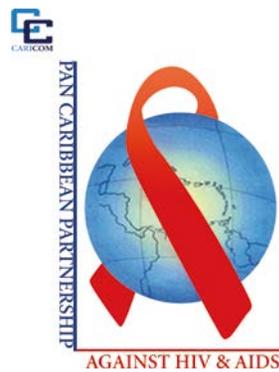




# **Justice for All**

## **Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean**



## **From the Author of this Report**

*It is inconceivable that we as Parliamentarians would even contemplate criminalizing our brothers and sisters because they live with HIV. Our remit as representatives must be to provide rights, respect those rights, protect those rights and fulfil rights for all citizens. Today, we must demonstrate that we take this responsibility seriously. Let us guarantee the rights of all people and not be seen to be taking away rights of some citizens. This is our legal mandate and our moral responsibility and in refusing to criminalize HIV transmission we would explicitly demonstrate that Guyana's Parliament is committed to guaranteeing fundamental human rights forever, for everyone, no matter the circumstances, no matter how difficult it might appear. We stand by our sisters and brothers even if it is hard, because it is right*

*Dr. Leslie Ramsammy, Parliament of Guyana (2011)*

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## ***FOREWORD***

At my request, and in keeping with its remit to eliminate stigma and discrimination in the context of HIV/AIDS in the Caribbean, the Pan-Caribbean Partnership against HIV and AIDS (PANCAP) has designed a programme to address specific issues of stigma and discrimination in the Caribbean. The PANCAP programme is entitled *Justice for All: Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean*.

HIV and AIDS-related discrimination continues in the Region and prevents persons living with HIV/AIDS and vulnerable populations, from engaging in health-seeking behaviour and meaningfully participating in society. In St. Kitts and Nevis we have already moved to accelerate actions that limit equality, justice and human rights for all citizens.

In addition, in light of new global evidence that shows the pernicious economic effects of exclusion, it is clear there is a continued need for the mobilisation of national, regional and international communities to protect the most vulnerable in society from being excluded, and from development and health. Evidence also indicates that an estimated 1.7% of GDP could be lost in a single year due to exclusion of sexual minorities and marginalisation of vulnerable groups.

In requesting this *Justice for All* Roadmap I affirm my commitment to ending HIV and AIDS-related discrimination in the Caribbean Region. It is essential that we work in collaboration with all partners, including parliamentarians and faith based organisations, to expedite the end of stigma and discrimination in the Caribbean.

*Right Honourable Dr. Denzil Douglas, Prime Minister of St. Kitts and Nevis*

## ***FOREWORD***

The *Justice for All* Programme is a PANCAP initiative spearheaded in 2013 at the request of the Honorable Prime Minister of St Kitts and Nevis, Dr Denzil Douglas.

The initiative recognizes that while CARICOM countries have made significant progress in reducing the HIV and AIDS epidemic, there is a dire need to reduce the epidemic of stigma and discrimination. The *Justice for All* programme seeks to even out the response in the Caribbean region so that progress towards eliminating stigma and discrimination matches the success in reducing new infections and AIDS deaths. The *Justice for All* initiative embraces the notion that eradicating stigma and discrimination is imperative in ending AIDS in the Caribbean.

As Special Envoy, it is my role to advocate for the commitments and targets laid out in the 2011 *Political Declaration on HIV and AIDS*. In particular, I aim to place human rights at the very centre of the HIV-response. This programme aims to reduce and eliminate stigma and discrimination in the Caribbean and to adopt a human rights-based response to the HIV epidemic. The *Justice for All* programme is a component of the Post-2015 HIV and AIDS Agenda for the Caribbean region.

In fact it is a testament to the fact that governments in the Caribbean are becoming increasingly aware of the need to invest in the AIDS response to avoid a regression on the progress that has already been made in providing access to HIV prevention, care and treatment. They are also increasingly receptive to advancing the human rights agenda, and especially to addressing and eliminating stigma and discrimination, including removing punitive laws. I am optimistic that the Caribbean region can provide *justice for all*.

*Professor Edward Greene, UN Secretary-General's Special Envoy for AIDS in the Caribbean*

## Executive Summary

PANCAP's *Justice for All* initiative was initiated in 2013 at the request of the Right Honorable Dr. Denzil Douglas, Prime Minister of St. Kitts and Nevis, in his capacity as Chair of the Pan Caribbean Partnership against HIV (PANCAP), and the CARICOM leader with responsibility for HIV/AIDS. The *Justice for All* Programme aligns with UNAIDS' Global Zero Goals – Zero New Infections, Zero AIDS Deaths and Zero Stigma and Discrimination by 2015. While progress has been made in response to Zero New Infections and Zero AIDS Deaths, there has been little success in attaining Zero Stigma and Discrimination in the Caribbean. The end of AIDS will not be achieved without the elimination of HIV-related discrimination. *Justice for All* is guided by the UN Special Envoy on HIV and AIDS to the Caribbean, Professor Edward Greene, and implemented and coordinated by PANCAP. It builds on previous work done by several national, regional and international agencies in addressing HIV and AIDS and human rights related issues in the Caribbean region.

Caribbean countries have signed key international human rights treaties towards equality and dignity for all. They have also undertaken a number of initiatives to galvanize support for advocacy efforts towards legislative reform that would provide a facilitating environment to end HIV-related stigma and discrimination. As part of this initiative, PANCAP's Coordinating Unit has undertaken to comprehensive desk review of the recent reports, studies and assessments related to human rights in the Caribbean to determine how countries are dealing with the issue through legislative and other means, and identify what action is required to eliminate stigma and discrimination in the Caribbean.

The results of this review are documented in this Report and cover a wide terrain that delves into several aspects of HIV-related stigma and discrimination. These aspects include the evolution of thought and action on human rights and HIV; the contemporary Caribbean context; challenges confronting governments; vulnerable populations such as men who have sex with men, sex workers, drug users, and women. The study also reviewed the global action platforms in the context of the current transition period toward the post-2015 development agenda. This review classifies actions in the *Justice for All* roadmap within three broad categories: **creating a facilitating environment; fostering a protective environment; and removing punitive laws and practices**. The actions identified under these categories provide an inventory of recommendations that have been referred to and discussed in the various documents, declarations, meetings and other fora. The list of recommendations is not intended to be exhaustive nor final. It is merely presented as possible inputs into the Roadmap and PAN CARIBBEAN DECLARATION.

### **Creating a facilitating environment:**

- Cross-cutting activities for behavior change, communication, awareness, mobilization of partners etc.
- To set the stage for the implementation of activities in the other two categories.

### **Fostering a Protective Environment:**

- The enactment of legislation, development of policies and other actions that protect PLWHA from stigma and discrimination
- Protect confidentiality and informed consent
- Provide for access to prevention, treatment and care.
- Place emphasis on gender equality, violence against women and girls

### **Removal of Punitive Laws and Practices:**

- Target existing laws and practices that act as obstacles in the fight against HIV.
- These actions were extensively discussed and identified with priorities #3 and #6 of the UNAIDS Seven Priority Programs.
- The removal of punitive laws that contribute to the persistence of HIV-associated stigma and discrimination.

# INTRODUCTION

## Justice for All

### **Creating a Facilitating Environment to Reduce and Eliminate HIV-Related Stigma and Discrimination in the Caribbean**

At the request of the Honourable Prime Minister of St. Kitts and Nevis, the Honourable Dr. Denzil Douglas, and in keeping with its remit to reduce and eliminate stigma and discrimination in the context of HIV in the Caribbean and in accordance with the UNAIDS Global Goal of Zero discrimination by 2015, PANCAP has designed a programme to address specific issues of stigma and discrimination in the Caribbean. The PANCAP programme is entitled ***Justice for All – Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean.***

The programme is funded as part of PANCAP's Global Fund Grant – *Justice for All* - and is also partly funded by UNAIDS. UNAIDS is collaborating with PANCAP in implementing this *Justice for All* programme as part of its own commitment to promote the reduction of stigma and discrimination in the context of HIV around the world. This is in keeping with UNAIDS seven (7) key programs to reduce stigma and discrimination and increase access to justice for all. The *Justice for All* Programme is endorsed by the UN Special Envoy on HIV and AIDS to the Caribbean, Dr. Edward Greene. The Programme is being implemented directly by PANCAP through its Secretariat. UNAIDS Caribbean Regional Office and UNAIDS Country Offices are collaborators in the implementation of the programme.

Caribbean countries have signed key international human rights treaties towards equality and dignity for all and have also worked to galvanize advocacy efforts towards legislative reform that would provide a facilitating environment to end stigma and discrimination. PANCAP has played a major role in supporting and coordinating these efforts.

As part of this Programme, PANCAP's Secretariat has undertaken to complete a desk review of recent (last five years) reports, studies and assessments related to stigma and discrimination, human rights and legislation in the Caribbean and to analyse National AIDS Strategic Plans to determine how countries are dealing with the issue of HIV-related stigma and discrimination through legislative and other means.

The Concept Note for PANCAP's *Justice for All* Programme that has guided this review contains several critical elements. Among them: establishing the family spirit to help those on need; placing emphasis on access to treatment, sexual and reproductive health and rights, and eliminating laws and policies that are discriminatory; identifying measureable targets, and developing a Justice for All roadmap leading to PAN CARIBBEAN DECLARATION for the consideration of Caribbean Community Heads of Government and other leaders in the wider Caribbean.

A summary of the Terms of Reference is presented below.

