulted, are shamed for their sexual activity (even unrelated to the assault), and the importance placed on virginity, which is more of a social construction than a biological fact.
SECTION FIVE:
WHO REPORTS?
Of the 651 students surveyed, 226 students have never reported an act of bullying, and 188 students rarely report acts of bullying. This means that 63% of students never or rarely report incidents of bullying, even though, as many as 73% experience some form of bullying.

Coupled with the significant number of students who never or rarely report bullying at school, 206 students are prevented from informing parents of bullying for fear that their situation may worsen at school. In addition, 147 students avoid reporting because their parents or caregivers won’t take them seriously. Thirty-four students fear being further abused at home, and 93 students do not report acts of bullying as they may be told that it is part of growing up.

At school, 43.9% of students do not report bullying acts because they do not want to be seen as a tell-tale or snitch. Additionally, significant numbers of students do not trust teachers at school (27.1%), and have tried to report but nothing was done (25.3%).

Alongside the number of students who are reluctant to report bullying at home, 146 students do not report bullying at school because they do not want their parents to get involved. For 25.8% of students, reporting bullying acts will lead to being bullied more; either by their peers (19%) or teachers (6.8%). It is clear that students are not (or rarely) reporting bullying because adults do not provide help and do not act on their reports, both at home and school. This may lead to students developing a “code of silence” about abusive behavior, which will have further psychological effects.

Students report mostly to friends and parents.

**LGBT Students’ reporting of bullying**

Reporting incidents of bullying to school authorities have been a huge obstacle for LGBT students. Previous research has shown LGBT students were more unlikely to report acts of bullying fearing the situation would worsen if records were made public of the event/incident. Overwhelmingly heterosexual peers showed a higher response rate when compared to LGBT students to reporting their bullying experience either to “Friends, (46.05% to 37.62%)” “Siblings” (18.20% to 9.90%) “Teachers” (18.42% to 12.87%) or “Parents” (29.17% to 25.74%)

Our analysis showed heterosexual peers were more likely to discuss or share their bullying experiences with someone than LGBT students. While a significant majority of students (54.57%) indicated that they chose to share bullying experiences with “No one,” overall, both groups indicated the highest preference to sharing bullying experiences were with “Friends” (83.67%) followed by “Parents,” (54.91%) and “Teachers,” (31.29%)

When we asked students how regularly do they report bullying experiences directly to a teacher/principal, our findings once more proved a high resistance from both groups to inform either a teacher/principal. **71.72% of heterosexual peers and 64.71% of LGBT students responded that they “Never” or “Rarely” reported their bullying experiences to a teacher or principal. Less than 10% of students did so on a regular basis.**

The most common reason given for this lack of reporting by both groups of students is the fear of being called a “tell-tale” or “snitch” prevented both LGBT students and their heterosexual peers from reporting bullying experiences to their teachers.

By an overwhelming majority, 52.99% of heterosexual students to 42.16% of LGBT students said this was their major concern preventing them for reporting to a teacher. Second most common was the issue of “trust”, with 32.05% and 28.43% of students (Het vs LGBT), believing that there was no teacher in school that they trusted.

Finally, 30% and 24% of students from both the heterosexual and LGBT groups respectively indicated that they had reported bullying in the past, but nothing was done.
Figure 17: Reasons given for not reporting incidents of bullying to Teacher

Figure 18: Reasons given for not reporting incidents of bullying to parents and caregivers
Fearing that bullying experiences would become worse after reporting to a parent/adult caregiver was the predominant concern among both groups, with 41.77% of heterosexual peers and 36.96% of LGBT students citing this reason as a main deterrent from “talking to parents/adult caregivers.” This demonstrates that even if students want to tell their parents and are supported by their parents, the treatment of violence in school is so inadequate that their fear of repercussions overpowers their desires to report and receive help.

Also, both groups (29.94% Hetero to 29.35% LGBT) shared a strikingly similar concern citing “they won't take me seriously,” as another deterrent factor that prevents them from talking to parents/caregivers. Meanwhile 19.16% of Heterosexual peers and 15.22% of LGBT students indicated that parents/caregivers “would say it is normal to be bullied/it’s part of growing up.” And 12.91% of both groups said parents/caregivers would also “abuse me” which deters them from talking.

Building stronger families

Students expressed a need to feel supported by their parents. With this support students would feel more comfortable reporting incidents of bullying rather than suffering in silence or feeling hopeless about how to deal with it. Parent-Teacher Associations can be very useful and important in bridging home and school environments to provide support for students. In addition to regular meetings, the PTAs can organise educational talks and smaller discussion groups where parents can be guided by trained persons in how to deal with various challenges they may face. These groups may address matters of drug use, sex and sexuality, including how to talk to your children about safe and healthy sexual practices, or about sexual orientation.
As emphasized in the definition offered at the outset of this report, interactions that are defined as bullying create gross imbalances of power through aggression. This power dynamic is often framed as a reality involving just the engager and the target. If we understand power as being reinforced by the broader school community, we can also see the ways in which the actions and inaction of every person in the school contributes to this reality as well. Therefore, a key aspect of students’ experiences with bullying is who responds and how. Beyond simply focusing on cataloguing the acts of bullying, this survey prompted students to reflect on how bullying is interrupted.

![Pie chart showing the rate of intervention](image)

**Figure 19: Rate of intervention**

![Pie chart showing who intervenes the most](image)

**Figure 20: Rate of intervention in named categories**
The above figure reflects the data from our inquiry into who exactly intervenes in incidences of bullying. Students in the same peer group as the respondent are reported to be the most frequent interventionists, followed by older students, while younger students and guidance counsellors stand out as the least frequent interventionists. Teachers were also ranked fairly highly. Guidance counsellors were consistently identified as the most disinclined to intervene in the presence of incidents of bullying.

It is worth noting that there is more to the data than simply how often the respondents witnessed a member of each identified group intervene. Not all groups represented in this chart have the same amount of contact with students who are bullied.

Another factor to bear in mind is that not all of these groups have the same chances of witnessing bullying. The likelihood of bullies engaging in patterns of intimidation may vary depending on the company that is present.

Belying the information presented in this portion of the survey are a number of additional questions about intervening. Who should be intervening? For whom is it safest to intervene and for whom could it be more dangerous? Why are some groups less likely to intervene than others (assuming comparable opportunities to intervene)? How would intervening affect the prevalence of bullying in the school’s broader social dynamic? Confronting these questions is essential in the scaffolding of effective policies to make schools safer and more hospitable.

Another key element in this process of creating effective anti-bullying policies is looking at how existing policies are perceived by the students they are designed to benefit. When asked “how do you feel teachers at school handle bullying?” students reflected on the impact made by their respective school administration’s existing anti-bullying efforts. Figure 21 illustrates how students responded when asked to opine as to whether bullying was being handled "excellently," "not at all" or some point in between.
Troublingly enough, the majority of responses indicate that students feel that their schools are inadequately addressing bullying. Further, the second largest share of responses indicated that school officials were perceived as not being handling bullying at all. Despite the fact that almost the same share of responses indicated that anti-bullying efforts were “adequate,” the broader context demands improvement in the methods that school officials use to prevent, address and remedy recurring aggressive student conduct.
SECTION SEVEN: IMPROVING INTERVENTION AND EDUCATION STRATEGIES
Student responses indicate that there is no standard practice in schools for education and disciplining of bullying. Some of what they observed include:

- Punishment
- Calling in the parents of the student
- Sharing their experiences by writing essays
- A walk on bullying
- Assigning prefects to help with the situation
- Peer Helper Bodies or Peer counsellors, where groups of students counsel each other
- Guidance counsellor.

The most common venue where students were exposed to anti-bullying measures was during school assembly. Almost half of the students had been exposed to other interventions, including lessons on bullying, the appointment of a special teacher to deal with bullying, or having a play or dramatisation on the subject.

These methods are not uniformly adopted across the schools surveyed. Some students responded that their schools only address bullying after it has happened, including responding to the suicide of a student by saying there was nothing they could do to prevent it. **Students suggested there be more cross communication on this matter, by having administrators listen more to students and their concerns. Student forums can be useful here, conducted by class or year group.**

To better equip school officials in their efforts to make necessary adjustments to their anti-bullying policies, students were also asked what more they thought could be done about bullying in their schools. In this way, we were able to illuminate why exactly so many students declined to rank their school’s handling of bullying as “excellent.” Many students called for a more aggressive punishments for bullies.

In its vaguest terms, the word “punishment” showed up multiple times, including corporal punishment, incarceration, pursuing criminal charges with the police, detention, suspension or expulsion of those engaged.

It is worth pausing here to offer that despite the need to make students feel more confident in their school’s capacity to protect pupils from bullying, these suggested measures could wind up being detrimental to the student body. While police responses could be applicable in some extreme cases, teachers must demonstrate an ability to competently and consistently address bullying without confounding matters of student discipline with matters of law enforcement. In our effort to deter bullying we don’t want to exacerbate the avenue between the schoolhouse and the jailhouse through misguided policy.

Further, while removing particularly aggressive actors from the student body has clear immediate benefits on each school’s learning ecosystem, any solution that poses the threat of interrupting access to education is in every case highly problematic.
Herein lies the need to find policies that disrupt students’ capacity to bully without disrupting their capacity to learn. With regard to the responses advocating for corporal punishment we bear witness to the cyclical aspect of school violence. Some students offered specific and graphic suggestions for how to sanction bullies with physical violence. A number of questions are worth reflecting on for school officials. How are students being conditioned with regard to authority and power over other people’s bodies? What do we want students to learn about violence overall? What leads them to believe that discipline should be inherently retributive? Any programming that seeks to re-educate students about how they relate to one another and adjust their expectations of their schools’ anti-bullying program should take these questions among others into consideration.

Among the more constructive responses were suggestions that encouraged counselling for aggressors. One student suggested having a counsellor on staff specifically designated for working with bullies. Some students voiced concerns that their teachers weren’t adequately trained or even invested in handling disruptive behaviour in their classrooms. To put it in constructive terms, the schools can invest in properly equipping teachers to suppress bullying.

There should also be a minimum annual standard of anti-bullying education that is comprehensive, repeated, reviewed and updated. Rather than being reactive, education as a whole should seek to teach compassion, empathy, emotional literacy, communication skills, and conflict resolution. Of course a large factor behind how each school takes these suggestions into account is the question of resources. Implementing new measures, designating classrooms and resources for students who engage in bullying, hiring new counsellors or training counsellors already on staff can be costly and onerous for school administrators as they contend with a number of other pressing issues.
Restorative Justice

What does “justice” mean? Often, it is thought to be synonymous with retribution or revenge: An eye for an eye. But as the saying continues, that only leaves everyone blind.

Restorative justice instead looks to find a place or balance and agreement between those involved, but also to the community. The offender must take responsibility for their actions, understand how they have caused harm. In discussion between the parties involved, the central question is: What can an offender do that will teach them a lesson while enriching the community and that would train them into different/better behaviours in the future?

Thus, the emphasis is not on punishment but on accountability, healing and personal enrichment to reduce the likelihood of future incidents.

Strategies may include:

**Bully-Victim Mediation**

This is simply a meeting between the victim and the bully, in the presence of a trained mediator.

**Peacemaking circles**

The circle formation promotes perceptions of equity among the parties involved. This circle may include (1) admissions of guilt by the offender/engager, (2) testimonies of those of ended/hurt, (3) explanations of expectations by both parties, on what they want to get out of the experience, (4) exercises for healing of all parties involved. This can be a small gathering with the engager, the target and a mediator, or it can be a larger **restorative circle**, that includes members of the school community, family members and others who have a stake in the students’ success.

**Community Justice board or committee**

A board is convened with community members, such as students from the same and other peer groups, a teacher or guidance counselor. The board functions like judge and jury would in a court of law. They review the details of the incident and determine the course of action to be taken. The board prepares a record of the incident and sees to it that the participants complete the required actions they are ‘sentenced’ to perform within a given time-frame. The restorative circle and the justice board emphasise collectivity and community.

Restorative practices also work to build the skills and capacity of students and adults to prevent future bullying. The other strategies discussed in this section are all aimed at addressing the needs and obligations of those in the school community, at fostering accountability and understanding the impact of actions, and doing the work needed to repair the harm caused. In this approach, teachers, students and the community can reach agreements to meet all stakeholders’ needs.
Creating Safer Classrooms

What does it mean to have a ‘safe’ classroom? As places of learning, the classroom should be tailored to optimise learning. Being free from fear, threat or intimidation is essential for students to be able to focus during lessons and gain knowledge as intended. There are many strategies for creating safer classrooms. Rebecca Alber wrote a list of 20 tips on the edutopia blog including community building, sharing students’ creative work; creating a space that is student centred and reflective of their experiences; admitting your limitations as a teacher, such as admitting not to have all the answers; remaining calm; modeling kindness, vulnerability and empathy; giving students the opportunity to problem solve and resolve conflicts, among others.

While these strategies are applicable across the board, particular effort must be taken to address the needs of students who are minorities (in whatever way) by having open discussion about socio-cultural differences, sex, gender, sexuality, race, etc. Teachers must strive to create a classroom of mutual respect. This can be done through special lesson plans or by building lessons into other topics. But the most important and influential way of imparting this knowledge is through modelling the types of behaviours that promote respect and courtesy.