- An examination of National Strategic Plans (NSPs) to determine the extent to which they include specific targeted actions related to stigma and discrimination, law reform, increased access to justice for People Living With HIV and AIDS (PLWHA) and most at risk populations, capacity development for parliamentarians, members of the police and disciplined services and the judiciary etc.
- A desk review by PANCAP's Secretariat that will take into consideration several reports including:
  - *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine (2013)*
  - *PANCAP Perspective on Human Rights (2012)*
  - *The Global Commission on HIV and Law Final Report (2012)*
  - *UNAIDS Seven Priority Actions to Reduce and Eliminate Stigma and Discrimination*
  - *Other Relevant Documents*
- A desk review to specifically identify the bottlenecks and major issues related to HIV-linked stigma and discrimination and identify opportunities to pursue actions within the context of UNAIDS seven (7) key programs to reduce stigma and discrimination and increase access to justice for all citizens in Caribbean countries.
- Based on the desk review, PANCAP will develop a Desk Review Report which will include a draft PAN CARIBBEAN DECLARATION and a Roadmap to **Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean**. It is hoped that this Desk Review Report will be completed by November 15<sup>th</sup> 2013.
- The Report with the draft Roadmap will serve as an entry point for four (4) National Consultations in Guyana, Jamaica, St. Kitts and Nevis and Trinidad and Tobago. The Roadmap will be for actions intended to be implemented regionally and in all CARICOM countries, but the three consultations will focus particularly on identifying short and medium term actions and seek to agree on these actions for the three countries. The three National Consultations are to be completed by January 15<sup>th</sup> 2014. Three stand-alone reports and a consolidated report will be prepared by the PANCAP Secretariat and would be available by January 20<sup>th</sup> 2014.
- These reports will serve as working documents for a Regional Working Group which PANCAP will convene in January 2014. The Working Group will develop a CARICOM Regional Roadmap with targets, outcomes and timelines by January 31<sup>st</sup> 2014.
- A Draft PANCARIBBEAN DECLARATION and the CARICOM Roadmap for **Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean** will be presented to a Special COSHOD in January 2014. It is hoped that the COSHOD will endorse the Declaration and adopt the Roadmap and submit *for endorsement by the CARICOM Heads of Governments in March 2014.*

| <b>Task</b>  | <b>Deliverable</b>  | <b>Responsible Party</b>   |  |
|--|---|--|--|
| Desk review of recent reports, studies and assessments and NSPs  | Desk Review Report and a Draft Roadmap towards Creating a Facilitating Environment to Fight HIV-Related Stigma and Discrimination | PANCAP's Secretariat   | November 15 <sup>th</sup> , 2013               |
| Four National Consultations in Guyana, Jamaica, St. Kitts and Nevis and Trinidad and Tobago                              | Three National Reports from each of the consultations and a consolidated report   | PANCAP's Secretariat/ UNAIDS Regional Office and Country offices | December 2013 to January 15 <sup>th</sup> 2014 |
| Finalisation of a CARICOM Roadmap for Creating a Facilitating Environment to Fight HIV-Related Stigma and Discrimination | Final Draft of the CARICOM Roadmap<br><br>Final Draft of PANCARIBBEAN DECLARATION   | PANCAP and Working Group   | January 31 <sup>st</sup> 2014                  |
| Convening of Special COSHOD to consider the proposed Roadmap and the PANCARIBBEAN DECLARATION                            | Adoption of the proposed Roadmap<br><br>Adoption of the PANCARIBBEAN DECLARATION  | CARICOM Health Desk and PANCAP                                   | February 15 <sup>th</sup> 2014                 |
| Presentation of Roadmap and PANCARIBBEAN DECLARATION for consideration and adoption by Heads of Governments              | Consideration and adoption at Heads of Government Meeting   | COSHOD/CARICOM   | March 2014                                     |

## The Context of the Justice for All Programme

This is an ambitious programme. Its goal is to develop and promote a Pan Caribbean Declaration and a Roadmap to fight HIV-related stigma and discrimination in the Caribbean. There are three groups of actions contemplated in the proposed approach and these are broadly based on the UNAIDS seven priority actions on stigma and discrimination and the six elements contained in the PANCAP *Justice for All* Concept Note.

**1. Creating a Facilitating Environment:** The first group of activities is intended to create a facilitating environment by building an awareness and education programme and mobilizing a network to advocate and drive changes in the Region.

- Establishment of a Regional Human Rights Committee coordinated by PANCAP
- Development and adoption of a Pan Caribbean Declaration on HIV-related human rights
- A bold regional advocacy and communication campaign to support inclusion efforts
- The adaptation of the PANCAP Model HIV Anti-Discrimination Legislation
- Human Rights driven National Plans for the Prevention and Control of HIV
  - Networks of people living with HIV and other vulnerable populations, such as LGBTI, mobilized to advocate for their human rights
- Dissemination of international human rights commitments, norms, standards and mechanisms that relate to people living with HIV, LGBTI and vulnerable populations
- Dissemination of a compendium of court judgments relating to HIV, Human Rights and the Law as a measure of progress and guidelines for further action.
- Regional consultations of the legal fraternity on HIV, Ethics, Human Rights and the Law to assess developments and catalyse further action
- Curricula inclusion for HIV, Human Rights, Ethics and the Law targeted to a variety of stakeholders
- Promotion of a Regional Anti-Discrimination Charter for HIV and Employment
- Institutionalizing Champions of Change speaking out against HIV-Discrimination

**2. Fostering a Protective Environment:** The second group of actions contemplates the enactment of legislation, development of policies and other actions that foster a protective environment. These are intended to protect people living with HIV from discrimination, protect their confidentiality, provide informed consent, increase access to prevention, treatment and care, protect women from violence and gender inequality, and protect children (orphaned or affected by HIV). It also targets their caregivers with social and legal protection. The *Justice for All* Roadmap for Fostering a Protective Environment to end HIV-Linked Stigma and Discrimination includes:

- End stigmatizing practices in the HIV response
- Include anti-discriminatory clauses and provisions in national legal environment (constitutions, laws) consistent with global agreements and particularly those involving employment and access to social services and education
- Improve legal and human rights literacy and capacity of people living with and vulnerable to HIV
- Empower persons living with and those vulnerable to HIV to access legal services when they experience or perceive stigma and discrimination through mechanisms such as legal

aid programmes and access to Human Rights Commissions where they exist nationally and or seeking redress at bodies such as the IAHRC.

- Strengthen the Stigma Index and the Human Rights Count and the Human Rights Desks in CARIFORUM countries.
- Build capacity among health care workers to diminish stigma and discrimination in health care settings
- Create a more efficacious environment for enforcing sexual and domestic violence laws in the various countries
- Establish training programs in the police force and the judiciary to prevent abuse, stigma and discrimination against PLWHA and those vulnerable to HIV such as Men who have sex with men (MSM), sex workers and drug addicts.

**3. Removal of Punitive Laws and Practices:** The third group of actions target existing discriminatory laws and practices that act as obstacles in the fight against HIV. The actions contemplated include the removal of those laws that contribute to the persistence of HIV-associated stigma and discrimination. In this regard, the need is to develop a roadmap to remove punitive laws and practices that contributes to HIV-associated stigma and discrimination in the following areas:

- Issues affecting the full realization of human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI), i.e. buggery or sodomy laws
- Sex work
- Criminalisation of HIV transmission
- Freedom of movement (migration)
- Pre-screening provisions for employment and for entry into the police and disciplined services
- Invigorate the discussion surrounding the criminalization of persons who are dependent on (addicted to) the use of illicit and illegal substances.

Through these three groups of actions the PANCAP *Justice for All* Programme seeks to develop a multi-prong roadmap that will see improvement in the protective legal environment and the removal of punitive laws related to HIV by 2015. It is anticipated that the national consultations will identify constructive, practical solutions for countries which will help marshal the power of the law and a facilitating environment to be a positive force for scaling up effective HIV responses.

# CHAPTER 1

## Introduction

*As men and women of conscience, we reject discrimination in general, and in particular discrimination on sexual orientation and gender identity....Where there is tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit discrimination on the basis of sexual orientation or gender identity, that encourage violence.*

*Secretary General of the UN, Mr. Ban Ki-moon, 2010*

This statement from the UN Secretary General aptly summarizes the accumulated consensus emerging out of a long history of investigation and advocacy around stigma and discrimination related to HIV and AIDS. Hence, this chapter tries to capture the historical evolution of these concerns and then focuses on the Caribbean-specific conditions.

### **Evolution of thought and action on HIV-related Stigma and Discrimination**

Human rights have become a critical part of the HIV response around the world. But this strand of the response was not a priority area from the beginning. The Human Rights part of the HIV response has evolved over time.

In the 1980s, the relationship between HIV and AIDS and human rights was understood as only involving PLWHA and the discrimination they face. For HIV-infected people and people with AIDS, the concerns included mandatory HIV testing; restrictions on international travel; barriers to employment and housing; access to education, medical care, and/or health insurance; and the many issues raised by names reporting, partner notification, and confidentiality.

These issues are grave, and more than 31 years into the epidemic, they have not been resolved and remain as issues in far too many jurisdictions around the world. In some ways, the situation has become even more complicated, as old issues appear in new places or present themselves in new or different ways. For example, in certain settings, access to employment has continued to be routinely denied to people infected with HIV. Even in places where this situation has improved, HIV-infected individuals now run the risk of finding themselves excluded from workplace health insurance schemes, with considerable impact on their health and thus on their capacity to work.

There are also new issues, with tremendous human rights implications, that have been raised for HIV-infected people, in particular the large and growing disparities and inequities regarding access to antiretroviral therapies and other forms of care.

The 1980s were extremely important in defining some of the connections between HIV and AIDS and human rights. By the end of the decade, the call for human rights and for compassion and solidarity with people living with HIV and AIDS had been explicitly embodied in the first World Health Organisation (WHO) global response to AIDS. This approach was motivated by moral outrage but also by the recognition that protection of human rights was a necessary element of a worldwide public-health response to the emerging epidemic.

While in the 1980s and most of the 1990s, the link between HIV and Human Rights was mostly restricted to PLWHA, the human rights approach evolved to the bigger goal of prevention of HIV and the rights of vulnerable populations such as LGBTI and women. Increasingly, too, throughout the 1990s and since 2000, the call was for a wider human rights approach for public health generally and, in particular as part of the HIV response.

The implications of this call were far-reaching. By framing this public health strategy in human rights terms, it became anchored in international law, thereby making governments and intergovernmental organizations publicly accountable for their actions toward people living with HIV and AIDS.

We present a brief history of the evolution of HIV and Human Rights:

- 1. The WHO has led the evolution of human rights as part of the HIV response:** The WHO held an International Consultation on Health Legislation and Ethics in the Fields of HIV and AIDS in April 1988 at Oslo. It advocated bringing down barriers between people who were infected and those who were not infected and placing actual barriers (e.g. condoms) between individuals and the virus. On May 13 1988, the World Health Assembly passed resolution WHA41.24 entitled “Avoidance of discrimination in relation to HIV-infected people and people with AIDS,” which underlined how respect for human rights was vital for the success of national AIDS prevention and control programs and urged member States to avoid discriminatory action in the prevention of HIV and AIDS in the health services, employment and travel. In July 1989, the first international consultation on AIDS and human rights was organized by the then United National Centre for Human Rights, in cooperation with the WHO/GPA. The resultant report highlighted the human rights issues raised in the context of HIV and AIDS and proposed the elaboration of guidelines. Resolution WHA 45.35 of May 14, 1992 recognized that there is no public health rationale for measures such as mandatory screening. In 1990, WHO conducted regional workshops on the legal and ethical aspects of HIV and AIDS in Seoul, Brazzaville and New Delhi. The first of these workshops developed guidelines to evaluate current and outline future legal measures for the control of HIV to be used as a check-list by countries considering legal policy issues. In November 1991, the WHO Regional Office for Europe and the International Association of Rights and Humanity held a Pan-European Consultation on HIV and AIDS in the Context of Public Health and Human Rights in Prague, which considered the Rights and Humanity Declaration and Charter and developed a consensus statement (the Prague Statement). Three further consultations on HIV, law and law reform were convened during 1995 by the WHO Regional Office for Europe, for countries in Eastern Europe and Central Asia.
- 2. The UNDP has played a pivotal role in linking HIV to law and ethics:** The UNDP held Inter-Country Consultations on Ethics, Law and HIV in Cebu (Philippines) in May 1993 and in Dakar in June 1994. Both of these consultations produced consensus documents reaffirming a commitment to voluntarism, ethics and the human rights of those affected (the Cebu Statement of Belief and the Dakar Declaration). UNDP also held Regional Training Workshops on HIV Law and Law Reform in Asia and the Pacific at Colombo, Beijing and Nadi (Fiji) in 1995.
- 3. The UN General Assembly early efforts to link effective HIV responses to human rights:** The UN General Assembly, in its resolutions 45/187 of 21 December 1990 and 46/203 of 20 December 1991, emphasized the need to counter discrimination and to respect human rights and recognized that discriminatory measures drove HIV and AIDS underground, making it more difficult to combat, rather than stopping its spread. The Special Rapporteur of the United National Sub-Commission on Prevention of Discrimination and Protection of Minorities on discrimination against PLWHA presented a series of reports of the Sub-Commission between 1990 and 1993. The Special Rapporteur’s reports highlighted the need for education programs to create a genuine climate of respect for human rights in order to eradicate discriminatory practices which are contrary to international law. The right to health can only be implemented by advising people of the means of prevention and the Special Rapporteur made specific reference to the vulnerable situation of women and children in the spread of HIV. Since 1989, the Sub-Commission, at its annual sessions, has adopted

resolutions on discrimination against PLWHA. In addition, **UNGASS 2001 and High Level Meetings in 2006 and 2011 enshrined the link between HIV and a human rights approach**. The drive to address and eliminate discrimination in the context of HIV derives from the commitments governments and national and international stakeholders, including people living with and vulnerable to HIV made at the UN in 2001, 2006 and 2011. These commitments are enshrined in Declarations from the UN General Assembly. These declarations are:

- Declaration of Commitment on HIV/AIDS, UN General Assembly (2001)
- Political Declaration on HIV/AIDS, UN General Assembly (2006)
- Political Declaration on HIV/AIDS: Intensifying our efforts to eliminate HIV/AIDS (UN Resolution 65/277) (2011)

4. **The UN Commission on Human Rights has not been silent**: The UN Commission on Human rights, at its annual sessions since 1990, has also adopted numerous resolutions on human rights and HIV which, inter alia, confirm that discrimination on the basis of HIV and AIDS status, actual or presumed, is prohibited by existing international human rights standards and clarify that the term “or other status” used in the non-discrimination clauses of such texts “should be interpreted to include health status, such as HIV/AIDS.”
5. **UNAIDS has played an indispensable role in promoting a human rights approach in HIV responses**: The role of UNAIDS in the evolution of a human rights approach in global HIV responses is described in Chapter 4. One seminal contribution of UNAIDS in the human rights approach was the publication of **The International Guidelines on HIV/AIDS and Human Rights (2006)**. This publication by UNAIDS and the UNHRC consolidates the recommendations that resulted from the second and third International Consultations on HIV and Human Rights held in 1996 and 2002 in Geneva. This publication provided help for States in designing, coordinating and implementing their national HIV policies and strategies, assisted in closing the gap between principles and practice and was instrumental in creating a rights-based and effective response to HIV.
6. **Various countries embarked on law reform to prevent discrimination against persons living with HIV and AIDS**: Law reform programme focusing on human rights have been ongoing in countries such as Australia, Canada, the United States, South Africa and in the Latin American region, together with networks of legal advocates, practitioners and activists at governmental and community levels. One concrete achievement of such groups has been general anti-discrimination legislation at national and local levels which explicitly includes HIV and AIDS. Such civil legislation exists in the United States, the United Kingdom, Australia, New Zealand and Hong Kong. In France such a definition is contained in the Penal Code. Some countries have constitutional guarantees of human rights with practical enforcement mechanisms, such as the Canadian Charter of Rights.
7. **Academic international studies link effective HIV responses to human rights approach**: There have also been prestigious academic international studies of HIV and human rights: these include the work of the late Paul Sieghart for the British Medical Association Foundation for AIDS; the Francois-Xavier Bagnoud Centre for Health and Human Rights, Harvard School of Public Health; the International Federation of Red Cross and Red Crescent Societies; the National Advisory Committee on AIDS in Canada; the Pan American Health

Organization (PAHO), the Swiss Institute of Comparative Law; by the Danish Centre on Human Rights and by the Georgetown/John Hopkins University Program in Law and Public Health.

**8. The evolution of thoughts and the link between effective HIV responses and a human rights approach are captured in international charters, consensus and declarations:**

Numerous charters and declarations which specifically or generally recognize the human rights of people living with HIV have been adopted at national and international conferences and meetings, including the following.

- London Declaration on AIDS Prevention, World Summit of Ministers of Health, 28 January 1988;
- Paris Declaration on Women, Children and AIDS, 30 March 1989;
- Recommendation on Ethical Issues of HIV Infection in the Health Care and Council of Europe, Strasbourg, October 1989 (Rec. 89/14).
- Council of Europe, Committee of Ministers Recommendation R(87) 25 to member States concerning a common European public health policy to fight AIDS Strasbourg, 1987;
- European Union, European Parliament and Council Decisions on “Europe Against AIDS” program (including dec. 91/317/EEC and dec. 1279/95/EC);
- Declaration of Basic Rights of persons with HIV/AIDS Organizing Committee of the Latin American Network of Community-Based Non-Governmental Organizations Fighting AIDS, November 1989;
- Declaration of the Rights of the People with HIV and AIDS, United Kingdom 1989;
- Declaration of the Rights of the People with HIV and AIDS, National Association of People Living with HIV/AIDS, 1991;
- Prague Statement, Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights, November 1991;
- Rights and Humanity Declaration and Charter on HIV and AIDS, United National Commission on Human Rights 1992; South Africa AIDS Consortium Charter of Rights on AIDS and HIV, 1 December 1992;
- Cebu Statement of Belief, UNDP Inter-Country Consultations on Ethics, Law and HIV, the Philippines, May 1993;
- Dakar Declaration, UNDP Inter-Country Consultations on Ethics. Law and HIV Senegal, July 1994;
- Phnom Penh declaration on Women and Human Rights and the Challenge of HIV/AIDS, Cambodia, November 1994;
- Paris Declaration, World AIDS Summit, Paris, 1 December, 1994;
- Malaysia AIDS Charter: Shared rights, Shared Responsibilities, 1995;
- Chiang Mai Proposal on Human Rights and Policy for People with HIV/AIDS, submitted to the Royal Thai Government, March 1995
- Montreal Manifesto of the Universal Rights and Needs of People Living with HIV Disease;
- Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, March 1995;
- New Delhi Declaration and Action Plan on HIV/AIDS, Interdisciplinary International Conference: AIDS, Law and Humanity, December, 1995.

Outside of the UNGASS and High Level Declarations in 2001, 2006 and 2011 the following made the most overt linkage between HIV and vulnerable populations including LGBTI, sex workers, drug users and prisoners:

- The Oslo Declaration (described later in the document) – 2012
- The UNAIDS Zero Goals – 2011
- The UNAIDS seven (7) priority actions to reduce and eliminate stigma and discrimination – 2012
- The Montevideo Consensus on Population and Development – 2013

- Addressing the causes and disparities in health services access and utilization for LGBT persons. PAHO. Resolution CD52.R6 (2013)

## **The Situation in the Contemporary Caribbean**

The Caribbean has made progress in its fight against HIV. For instance in 2013 UNAIDS reported the most pronounced reduction globally in new HIV infections (49%) since 2001 occurred in the Caribbean.<sup>1</sup> In addition, UNAIDS reported that the Caribbean has significantly reduced new HIV infections among adolescents. Further, the report indicates a reduction in the number of AIDS deaths from 24,000 annually in 2001 to 11,000 annually in 2012. Encouragingly most countries now provide virological testing for babies within two months of birth. Indeed, new infections among children in the Caribbean have dropped from about 3,500 in 2001 to less than 500 in 2012. Moreover, progress has been made in behaviour areas such as sex workers using condoms with their most recent client. These and other statistics tell a story of progress in reducing the epidemic of HIV and AIDS.

But while the Caribbean can count many successes in the fight against HIV and AIDS, as described in an earlier UNAIDS Report (Appendix 2), it is also evident that in its pursuit of the UNAIDS Global Zero Goals – Zero New Infections, Zero AIDS Death and Zero Stigma and Discrimination by 2015 (Appendix 3) – progress is not uniform. While measurable progress has been made in response to the Zero New Infection and Zero AIDS Deaths, little progress is being made in attaining ZERO STIGMA and DISCRIMINATION in the context of HIV in the Caribbean.

A robust human rights approach in the Caribbean HIV response and a major push back on HIV-related stigma and discrimination have become imperatives because the epidemiological profile of the HIV epidemic clearly shows a concentration of infections and AIDS in certain vulnerable populations – populations which are subjected to significant human rights violations in many settings (Appendix 2). Consequently, Caribbean Governments and stakeholders have embarked on strengthening the human rights approach in the regional and national HIV responses.

Yet, thirty-two years into the HIV pandemic, the projection of Jonathan Mann of three phases of the pandemic is being played out in the Caribbean and the world.<sup>2</sup> The late Jonathan Mann had predicted three phases:

- The epidemic of HIV
- The epidemic of AIDS
- The epidemic of stigma and discrimination

Clearly, the epidemic of stigma and discrimination looms over us in the Caribbean and globally. His prediction are not only correct, but this third phase of the HIV pandemic threatens to derail the response and cause the Caribbean to lose the ground it has gained in the fight against HIV.

The working definition of HIV-related discrimination was described at the 31<sup>st</sup> Meeting of UNAIDS.<sup>3</sup> The Background Notes for the 31<sup>st</sup> Meeting provided a comprehensive list of the forms and prevalence of discrimination experienced by people living with and vulnerable to HIV. This document also provides a listing of policies and programmatic responses by sector to address HIV-related discrimination.

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<sup>1</sup> UNAIDS Report on the Global AIDS Epidemic 2013

<sup>2</sup> Johnathan M Mann et al: *Health and Human Rights*. London Routledge (1999)

<sup>3</sup> In the Background Note for the Thematic Segment: Non-Discrimination for the 31<sup>st</sup> Meeting in December 2012 of the UNAIDS Program Coordinating Board (PCB)

CARICOM countries have committed to reduce the impact HIV has had on the development of the Region. National Governments have made clear commitments to eliminate HIV-related discrimination because it is harmful to the individuals who experience it and to the communities in which it occurs, and because it has a negative impact on HIV prevention and treatment outcomes. CARICOM leaders have joined other World Leaders who have agreed through signing of declarations at the UN that efforts to reach Zero Discrimination are essential to enable the AIDS response to reach every citizen.