An initiative called Safe Space has been utilised in schools around the world. SLF currently runs one of their own in San Fernando, but it is a strategy that can be used in every school. The Safe Space holds regular meetings and functions as a space for students to talk freely about the issues affecting them, often under the supervision of someone trained in counselling and mental health.

While used for LGBT students to find a space of acceptance in an otherwise judgmental environment, Safe Space can be more broadly conceived as a student forum or as a group therapy session. Guests can be brought in to discuss specific problems students may be confronting.

More information on forming a safe space at your school can be found on the SLF blog at: http://www.silverliningtt.com/how-to-build-a-safe-space-at-your-school/

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**Educating For Change**

How can educators teach about bullying? The most obvious option would be to have lesson plans addressing the information reviewed in this report - who is a bully; types of bullying; causes and consequences etc. This is very important, but we have found that rather than directly addressing “Bullying”, it may be more useful to break this down to the specific problems contributing to bullying behaviours. These include lack of respect for person and belongings, disregard for authority, ineffective/inadequate communication skills, lack of empathy, inability to control emotions, inability to work in a team.

These skills can be built into the syllabus through classroom exercises that reflect these themes in form and content. For example, classroom activities can incorporate team-building exercises prior to assigning teamwork exercises, in order to first educate about what it entails to be part of a team. These include exercises that build trust, that allow each participant space to speak and be heard, that encourage mindful listening and respectful engagement.

Rather than holding out these activities as extra-curricular or leaving these topical discussions for special groups, they can be built into the syllabus through readings, essays, experiments, arts and music, and interactive projects. These measures should be taken into consideration during curriculum design, instead of leaving the creativity up to individual teachers, especially as teachers are not trained in developing these particular skills in students.

These skills can be timed into age-appropriate lessons that build on each other in each subsequent standard or form to ensure that these skills do not fall away as students get older. Similarly, waiting until students are in secondary school before teaching these skills makes it all the more difficult to break their already badly formed interpersonal skills. There should be a minimal required level of training for teachers in mediation, conflict resolution and in managing diverse classrooms, so they can better deal with problems arising there.
What do we do next?

The Silver Lining Foundation is dedicated to ending violence in schools and disrupting the cycles of violence, disrespect and intolerance that plague our society.

Specifically targeting LGBT youth, our on-going Safe Space project, currently at University of Trinidad and Tobago Tarouba campus provides a space for these students to meet and discuss the challenges they face.

Our Stronger Families program provides a forum for parents to meet and unite their strengths, sharing their experiences and strategies for raising healthier and better adjusted children towards the goal of a more inclusive and kind future.

We also aim to assist teachers and bring about a change in the culture of education in Trinidad and Tobago. We will soon be offering a training workshop in diversity management and conflict resolution targeting teachers. The workshop aims to teach skills in two areas: (1) prevention, through the creation of more respectful and safe classrooms; and (2) intervention, moderating and resolving classroom conflict. While practicing these skills, participants will also be instructed in recognising signs of bullying, talking to parties involved in incidents of bullying, and terminology related to human diversity, particularly gender and sexuality, gender-based violence, race and ethnicity.

Through this workshop, teachers will learn about strategies for creating a more inclusive and conflict-free classroom through a student-centred approach to education and restorative justice.

Future cycles of this survey will be conducted to assess changes in bullying behaviours.

We cannot raise children with social, emotional and psychological issues and expect them to be wholesome, productive and just adults. We must be courageous enough to break these harmful patterns of individual and institutional practices if we are to work towards a healthier society.

The ASPnet promotes the values and principles enshrined in UNESCO’s Constitution and the United Nations’ Charter, including fundamental rights and human dignity, gender equality, social progress, freedom, justice and democracy, respect for diversity and international solidarity, as well as supporting the global implementation of the Sustainable Development Goals, and in particular Goal 4 ‘Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’.

Until bullying and school violence in all its forms, are eliminated in and around schools across the world, many of the ambitious targets set by the global community through the Sustainable Development Goals (SDGs), to provide safe and supportive learning environments, to end violence against children in all settings and to achieve gender equality and eliminate violence against women and girls, will not be realized.

Therefore, UNESCO and the ASPnet will continue the monitoring of school violence at all levels, to ensure that all children and adolescents are able to fulfil their right to a quality education. The ASPnet in Trinidad and Tobago will aim to be a key provider to policy-
makers, stakeholders, and education communities of data and key publications, and will continue to contribute towards the monitoring of SDG 4 and its targets.
Reference List


| Tab 12 |
La Chaîne du Futur which broadcast the documentary, were repeatedly summoned for questioning and asked to reveal their sources, including at the headquarters of the Research and Investigation Services and at the High Authority for Audiovisual and Communications on 18 and 26 August respectively.

Local media organizations reported websites, including social media sites, being blocked by internet providers in Togo shortly before and after the publication of the results of the presidential election.

ARBITRARY ARRESTS AND DETENTIONS
On 25 April, the Community Court of Justice of ECOWAS ruled that Togo subjected Pascal Bodjona, a Togolese politician and former member of the government, to arbitrary detention. It ordered Togo to try Pascal Bodjona in a court of law and to pay him a compensation of 18 million CFA franc (approximately €27,440). Pascal Bodjona was arrested on 1 September 2012 and charged with fraud and complicity in fraud. He was released on bail on 9 April 2013, rearrested on 21 August 2014 on the same charges and has been in detention without trial since then.

Seven out of 10 men convicted in September 2011 of participating in a 2009 coup plot, including Kpatcha Gnassingbé, half-brother of the President, remained in detention throughout 2015. In November 2014, the UN Working Group on Arbitrary Detention stated that their detention was arbitrary and requested their immediate release.

IMPUNITY
The climate of impunity for human rights violations persisted. Ten years after nearly 500 people died in political violence during the presidential election of 24 April 2005, the authorities have taken no steps to identify those responsible for the deaths. Of the 72 complaints filed by the victims’ families with the Atakpamé, Amlamé and Lomé courts, none are known to have been fully investigated.2

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
On 2 November, the National Assembly adopted a new Criminal Code. While the Code contains a number of positive human rights developments, including the criminalization of torture in line with international standards, certain provisions undermine freedoms of expression and assembly. The Code maintains homophobic provisions criminalizing sexual relations between consenting adults of the same sex. It criminalizes defamation and publishing false news, with these offences carrying prison terms. It reverses the requirement for peaceful assemblies from prior notification to prior authorization.

1. Togo: Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango (News story, 11 December)
2. Togo: One decade of impunity: Five steps to end impunity (AFR 15/1508/2015)

TRINIDAD AND TOBAGO
Republic of Trinidad and Tobago
Head of state: Anthony Thomas Aquinas Carmona
Head of government: Keith Rowley (replaced Kamla Persad-Bissessar in September)

Violence and discrimination continued towards lesbian, gay, bisexual, transgender and intersex (LGBTI) people, and women and girls. Abuse of children was a concern. Trinidad retained the mandatory death penalty for murder.

BACKGROUND
General elections took place in September resulting in a new administration. Violent crimes remained a key concern with 329 murders reported by the police between January and September 2015, a similar rate to the same period in 2014.
EXCESSIVE USE OF FORCE
Serious concerns remained about excessive use of force by the police. The Police Complaints Authority lacked staff and sufficient powers to effectively investigate all alleged misconduct by police officers.

CHILDREN’S RIGHTS
High levels of sexual and other physical abuse of children remained a serious concern. A new Children’s Act came into force in May, increasing penalties for abuse of children and raising the age of consent for sexual relations to 18. A Children’s Authority was established and received 1,500 reports of child abuse within its first three months. Despite progress in this area, civil society groups reported that insufficient action had been taken by the authorities to prevent child abuse and cases were still poorly investigated and handled.

Activists raised concern that the Children’s Act decriminalized sex between children of the opposite sex (unless exploitative), yet criminalized consensual same-sex sexual activity for those aged under 21 with a potential penalty of life imprisonment, in contravention of the rights of the child.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
Consensual same-sex sexual activity remained a crime. Local civil society groups continued to receive reports of violence and discrimination towards LGBTI people. Some LGBTI people did not report these crimes or seek access to justice, for fear of further victimization from law enforcement officials or exposure of their sexual orientation or gender identity. Some youths reported being pushed out of their homes or experiencing domestic violence due to discrimination based on their sexual orientation or gender identity. Social services and shelters were not equipped to respond to the needs of homeless LGBTI people, according to local NGOs.

Parliament failed to act on a 2014 recommendation from the Equal Opportunities Commission that “sexual orientation” be included as a protected ground in the Equal Opportunities Act.

A transgender woman ran as an independent candidate in the elections – the first known transgender candidate to run for public office.

VIOLENCE AGAINST WOMEN AND GIRLS
High levels of gender-based violence, including domestic violence, continued.

DEATH PENALTY
Mandatory death sentences continued to be imposed for murder. The Judicial Committee of the Privy Council substituted a conviction for murder with one for manslaughter in the case of a man with a mental disability, and reduced his death sentence to a term of imprisonment.

TUNISIA
Republic of Tunisia
Head of state: Beji Caid Essebsi
Head of government: Habib Essid (replaced Mehdi Jomaa in January)

The authorities tightened restrictions on freedoms of expression and assembly, including by banning demonstrations in some instances. There were new reports of torture and other ill-treatment. Women, girls, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people faced discrimination in law and in practice. Courts continued to pass death sentences; there were no executions.

BACKGROUND
Militants apparently affiliated to armed Islamist groups carried out gun attacks at the Bardo Museum in the capital Tunis in March and at a Sousse beach resort in June, killing 61 people, mostly foreign tourists, and injuring many more. In November, an attack in central Tunis on a Presidential Guard bus killed 12 people. Clashes between the security forces and armed militants occurred.
| TAB 13 |
Civil society groups who care about justice and diversity make election season promises and ask national decision makers to join us

II. HOMELESSNESS

Posted on August 14, 2015December 9, 2015 by justicediversity

4. Emergency Housing & Transitional Supports

Why? Over the past ten months, T&T’s joint LGBTI community casework initiative has received requests every month for emergency housing. It is one of the most urgent and unmet needs facing LGBTI members of the national community, especially those who are young. Homelessness is catastrophic, can be life-threatening, and affects every other aspect of life functioning. It increases risks for violence and substance abuse, and robs people of the ability to fulfill their potential.

LGBTI people (particularly in low income, larger households) get put out of family homes because of their sexuality or gender expression. Sometimes this follows domestic violence. Poverty among young LGBTI persons is also fuelled by low school achievement due to bullying, unaddressed workplace harassment that drives them out of employment, and challenges being hired, with no recourse to the law if denied a job or fired because of their gender expression or sexual orientation. Defensive coping mechanisms young people use to deal with persistent abuse also leave them even less market-ready.

Low-income LGBTI persons have few housing options of any nature. Public shelters are dangerous for gay men and trans persons, who avoid them. Domestic violence shelters have refused to accept lesbian and bisexual victims of family violence, or subjected them to harassment and religious proselytizing. Landlords are unwilling to rent to LGBTI people, either out of personal prejudice or pressure from tenants, and are legally able to refuse to do so or to evict tenants on that ground when they discover their sexual orientation or gender identity. Young people especially end up in housing where they are sexually vulnerable, or engage in transactional sex for shelter, heightening their risk
for HIV. Some turn to street sex work. Others find affordable housing only in neighbourhoods where crime, violence and homophobia are high and become opportunistic targets for criminals. Even in “safer” neighbourhoods, the threat of bias violence and low-level bullying and harassment by neighbours and on the street endure, and they fear reporting it either because the cost of the related stigma outweighs any justice, or because police dismiss or ridicule them.

Young LGBTI people end up on the street where trans young people in particular are then targeted for police harassment and arrest using colonial vagrancy laws (Section 45(c) of the Summary Offences Act criminalizes being in a public place and being unable to give a good account of oneself). In several cases of these arrests, media are alerted to the appearance of trans women and cross-dressing men, who are paraded through the courthouse and their pictures, names, addresses and clothing details salaciously published. Serial arrests and poor representation help criminalise young people and make it harder for them to transition to sustainable living.

We pledge: to enter the LGBTI inter-organizational initiative Wholeness & Justice into a public-private partnership that manages a programme of transitional housing and life skills development for young people made homeless by discrimination, to restore their dignity, provide safety and a bridge to self-sufficiency, and address their wellness and justice needs from years of neglect, abuse and marginalization

We urge:

- the Housing Development Corporation to allocate for management by the partnership up to four multi-bedroom dwellings in safer, more cosmopolitan neighbourhoods accessible by public transportation, one each in Northwest, East, Southwest and Central Trinidad, as transitional homes for homeless LGBTI members of the national community
- Businesses and ministries responsible for supportive housing, social welfare, youth, gender and training to partner together to develop, fund and deliver the transitional services and evaluate the programme

5. Youth Eligibility for Social Welfare

Why? Adolescents forced out of families and into independence by violence and homophobia, and too old for children’s homes, may not be eligible to directly benefit from a number of existing social welfare benefits, including public assistance, house rent, household items and clothing grants, temporary food cards, or the micro enterprise grant, which could ensure their subsistence and help them transition to independent living.