In a speech in November 2012 in London, Sir Shridath Ramphal, the former Secretary-General of the Commonwealth of Nations, laid out his views opposing the criminalization of homosexuality, wherever it occurs.<sup>4</sup> Sir Shridath quoted another stalwart of anti-discrimination, Archbishop Desmond Tutu, who has said that the violence and criminal sanctions suffered by LGBTI people across the world are intended to make them "doubt that they too are children of God," which he calls "nearly the ultimate blasphemy." Sir Shridath went further, equating opposition to the persecution of LGBTI people with the campaign to end slavery in the 19th century and the anti-apartheid struggle of the 20th century, "The abolitionists were pilloried, but they prevailed."

Sir Shridath Ramphal, who played a pivotal role in dismantling apartheid, is an unapologetic advocate of decriminalization. He recognizes criminal sanctions for what they are: a colonial legacy that never had a part in the indigenous cultures on which they were imposed and should have been repealed long ago.

Ahead of the 2013 Commonwealth Heads of Government Meeting (CHOGM) in Sri Lanka, the 'Speaking Out' Report, produced by the UK's Kaleidoscope Trust, alongside activists from Australia's Kaleidoscope Human Rights Foundation and other countries' rights groups, called on Commonwealth nations to take action against homophobia and transphobia and for homosexuality to be de-criminalized across all member countries.<sup>5</sup> It detailed a litany of human rights abuses against LGBTI people and identified that 41/53 Commonwealth countries continue to criminalize homosexuality. This means that 80% of the Commonwealth countries criminalize homosexuality compared to 25% of non-commonwealth countries.

The Kaleidoscope Report received the backing of former Secretary General of the Commonwealth, Sir Shridath Ramphal, and Dr Purna Sen, the former Head of Human Rights at the Commonwealth. Sir Shridath Ramphal wrote the foreword for the report while Sen contributed its introduction. Sir Shridath Ramphal stated, "It is a reminder that for most of the countries of the Commonwealth, the desecration of our fellow citizens began in the law." He concluded, "As with the abolition of slavery, the decriminalization of homosexuality in our time must be an act of law."

The report also included first-hand accounts from citizens across the Commonwealth about the consequences of discrimination and hardship entailed because of bigotry against LGBTI people, including in wealthier nations. The British Prime Minister also promised to raise the issue at the CHOGM in Sri Lanka. However, the CHOGM did not consider the report and once again the CHOGM failed to address a fundamental human rights issue. Indeed, the CHOGM Communique showed that although human rights and health issues were subjects at the CHOGM, the issue of HIV and LGBTI did not get on the agenda.

In May 2012, in her state of the nation address, President Joyce Banda of Malawi asserted that the provisions of the penal code that criminalize homosexual acts should be repealed.<sup>6</sup> In November 2012, during a public debate, the justice minister announced the suspension of sodomy laws in Malawi. Caribbean leaders may wish to follow this lead.

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<sup>4</sup> Sir Shridath Ramphal. Opening remarks at Launching of Film "Call Me Kuchu." London, November 2012.

<sup>5</sup> The Kaleidoscope Trust. Speaking Out – The Rights of LGBTI Citizens from Across the Commonwealth. A report for the CHOGM, November 2013. Sri Lanka (2013)

<sup>6</sup> Inter Press Service (IPS), November 17<sup>th</sup>, 2013

Caribbean governments have endorsed UNAIDS' anti-discrimination programme. UNAIDS has recognized advancing human rights and gender equality as one of three strategic pillars in response to HIV. It is in this regard that UNAIDS has developed a seven (7) point strategic action plan to address the issue of stigma and discrimination (Appendix 4).

At the Regional level, CARICOM countries in 2013 signed on to two significant declarations that must become part of the PANCAP *Justice for All* Agenda. The first of these important declarations was the Montevideo Consensus on Population and Development which resulted from the First Session of the Regional Conference on Population and Development in Latin America and the Caribbean held in Uruguay in August 2013.<sup>7</sup> This Regional Conference agreed on the position that LAC will take to the UN Conference in 2014. The 2<sup>nd</sup> of these declarations is the Resolution CD52.R6 at the 52<sup>nd</sup> Directing Council of the Pan American Health Organization in Washington DC in October 2013.<sup>8</sup> This was the first time a UN organization addressed the equal access to health services for LGBTI populations. The countries of LAC adopted this resolution which was presented by the US delegation.

Within the Caribbean itself, there is a robust effort to implement a comprehensive human rights approach in HIV responses. A conference to examine HIV-related stigma and discrimination, ethics and the law in the Caribbean at the University of the West Indies in 2010, which led to the publication of a book in 2013, concluded that in pursuing zero discrimination relating to HIV Caribbean countries must re-examine their constitutions, laws, policies and practices as they relate to human rights.<sup>9</sup>

As the national HIV NSPs are strengthened to make a human rights approach more prominent, countries, and particularly their leaders and policy makers, must confront difficult issues and find answers to protect all their citizens while sometimes going against well-established societal norms. Some of the subject matter has been treated as taboo in Caribbean societies up to now. The *Justice for All Programme* comes at a time when leaders and policy makers are showing a willingness to explore boundaries never before contemplated.

Recently, Prime Minister Denzil Douglas of St. Kitts and Nevis argued that the fundamental rights of persons living with HIV and of vulnerable populations such as MSM must be issues that Caribbean countries discuss and develop a way forward to improve on the way Caribbean countries guarantee equality and justice for all citizens (Appendix 5). Prime Minister Douglas stated in strong language: ***“I am determined that St. Kitts and Nevis will move to expedite the abolition of punitive laws which continue to foster stigma and discrimination especially against LGBT community. In fact, the legislative changes have already been completed and I had expected that, together with UNAIDS and our Ministry of Health, the proposed national consultation on “rights for all” would have been completed in time for World AIDS Day 2012.”***

In Belize, both the Prime Minister of Belize and the First Lady of Belize have recently come out to support the change in punitive laws. The First Lady of Belize in July 2013 on International Day against Homophobia called for equal treatment of all citizens, regardless of sexual orientation. The Prime Minister of Belize in an address to the Nation for the 32<sup>nd</sup> Independence Anniversary stated as follows:

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<sup>7</sup> The Montevideo Consensus on Population and Development (2013): Full integration of population dynamics into rights-based sustainable development with equality: key to Cairo Programme of Action 2014. The 1<sup>st</sup> Session of the Regional Conference on Population and Development in Latin America and the Caribbean

<sup>8</sup> PAHO Directing Council Meeting (2013), Resolution CD52.R6

<sup>9</sup> *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

*“We cannot afford for Government and the Churches to be at odds. The filigreed chain that links the two is a proud part of the national ornamentation, and it cannot be allowed to break. Government will therefore fully respect the right of the churches to propagate their understanding of the morality, or immorality, of homosexuality. But what Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law. After all, the Belize Constitution that affirms the supremacy of God also affirms fundamental rights and the dignity of the individual human being. That same Constitution further declares that all persons are equal before the law and entitled to non-discrimination; to freedom from interference with their privacy; and to freedom from unlawful attacks on their honour and reputation.”*

The Honourable Prime Minister Portia Simpson Miller of Jamaica has committed to bring a bill to the Parliament of Jamaica to address the issue of sodomy by the end of 2013 and that she will ask Parliamentarians to vote on conscience, rather than on party lines.<sup>10</sup> It should be noted that Prime Minister Simpson is keeping a promise she made as part of her campaign in the 2011 elections in Jamaica. It should be further noted that her promise was made in the face of an unrelenting attack from the former Prime Minister of Jamaica, Mr. Bruce Golding, who insisted when he was Prime Minister that he would not make room in his cabinet for any person who is gay. Ms. Portia Simpson Miller was accused of taking campaign contributions from gay-rights groups.

In Guyana, in 2011, Guyana’s Parliament, led by the then Minister of Health passed a motion in which the Parliament refused to criminalize HIV transmission (Appendix 6). Moreover, in 2012 they passed a resolution and have established a Special Select Committee to make recommendation on how to bring the discriminatory laws relating to same sex relations in compliance with Human Rights provisions of the UN (Appendix 7). Also in Guyana, the Chief Justice ruled in a recent case that dress preferences in public is not unlawful. In Belize, the court is presently adjudicating in a case challenging the legality of the constitution and laws making same sex relations illegal.

Caribbean Ministers of Health joined other countries of the Americas to approve Resolution CD52.R6, “LGBT and their right to access health services,” at the 52<sup>nd</sup> Directing Council Meeting in Washington DC in October 2013.<sup>11</sup> It was the first time a UN body passed a resolution linking LGBT and access to health services.

As there is more public outrage at flagrant violations of LGBTI rights, Caribbean policy makers are also openly beginning to address issues pertaining to this segment of the population. In Jamaica, the Parliament is considering an anti-gang bill which contains a clause to criminalise the production and singing of songs which incite violence against homosexuals and other groups.<sup>12</sup> Similarly, in Trinidad and Tobago [avaaz.org](http://avaaz.org), the world’s largest online campaigning community for human rights and change, is calling for a complete ban of the song ‘Kick ‘een’ She Back Door’ by the Antiguan group Burning Flames.<sup>13</sup> [Avaaz.org](http://avaaz.org) believes that the song promotes rape and violence against women. Earlier, [Stabroek News](http://StabroekNews.com) had reported on August 7, 2013 that the Guyanese group, Red Thread petitioned against Burning Flames, Onyan and R. Kelly for their promotion of violence against women.

Caribbean leaders are pursuing the questions of equity, equality and justice for **all citizens** at a time when on the global front, significant leaders, such as Pope Francis, have conceded that the Catholic Church must find a way to better discuss and deal with the issue of homosexuality. The Anglican Diocese has accepted homosexual candidates in the priesthood.

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<sup>10</sup> Honorable Portia Simpson Miller promised to decriminalize LGBT. [Jamaican Advocate](http://JamaicanAdvocate.com). January 4, 2012

<sup>11</sup> Report of the 52<sup>nd</sup> Directing Council of PAHO, Washington DC, September 29 to October 4, 2013

<sup>12</sup> [Jamaican Gleaner](http://JamaicanGleaner.com) – Proposal to criminalize production, singing of violence-inciting songs, November 28, 2013

<sup>13</sup> [Stabroek News](http://StabroekNews.com) – More trouble for Burning Flames song: Petition launched in Trinidad and Tobago, November 13, 2013. This is a reproduction from the [Trinidad Guardian](http://TrinidadGuardian.com).

PLWHA have started a movement called, “Policy, Health, Dignity and Prevention (PHDP).” This focus on a human rights approach to HIV has come about after a long journey of observations and experience. It identifies vulnerabilities and responds to them in terms of:

- Identifying those who are vulnerable to or affected by HIV
- Identifying programs that will reduce that vulnerability
- Identifying stakeholders and partners who are critical in implementing programs to identify vulnerable populations and reducing those vulnerabilities.

Clearly, thirty one years after the beginning of AIDS, there is need for a shift in the way we respond to HIV. This shift entails firstly that more expenditure and programs should be directed to those most heavily affected or vulnerable to HIV. Such vulnerable groups include women, discordant couples, young people, men who have sex with men, sex workers and persons who use drugs. It is imperative that national responses, for example, must not restrict anti-discrimination strategies only in relation to PLWHA, but must also include anti-discrimination strategies for those most at risk for HIV.

Secondly, there must be a shift in programming. There is clear evidence that certain aspects of the social and legal environments increase vulnerability to HIV infection and such environments do not support people to take up HIV information, services and commodities. In this regard, there must be a shift in the content of programming beyond biomedical and behaviour programs to programs that empower and address legal and social vulnerabilities and other structural issues.

The third element that needs shifting is the composition of human rights partners. The Ministries of Health have led the fight. Their leadership and continued hard work is still necessary. . But there is need for more engagement of and by the Attorney Generals and Ministries of Legal Affairs, Home Affairs, and Women and Gender, for Parliaments and MPs, the Judiciary, Human Rights Commissions and parliamentary groups as a whole.

There is clear evidence that stigma and discrimination impedes uptake of HIV prevention and treatment services. It also discourages disclosure of positive HIV status. It is from this perspective that the *Justice for All* Programme is focusing on the human rights approach to address stigma and discrimination of key populations like LGBTI persons, sex workers and people who use drugs, and on removing laws that represent obstacles to attain human rights for all and establishing legislation that facilitates human rights for all citizens.

It was from this perspective that the **PANCAP Champions for Change Programme** was launched in 2004 in St. Kitts and Nevis to create an enabling environment to reduce stigma and discrimination. This is captured in the volume on human rights in the Caribbean, edited by Volderine Hackett, which identified the intractable nature of the problem and recommended the need for behavioural research, the establishment of a Stigma and Discrimination Unit and the institutionalisation of champions across the sectors to advocate for change.<sup>14</sup> Almost 10 years later we lament a lost opportunity to accelerate this agenda.

The *Justice for All* Programme offers another opportunity to bridge the gap. It is based on six elements that are elaborated in a concept note (Appendix 1):

- Enhancing the family spirit in the form of national and regional solidarity to support and care for those in need

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<sup>14</sup> Volderine Hackett: PANCAP Perspective. Volume 1 (#3 Of 2012). HIV and Human Rights – Reshaping the PANCAP Agenda

- Increasing access to treatment, including affordable medicines
- Reducing gender inequality, including violence against women, girls and children
- Promoting sexual and reproductive health and rights, in the context of self-worth
- Achieving legislative reforms for modifying and repealing discriminatory laws that infringe human rights
- Providing targets and indicators for tracking progress
- Agreeing on a Pan Caribbean Roadmap

*While PANCAP's Justice for All Roadmap aims to reduce and eliminate stigma and discrimination related to HIV overall, it targets the removal of discriminatory laws that enable the disavowal of certain human rights or disabled persons from pursuing their rights to life, liberty and autonomy, while at the same time seeking to promote the enactment of statutory provisions that will facilitate enjoyment of human rights.*

## CHAPTER 2

### Hurdles to overcome

The hurdles to overcome in the Caribbean to assure a successful fight against HIV are comprehensively discussed in the publication *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine. This subject is also extensively discussed in the *Report of the Global Commission on HIV and the Law*.

CARICOM countries have made significant advances in the fight against HIV and their comprehensive fight against HIV has been recognized; several best practices have been acknowledged globally. But the HIV-situation today is far from comforting:

- The Caribbean is the most HIV-affected region of the Americas and the second most affected region in the world;
- The HIV epidemic is a mosaic, with a number of different epidemics within countries and across the region;
- AIDS is the leading cause of premature death among 25-44 year-olds with 38 deaths due to AIDS-related illness occurring every day;
- HIV prevalence in Caribbean countries is between 0.2 to 3.1% of the adult population (Appendix 2)
- HIV disproportionately affects the most vulnerable population groups;
- HIV is gradually affecting men and women almost equally;
- Approximately 20,000 new HIV infections occur in the Caribbean annually representing close to 1% of the total new global HIV infections.

Thirty one years after the first HIV cases were diagnosed in the region, stigma and discrimination are still hurdles the Caribbean struggles against in the fight to reduce and eliminate HIV as a public health scourge. A mapping of the punitive laws which impede universal access to HIV prevention, treatment, care and Support was done for Barbados and OECS countries in 2010.<sup>15</sup> Similar assessments have been done by PANCAP in several countries as part of CIDA's Law, Ethics and Human Rights Project in Guyana, Dominica, St. Vincent and the Grenadines, St. Lucia, and St. Kitts and Nevis.<sup>16</sup>

UNAIDS and Ministries of Health in CARICOM have posited that anti-gay laws drive the pandemic by creating toxic homophobic environments which restrict LGBTI from engaging in health-seeking behaviour. Jamaican men who have sex with men (MSM) now have the world's highest HIV prevalence rate among this vulnerable population (32.9%). Unpublished research by Professor Peter Figueroa, head of Public Health at the University of the West Indies, Mona indicates that nearly 60% of these men also form relationships with women and many do so as a cover for their homosexuality. This provides the perilous opportunity for HIV to bridge between the heterosexual and homosexual populations. Many at risk of HIV infection are people who engage in behaviours that are subject to moral condemnation or criminalized by the law: same sex relations, drug use and sex work. It is also evident that there are aspects of the law and the legal and judicial environment that negatively impact on the lives of persons living with HIV and also impede the efforts to prevent and control the HIV epidemic in the

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<sup>15</sup> UNAIDS in Barbados and the OECS. November 2010. Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados

<sup>16</sup> CIDA

Caribbean and around the world. The situation in the Caribbean, reported in various sources, is particularly discouraging:

- 56% of Caribbean countries reported no legal protection against HIV-related discrimination
- Broad-based anti-discrimination laws (not constitutions) are mostly related to employment legislations, and only exist in some countries, but only the Bahamas specifically prohibits discrimination based on HIV status.
- 75% of countries report laws and regulations that present obstacles to HIV services for vulnerable population groups
- 69% of countries criminalize same-sex activities among consenting adults. These countries include Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago
- 81% of countries criminalize some aspect of sex work
- 19% of countries have HIV-related travel restrictions
- 19% of countries have HIV-specific laws that criminalize HIV transmission
- Law enforcement relating to anti-discrimination laws and rules, sexual and domestic violence laws in Caribbean countries are weak
- Legal and Human Rights Literacy in the population, particularly persons living with and vulnerable to HIV is low.<sup>17</sup>

But the situation in the Caribbean is, as dismal as it is, also reflected around the world. Globally, levels of stigma and discrimination related to HIV and gender-based violence remain persistently high and pledges to address these human rights violations remained unfulfilled in every region of the world. With regards to laws that can act as obstacles to access HIV services, seventy-nine countries and territories around the world criminalize same sex sexual relations and six impose the death penalty for same-sex relations. At least 116 countries around the world impose legal sanctions for various aspects of sex work. Forty seven countries retain HIV-travel restrictions on entry, stay and residence and fifty-six countries have enacted laws specifically criminalizing HIV transmission.

## **What are the issues to be addressed?**

PANCAP has developed a concept note (see Appendix 1) which comprehensively captures all elements of the *Justice for All Programme*; however, this review focuses on a limited number of issues that are significant in the fight against HIV-related stigma and discrimination. Its main concern is with policies and actions designed to strengthen the protective legal environment for people living with and vulnerable to HIV by eliminating punitive laws. These laws inhibit the AIDS response in the specific ways detailed below.

### **1. Stigmatizing policies and practices in the HIV Response**

The legal and policy measures and practices implemented as part of the HIV responses in the CARICOM Region have contributed to HIV-related stigma and discrimination. These measures were put in place with the understanding that they were necessary to protect the general population from the behaviour of ‘high-risk’ groups.

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<sup>17</sup> HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine (2013). Also see PANCAP Perspective on Human Rights (2012) and The Global Commission on HIV and Law Final Report (2012)

This was a mistake from the very start as it enshrined stigmatization and established a basis for discrimination. Among the examples of stigmatizing and discriminatory measures are:

- Compulsory screening and testing of military and police applicants and staff and prisoners
- Compulsory notification of HIV cases
- Compulsory screening of pregnant women
- Screening of persons applying for visas and citizenship
- Mandatory testing of persons applying for work permits
- Pre-employment testing
- The introduction of criminal laws to punish wilful transmission of HIV
- Restricting access to services, in particular, treatment and care to nationals

Constitutional and other legislative measures have illustrated some positive movements. For example, in 2008 St. Kitts and Nevis removed the requirement for an HIV test for a work permit applications. However, the requirement is still in place with respect to applications for citizenship. In 2006 St. Lucia passed the Health Practitioners Act No. 33 of 2006 which regulates the conduct of medical professionals and provides sanctions for refusing to treat a patient. There is also provision for the revocation of a doctor's practicing certificate. In Guyana, the Regulation for the Ministry of Health Act 2001 includes a Code of Conduct for Medical Practitioners, Nurses and Pharmacists which make specific provisions to prevent discrimination for PLWHA.

***The Justice for All Roadmap, based on the recommendations of a series of national consultations, will identify the countries where discriminatory measures exist and outline what is required to eliminate these practices.***

## **2. Narrow and deficient responses to discrimination within the legal environment**

Professor Rose-Marie Belle Antoine argues that the law is a direct and effective instrument of social change and an efficient tool for addressing many of the problems associated with HIV – in particular, practices of discrimination, which not only violate the dignity and rights of PLWHA but also perpetuate the “underground” nature of HIV.<sup>18</sup> In other words, the constitutional and legislative environments are insufficient when it comes to protecting PLWHA, or those vulnerable to HIV, from stigma and discrimination. The legal and statutory environments of the Caribbean do not adequately, if at all, provide protection for persons living with and vulnerable to HIV. Specifically, antidiscrimination provisions in the context of HIV are lacking or weak with specific reference to:

- Anti-discrimination provisions protecting persons in employment: since the beginning of HIV, the workplace has been, and continues to be, rife with HIV-related discrimination.
- Anti-discrimination provisions for police and defence force
- Anti-discrimination provisions guaranteeing education
- Anti-discrimination provisions guaranteeing access to health services: HIV-related discrimination in the health care sector has long been identified as a major problem in the AIDS response. People living with HIV and other key populations face denial of services, judgmental or condemnatory attitudes, lack of confidentiality, and segregation and rejection at the hands of health care workers. Health care workers who are living with HIV also face discrimination and dismissal.

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<sup>18</sup> *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

**(i) The legal environment in terms of general anti-discrimination provisions in the context of HIV in CARICOM countries is insufficient**

Most of the constitutions and ordinary laws in Caribbean countries make little or no reference to non-discrimination on the basis of HIV-status or based on sexual orientation. While the need for non-discrimination aspects of the constitution and laws has dominated the discussion relating to HIV-linked stigma and discrimination in the Caribbean, other aspects, such as weak or non-existent provisions for prevention of gender-related discrimination are still relevant. Some constitutions and laws in the Region are still silent on the issue of gender-linked discrimination.