We pledge: to work to educate social welfare workers and administrators about LGBTI homelessness and LGBTI youth culture so their interventions are appropriate, effective and do no harm • to engage traditional shelters so they deepen their understanding of how LGBTI persons experience domestic violence, and reassess admission polices and provider attitudes • to facilitate all providers engaged in serving LGBTI homeless people in an inter-agency support network, in recognition of the multi-sectoral nature of the response needed
We urge:

- the ministers responsible for social welfare and youth and the Public Assistance Boards to work together urgently to make young people 16 and 17 years old who have been rejected or are fleeing abuse by their families eligible without red tape to directly receive social welfare benefits, including effecting any necessary amendments to the Public Assistance Regulations.
TAB 14
A happy life ended by a hateful man

Susan Mohammed
Sep 22, 2019

The bullet that ended the life of David Young remained at the crime scene for days before it was found.

As a relative cleaned the blood-stained room of the man who was just months away from retirement, the slug that caused the fatal injury was discovered.
It was overlooked days earlier, on April 11, 2016, when detectives and crime scene investigators swept through the house at Ramdhanie Street, St Margaret’s, Claxton Bay, searching for evidence of the killing.

Young, also called Glen, was shot while he slept in his bed, and died on the blood-soaked mattress in a house he had lived all his life.

His brother-in-law Cosmos Hamlet said he was cleaning the room when he found a suitcase beneath the bed with a bullet hole.

Hamilton peeped into the suitcase and found the bloody bullet.

“They (killers) took nothing. They shoot him in the head as he tried to raise up. All the blood drained through and into the boards. One shot to the head. He didn’t stand a chance at all,” said Hamlet.

A life well lived

Young was 19 years old when he entered the public service in the Ministry of Health. He worked his way through the ranks and at 58, having attained supervisory status as a public health inspector, he began planning his retirement.

He had planned to purchase a new vehicle and perhaps visit his sister in New York, Hamlet said.

Another man, who spoke to the Express under the condition of anonymity, said Young was homosexual.

Young had an argument at a bar with someone from the “trainline” who did not approve of the homosexual lifestyle, the Express was told.

“Glen did not mess with anyone. He liked to cook and lime at home. He used to keep ducks. He liked to make himself happy and invite his friends by him to eat, drink and that was it. People were shocked to know that they killed Glen. It was a shock that he was killed in that manner. It is a sad thing,” the man said.
“It was not a robbery, it was personal. Three years have passed and the information is coming out. The guy that put down the work had a falling–out with Glen by the bar. They were drinking by St Margaret’s Junction. The issue arrive with a personal talk...homosexual talk, and the guy was opposed to homosexuals. He was the only one who had a problem with him. When Glen was buried, he (the suspect) laughed and said ‘one more gone’,” the man told the Express.

What happened

The Express was told that the two men who entered the house that night were known criminals in the Claxton Bay area.

They have since died — killed in unrelated incidents.

The man who pulled the trigger was shot 21 times.

The accomplice was the killer’s cousin, and he, too, was gunned down.

Young’s sister, Sheila Hamlet, said she turned over to police the bullet that killed her brother. “That was it. The police never came back here. Nothing ever came of that after,” she said.

“When the police left that day Glen was killed, that was it. No one was ever arrested. They never even came to us for any form of a follow–up,” said her husband.

Young was the second person killed on the premises.

About ten years earlier, a co–worker of Young, Shirlon Boxhill, was stabbed to death in the house.

That killing was also never solved.

“Nah, the house is not blight. That was just how things happened,” said Cosmos Hamlet.

The house remained locked until three months ago when a relative and his wife moved into the premises.
Last memory

Sheila Hamlet cherishes the last memory of her brother in the house.

She said both she and Young were born in March, and he threw a party for them.

“He celebrated his birthday on March 29 and I was the 18th. He bought vodka and orange juice for me because he knew that is what I drink. We enjoyed that lime.

“I remember he had bought a camcorder from America and he couldn’t use it, but he gave it to someone and we did a video of us drinking, eating and enjoying ourselves. He cooked curry duck and we had a great time. Then 12 days after they killed him,” she said.

Cosmos Hamlet said: “Glen loved his job, he was hard-working. He had a few months to go before retirement. He worked over three decades in the Ministry of Health. He was not an aggressive person. He liked to have fun and talk plenty. He was never arrested for anything. He was an upstanding member of the community. People will form their opinion no matter what. It is a sad time we are living in.”
TAB 15
COMMENTARY
Raymond Choo Kong, Bent
THANK GOD IT’S FRIDAY

EVERY ONE OF us knows someone who has been murdered. Even within my own fairly privileged social position, I’ve had Christmas or New Year’s Day lunch with three people – brother and sister Henry and Candace Carrington and Michael Jobity – who’ve been slaughtered, like meat, Candace and Michael in their own homes. My friend Kath counts 18 people, including her own father, murdered in Trinidad.

In Tobago, the last time I counted, seven elderly white couples had been chopped to death in their own homes, a statement of simple fact that, in a real country, would have led to a systematic hunt for what would be seen to be a clear serial killer; in Tobago, police routinely arrest and release the village cocaine-piper when they reluctantly concede that they cannot give him seven cases of double murder.

In Trinidad, when it comes to crime in any form, we’ve learned to expect nothing from anyone anymore, even Double-G, continually riding in on his white charger. Children can be murdered accidentally, mere collateral damage, or obviously targeted as serious players in gangland executions.

Child soldiers break our hearts but child gangsters come like PH taxis: without them, the system just wouldn’t function. We raise an eyebrow, perhaps, but not an expectation; we “done know” that no arrest will be made, no case proven, no justice seen to be done.

The writer Oonya Kempadoo caught our predicament in a perfectly-realised scene in her third novel, All Decent Animals, set in Trinidad: police investigating a theft at a Lady Chancellor Hill home decline to cross the lawn leading to the track where the thief escaped because to do so would necessitate getting their shiny shoes wet by the dew on the grass! They can see the track from the dry porch, thanks.
What breaks our hearts this week is not that Raymond Choo Kong, one of our great actors, was murdered; it is that we do not need the passage of ten months, ten years or ten lifetimes to know what we already know today: that he will have died for nothing.

Our newspapers know something our police do not: that there is a serial killer stalking gay men. Police put their noses in the air to declare they don’t have statistics about the murders of homosexuals because they don’t judge anybody; what would be, in a real country, a clear hate crime becomes, in Trinidad, proof that the police force is not homophobic!

You could die laughing.

Raymond Choo Kong was deservedly recognised for the full houses his localised farces played to, but he was even more important for two serious reasons.

First, for a time, he kept theatre itself in Trinidad alive (as others, like Helen Camps and Lennox Raphael, have done) by creating a space for it – the Space at Bretton Hall – when there was none. If life truly is but a stage, we sometimes had no life at all in our capital city.

And, second – and how I will remember him – for the role he played in Helen Camps’ Tent Theatre production of Samuel French’s Bent, the play from which I learned that the only group more despised than Jews in Nazi concentration camps in World War II were the homosexuals. It may be that, in Hitler’s Germany, rather than Anderson Cooper’s CNN, they wore their pink triangles without shame, if not with pride, and at a time when the word would not be capitalised, far less recognised as emblematic of human rights, as in Pride TT.

Actors draw on both their gift and their experience. In Bent, Raymond Choo Kong personified, live on stage, all the persecution his kind – our kind, humanity itself – has suffered down through the ages; and reasserted the
much as the distraction of the farce of Boeing Boeing; had we created and lived in that space, Raymond might not have died in the place and the way he did.

Eugene O’Neill, the American playwright, said there is no present or future, just the past happening over and over again; he could have been from Trinidad, where this week’s present has, once more, caught up with our past.

We will see, every day from now on, whether our past remains our future.

**BC Pires is downcast and out in Paris and London and Port of Spain**

**Trending**

1. Support pours in for Icacos couple
2. Paria responds to uproar over fuel sale
3. Garcia: I offer myself...again
4. ‘Welcome, Mr Manning’
5. Cunningham summoned by Tracy after food card fraud claim
6. [UPDATED] Fyzabad teenager found in Point Fortin
7. Finding life, love behind bars

**Comments**

"Raymond Choo Kong, Bent"
TAB 16
JSC hears: 3,577 teen pregnancies in five years

by Gail Alexander 314 days ago  Wed Jul 10 2019

Gail Alexander

The Single Father’s Association (SFATT) has called for a study to ascertain the number of adult women who’ve been impregnated by teen boys as this has happened “many a time” says SFATT president Rhondall Feeles.

Feeles made the point yesterday when a Joint Select Committee (Social Services and Public Administration) interviewed the association, Child Welfare League and counselling psychologist/author Anna Maria Mora on the prevalence of teen pregnancies.

JSC chairman Paul Richards noted the number of teen pregnancies reported at hospitals in the last five years totalled 3,577 which he said was an underestimation. He also listed teen pregnancy figures for female age groups up to 19.

Richards also noted Health Ministry figures of the number of fathers impregnating teen girls—1, 710.

Those figures showed 1,305 teen pregnancies fathered by persons in the 20/30 age group, 146 (the 31-40 age group), 24 (41 to 50 age group), two (51-60 age group) and 142 (men over 60).

Richards said although the term “teen pregnancy” was used, “…Rape is rape...and it’s illegal to have sex with a minor. T&T has a grave situation of men impregnating teen girls and it doesn’t seem like the system has been effective in bringing them to justice.”

Chairman of the Joint Select Committee on Social Services and Public Administration, Independent Senator, Paul Richards.

OFFICE OF THE PARLIAMENT
On teen dads, Richards noted in some quarters if one didn’t have a child by 21, one might be labelled “gay” and it was a neighbourhood block badge of pride if a teen expressed his masculinity by becoming a father.

JSC member Glenda Jennings-Smith noted the Central Regional Health Authority was the only entity which reported increased teen pregnancies in its jurisdiction.

Feeles’ organisation, whose work targets Central areas, said it was hard to find information on teen fathers apart from the Education Ministry statistics on sexual misconduct showing 105 students who were suspended for this. He said if that problem was brought under control, fewer teen pregnancies might occur.
TAB 17
THERE are 27 laws in this country which result in discrimination against homosexuality.

Attorney General Faris Al- said this yesterday during a press conference at his office.

He was asked to comment on Government’s position on a High Court judge’s determination that two sections of the Sexual Offences Act were unconstitutional.

Explaining that there were two ways in which the country could treat with its laws, either through Parliament or through the courts, Al-Rawi said on this particular issue a High Court judge had made a determination.

“There is strong advocacy for and against the issue. That requires the law to be settled so that the other 26 laws can perhaps have a reflection upon the same determination. The Court of Appeal will be approached and the Privy Council will ultimately be approached. That is so it is not arguable as to which view should be accepted over another view, because once your appellate court has spoken with finality, you are bound to treat with the law in a particular fashion.

It, therefore, provides a conclusive determination of a very heated and live issue.”

Al-Rawi said he was acting as the attorney general for all the people of TT and was acting with the concept of equality being enshrined in the fundamental rights of the Constitution.
He added that the government joined in the sentiments expressed by President Paula-Mae Weekes, that there should be measure and calm on the issue.

“We respect the democracy and the rights, the freedom of association, expression, private and family-life principles that our constitution upholds and we certainly do believe that there ought to be a calm and reasonable approach to this issue.”
“The LGBTQI community has no claim to human rights” says Trinidad Church Council

By Trinidad Express
February 21, 2019

Members of the lesbian, gay, bisexual and transgender (LGBT) celebrate victory at the Hall of Justice in Port of Spain on April 11, 2018 following a ruling in a constitutional motion claim brought by Trinidad-born gay rights activist Jason Jones, (not in photo) against this country’s sodomy laws. * STEPHEN DOOBAY photo

(TRINIDAD EXPRESS) — The Trinidad and Tobago Council of Evangelical Churches last Friday attended the National Faith Leaders Consultation, hosted by the Pan-
Caribbean Partnership against HIV and AIDS (PANCAP) in collaboration with the National AIDS Coordinating Committee (NACC) in the Office of the Prime Minister.

Issues discussed included the removal of barriers to stigma and discrimination, how the Church’s response to HIV/AIDS can be strengthened, the resolving of the tension between the Church’s value system and the recent court judgement in the Jason Jones’ case, human rights and the Comprehensive Sexual Education (CSE) curriculum.

In a statement issued on Wednesday, Public Relations Officer for the TTCEC and Chairman of the Faith Based Network of Trinidad and Tobago (FBNTT), Reverend Winston Mansingh, celebrated the work that the Church has already done towards assisting HIV/AIDS victims.

He said that “Church will continue its work in assisting HIV/AIDS victims to the best of its ability, but will do so without compromising its doctrinal, spiritual and moral values.”

According to the statement, during the discussion on the resolving of tension between the Church’s doctrinal stance and the recent Jason Jones’ judgement, the council, in agreement with other representatives of the Christian faith, maintained that while the Church is always open to counselling and assisting members of the LGBTQI community who acknowledge the wrongfulness of their behaviour, it cannot and will not condone LGBTQI behaviour.