Protection must be such that obligations are not only on the state, but also on the private sector. Non-discrimination on the basis of gender, sexual orientation and HIV status must relate to employment, schools, health services, sports, etc.

*The Justice for All Roadmap will place emphasis on a strengthened legal and facilitating environment to protect individuals and groups against HIV-related stigma and discrimination by promoting relevant provisions in constitutions, laws (such as employment laws), policies, codes and practices.*

**(ii) Broad-based non-discrimination and equality legislations exist only in relation to employment in the Commonwealth Caribbean**

Broad-based non-discrimination and equality legislations exist only in relation to employment and these legislations only exist in certain countries. The strongest of these legislations appear to exist only in Guyana, the Bahamas, St. Lucia and Trinidad and Tobago. But other countries also have some non-discrimination provisions. Yet none of these anti-discrimination laws, except for the Bahamas, make reference to HIV. The *Justice for All* Roadmap must target these opportunities to change the legal environment for a more effective HIV response.

The dependent territories of the Region have laws that are protective as they reflect the UK Human Rights Act 1988. *Outside of the Dependent Territories, only the Bahamas caters for HIV-non-discrimination in employment in its laws.* The relatively progressive nature of the Bahama's provisions is diminished by the fact that the Act, which prohibits employment pre-screening for HIV, does not extend this protection to the disciplined forces. This is an area of concern in all CARICOM countries. The Bahamas Employment Act (2001) prohibits discrimination on the grounds of race, creed, sex, marital status, political opinion, age, HIV or AIDS status or disability in public or private employment.

Guyana has extensive constitutional and legislative provisions that seek to promote equality between the sexes and prevent discrimination. Guyana's constitution (section 149) prohibits discrimination on the grounds of race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture. The constitution (Section 249) also protects free choice of employment, equality before the law, equality of birth status and equality of women.

It ought to be noted that in 2000, Guyana's constitution was extensively amended and the discrimination clause included protection for sexual orientation, however, this amendment lapsed after the President of Guyana failed to provide assent to the amendment bill, largely based on representation by the faith-based organizations. Guyana also has an Equality Rights Act (1990) and Prevention of Discrimination Act (1977) but there is no provision in the Constitution and in any of the laws to protect against discrimination on the grounds of HIV status or on the

grounds of sexual orientation. It ought to be further noted that Guyana's constitution provides for the establishment of various Rights Commissions, including an overarching Human Rights Commission and the following Commissions – Ethnic Relations Commission, Women and Gender Equality Commission, Rights of the Child Commission and the Indigenous Peoples Commission. All of these commissions include provisions to protect people against discrimination on various grounds.

The Grenada Employment Act (1999) and the Equality of Opportunity and Treatment in Employment and Occupation Act (2001) of St. Lucia contain strong anti-discrimination grounds similar to those in Guyana's constitution and laws, but, like Guyana, do not extend protection on the grounds of HIV status or sexual orientation. There are also non-discrimination clauses in the Employment Legislation of Grenada and limited non-discriminatory provisions based on race, sex, religion or political affiliation in Dominica and St. Vincent.

Dominica, St. Kitts and Nevis, St. Vincent and the Grenadines, Belize, Barbados and Suriname do not appear to have any specific or general non-discrimination legislation.

The Human Rights Act (1981) of Bermuda was amended in 2000 to revise the definition of a disabled person to include a person with an illness such as HIV or AIDS. *While Right to Work provisions are contained in constitutions of Guyana, Suriname and Belize, there is no Right to Work Provisions that specifically protect people living with, or vulnerable to, HIV.*

*The Justice for All Roadmap will review all Employment and Right to Work provisions in constitutions and laws of CARICOM countries and promote specific references to avert discrimination related to HIV status, sexual orientation and gender.*

The Caribbean Region needs to define a legislative policy and program to outlaw discriminatory practices and creating new obligations and entitlements which are necessary to protect any society against the harms of HIV. The non-discrimination provisions of constitutions and laws must be such that it offers citizens the broadest possible basket of rights.

Given the experience in the Caribbean and in other Regions, it appears that one immediate response to improving the legal environment to tackle HIV-related stigma and discrimination would be to ensure that all employment legislation include non-discrimination on the basis of HIV status, sexual orientation and gender. This is already being addressed. In the new Labour Code of St. Lucia provisions to prevent discrimination based on HIV status has been included, although the law has not yet been implemented. Similar provisions have been made in the amended Employment Ordinance in Turks and Caicos Islands, but this has not yet had legislative approval.

There is already considerable experience in certain parts of the world with unfair dismissal laws relating to HIV. The Caribbean countries could benefit from an examination of these experiences.

### **3. Health as a fundamental human right**

Health is a development issue and the Caribbean Leaders in the Nassau Declaration in 2001 adopted the Caribbean Cooperation in Health which states emphatically that “Health is the Wealth of the Caribbean” (Appendix 8). All Caribbean countries are members of WHO whose constitution states, “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition.” But few constitutions provide for health as a fundamental right. In constitutions such as that of Guyana and Suriname, health is regarded as a human right, but

economic and social rights, such as health, where they exist, have been treated as non-justiciable. In Guyana, Article 25 of its constitution states: “Every citizen has the right to free medical attention, and also to social care in the case of old age and disability.” In Suriname, Article 36 states: “Everyone has the right to health.”

Other Caribbean countries which recognize the right to health are Cuba, the DR, and Haiti.

At the 52<sup>nd</sup> PAHO Directing Council Meeting in 2013 CARICOM countries joined Latin American and North American countries in PAHO to adopt Resolution CD52.R6 which seeks to ensure equal access to health care services for all citizens, including LGBTI persons.

*The Justice for All Roadmap will advocate for “Right to Health” Provisions in the legal environment of countries, taking into consideration the Montevideo Consensus (2013) and PAHO Resolution CD52.R6 (2013)*

#### **4. Right to Privacy and Confidentiality**

The right to privacy and confidentiality is critical to any consideration of stigma and discrimination in the Caribbean. Neither the constitutions nor the laws contemplate the need for privacy and confidentiality as they relate to HIV. This issue is tackled and addressed in the proposed CARICOM Model Legislation on HIV as presented by PANCAP.

#### **5. Sexual and Reproductive Rights, particularly those linked to the Rights of LGBTI**

One major issue is how the Caribbean will apply policies related to sexual and reproductive rights. These include sexual orientation and in particular persons having sex within same sex sexual relations. Sexual orientation is not only absent as a ground of anti-discrimination in Bills of Rights, but is also excluded from ordinary legislation, specifically on grounds that sodomy is unlawful and that such unlawful and unjust laws are preserved by savings law clause in the constitutions of Caribbean countries.

An in-depth analysis of this issue is found in a discussion by Professor Simeon C.R McIntosh.<sup>19</sup> He states that while human rights are prescribed in the constitutional elements, in practice they are neither upheld by the legal system nor by national convention and cultural mores. As a result, dignity and respect for the individual may be ignored in the constitution and in the law. He argues that our laws prohibiting same sex sexual activities between consensual adults are largely holdovers from colonial systems. They are also derived from our religious tenets that draw on scriptural texts that describe homosexual sodomy to be a sin and an abomination in the face of God. These have been collectively inscribed in our social norms that declare homosexuality as unnatural, and morally and socially reprehensible.

For politicians and other stakeholders, these laws cannot be changed because the majority of persons in any one country may be in favour of retaining the laws that criminalize such activities. The argument is made that our countries are based on a democratic norm of majority rule. Since the majority of citizens in any Caribbean country favour the retention of these punitive laws, politicians believe they have no mandate to change the laws. Religious leaders argue that the Caribbean has a faith-based culture and that our laws must reflect this reality. Religious leaders believe that the punitive laws that relate to same sex sexual activities are consistent with the religio-moral principles that socialize people’s lives in the Caribbean.

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<sup>19</sup> *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

Some in the legal environment argue that laws that criminalize same sex relations and behaviours are in violation of our constitutions and must be repealed. Others argue that while the laws might be in violation of the constitutions, which are strong on a rights-based-approach, the constitutions contain a Savings Law Clause that retains certain laws from colonial period. This was precisely the argument used in the courts in Trinidad and Tobago in the case of *Surat v AG*. This case is discussed later in Chapter Three and is an example where the court ruled that the saving law clause cannot preserve a law which clearly restricts the fundamental rights of a citizen.

The dual conundrum of majority opinion and the faith-based foundations of Caribbean countries is how to make these realities compatible with the fact that Caribbean constitutions have created a community of rights for ALL CITIZENS. Indeed, the paradox is that our faith-based norms are in conflict with our rights-based democracies. Added to this conundrum is that public health principles and rules dictate that the laws prohibiting certain sexual orientation and sexual freedoms place large segments of populations in every country at risk of morbidity and mortality. In this instance public health needs must be given prominence.

Out of the 54 Commonwealth countries 42 British Commonwealth members still outlaw homosexuality, including 11 of the 12 Caribbean members. Legislators in London imposed the laws in the late 19th century, but in the UK the equivalent legislation was taken off the statute books in 1967. One example of the incongruity of these outdated laws is illustrated in the case of Jamaica where the law related to buggery (the Jamaican Offences against the Persons Act, Article 76 – unnatural offences) states that: “Whosoever shall be convicted of the abominable crime of buggery with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.” In a recent draft legal assessment for Jamaica done by the UNDP, they recommended that from a financial and health perspective, Jamaica should decriminalize same sex behaviour among consenting adults, while retaining the laws in the case of sex involving minors and coercive sex as criminal offences.

Other European imperial powers, such as France, Belgium and Portugal, did not share Victorian Britain’s obsession with supposedly aberrant sexual behaviour. This explains why the non-British Members of CARICOM do not have the same problem. Nonetheless, homophobia remains deeply rooted in much of the Caribbean. In 2006, Time Magazine described Jamaica as the “capital of LGBT discrimination in the world.” Colin Robinson, of the Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS), based in Trinidad and Tobago, have presented a powerful case to show how deeply rooted homophobia is in the Caribbean. In Jamaica homophobic attacks can be particularly brutal. Through the years, globally recognized performers of Jamaica’s dancehall style of reggae, such as Buju Banton, whose 1990s hit ‘Boom Bye-Bye’ glorified murdering gays, have revelled in extreme homophobia. Dancehall lyrics have attracted international condemnation, including the banning of certain entertainers from performing in some countries. A group called Stop Murder Music Canada has organized a boycott of Jamaican music and performances for their promotion of violence-inciting songs, particularly directed against LGBTI.<sup>20</sup> It should be noted that in Jamaica, an anti-gang bill is presently being considered in a special select committee. There is controversy as one clause in the bill seeks to punish musicians and performers who promote violence through music and performances. This would be an important move in also addressing the glorification of violence against LGBTI population in Jamaica and elsewhere by music and musicians.<sup>21</sup>

**In the western hemisphere, the Anglophone Caribbean maintains some of the most regressive anti-gay laws in the world. Same-gender intimacy, regardless of consent or physical location, is criminalized with sentences ranging from life imprisonment to 10 years of hard labour. There are also laws against cross-dressing and constitutional bans on legal recognition of same-sex relationships. Some illustrations that follow indicate the implications of these laws even when they are not actually enforced.**

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<sup>20</sup> Xtra.ca – May 21, 2008

<sup>21</sup> Jamaican Gleaner – Proposal to criminalize production, singing of violence-inciting songs causes split in parliament, November 28, 2013

The UK overseas territories have introduced laws to decriminalize homosexuality, and Dutch laws relevant to Aruba and the Netherlands Antilles prohibit discrimination against individuals on the basis of their sexual orientation. The DR, Cuba, Suriname and the Bahamas have no criminal sanctions against consensual same-sex sexual activity. Both Guyana and Barbados allow for life imprisonment for same-sex relations, although these laws have never been enforced. Similarly, most states allow for imprisonment up to 10 years for same-sex relations, but hardly ever enforced these laws.

In **Belize**, section 53 of the Criminal Code criminalizes unnatural crimes. The section does not specifically state that sodomy is a crime, but it is used to criminalize acts of sodomy. In practice, however, the section has only been invoked to bring charges against male adults who sexually assault boys or other men. The police indicate that they treat sexual intercourse between consenting adults, whether male or female, as a matter of privacy of such adults. It should be noted that a new bill would change Section 46 of the Criminal Code of Belize – putting male anal or oral rape on a par with female rape for the first time. This is vital to counter anti-gay churches who have argued scrapping Section 53 would leave no protection for boys and men who are raped. The new bill was passed on 8 October. 2013??

In **Grenada**, section 431 of the Criminal Code, cap .1 (1994 continuous revised edition) states the following: “If any two persons are guilty of unnatural connection...each person shall be liable to imprisonment for ten years.”

In **Dominica**, buggery is an offence under section 16 of the Sexual Offences Act no, 1 or 1998:

Article 16. (1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for:

- a. Twenty-five years, if committed by an adult on a minor;
- b. Ten years, if committed by an adult on another adult; or
- c. Five years, if committed by a minor.

In **St Lucia**, section 133 of the Criminal Code (2004) criminalizes buggery:

- 1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for:
  - a. Life if committed with force and without the consent of the other person;
  - b. Ten years, in any other case.
- 2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years.

In **St. Kitts and Nevis**, the Offences against the Person Ordinance, chapter 56 of the Revised Laws 1961, section 56, provides, “Whoever is convicted of the abominable crime of buggery, committed either with mankind or any animal, shall be liable to be imprisoned for any term not exceeding ten years, with or without hard labour.”

In **St Vincent and the Grenadines**, the Criminal Code (1990) Edition 101, sections 146 and 148 provide the following:

Article 146. Any person who

- a. Commits buggery with any other person;
- b. Commits buggery with an animal; or
- c. Permits any person to commit buggery with him or her; is guilty of an offence and liable to imprisonment for ten years.

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

In **Barbados**, the Sexual Offences Act 1992, chapter 154, section 9 provides the following: “Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.”

In **Guyana**, it is an offence for a man to commit an act of “gross indecency” with another male person in public or private, including procuring or attempting to procure such an act. In accordance with section 351 of the Criminal Law Offences Act cap.8.01, the offence is punishable on indictment by imprisonment for up to two years. Section 353 of the Criminal Law Offences Act criminalizes buggery which is punishable on indictment by life imprisonment. Attempted buggery is punishable by imprisonment for a period of up to ten years

## 6. **Sex Work and the Law in the context of HIV**

This subject has been addressed comprehensively in PANCAP’s publication: *Prostitution, Sex Work and Transactional Sex* (2009). An extensive list of recommendations was made in this publication. There are no prohibitions against sex work in Suriname. However, prostitution is an offence in all other countries under review. The laws relating to sex work cover a range of activities including prostitution. All countries under review contain prohibitions including:

- Soliciting, living off earnings, loitering and wandering in public places;
- Procuring for the purpose of prostitution;
- Use of premises as a brothel;
- Laws sanctioning idle and disorderly persons, rouges, vagabonds and vagrants;
- Immigration laws;
- Procuring of minors

Legislative provisions define sex workers as “prostitutes” and “night walkers” and regulate aspects of “prostitution” and “brothels.” Less directly, those engaged in sex work might be deemed “vagrants”, “disorderly”, “rogues” and “vagabonds.” Sex workers face grave physical and sexual violence, threats to themselves and their families, harassment, sexual violation and even murder at the hands of their clients and pimps, they report being raped and robbed by clients, police officers and strangers who see them working on the streets. Many report narrow escapes from even more severe injury and murder. They are also unlikely to seek sexual and reproductive health services for fear of the discrimination that may occur. In many countries sex workers are viewed as drivers of the epidemic and the provision of certain services to sex workers, including the provision of condoms seen as encouraging and facilitating this immoral and illegal activity.

***The Justice for All Roadmap will make recommendations to create an environment where sex workers are protected against violence and where services are provided for and accessible to all persons, taking into consideration the recommendations contained in PANCAPs publication: Prostitution, Sex Work and Transactional Sex (2009)***

## 7. **Laws restricting entry, stay and residence in the context of HIV**

Trinidad and Tobago is one of the Caribbean countries in which the law prohibits entry for homosexuals. In 2007 Sir Elton John, an openly gay man, had to be given a special waiver to enter Trinidad and Tobago for a concert in Tobago. But recently, at the PANCAP AGM meeting in Trinidad and Tobago from October 21<sup>st</sup> 2013, the book ***HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean*** edited by Sir George Alleyne and Professor Rose Marie Belle Antoine was launched. According to the US-based NGO, An AIDS-Free World, its legal advisor, Mr. Maurice Tomlinson, was invited to the launch of the book. But Mr.

Tomlinson who is gay and an LGBTI and HIV activist could not attend unless he had a waiver. Mr. Tomlinson refused to apply for a waiver, considering the necessity as an assault on his fundamental human right.

Whether PANCAP intended it or not, the book launch highlighted the issue of discrimination against LGBTI and particularly in this case the deprivation of the right of a person to enter, stay or reside in a country solely on the basis of sexual orientation.

*The Justice for All Roadmap will seek to address Stigma and Discrimination in the context of HIV to highlight the instances of restriction in the entry, stay and residence of persons based on his or her sexual orientation.*

## **8. Laws criminalizing HIV transmission, exposure and non-disclosure**

The overtly broad application of criminal law to HIV non-disclosure, exposure, and transmission raises serious human rights and public health concerns. These matters are discussed in details in a *Guidance Notes Publication of UNAIDS: Ending overtly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations (2013)* (Appendix 9)

The Global Commission on HIV and the Law in its final report in July 2012 makes the following recommendations on HIV non-disclosure, exposure and transmission:

- Countries must not enact laws that explicitly criminalize HIV transmission, HIV exposure or failure to disclose HIV status. Where such laws exist, they are counter-productive and must be repealed. The provisions of model codes that have been advanced to support the enactment of such laws should be withdrawn and amended to conform to these recommendations
- Law enforcement authorities must not prosecute people in cases of HIV non-disclosure or exposure where no intentional or malicious HIV transmission has been proven to take place. Invoking criminal laws in cases of adult private consensual sexual activity is disproportionate and counter-productive to enhancing public health
- Countries must amend or repeal any law that explicitly or effectively criminalizes vertical transmission of HIV. Where review and reforms are underway, Governments must place moratoria of any such laws
- Countries may legitimately prosecute HIV transmission that was both actual and intentional, using general criminal laws, but such prosecution should be pursued with care and require a high standard of evidence and proof.
- The conviction of those who are successfully prosecuted for HIV exposure, non-disclosure and transmission must be reviewed. Such convictions must be set aside or the accused immediately released from prison with pardons or similar actions to ensure that these charges do not remain on criminal or sex offender records.

This position was also reflected in the Oslo Declaration on HIV Criminalization adopted by civil society in Oslo, Norway, in 2012.

Criminalization of HIV non-disclosure, exposure and transmission has not been a major issue in the Caribbean. In 2010/2011, a motion in the Parliament of Guyana was moved by an Opposition MP to criminalize the transmission of HIV. However, this motion was amended with unanimous support from the Members of Parliament to assert that criminalization of HIV transmission is a retrogressive action and that the Parliament should establish a select committee to examine ways and make recommendations to ensure effective prevention, treatment, care and support (Appendix 6)

Only Belize, St. Lucia and Trinidad and Tobago appear to have a specific law criminalizing HIV transmission. In Belize, sections 46.01 and 73.02 of the Criminal Code chapter 101 of the revised edition of Laws 2000 list reckless or wilful transmission of HIV or AIDS as a criminal offence.

In St. Lucia section 140 of the Criminal Code 2004 provides as follows:

Transmission of HIV:

Article 140.

- (1) Any person who, knowing that he or she suffers from...AIDS, intentionally or recklessly infects another person with human – immune deficiency virus known as HIV, whether through sexual intercourse or any other means by which the disease may be transmitted to another person, commits an offence of aggravated assault and is liable on conviction on indictment to prison for ten years.
- (2) It is no defence for a person charged with an offence under subsection (1), to prove that the act was committed with consent of the other person.

The Criminal Code (Sexual Offences) Amendment Act 1993 of Trinidad and Tobago provides that where a person who knows he has HIV/AIDS, commits a sexual act (which involves body contact and is capable to transmitting body fluids) with another person and does not inform that other person he has HIV, that person is guilty of sexual assault. Such a person is liable to 20 years on summary conviction. Spouses are not exempt.

The Sexual Offences and Domestic Violence Act of 1991 in Trinidad and Tobago states, “ Any person who knows he is infected with a virus causing or known to cause AIDS and who has sexual intercourse with any other person, with the consent of that other person, but without disclosing that fact to the other person, is guilty of an offense, and is liable to be detained for a term of five years in such place and under such conditions as may be specified by the court before which he is convicted and whilst being detained he shall be deemed to be in legal custody. It is a defence if the other person already knew.” This law was repealed in 2000. Later that year, there was an effort to bring a specific law to criminalize HIV in Trinidad and Tobago. A legislation proposal was brought to the Cabinet of the Government for the criminalization of persons who knowingly transmit HIV to an HIV-negative person.<sup>22</sup> However, as the proposal was incomplete it was rejected and referred for further formulation. The Trinidad and Tobago Law Commission decided against introducing laws that would criminalize HIV exposure or transmission for the following reasons: creating a criminal offence might create a false sense of security “whereas individuals need to be responsible and protect themselves”; in countries where HIV-specific laws have been introduced, “they have rarely been used and have often been harshly criticized”; legislation enacted, “in reaction to a public demand for action, can be counterproductive because it diverts attention from underlying problems by creating the impression that decisive action is being taken while hindering the implementation of constructive solutions”; “proof and enforcement of this type of law can be difficult”; and prosecuting only people who know their status may discourage HIV testing.