“On the topic of human rights regarding to the LGBTQI community, the council disagrees that there was any legitimacy to the demand of the LGBTQI community for human rights, since scientifically and biblically, no such gender categories exist”

And while while the council acknowledges and applauds some of the initiatives of the government towards eliminating the scourge of HIV/AIDS from our nation, it feels that the government is somewhat misguided in its approach, particularly as it relates to its consideration of the inclusion of the CSE curriculum in schools and its
suggestion that the Christian community should sanction the behaviour of LGBTQI individuals so that they no longer feel “discriminated” against.

Regarding the CSE, the council said it believes that sex education should begin with parents.

“Where the Church’s relationship with the LGBTQI community is concerned, the council feels that given that the highest rate of HIV/AIDS infections is among the MSM community, the government may do better to educate the population on the medical dangers of this behaviour and discourage it. In fact, the rate of infection among that community is an indicator that there is a high rate of hypersexuality among members of that group, suggesting that LGBTQI behavior is a manifestation of underlying psychoses. The U.S. National Institute of Health supports that assertion. According to ncbi.nlm.nih.gov, “Sexual addictions are behavioural addictions.”

According to the council, for the well-being of those who engage in that behaviour, and the wider population, the better course of action for the government to pursue is to join the Church in its stance against that behaviour and offer counselling to LGBTQI individuals.

Regarding helping to change improper sexual behaviours nationwide, said the council, one initiative that the government can take is the banning of certain songs from the airwaves to discourage the immoral sexual behaviour that many of our local songs promote.

“Of course, this would apply to foreign songs as well. Therefore, the council would like to advocate that the Telecommunications Authority of Trinidad and Tobago (TATT) begin to give serious consideration to banning certain songs – those containing lewd, vulgar lyrics and that promote immoral behaviour – from our airwaves” said the council.
Transgender woman’s fight to fit in
Call me Oliver

by 653 days ago  Sun Aug 05 2018

Oliver Michael Hirst
Nicole Drayton

BOBIE-LEE DIXON

bobie-lee.dixon@guardian

The idea of stuffing her underwear to give the appearance of the male organ, running around bareback and believing she was a superhero named Adam, was not just silly kids stuff for the newly-legally-renamed Oliver Michael Hirst.
name be withheld. Hirst said for her, having breasts and dealing with a period was just awful.

Recalling her initial reaction, she jokingly told the Sunday Guardian, “Life starts happening. I have a chest, things are coming out of me and it was just like very bad.”

The Sunday Guardian met Hirst at last weekend’s inaugural LGBTQIA Pride Parade, which was held at Nelson Mandela Park in St Clair.

The 19-year-old, who suffers from social anxiety and depression, was not at all nervous on the day to speak out on gay rights, even taking to the stage at one time to share in a nutshell her experience as a trans-male and her name changing process. She also exuded pride and joy for the day, saying, “I never thought this day in T&T would come where you can see so many trans-people. I am really glad to see that trans-people are coming out.”

But that joy and pride Hirst felt on July 28, 2018, are feelings estranged from her everyday life since discovering what she calls her real identity.

It’s still a hard pill for her mother and brother to swallow. And though her mother has reluctantly come around, her brother has completely distanced himself from her and never accepted or supported her transition.

“He doesn’t acknowledge it but I haven’t been particularly close with my brother. We have always had kind of a rough relationship, so we pretty much avoid each other in the house,” she told the Sunday Guardian.

School was another pit of depression for Hirst and although most would identify with her obvious masculine behaviour, the former Holy Name Convent student said she did not have that many friends.

“I was pretty much a loner, struggling with social anxiety, depression and other mental issues,” she related.

Hirst added, “For the first three years in secondary school, I did not have a proper group of friends at school. People would come and talk to me occasionally but I didn’t really have a place.”

Things changed a bit for Hirst once she got to form four after meeting for the first time amongst her peers, an openly bi-sexual schoolmate. She immediately gained comfort in this similarity and for the first time stopped viewing herself as a ‘weirdo.’

“At the time I really did not understand what I was going through, everything was confusing. I knew I was questioning my gender but I did not know there was a name for it. I eventually understood what the term transgender meant,” Hirst said.

The chest-binder wearing teen, who has not yet fully transitioned from female to male, explained that she is unable to begin her actual transition because of her doctor’s concerns for her mental health. Although a psychiatric evaluation revealed unconfirmed
This is not good for Hirst, who has to deal with a very painful and heavy menstrual cycle each month, something that runs in her family. But more seriously, with these periods also comes severe suicidal thoughts.

“I understand the doctor’s concerns but I also find it a little bit unfair because you don’t know how close someone is to the edge or how bad they need that,” Hirst reasons.

I did not have a choice

While it is thought people of the transgender community take the decision or choice to live the ‘lifestyle,’ Hirst says she never had a choice. In fact, she told the Sunday Guardian if she could give it up she would, as the experience has all been too painful.

The roller coaster life as a trans-teen has caused Hirst to attempt suicide on several occasions. Without soliciting for that kind of attention, she has also endured online bullying and hate messages from anonymous people threatening to hurt her and wishing death upon her.

Hirst, who has a transgender boyfriend living in New Jersey, admits the space at the recent event was one that was safe only because it was predominantly made up of people from the LGBTQIA community.

“The solidarity is nice but people who do not support the LGBTQIA plus community here tend to be very violent about it so it is scary,” said Hirst, who is currently seeking asylum in Canada.

While Hirst told the Sunday Guardian she understands her mother’s grief in what she might perceive as losing a daughter, she had a strong message to send to parents of trans-children.

“You can have two choices, a dead daughter or son lost to suicide or hate crimes, or you can accept them and help them through it.”

The Maraval native said there was still a long way to go in T&T accepting differences.

“Not everyone is going to agree with this and I don’t need anyone to agree with why I am the way I am. A lot of times, I don’t understand why I am the way I am…it’s kind of just how you’re born,” she said.

“All I ask from people is basic human decency. Refer to me as Oliver; treat me as any other guy. I’m not going to tell people they have to go advocating for trans-rights if that’s not their thing.”
A 21-year-old El Dorado man was held up at gunpoint on Thursday night by two men who accused him of being gay and relieved him of a gold-plated chain valued $300.

According to reports made to the police, at about 10 pm on Thursday, the victim was awaiting transportation near St Mary’s Anglican School, Eastern
Road, Tacarigua when he was approached by two men armed with guns. One of the men said to him "we do not want no faggot in Trinidad so we robbing you." After being robbed of his chain the victim went to the Arouca Police Station and made a report.

A search was carried out for the two suspects to no avail. PC Ali of the Arouca police station is continuing enquiries.
TAB 21
No place for discrimination

Michelle Loubon
Jun 19, 2018

HUMAN RIGHTS: From left, researcher Renelle White; His Excellency Arend Biesebroek, Ambassador for the European Union in T&T; Dr Gabrielle Hosein, Head of Department at IGDS; Samantha Rattan and Rawwida Baksh, Principal Researcher, following the recent workshop for CSOS to contribute to reduce Gender-Based Violence and LGBT discrimination in Trinidad and Tobago, Institute for Gender Development Studies, SALISES, The UWI, St Augustine.-- Photo: CURTIS CHASE

Employees spiked the drink of a boss whom they did not wish to report to because he was a homosexual. A homosexual took his brother and sister to court because of the hostility and violence they directed towards him.
LGBT youth are more subject to bullying from their peers. These were among the findings from researchers Samantha Rattan, who conducted interviews with survivors of gender-based violence (GBV); perpetrators; and Renelle White, who interviewed members of the lesbian/gay/bisexual/transgender (LGBT) community.
Police must protect us

COREY CONNELLY  SUNDAY 15 APRIL 2018

File photo: Gay rights activist Jason Jones celebrates at Woodford Square, Port of Spain with Kelvin Darlington (Saucy Pow), left, and another member of the LBGTQI community after the high court’s ruling decriminalising gay sex. PHOTO BY AZLAN MOHAMMED

Activist Jason Jones is painfully aware that Thursday’s ground-breaking Supreme Court ruling which overturned this country’s sodomy law would engender backlash for the local lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community.

For him, it was a foregone conclusion.
“I think we have to emphasise security for our community because we are a minority community and very vulnerable.”

Jones called on acting Police Commissioner Stephen Williams and, indeed, the TT Police Service, to “catch up with this (backlash) as it’s ongoing.

“So, I do implore the acting commissioner of police to instruct his officers to be aware of the issue and the fact that LGBT people are at a higher risk of violence. I think we all have to be on guard for any unfortunate incidents that may occur. It’s sad but transformation does not happen without this. With growth comes this.”

Jones, who prefers to be called a human rights defender, also envisages a role for faith-based leaders, non-governmental organisations and other civic bodies in promoting calm.

“I call on the Archbishop of the Roman Catholic Church (Jason Gordon) and the leaders of other faith-based organisations to ask their members to please treat us with respect and kindness. That has to be done. It has to come from them.”

He added: “This is an historic moment for human rights. It is the last civil rights issue for this country. We can now truly say that we are a callaloo country, a rainbow country and here every creed and race has finally found an equal place. It’s their voices. I cannot call for calm. I am the focus of the hate.”

So concerned was Jones about the vandalism, he declined to reveal to Sunday Newsday the venue of a celebration which members of the community were hosting on Friday night.

He would only say that a number of artistes were expected to perform.
2016.

“With emotions running so high, we have to be cognisant of the security for all of us.”

Jones knows only too well the venomous, violent attacks to which members of the LGBTQI are subjected. He has lived it.

“Growing up in TT, I suffered tremendous homophobic abuse,” he said. “Even when I walked down the steps of the High Court, people were shouting offensive terms at me.”

Nevertheless, Jones still hoped the country would come to terms with the judgement and be accepting of the country’s gay folk.

“I think we, as a nation, have to grow up and I think this judgement has shown that we have to grow up and that judgement has taken us to a much better place.” He is unfazed by the Government’s stated intention to appeal the judgement.

“When you attack the Constitution, it must go to the final court of appeal.”

He felt, though, the sum he incurred to get to this point was well worth it.

“I walked out of court having spent five million TT dollars and to continue unto Privy Council may probably be half of that again.

“This costs. I have the best lawyers in the world but the best lawyers in the world are not cheap. My work is not cheap. So, I did not want this to be done cheaply.”

Asked how he was able to fund the legal battle over the past two years, Jones told Sunday Newsday: “I am very lucky that the lawyers have all given their services at this point. I have a crowd funder to raise funds to help me and I think now that people see what I have achieved.”
Next week, Jones plans to attend the Commonwealth Heads of Government Meeting (CHOGM) in the United Kingdom, where he is hoping to meet Prime Minister Dr Keith Rowley. Ahead of the trip, though, Jones said he may even write the Prime Minister a letter “just in the sense that he applauds my work and he applauds the judge for his deliverance of justice.”

He added: “What we saw happening in the court was our democracy at work and that is the key thing, Trinidad and Tobago right now is on the international stage as being a modern, progressive, democratic nation and that’s huge.”

Based on the judgement, Jones said, Rowley can walk into CHOGM with his head held high “because he is now ranked the same as the prime minister of England, Australia where there is equality.”

“So that puts him into a much higher bracket of leader. I think it is important for him to share in my pride and I hope most of the citizenry will share in that pride as well.”

1. Support pours in for Icacos couple
2. Garcia: I offer myself...again
3. Paria responds to uproar over fuel sale
4. ‘Welcome, Mr Manning’
5. [UPDATED] Fyzabad teenager found in Point Fortin
6. Cunningham summoned by Tracy after food card fraud claim
7. Finding life, love behind bars
TAB 23
RAINBOW PRIDE: A member of the LGBTQI community pose in front of a rainbow flag at Woodford Square, Port of Spain, on Thursday after a High Court judge ruled that this country’s
OUTSPoken Reverend Victor Gill says despite the court’s ruling on the unconstitutionality of this country’s buggery laws, his position has not changed and is warning that the ruling can have serious repercussions, including massive social unrest similar to that which led to the 1990 attempted coup.

Gill, of the Redemption Christian Centre, spoke to Newsday after conducting service at one of his churches yesterday.

He has been one of the most outspoken critics of the law’s removal.

Gill said while he was still opposed to homosexuality, his organisation preaches peace and did not condone violence against any group of individuals.

Responding to critics who placed him indirectly responsible for the eviction of gay men by landlords and relatives, Gill said this was merely the reaction of a society opposed to homosexuality.

Citing the 1990 insurrection, Gill predicted similar action from the public in response to the buggery laws’ ruling. “This decision will have major fallout. There will be a spillover. It’s not something that I am advocating, but in 1990, the Jamaat al-Muslimeen felt the government at the time was being unjust, and it led to anarchy. The Jamaat has already expressed their objection to the removing the buggery law and so have we (Christians), 95 per cent of the population do not want this.

“This could lead to a big uprising in this country unless the government steps in and realises this country cannot bear this moral burden.”

Gill said he and other religious leaders were in the process of organising one of the largest protests against the law’s repeal, uniting various religious organisations, sometime this week.
Newsday also spoke to Luke Sinnette, social worker and member of LGBTQI lobbyist group, Friends for Life, who said he was concerned by Gill’s remarks about social uprising. Sinnette said he was not convinced that Gill was using his role as a religious leader for the greater good, and accused him of hate speech. “They have to stop and take responsibility for what they’re doing, because if you’re putting this rhetoric out there, that there will be some social unrest, you put that in the minds of people.

“Instead of quell the unrest you choose to feed it. This is not religious beliefs; this is homophobic beliefs. It’s hard when all you want to do is get up and get a taxi to come home; it’s a serious problem,” an emotional Sinnette said.

Sinnette added that despite the backlash, his organisation has received tremendous support from local and international supporters for the three men who were evicted from their apartments and have succeeded in finding alternative accomodations for the trio.

In his ruling, High Court judge Devindra Rampersad said Jason Jones’ constitutional challenge was not a case about religious and moral beliefs but was one about the inalienable rights of a citizen; the dignity of the person.

Although he has ruled that the laws were unconstitutional, null and void, he has not struck down the offending sections of the Sexual Offences Act, so they remain in place until he finalises his order.

The State has announced its decision to appeal the ruling.

**Trending**

1. Support pours in for Icacos couple
2. Garcia: I offer myself...again
TAB 24
Members of the gay community are calling for calm and tolerance as three young men who were at the forefront of a human rights rally celebrating the historic court ruling on the unconstitutionality of the buggery and serious indecency laws, last Thursday, have been kicked out of their homes.

The three men, social worker Luke Sinette confirmed yesterday, were evicted for being gay. Among them, one young man who was asked to leave his family home because he embarrassed them because he was seen at the rally. Another man was accosted and taunted as he arrived at his rented apartment
and a third was told by his landlord that after his display at the rally he had to leave.

Sinette’s organisation, Friends for Life, has put out an appeal for people to open their homes for temporary accommodation for the displaced men who no longer have a home. Friends for Life is also asking for resources including couches and mattresses for them. He said the response has been good.

Colin Robinson, head of Coalition Advocating for Inclusion of Sexual Orientation (CAISO), blamed the homophobic reaction on the protest mounted by several religious organisations including the T&T Cause and the sentiments expressed by its member Bishop Victor Gill that the ruling would be met with resistance.

Robinson appealed to the politicians and religious leaders to end the violence by speaking out and joining their call to share the nation with all the diverse groups.

“That is the most important thing that can happen now. Homophobic violence, the worst kind, psychic violence, happens in the home, in schools and in the workplace. It is sad that some of our brave folks who stood up with us have no place to live today.”

Robinson said they intended to sit with the police and work out a strategy to protect their members from hate crimes.

Sinette remarked that there had been precedent around the world where laws favouring same sex marriages and other gay rights had sparked violence against members of the LGBQTI community. He called on people to deal with the outcome in a rational adult way.

Activist Jason Jones who dared to seek the decriminalisation of Sections 13 and 16 of the Sexual Offences Act, said, he was expecting this kind of push back here as well.

Gill, one of the advocates for keeping the laws intact, also said the court ruling was not only biased but could lead to some form of anarchy.
Snippets of the backlash that could follow was demonstrated on the steps of the Hall of Justice on Thursday when activist Rudy Hanamji filmed a video which went viral, showing the tensions between the religious and the LGBTQI groups after the ruling. Insults were hurled, threats made, and one member of the community was allegedly spat on.

Sinette said one of the men who accompanied him and the female victim to the Port of Spain CID to report this matter was among those evicted.

“Strangely enough, I was talking to this young man at the rally and he accompanied me to the police station to make a report that another demonstrator got spat on and pushed by a Muslim guy. I got a message from him yesterday, that his landlord said he had to leave.

“The landlord identified his visibility at the rally for the decision he took,” Sinette confirmed.

“Another member, who is ‘out’ with his family, they know he is gay, was out front and centre at the rally, holding the banner and was covered by every media and in every newspaper. Because of this, his parents would have asked him to leave. I mean we were really shocked because his parents know, but perhaps he misjudged them or perhaps he embarrassed them because maybe their friends and relatives did not know.”

Sinette referred to the third situation in which a member who lives at Belmont, was attacked.

“He was going home, when he got to his gate, he was attacked and taunted and had to make a report at the Belmont Police Station. Now he wants to leave his home, because he is terrified, afraid that he could be in the sanctity of his home or walk out of his gate and be attacked because people know where he lives. This guy, like most of the people who were at the rally are people who have come out. They are not in the closet, but I guess because they are more visible, having been seen on television, other people are now more emboldened to attack them.”
Sinette said the police have been very professional so far in their dealings with them. He said they were now documenting every case, and were encouraging people to make reports because human rights abuses had been perpetrated on gay people in the past, but they had been too afraid to report them.
Tension over buggery ruling

by 768 days ago  Fri Apr 13 2018

SHALIZA HASSANALI

Two members of the LGBTQI community were yesterday attacked outside the Hall of Justice, Port-of-Spain, just as Justice Devindra Rampersad was set to give his ruling on Jason Jones’ challenge to T&T’s buggery laws.

The first incident took place on the steps of the Hall of Justice with Cherisse Berkeley, who was shoved, spat upon and cursed by a supporter of the Jamaat-Al-Muslimeen group, while scores of flag-bearing LGBTQI people were awaiting Rampersad’s judgement.

Armed with a placard bearing the words “Side By Side We Stand, All Yuh Ova-So,” Berkeley had joined the LGBTQI community to lend support to the cause when members of the Jamaat also converged on the scene and began shouting at them.

“They began shouting for us to go from here. We don’t want any gays here.

“Then the Jamaat supporter began to mutter something from the Bible, saying he was trying to preach the word of our God, while he was inching his way up to my face.

“I told him what he was doing was against the law,” Berkeley told the T&T Guardian of the incident.

Berkeley, who formed her own organisation in 2016 called Cherisse PeaceS, which educates young people about sex education, said the angry Jamaat members called for the police and that was when things turned a bit heated.

“In the melee, the member pushed me and in passing said I am a f… bitch and spat in my face.”

Berkeley reported the matter to the Central Police Station shortly after the incident. Cpl Arthur is conducting investigations.

“The police have advised us to take all legal proceedings against the individual, which I intend to do. What he did was wrong,” said 26 year-old Berkeley, who admitted she has been an open gay for most of her adult life.

Berkeley, who also revealed she was raped at the age of 17 by someone she trusted, said she was yet to decide when to press charges.

“I was raped by the individual, who kept insisting that he wanted to make me straight.”

Yesterday’s attack, which was captured by someone using their cellphone camera, was later posted on social media has since gone viral.

Berkeley said she heard another LGBTQI person was attacked while on his way to his car, which was parked a few metres from the court.

“This is the information that is now coming to us. We are trying to find out who is the individual and what transpired,” Berkeley said. As for the ruling, Berkeley said it was a large stepping stone for the community “to pave the way forward in terms of equal rights for all LGBTQI citizens.”
TAB 26
Questions over shooting of gay man with links to Trinidad judge

Dillian Johnson fears being killed for sexuality and is seeking asylum in the UK after attack

Robert Booth
Wed 28 Feb 2018 09.11 EST

Lawyers in Trinidad and Tobago are challenging the conduct of the country's top judge, following questions about his relationship with a man who was shot in an ambush and is now seeking asylum in the UK.

The Law Association of Trinidad and Tobago is investigating allegations involving the chief justice, Ivor Archie, after local media queried his conduct in relation to Dillian Johnson, 36, who survived a night-time shooting outside his home in December. Johnson fled Trinidad to the UK three weeks after the shooting and says he fears for his life if he is forced to return.
Questions have been asked about whether the married judge took Johnson with him to a four-day Commonwealth law conference in Guyana in 2016, and whether he used his office to lobby for state housing for people, including Johnson. It was also alleged that he proposed to his fellow judges that they swap their state-provided personal security officers for others provided by a company that employed Johnson as a consultant.

Archie has denied the allegations and has accused the law association of being biased against him. He strongly denies any suggestion he knew about a plot to shoot Johnson, saying such claims were “ridiculous and false”.

Archie, 57, is an honorary member of the middle temple bench, one of London’s four inns of court, and is considered a liberal thinker on gay rights. He has denied having an “intimate” relationship with Johnson, a manager for the state water and sewage company who was convicted of forging job references in 2008. Archie’s lawyers declined to say whether he described himself as gay or bisexual as they said it did “not affect the chief justice’s professional conduct and concern[s] his private life”.

Johnson was shot outside his home on 3 December and arrived in the UK on 29 December. He says he fears for his life if he returns to his home country and believes he was the victim of a targeted hit.

“I fear being murdered for my sexuality if I go back,” Johnson said. “My relationship with [the chief justice] has been highly publicised.”

Johnson has complained that police have failed to bring his attacker or attackers to justice. He is being assisted in the UK by the human rights campaigner Peter Tatchell, who said there was “public hostility and great stigma attached to homosexuality” in Trinidad and Tobago.

“Buggery” remains punishable by up to 25 years in prison and six gay men were murdered in the first five months of 2017, according to rights campaigners.

Last week, a legal challenge was launched to repeal the laws criminalising homosexuality in the Caribbean nation, which has a population of 1.4 million. The UK-based gay rights advocate, Jason Jones, who is leading the case, has said he has received death threats as a result.

In January, photographs emerged in the local press, apparently showing Archie and Johnson on a hotel bed at a legal conference in Guyana. Another photo showed Johnson wearing what
appeared to be Archie’s conference lanyard. Archie has said he did not stay in the same room as Johnson or pay his bills, and that US forensic experts had concluded the photos had been digitally manipulated.

Archie’s lawyers said he was “alive to the clear mischief of Mr Johnson” and that two of the photos “contain images which are false representations of the subject matter of the photographs”.

Johnson has alleged to police that Archie may have known about the shooting before it happened. Archie’s lawyers said Whatsapp messages which Johnson claims show Archie plotting the attack with another man “were as false as the doctored photographs and should be forensically examined by a reputable source before any responsible person seeks to rely on them for publication”.

In December, Archie won backing from a group of supreme court judges who believe he has been the victim of “false narration” in respect of some of the allegations against him. They took out a newspaper advertisement to declare it was they, not Archie, who suggested alternative security arrangements should be explored.

“At no time did the honourable chief justice seek then or since to ‘convince’ fellow judges to change existing security arrangements,” they said in a statement signed “group of judges”.

However, last week the Trinidad and Tobago Law Association said it had appointed two QCs to take their investigation into Archie forward. They said they had a list of allegations “sufficiently substantiated as to require a response”.

Archie responded by saying he would issue a high court claim to halt the investigation. He alleges the law association is “tainted by bias” against him and is exceeding its powers.

Before Johnson was shot in Gasparillo, 90 minutes’ drive from the capital, Port of Spain, there was growing media speculation about the nature of the relationship between Archie and Johnson. Johnson believes he had been under surveillance in the preceding days.

After the shooting, Johnson made a detailed 13-page crime report to the anti-corruption investigative bureau of the Trinidad and Tobago police, including details about how he claims to have obtained the Whatsapp messages which Archie’s lawyers said were fake.

He described how, four days before the shooting, he was followed in his car by an unidentified man to a restaurant car park, where the man photographed his vehicle. The following day a friend introduced him to a man whom he recognised as having followed him 24 hours earlier. Johnson said the man warned him that the political opposition wanted to kill him.

Johnson told the police that on the day of the shooting he was outside his home when he was approached by a man asking if there was a mechanical garage nearby.

“I saw him move his left hand and pulled up his jersey and with his right hand he pushed it down the waist of his pants. I heard him say ‘Doh make a scene’. I felt fear and immediately turned and started to run. I heard loud noises and knew it was gun fire.

“I didn’t know I was hit until I came out of the bushes,” he told the Guardian. “The adrenaline was pumping.”
He had been shot once in the hand and went to hospital for treatment.

“The police came to me and took reports,” he said. “They did nothing to find the perpetrators.”

Asked to comment, the chief of the the anti-corruption investigative bureau, William Nurse, said: “I have no interest in speaking with the press, foreign or local.”

**America faces an epic choice ...**

... in the coming year, and the results will define the country for a generation. These are perilous times. Over the last three years, much of what the Guardian holds dear has been threatened – democracy, civility, truth. This administration has cleared out science and scientists across all departments. America’s reputation as a competent global leader is in peril. Truth is being chased away. But with your help we can continue to put it center stage.

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Adult & Workplace Bullying on the Rise: the Victims Speak Out

L ast week, we looked at bullying among school children and young adults. But did you know that bullying in the workplace is said to be on the rise? Experts and studies have acknowledged that adults suffer from the same health issues like children who are victims of bullying.

While statistics are not forthcoming about how many adults are affected by bullying in Trinidad and Tobago, in the United States of America it is estimated that more than half of all American workers have been affected by workplace bullying. A 2016 article in Forbes magazine by Christine Crawford quoted a University of Phoenix study which revealed that 75% of workers were affected by bullying in the workplace. Some workers who experienced bullying were absent from work quite often, affecting not only their productivity but also that of the company/industry. Others suffered from low self-esteem, suicidal thoughts and had to seek counselling for mental health issues.

Aside from what happens in the workplace, many adults are also bullied because of their sexual orientation and even because of assumptions.

Sexual Orientation Bullying

44-year-old Kerwyn Jordan was forced to seek counselling and even used anti-depressant medication for years because of the bullying and harassment he experienced for his sexual orientation.

"I have been a victim of bullying in many places I've lived. I have had to change my approach to where I live to avoid being bullied."

He said his first outbreak incident of bullying occurred when he lived in Petit Bourg. He told us, he was about to go shopping but was returning home to collect something he had forgotten when he was attacked.

“A group of boys ganged up on me, they began beating, cuff, kick. I called out the lady in the shop for help, she watched me and closed up the shop. A friend who lived close by was seeing something, what was happening. I called out to him to call the police or help and he just stood there staring. So I took the beating. They dispersed after. I called police, they said they had no vehicle. I went to the San Juan Police Station reported it, nothing came of it. When I got back home later I contacted a family friend who referred me to officers from the Belmont Police Station. They eventually came, pulled out the gays and warned them not to interfere with me again. The officers took them to the area station, where they spent the weekend in a cell. So I was able to get some redemption.”

Although Kerwyn saw his attackers punished, the incident left him permanently scarred—emotionally. Even while talking about, and feeling fear, he didn’t have a sense of apprehension.

"Feeling of it lingers on. Since then I have been living in areas which are above my means, gated communities, where I can feel safe. I still feel vulnerable. There is no family nearby, no familiar relationship. I still have a sense of apprehension.

But that was not the only time Kerwyn was bullied because of his sexuality. He said in Diego Martin it was “torture” being constantly heckled by residents. One time he was even beaten with a cutlass. The emotional pain, he said paled in comparison to the physical assaults.

“I went to therapy to deal with depression because of bullying. For three years straight I was in deep, deep depression. I was diagnosed with acute depression and acute level of PTSD (post traumatic stress disorder). I had to get a dual dose of treatment with medication and counseling.”

Kerwyn said he was dating therapy that he dealt with the bullying he experienced at home, school, where he lived and at the workplace.

Workplace bullying went to the extreme

For another man, whom we will refer to only as L, workplace bullying led to isolation, and discrimination with absolutely little to no recourse.

L worked in the public service for close to 20 years and had been at the Central Statistical Office for 12 years. During that time he began exhibiting symptoms of HIV and went on sick leave in 2001. Within that period, his life turned upside down.

His colleagues and superiors began to discriminate against him, bullied him and because he had HIV automatically assumed he was gay.

Staff members openly called him “AIDS man”, said “He don’t like women” and also used slangs too crass for publication, when referring to L. Snide homophobic remarks were used in his presence, staff members wiped phones off after he used them and people would leave the washroom after he used it.

Those incidents and the name calling were just the tip of the iceberg when it came to the bullying L encountered. His desk was moved from the main office to an isolated area close to the kitchen, which was not a designated office space. The area was not only lonely but had no air conditioning and because of a hole in the wall, L was exposed to the elements. He had a phone or computer and this stressed his job function.

Despite countless complaints to senior members of staff, nothing was done. L was excluded from staff training courses and had no evaluation done, which meant he could not get a salary increase.

The bullying has affected L psychologically and altered his attitude. He has become angry and frustrated. He said he is certain the bullying, discrimination and unfair treatment at the workplace was as a result of his HIV status. L said, he did not go to any other institution to seek redress for what happened to him at work.

What’s been learnt from being bullied

But despite the challenges and at time debilitating psychological trauma from being bullied, Kerwyn said he has found ways to cope.

“Having a network of friends I can de-stress with helps. Also having allies in the police service has helped as well, because when stuff hits the fan, you have somebody to get there and be there. Speaking to someone about my experiences was very useful. I was able to clear my head of issues.”

For Kerwyn the ability and willingness to open up to someone about the ways being bullied has impacted his life, is the message he wanted to share with those who are going through a similar experience.

“Talk about it, talk to someone about the feelings of depression, hurt, humiliation. It doesn’t matter if you’re a man, woman or child being bullied will cause you to be hurt. We all want peace, no one wants to be treated like that. So find a confidant and friend who can see you openly and be yourself.”

I still feel vulnerable. There is no family nearby, no familiar relation. I still have a sense of apprehension.

What is workplace bullying?

Is defined as verbal, physical, social and psychological abuse by your employer, manager/ supervisor, another person at work or group of people at work. It can occur in any type of workplace. Some types of workplace bullying are criminal offences and can be reported to the police. Other forms of bullying can also result in discriminatory practices and can be referred to organisations which investigate workplace incidents.

Statistics on adult bullying are not dear and vary depending on the studies done. However, health care professionals and law enforcement have said that it’s quite prevalent and growing. They added it can often be misinterpreted as harassment or abuse.

Where to find help and support

Friends life@live.com
Or Facebook Page: Friends Life Social Worker Lake Sinnette
Caltex: 379-1952
Call: 379-1952
For Kapchor Social media
Equal Opportunity Commission
55-57 Manic Street, Chaguanas
672-0928
Email: eos@igg.com
Contact a psychologist/psychiatrist if feelings associated with bullying become overwhelming.

Nearest Police Station, if attacked or life is being threatened
TAB 28
Victimised for sexual orientation

Milly happy after being granted asylum

Deyone "Milly" Guiseppi fled this country five years ago after being bullied, harassed and victimised for her sexual orientation and sought asylum in a European country.

Guiseppi has since been granted asylum and is happy.

"I am in an environment where it is more positive and I think more clearly and it is conducive to me progressing, I can grow as a human being," Guiseppi told the Sunday Guardian.

"I think it's the best decision I ever made," she said.

Guiseppi, who was born a male, said at age three she realised that something was different with her.

"I knew but I just didn't have the words to say what that was."

It was only when she turned 16, Guiseppi said she was actually able to find the words to describe what she was going through.

"I was struggling to find my identity or to at least fit in or feel like I belonged somewhere. I always thought that I was gay but then I realised I was transgender, many people just don’t understand in Trinidad and Tobago and they try to put everything into the box of being gay," Guiseppi said.

Guiseppi said that being transgender has to do with your gender, while being gay has to do with who you are attracted to.

Eventually as Guiseppi grew older, she decided she wanted to transition.

"I decided that I wanted to transition and didn’t want to stay living an unhappy life as somebody I wasn’t," she said.

Guiseppi approached a private doctor for hormone therapy to assist in her transition.

The process, however, was extremely expensive and Guiseppi eventually sought therapy at a public health facility.
She also had to undergo psychiatric analysis.

"I was gradually changing myself, nothing extreme, by using make-up and wearing clothes that was more feminine," Guiseppi said.

Things, however, became problematic when she got a new boss who was also a pastor.

"He started to harass me about how I chose to express myself in the way I dressed and I was even given a document highlighting the dress code for men and women," she said.

The company's human resource department also got involved.

"The harassment was becoming continuous and I really didn't want to go to work any more. It was a nuisance, and if I can't work then I can't support myself," she said.

**The Equal Opportunity Commission could not help**

Guiseppi approached the Equal Opportunity Commission (EOC) and filed a complaint about victimisation.

"I stood against the victimisation because I thought it was wrong, I was doing my work and I couldn't understand why I was being harassed like this, but I think it is part of our society in Trinidad where it is seen as being bad to be transgender, gay or lesbian," Guiseppi said.

"People should be able to be themselves, they shouldn't have to change for other people because I was not harming anybody."

However, according to the EOC Act, people who claim to be discriminated against on the basis of sexual orientation have no recourse.

The act prohibits discrimination against individuals on seven grounds (race, ethnicity, religion, sex, marital status, origin and disability), but sexual orientation is expressly excluded from protection.

Although the act includes sex as a status ground, Section 3, the interpretation section, provides that "sex does not include sexual preference or orientation".

Both EOC chairman Lynette Seebaran-Suite and head of The Coalition Advocating for Inclusion of Sexual Orientation (CAISO) Colin Robinson have called for this to be changed.

Guiseppi said this hurt.

"The EOC told me they couldn't help me because gender in T&T is limited to being male or female. It made me feel like that with me being transgender that the EOC was telling me I wasn't a citizen because of my gender, it was like they were saying they are unwilling to protect me because in the laws of Trinidad and Tobago it says that there are only two genders," she said.

"My gender was not protected under the act. It is a shame that all Trinidadians cannot be protected from discrimination and it's a shame that all Trinidadians can't live in their country and be happy. I'm still proud to be a Trinidadian and nobody can take that away from me, but I think in changing some of the laws we will be more inclusive to people who are from the LGBTQIA community. It is protecting your citizens, which is basic human rights."

While going through the EOC process, Guiseppi was also physically attacked.

Lack of support from her family was also an issue.

"It all reached a breaking point," she said.

Guiseppi bought a ticket and left the country for greener pastures.

When she landed, she filed for asylum and had to undergo the requisite interviews.

She has since been granted asylum.

"If Trinidad and Tobago couldn't protect me and it is my own, then what could I do again. If my own didn't care about me and want to see the destruction of me because of only one aspect of me then I had no choice but to move away and get out of that negative situation," she said.

"It was extremely overwhelming when I reached because, of course, I didn't speak the language, there was different weather, different people and a different culture, it is still a bit overwhelming sometimes but I'm getting accustomed to it," Guiseppi said.
Guiseppi is currently in university.

Previous Article
6 companies tendered for ferry in November

Next Article
Woman, 20, injured in hit and run accident

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Popular in the Community

More Conversations for You
Study: T&T's LGBTQI community denied rights

Joel Julien
Published: Sunday, December 31, 2017

While many people look to the start of the new year in anticipation of new beginnings, T&T’s lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community continues to be faced with troubling issues”, Friends For Life (FFL) said.

The group, which has offered friendship, support and counselling to LGBTQI persons in the country for the past 20 years, published an advertisement yesterday highlighting the findings of a research project it held between May to September.

A steering committee was established with five members of the LGBTQI community who guided development of research questions, methodology and analysis of the data with two university-based researchers providing technical support during the process. The study used a combination of methods to collect data including an online survey and journaling by ten LGBTQI individuals.

FFL said: “The findings showed that the LGBTQI in Trinidad and Tobago experience many forms of human rights violations, including denial to the right to security of person, discrimination in accessing and maintaining economic and social rights such as employment, education, health and housing, and experiences of trauma from emotional and physical abuse perpetrated by both community and family members.”

All of the survey’s respondents said they, or persons close to them, were victims of violence on at least one occasion, including being raped, robbed and physically abused.

Apart from this violence the LGBTQI community also faces difficulties when it comes to housing, FFL said.

“The policies of the Government of Trinidad and Tobago is silent on the LGBTQI access to low-cost or government subsidized housing. However, there seems to be an institutionalised barrier since the study’s findings show that it is significantly more difficult for same-sex couples to submit and have an approval since the process privileges married heterosexual couples.”

“Also, there is no protection from landlords’ discrimination against LGBTQI who attempt to rent or are renting,” the group said.

FFL said the study moves beyond anecdotal evidence to show patterns of structural and cultural barriers which continue to plague LGBTQI’s enjoyment of rights and protections in T&T.

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TAB 30
NEWS
Sasha Fierce, an agent for change
JANELLE DE SOUZA  SATURDAY 23 DECEMBER 2017
For several months, up to the time of her death, Sasha Fierce, aka Keon Allister Patterson, worked towards educating the local LGBTQI community about HIV/AIDS. LGBTQI stands for lesbian, gay, bisexual, transgender, queer or questioning, and intersex.

One person who knew her said Fierce was previously a sex worker and felt strongly about HIV prevention and management, as she knew the risk of her former occupation.

Her latest job was as a peer educator with the LINKAGES Project funded by the United States (US) Agency for International Development (USAID) and the US President’s Emergency Plan for AIDS Relief (PEPFAR).

The project provided support for people who belong to their “key” population including sex workers, men who have sex with men, people who use drugs, and transgender people, as they were a section of the population most affected by HIV because they operate on the margins of society.

A LINKAGES co-worker said Fierce started working with the project in August and was with them until she was shot and killed at Nelson Mandela Park, St Clair on December 5.

She said that in October, Fierce reached 20 members of the key population, and supported a few who were victims of violence. In November, she reached
centre providing care for sexually-transmitted infections.

“What Sasha did was work with people one-on-one and, because she had a lot of respect in her community, she was ideal as an agent of change. She was one of the more productive persons on the platform. Sasha was doing really good work.”

She believed Fierce felt strongly about the project because she had similar experiences to those with whom she worked.

She said many members of their key population had no support from their family, or if they did, they and their family were ostracised so they ended up on the street. Also, if people noticed that they were different or found out they had HIV, no one wanted to employ them. Therefore, they clung to each other and formed communities.

“With all the glitz and glamour in the community, all the make-up and fun, many times their family alienates them. There is a collective experience most persons have – being born male but feeling female or vice versa. Sometimes our families and the people of TT are not prepared to treat with persons who are different.”

Luke Sinnette, a social worker with the LGBTQI organisation Friends for Life, had high praise for Fierce’s work with LINKAGES. He said, “Her emotional intelligence was a bit more. I think she understood it was not just about her, that she was part of a movement and it needed to happen. In the process she affected a lot of lives.”

Agreeing with Fierce’s co-worker, he said many trans-women had limited employment opportunities, and sex work ended up being one of the few options available to them...and it was lucrative. “I think she knew if you are out there (as a sex worker), there is a huge risk to it, so it was important that she talk about the risk and how not to get HIV and ruin your life. And if you are positive, taking your medication on time, all the time.”
There, it was taught if you felt good about who you were and about your sexual orientation, you made better choices about sex.

He said Fierce attended many of their workshops, then joined the TT Trans Coalition, which Sinnette believed emboldened Fierce, who began attending workshops dressed as a woman.

Sinnette said around that time Fierce’s confidence grew. She wanted to go to school to become a social worker.

“If you were around her she would always make you laugh and she would go out of her way to make you feel good.”

**Trending**

1. Support pours in for Icacos couple
2. Paria responds to uproar over fuel sale
3. Garcia: I offer myself...again
4. ‘Welcome, Mr Manning’
5. Cunningham summoned by Tracy after food card fraud claim
6. [UPDATED] Fyzabad teenager found in Point Fortin
7. Finding life, love behind bars

**Comments**

"Sasha Fierce, an agent for change"
TAB 31
Chief Justice laments murder of Sasha Fierce, calls it a hate crime

JANELLE DE SOUZA  SUNDAY 10 DECEMBER 2017
Sasha Fierce was found murdered in Nelson Mandela Park

Chief Justice Ivor Archie yesterday said he had no doubt that the recent murder of transgender woman Sasha Fierce was a hate crime.

Fierce, whose given name is Keon Allister Patterson, was killed at Nelson Mandela Park, St Clair, on Tuesday night. Police found her body with several gunshot wounds in a pile of rubbish.

Speaking at the launch of the Human Rights Development Trinidad and Tobago at the Hall of Justice, Port-of-Spain, Archie said discrimination against people’s sexual orientation or how they self-identify was no secret in the Caribbean.

He said the country needed to have a conversation about discrimination but society sorely lacked forums and safe spaces to hold such discussions.

“IT behoves all of us to constantly enquire and be mindful of whether, as a substantive outcome, genuine equity in treatment is the lived experience of the persons with whom we come into contact every day.”

The Chief Justice said society had the habit of defining human beings by their “otherness” which reinforced stereotypes that perpetuated discrimination, despite the appearance of tolerance and harmony. “I actually think that we need to revisit our national watchwords and move from ‘tolerance’ towards
acceptance" because we are perfectly capable of tolerating that which we secretly or even openly despise.
Chief Justice Ivor Archie believes the murder of Sasha Fierce was a hate crime.

“The truth is that we still live in a society riven by deep structural inequalities on the basis of sex, race, ability and other prohibited or unstated grounds of discrimination. The beginning of true development must be the kinds of conversations that we are having today.”

He added that, in all the talks about human right and freedoms, “In Trinidad and Tobago simply asserting one’s right to be and express oneself can come at a terribly high price.”

Archie said discrimination may have many different causes and could be aimed at people of different origins including racial, ethnic, national, social, cultural, linguistic or religious origin. It could also affect people with disabilities, the elderly, or people living with HIV or AIDS.

“Any discriminatory practices always affect victims in a profoundly negative way because it constitute a denial of their distinctive human characteristics and thus negates their intrinsic right to be different among human beings who all have equal value, independently of the colour of our skin, our origin, gender, religion and so forth.”

He said all the time and energy used in forcing people to conform to expectations, as well as energy adopting defensive or defiant postures,
Sasha Fierce...shot dead

While no one could truly know what it was like to be another person, observed Archie, people could at least try by having open, accepting conversations.
and those of others or else his conclusions would not necessarily be based on the reality before him. He also said the true test of a mature democracy was not whether or not the will of the majority was expressed, but the recognition and respect for the voices of minorities and those marginalised.

Therefore, he said, to understand the requirements of equality, everyone should continually and regularly update their education in order to be “sensitive to insidious forms of discrimination, hone our ability to critically evaluate existing and evolving concepts of equality, and develop our capacity to formulate new methods of thought and understanding.”

Trending

1. Support pours in for Icacos couple
2. Paria responds to uproar over fuel sale
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5. Cunningham summoned by Tracy after food card fraud claim
6. [UPDATED] Fyzabad teenager found in Point Fortin
7. Finding life, love behind bars

Comments

"Chief Justice laments murder of Sasha Fierce, calls it a hate crime"

More in this section
TAB 32
NEWS

LGBTQI community living in fear

RYAN HAMILTON-DAVIS  FRIDAY 8 DECEMBER 2017
Members of the LGBTQI community continue to express grief over the death of trans woman Keon Allister Patterson, also known as Sasha Fierce, after she was killed at Nelson Mandela Park, St Clair, on Tuesday night.

However, Patterson’s closest friends and loved ones are afraid to mourn her death publicly, worried that if they express their regret in the open, they will be targeted by bigots and homophobic people.

Patterson herself complained of being scorned and mistreated by the public. A YouTube vlog called Not a Straight Ting, which highlighted issues affecting people in the LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer and Intersex) community, featured Patterson in several episodes. In them she described some of the hardships of living an alternative life.
for check-ups, they look at you strangely, the nurses make fun of you, scorn you, and do you all kinds of things.

“But I believe in myself, so I dress to go out... people who know me would usually tell others, ‘Don’t be on that. Respect him for who he is.’”

Neither respect nor regard was shown for Patterson when she was shot dead on Tuesday night. Newsday understands that Patterson was at the Nelson Mandela Park when two men approached and killed her. Police found her body in a pile of rubbish at the park. She had several gunshot wounds.

Two men were said to have been arrested and a gun seized. Up to press time the men remained in custody without being charged. The gun has been sent for ballistic testing.

Newsday was first told by police that Patterson may have been a sex worker, and her killers may have posed as clients. In fact Patterson was a well-known and outspoken member of the trans community, had been a participant in several beauty pageants and was an advocate for protection against HIV and AIDS.

One person who was willing to speak out described Patterson as a polite and friendly person, who genuinely cared for other people’s well-being.

“She was a great asset to our community, and her death is a complete shock and a huge loss,” this friend told Newsday.

While some have been calling Patterson’s murder a hate crime, police have not yet established a motive behind her murder.

On Wednesday at the weekly police press briefing public information officer Michael Jackman could neither confirm nor deny whether there had been an increase in crimes against people in the LGBTQI community.
TAB 33
Gays are targets for criminals

JANELLE DE SOUZA  SUNDAY 9 APRIL 2017

The lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) community is a vulnerable one. Its members are generally not well-liked, they may not have family support, and the police often dismiss their claims of discrimination or abuse, sometimes ignoring serious cases simply because an LGBTQI person is involved.

One police officer, a corporal, who is also gay, expressed his suspicions that a person or people were targeting members of the LGBTQI community for robbery and murder. He stressed he had no proof of this, but believed that LGBTQI people should be alert.

The officer said over the years he had known criminals to target gay parties, assuming the patrons would have good jewellery and a lot of money to spend.

“Previously they were targeted for robberies, assaults and different crimes, but now the game has stepped up to murder.

It just moved from one level to the other,” he said.
To his knowledge, he said there had been at least five gay men who were killed this year alone: three were Guyanese, one a Jamaican, and one a Trinidadian.

The murders occurred in the west, along the east-west corridor, and in central Trinidad. He admitted there had been murders in the community from time to time but he personally began noticing an increase over the past year.

The circumstances also caught his attention because, whereas most murders in the country were committed by shooting, the gay men were either strangled, stabbed, or beaten. There was also the fact that most were from other Caribbean countries.

In addition to the previously mentioned vulnerabilities, he said the LGBTQI community become “easy prey” when they go out, get drunk, spend money, and look to get intimate.

NO JUSTICE The officer said a homophobic attitude has been alive and well for decades throughout the Trinidad and Tobago Police Service. He said officers, especially male officers, did not want gay people around them as if they were afraid being gay was “catching” or a gay man may be attracted to them.

He said he knew of several instances in which gay men were told to leave the police station even before they could make a report, possibly sending them to their deaths.

Even if a report was taken, he said many times there was victim blaming or shaming so that the victim was reluctant to report any crimes against them.

Other times, he said the police simply ignored the cases, refusing to investigate them because an LGBTQI person was involved.

“Why do you think so many gay murders go unsolved?” he asked.

Not wanting to reveal too many details, he recalled a crime that was committed about three
years ago in which two men arranged to meet in person after speaking to each other on a gay dating site.

“That was an easy case to solve because everything was online,” he said. “But from the time the police heard it was linked to that (LGBTQI), that was it.” He said the attitude of officers affected him personally as a gay friend of his was murdered last year. Because of numerous eyewitness accounts in that instance, a suspect was identified, but he said the police never even brought the person in for questioning.

However, he said the lackadaisical attitude of some officers towards investigating crime was not only directed at the LGBTQI community.

He told Sunday Newsday before he joined the police service he had all types of friends and remained in contact with many of them, making him a well-informed officer.

He said over the years he volunteered critical information on a variety of cases to 800-TIPS, 555 and more directly to senior officers, but no one listened.

“Imagine I, as an officer, am going to senior people and giving them first-hand information about murders, which could have get (sic) me set up... I am part of the organisation, you would think they would listen, but no. It makes no sense. There is no proper follow-up procedure.” He said even if a matter was brought to court, the magistrate or judge easily accepts the “gay panic” defence. “The defence is always the same,” he said. “They come around me with that macomere thing and I trip. You pick up a man, he buying drinks and food for you whole night, and two o’clock in the night he says, ‘Hey, leh we go home by me.’ You gone home by the man and then you get gay panic in the man room? And the court accepts it very easily and the prosecution doesn’t force it.”

TAKING ACTION Because of these concerns, the LGBTQI community is mobilising for safety and their rights.

The safety campaign calls on the membership to Watch • Send • Stop offer simple messages:
Be aware. Watch out for each other. Help find solutions.

Colin Robinson, president of CAISO (Coalition Advocating for Inclusion of Sexual Orientation): Sex and Gender Justice, stressed that, although they had no evidence that the murders were bias-related, they were aware that the LGBTQI community was vulnerable.

“We just know people of the LGBTQI community are vulnerable in particular ways,” Robinson said. “The police and society are not friendly to us, so the kind of support that other people might have, we don’t have.

There is a cost for us to even report a crime. Sometimes when we do, we lose because we lose the support of family when we are outed.” Therefore, six organisations decided to mount a campaign to try to get more information from the police and encourage them to investigate the cases more fully, as well as to ask people to be more careful and to take care of each other.

These organisations include Womantra, Friends for Life, the Silver Lining Foundation, I Am One, the Women’s Caucus of TT, and CAISO.

Luke Sinnette, a clinical social worker with Friends for Life explained that the campaign involved safety tips such as sending a friend your location when you go to lime, or warning others about an individual. The idea is to encourage LGBTQI people who refuse to report crimes because of negative experiences with police, and to ensure accurate information about the number and nature of violent crimes against LGBTQI communities is disseminated.

“What we know for sure is that because of the vulnerability that gay men face, it makes them a target for criminals,” Sinnette said.

“Being catfished online by would-be criminals becomes easier when we are afraid to find relationships in our everyday life. It also makes reporting or investigating these crimes more difficult if one is not out.
“The murdered young men had the further stigma of being migrants from fellow Caribbean countries. It means that they are on their own and things like family support is often missing. If they have over-stayed, they might not speak out against exploitation by employers for fear of deportation. When vulnerabilities like these begin to add up, people are more likely to be in an emotional state that can make them a target.” In addition to tips and data collecting, Sinnette said support was one of the biggest component of the campaign.

He said if a victim of crime called the “hotline,” he would help them sort out the facts so that the case could be documented.

The next step would be to find out the person’s immediate need and act on it, then to meet the person and try to counsel them and provide support in any possible way.

The police officer suggested that his colleagues be given sensitivity training to encourage them to focus on the offence committed and to make a conscious effort to solve the crime rather than focussing on the person’s race, status in society, gender or sexuality.

He is also asking investigators to reopen some cases in which they knew that the murder victims were gay, examining the cases from the angle of violence against homosexuals, and making connections with similar cases with the hope that they would be solved.

He is also suggesting that investigators begin to collect DNA samples so that when a proper related law is instituted, police would be able to solve cold cases.
Trinidad and Tobago Activists Launch LGBTQI #KeepSafe Campaign

"Instead of fear and victimhood, we are calling for people to take more loving care of each other, and to ensure each other's protection," said CAISO.

On Friday a coalition of feminist and LGBTQI groups in Trinidad and Tobago launched a safety and self-defence campaign in response to a recent wave of anti-LGBTQI threats and violence.

"It's an empowerment message," said Colin Robinson, director of the Coalition Advocating for Inclusion of Sexual Orientation. "Our LGBTQI communities here are resilient and have a long history of collaboration and of solution-seeking. Instead of panic, fear and victimhood, we are calling for people to increase our responsibility and vigilance, to take more loving care of each other, and to ensure each other's protection."

Piloted during this year's Carnival celebrations, the campaign involves dating safety reminders, and a series of workshops specifically targeting women, trans people focussed on issues of gender-based violence.
The coalition has also launched a hotline to encourage members of the community to both report anti-LGBTQI threats and violence as well police harassment, both of which aim to pressure law enforcement to take anti-LGBTQI violence seriously.

"We are also asking the media to help through responsible, non-sensational reporting, and by ramping up investigative journalism, so we get to the bottom of why people are being killed," said Terry Ann Roy, a spokesperson for I Am One, a community group focussed on gender and sexual justice.

Since January at least three gay men have been murdered, crimes which the coalition says the police have not thoroughly investigated.

The campaign comes three weeks after a prominent LGBTQI activist launched a constitutional legal challenge against anti-LGBTQI laws in the country which criminalizes same-sex activity and also allows for the banning of LGBTQI immigration.

"It is a human rights issue. It is about my right to live my life as I choose. Somebody has to do it. So I am doing it," said Jason Jones after launching the suit.

Jones has said that in the weeks after announcing the case he has received over 50 death threats.

Tags

| Trinidad and Tobago | Caribbean | LGBT equality & sexual diversity | Human rights | Hate crimes | Social movements |

LOOP-The Guardian-Trinidad Express
by teleSUR / jc

Related News
Nearly 300 religious officials from the Bahamas, Guyana, St. Vincent and the Grenadines, Trinidad and Tobago and St. Maarten have asked President Trump to end U.S. efforts in support of LGBT and intersex rights abroad.

Nearly 300 religious officials from the Caribbean and Guyana have urged the U.S. to no longer promote LGBT and intersex rights abroad.

The 289 ministers who are from the Bahamas, St. Maarten, St. Vincent and the Grenadines, Trinidad and Tobago and Guyana made the request in a letter they sent to President Trump on Jan. 31.

"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," reads the letter. "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
The letter specifically notes the appointment of Randy Berry as the special U.S. envoy for the promotion of LGBT and intersex rights in 2015 was central to “the promotion of same-sex marriage” in American foreign policy. It also questions then-Secretary of State Hillary Clinton’s 2011 speech to the U.N. Human Rights Council in which she said “gay rights are human rights.”

“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,” reads the letter.

The letter also points out to Trump that “several of your government agencies” are “using executive orders to foist transgender confusion through the bathroom issue on your public schools by threatening the loss of federal funds.”

“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,” it reads.

The Obama administration last year advised public schools that Title IX of the U.S. Education Amendments of 1972 requires them to allow trans students to use bathrooms consistent with their gender identity. Trump rescinded this guidance on Feb. 22.

**Guyanese group receives grants through Global Equality Fund**

The promotion of LGBT and intersex rights abroad was a cornerstone of U.S. foreign policy during Obama’s second term. The promotion of marriage rights for same-sex couples internationally was never a publicly articulated part of this strategy.

The Society Against Sexual Orientation Discrimination, a Guyanese advocacy group known by the acronym SASOD, has received grants through the Global Equality Fund, a public-private partnership the State Department manages with the U.S. Agency for International Development. Officials at the U.S. Embassy in the Guyanese capital of Georgetown also meet with SASOD staffs and support their efforts.

Dennis and Judy Shepard met with LGBT rights advocates, parents and officials at the U.S. Embassy in Trinidad and Tobago in 2014. The Global Fund to Fight AIDS, Tuberculosis and Malaria has also supported HIV/AIDS programs in the country.

Consensual same-sex sexual relations remain criminalized in Trinidad and Tobago, Guyana and St. Vincent and the Grenadines. St. Maarten recognizes same-sex marriages that are performed in the Netherlands.

**Ministers’ letter is ‘appalling’**

Steven Anderson, who was deported from Botswana last September, traveled to Guyana earlier this year. The anti-LGBT pastor from Arizona who has said gays and lesbians should be killed and described the victims of the Pulse nightclub massacre in Orlando, Fla., as “disgusting homosexuals,” claims a hotel in Port of Spain, the capital of Trinidad and Tobago, cancelled his reservation earlier this month.

Activists in the region with whom the Washington Blade spoke on Wednesday criticized the pastors who wrote to Trump.

“It’s appalling that they are pandering to President Trump — a head of state who has demonstrated nothing but prejudice and intolerance towards entire communities, immigrants and Muslims especially,” said SASOD Managing Director Joel Simpson.

Erin Greene, an LGBT and intersex rights advocate in the Bahamas, agreed.

“The statement and petition is a desperate move by a once powerful structure in Caribbean societies,” she told the Blade. “The Christian church was once the center of Caribbean societies, and now, these pastors are grasping to retain power and relevance as they are being stripped of their influence in policy making and national development.”

“In fact, they would be fulfilling their Christian mandate by denouncing the exportation of anti-LGBTI hate speech to the region, and asking President Trump to focus on foreign policy initiatives that prevent the spread the of U.S.-based religious terrorism in the Caribbean, Latin America and the Global South,” added Greene.

Bahamas Transgender Intersex United President Alexus D’Marco echoed Greene’s criticism while defending Obama, Clinton and Berry’s appointment.

“It is inconceivable that these ‘Christian’ reverend gentlemen and gentle ladies could not find the
A State Department spokesperson on Friday said “protecting universal human rights is at the core of U.S. foreign policy.”

“All people should be protected from discrimination and violence, and must be allowed to exercise their human rights, including their rights to the freedoms of expression, association, peaceful assembly, and religion or belief,” the spokesperson told the Blade.

The White House did not respond to the Blade’s request for comment.

Michael K. Lavers
Michael K. Lavers is the international news editor of the Washington Blade.
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The Struggle for Transgender Rights in Today’s Caribbean

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Today, 17 May in 1990 the World Health Organization decided homosexuality was not a mental disorder. Since 2004 the day has been celebrated to draw attention to the violence and discrimination experienced by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people internationally.

In Latin America, the life expectancy of transgender women is 35 years old, according to the Inter-American Commission on Human Rights. Across the Caribbean the lives of transgender women are affected by criminalizing laws, stigma, marginalization and terrifying violence by state and non-state actors.

In a 2014 report on police violence towards transgender sex workers in the Dominican Republic, TRANSSA, a Dominican transgender-led group, documented the unlawful detention of Ana. She was stripped by the police and detained in the back of an open wagon. The police then removed her wig, and paraded her around the streets naked. Later at the police station, when she was trying to sleep, they threw buckets of water on her. Police said if she said anything about the abuse, she would “disappear.”

Like in Ana’s case, most States in the Caribbean fail to protect transgender people from violence, and their gender identity and expression is rarely taken into account as grounds for hate crimes during murder investigations, resulting in impunity. TRANSSA estimates that 34 transgender people have been murdered in hate crimes over the past 10 years in the Dominican Republic and only 3 people have been convicted.

Guyana Trans United estimates 9 people have been killed due to their gender identity and expression since 2014 in the South American country. Of those cases, only one person has been charged, but there have been no convictions.

Violence and discrimination against transgender children and youth starts early. They are excluded from homes, schools and families because of their gender identity.

In Jamaica, transgender children and teens are often kicked out of their homes and some had at one time even sought refuge in storm drains in Kingston’s business district. JFLAG,
Jamaica’s leading LGBTI group, has repeatedly called on the government to intervene in families to stop the exclusion of LGBTI children and to increase shelters for the homeless.

According to a study by the Caribbean Vulnerable Communities Coalition (CVC) in the Dominican Republic less than 35 percent of transgender women sex workers have completed secondary school. As they are pushed away from education, many become involved in transactional sex as early as 16. This early social exclusion leads to poverty and more violence. Transgender people are often pushed into criminalized work, such as sex work, which further exposes them to police abuse and arbitrary detentions. Eighty percent of Dominican transgender women involved in sex work have been arrested or detained at least once, and 36 percent had exchanged sex with police officers to avoid being arrested.

But extreme violence is not the only human rights abuse transgender women face. Many transgender women continue to die, not from lack of medical options, but due to intense stigma and discrimination that drives them away from health care services. Data reflecting HIV prevalence within the Caribbean transgender community is scarce, but according to a 2013 study published in the Lancet that reviewed HIV data in 10 low and middle income countries, almost 18 percent of transgender women live with HIV. In many Caribbean countries, transgender women often die instead of accessing stigmatizing healthcare services and treatment for HIV and AIDS.

With few exceptions, Caribbean political leaders are silent on transgender issues. When politicians do speak, their comments are often shameful and offensive. In May 2016, Bahamian media reported that a local Member of Parliament had publically advocated for transgender people to be exiled to an isolated island.
Despite this unacceptable reality, across the Caribbean, brave human rights defenders push for change.

Quincy McEwan, Director of Guyana Trans United, is a litigant in a constitutional challenge to colonial laws which criminalize cross-dressing. Her organization runs programs that help transgender women access healthcare services, support groups and activities to raise visibility of transgender women. Accessing public spaces is still a major challenge for transgender people in Guyana, and her organization recently protested a magistrate’s decision to bar a transgender woman from entering his courtroom whilst she was dressed in female clothing. Quincy says things “change very slowly” but believes it’s increasingly easier to approach Ministers of Parliament in Guyana and to engage people on transgender issues.

Cuba is the only country in the Caribbean where gender reassignment treatment is permitted, but there is little publicly available information on how accessible the treatment is. In Puerto Rico, the Governor issued instructions in August 2015 allowing for gender to be changed on driving licenses, but as in the rest of the Caribbean, there are no provisions for changing gender in other identity documents.

Yet in the neighboring Dominican Republic, Christian King, who leads TRANSSA, says his organization and others are bringing the issue of legal gender recognition to the national debate. Christian believes there is a need for a “legal tool” against entrenched discrimination. TRANSSA also runs programs for HIV positive transgender women, helping them to navigate the healthcare system and fight the stigma and discrimination transgender women experience in services.

Christian believes there have been many advances.

_We have a public prosecutor’s office trying to resolve some small cases, there are diverse social actors interested in the general situation of LGBTI people, and in the health system there is a specific strategy for key populations (those at higher risk for HIV). There are also many trans leaders, the result of voluntary community empowerment work, fighting to improve their own situation and that of their fellow trans. In ten years since TRANSSA was founded, we have seen many results._
Alexus D´Marco heads the Caribbean´s newest transgender organization, Bahamas Transgender Intersex United (BTIU), founded only in April 2016. Alexus says the group was formed as the government was saying there were no transgender people in the country; a huge irony Alexus says, because the same Bahamian government receives US funds to run programs for transgender people. Since its first press conference, Alexus says members of the group have received direct and indirect threats from members of the public and the Deputy Prime Minister has reportedly been critical of transgender people. Alexus says, “We need sensitivity and diversity training for members of government on what it is to be LGBTQI because they don´t know.”

So the struggle for transgender rights in the Caribbean continues. Civil society are raising their voices and getting stronger because people want visibility. It´s already created backlash. But, at the very least, it’s becoming harder for Caribbean governments to deny transgender people exist.
Referring to the parents of a student who had openly professed to being gay, the teacher reportedly said: “He has two parents, who should not be parents. They are both screw-ups, they are atheists, they do not believe in God.” “You see me,” she is said to have continued, “Give me a gun and I will fix all the problems in the world, both of them (parents) first, then their offspring. Do not tell me there is no God,” she added while noting that persons with such beliefs should keep it to themselves.

The audio recording of which the teacher’s voice has been identified, as the one addressing a classroom session, has gone viral on social media, generating numerous comments both for her gun talk and jab at homosexuals.

Yesterday, a senior official at the school confirmed the incident, telling Newsday that a report was being prepared to be passed to the Ministry of Education. The official said: “Yes, we have heard it and we are following the rules.

We have contacted the Ministry of Education and at this time, we are in the process of preparing a report” “At this school we do not judge, (students) we do not judge at all,” the official said. “We will be delivering that report and we are treating the matter very seriously.” Up to yesterday the teacher was still in the classroom and Newsday was told that she has been receiving support from members of staff. There has also been some counselling sessions for both students and teachers as a result of the incident.

According to reports, last Thursday, while conducting assembly in which there was a scripture reading, the teacher (name called) is said to have
Newsday learnt that the following day, during assembly, one student marched to the front of the hall and told students it was okay “to be gay” before walking off. There was an uproar.

The female teacher who has been a member of staff, “for many years”, later admitted to being “thrashed” by other teachers for her remarks. She then met with students on Friday to explain her side of the story and it was during that session, that she made some shocking statements to the point of even identifying the student by name, who she (the teacher) said was gay and called his parents atheists.

She said it is because of what he believed, the student could have gone in front of the assembly in support of gay persons. The teacher denied she ever made a pronouncement on “gay people” during assembly last Thursday, claiming that instead, all she did was read from Scriptures.

“And all Scriptures and doctrines say, that to be gay is wrong.

It is not something appropriate in the eyes of God. However, I also live in a cosmopolitan country whose watchwords are discipline, tolerance and production. Tolerant I can, if you want to walk with your jockey shorts on your head and leave your privates out all over the place, that is your right, your opinion, and I am tolerant to that.

“So you being gay, I don’t care how you take a man or which man you take and what you do with him. That is your right. That is not my business. My issue is, you are here in a school, where there are impressionable young children and I don’t want the perverted ones, which I know there are, to have an impact on the little ones,” she said.

She further argued that being gay is not a disposition that “you were born with” and therefore it was not acceptable. “My issue is, when you turn 18 or 21, you can take a woman, you can take a man, you can take a dog, a goat, a sheep, a cat...I don’t care. You are a grown man and you make grown-man
You do what you want, but do not let what you do, affect the masses.” The teacher said she hates violence and disrespectful students but later threatened to, “rearrange your blasted face”, to any student who disrespects her. She then urged male students to take the good aspects of life with them as they go out into the world as they are the game changers for the society.

Contacted yesterday for comment, TT Unified Teachers Association (TTUTA) President Devanand Sinanan said he was aware of the incident but did not want to comment at this time.

“Because it is a teacher who may be a member of TTUTA, it will be inappropriate for me to make a comment at this time,” Sinanan told Newsday.