However, this positive approach by the Trinidad and Tobago Law Commission is currently under threat. Following a case where a man was charged with murder of his wife, but was only convicted of manslaughter because his action was seen as due to extreme provocation on finding out this wife was HIV positive there were calls for criminalization of HIV transmission. This call included pleas from a High Court Judge and the Attorney General.<sup>23</sup> This is a worrying trend: the same promise was made by the Minister of Health of Grenada during her budget presentation in 2013.

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<sup>22</sup> C. Taylor-Bassoo. Laws cannot prevent HIV. AIDS Window 1 (2000)

<sup>23</sup> [http://www.trinidadexpress.com/news/wilful\\_spread\\_of\\_HIV](http://www.trinidadexpress.com/news/wilful_spread_of_HIV) AG to bring bill to criminalize HIV

St Vincent and the Grenadines, Guyana, Barbados, and Suriname and other CARICOM countries do not list such offences. However, in St Vincent and the Grenadines, under section 291 of the Criminal Code, any person who unlawfully or negligently does any act which he knows, or has reasons to believe, to be likely to cause the spread of any infectious or contagious disease is guilty of an offence and liable to imprisonment for one year. It appears that a person who deliberately infects another person with HIV knowing that he is living with that disease may be prosecuted under that provision. In Barbados, section 19 and 26 of the Barbados Offences against the Person act could be used to prosecute persons who in section 19 “endanger life and safety” and in section 26 “assault another occasioning harm.”

In Suriname, under the Surinamese Criminal Law 11, it is virtually impossible to prosecute persons who intentionally infect others. One would have to produce lawful evidence to show the intention of the defendant; that the defendant was HIV positive at the moment of transmission; and that the victim could not have been infected with HIV virus other than through the defendant.

***The Justice for All Roadmap will mobilize regional and national stakeholders to advocate for the abolition of criminalization laws relating to HIV. The Project will seek to ensure that all countries that criminalize HIV transmission repeal such laws.***

## **9. Laws criminalizing persons using drugs**

This particular issue is discussed in depth in the Global Law Commission’s Report in 2012. The public health approach to dealing with drug users is comprehensively made out to encourage countries to reconsider laws and policies criminalizing drug use.

The Report refers to numerous studies which have demonstrated that coercive drug law enforcement measures and the frequent incarceration of people who use drugs hinder them from seeking HIV testing and treatment, and contribute to the interruption of HIV treatment once it has begun. The Report refers to a recent Canadian study which showed that the greater the number of times an HIV-infected individual was incarcerated, the less likely that person was to adhere to antiretroviral therapy. Similarly, a Baltimore study of HIV-infected patients found that even brief periods of incarceration were associated with a two-fold risk of syringe sharing and a greater than seven-fold risk of virological failure. The fact that drug law enforcement measures often disrupt HIV treatment efforts, promoting HIV drug resistance and increasing risk of HIV transmission, has yet to be appropriately addressed in national and international HIV prevention strategies. In fact, “treatment as prevention” and new prevention strategies such as scaled-up use of pre-exposure prophylaxis with antiretroviral medicines are rarely even considered or discussed by policymakers as responses to HIV among people who inject drugs.

***The Justice for All Roadmap will promote better education and awareness programs for policy makers and law enforcement authorities to understand that law enforcement for drug users can benefit from a public health approach. As part of the public health approach awareness programs to prevent substance abuse and establishment of counseling and treatment programs for substance abuse will be proposed.***

## CHAPTER 3

### **Making for an Adequate Response in the Caribbean on the HIV-Human Rights Platform**

The Caribbean has fought valiantly against HIV and AIDS. There have been many successes and it stands out as a Region with a comprehensive set of programmes aimed at reducing the impact of HIV and AIDS. The record shows a story of success in achieving universal access to prevention, treatment and care services in most, if not all, of the countries of the Caribbean and this is reflected in the latest UNAIDS Global Report.<sup>24</sup> However, the Caribbean remains the second most affected Region in the world. There are still too many new infections and more than 250,000 persons are living with HIV in the Caribbean with about 12,000 new infections in 2012. This situation endures despite a growing and intensified focus on addressing stigma and discrimination and the Caribbean can document an active programme to combat HIV-related stigma and discrimination. This includes:

- Caribbean Regional Strategic Framework (CRSF) – Priority area 1 of the CRSF is “advocacy, policy development, and legislation.” This priority area was retained in the 2<sup>nd</sup> CRSF (2008-2012). The 3<sup>rd</sup> CRSF is being prepared and this priority area is being developed as a major plank..
- PANCAP, in collaboration with CIDA, developed the HIV/AIDS Law, Ethics and Human Rights (LEHR) Project
- Establishment of the PANCAP Regional Stigma and Discrimination Unit in Barbados
- Establishment of Human Rights Desks in six countries in 2005<sup>25</sup>
- Report on the Initial Assessment of HIV and AIDS Stigma and Recourse Mechanisms in Six Countries of the Caribbean - A PANCAP Study in 2008
- Establishment of the Caribbean Rights Defenders Network
- Development of the PANCAP Model Anti-Discrimination Bill which was published in 2012
- Establishment of UWIHARP by the University of the West Indies at its three campuses in 2001
- Establishment of the Caribbean HIV and AIDS Alliance (CHAA)
- Establishment of the Champion for Change Initiative in 2004
- Completion of study and publication of a report on Prostitution, Sex Work and Transactional Sex in the Caribbean (2009)
- Assessment of Human Rights Desk in Selected OECS countries – commissioned by UNAIDS, Barbados and the OECS
- Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados

Human Rights have been on the PANCAP agenda from its inception. Among the more specific PANCAP activities are its Law Ethics and Human Rights project (LEHR), its model anti stigma and discrimination policy and model legislation, and its champion for change initiative. These programmes are detailed below.

#### **1. The Law, Ethics and Human Rights (LEHR) Project**

Through PANCAP an action plan was developed around law, ethics and human rights with funding from the Canadian Development Agency (CIDA), the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM)

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<sup>24</sup> UNAIDS Global Report on HIV and AIDS (2013)

<sup>25</sup> UNAIDS (March 2010). Assessment of Human Rights Desk in Selected OECS Countries

and the World Bank. Under the LEHR Project legislative assessments were done in six countries (Guyana, Dominica, St. Vincent and the Grenadines, St. Lucia and St. Kitts and Nevis). These assessments were used in a regional consultation to find common policy areas for action. The LEHR Project in collaboration with CRN+ supported a sensitization of two sub-regional groups of legal practitioners living with HIV around legal issues and advocacy. A similar meeting was held with HIV and Human Rights activists to develop a common platform for human rights-based action on HIV. The Project led to the development of the PANCAP anti-discrimination model policy and legislation. It is hoped that this project will further advance the model policy into national anti-discrimination policies against HIV.

## **2. PANCAP's Regional Policy on HIV Related Stigma and Discrimination (2010 and Model Anti-Discrimination Bill (2012))**

Through efforts coordinated by PANCAP, a CARICOM Regional Policy on HIV-Related Stigma and Discrimination was finalized in 2010. This Policy Statement document contained recommendations on how to confront the issue of stigma and discrimination in the various countries and contained actions for governments, PLWHA, vulnerable populations and other important stakeholders. The initial draft came about as a deliverable from the LEHR Project. The final draft, October 2012, took into consideration further views from the region and from legal experts. PANCAP presently is working with national programmes to ensure action is taken to adapt the model legislation as part of the Human Rights Approach to HIV in CARICOM countries. The model legislation addresses areas such as:

- Prevention of Discrimination in Employment and Other Areas
- Prevention of Discrimination involving Harassment, Victimization and Vilification
- Prevention and Care
- The Anti-Discrimination Commission
- Complaints, Investigation and Conciliation
- The Anti-Discrimination tribunal

## **3. Behaviour Change Communications Strategies – Champion of Change**

Behaviour Change Communications and Advocacy Strategies addressing human rights issues have been developed by CARICOM, PANCAP, CAREC, UNICEF and UNDP. This included the Champions of Change initiative, funded by DFID, which brought together a variety of stakeholders – parliamentarians, youth, civil society, private sector, faith leaders, cultural and sport icons, and media workers. The consultations in 2005 and 2006 targeting FBOs and media workers provided a useful illustration of how the idea of champions for advocacy had the potential to advance the movement toward the reduction of stigma and discrimination. Lack of institutional support to sustain the activities of the champions for change programme has led to another lost opportunity in the efforts to reduce stigma and discrimination and in promoting an HIV-Human Rights agenda in the Caribbean.

In addition, even though all National HIV Response Programs include BCC strategies, these have had limited success in addressing stigma and discrimination in the context of HIV.

*The Justice for All Roadmap will help to build solidarity within and among various stakeholders at country level to sustain advocacy with the assistance of partners in the UN system and with the involvement of the public and private sectors, and civil society.*

In a recent speech The former United Nations Secretary General’s Special Envoy for HIV and AIDS in the Caribbean, Sir George Alleyne, captured the hurdles CARICOM countries confront by declaring that the presence of laws that criminalize consensual homosexual sex in private was “a clear indication of the disjuncture between the criminal codes and the principles of respect for human dignity and essential freedoms that are enshrined and engraved in the Caribbean constitutions.”<sup>26</sup> He went on to say: “As I understand it, two of their major efforts are in relation to the denial of human rights to a specific minority – the lesbian, gay, bisexual, and transgender community...The teaching and the discourse around moral, philosophical and constitutional niceties do not relate to the daily infringements suffered by minorities in our societies.”

He concluded with a strongly articulated verdict: “Of course parliaments, if so inclined, could amend or repeal these laws. However, given the difficulty of parliamentary action, the only recourse for change is through litigation...Not only is such stigma and discrimination inimical to public health efforts to prevent and control HIV/AIDS, but they affront the basic rights which are enshrined in the constitutions of our countries.” The efficacy of this statement is fully illustrated by the number of cases that are currently subject to litigation (Annex 3).

The faculty of law of the UWI has formed the rights advocacy project the main objective of which is to promote human rights and social justice in the Caribbean, through pivotal public interest litigation and related activities of legal and social science research on the situation relating to human rights in the Caribbean and public education.

*The Justice for All roadmap should make the UWI Advocacy project an integral part of its strategy for a more comprehensive approach to eliminating stigma and discrimination which includes legal reforms*

### **The Caribbean Human Rights Platform**

An examination of the laws, regulations and policies in various CARICOM countries demonstrates the weak human rights platform when compared against eight (8) measurements relating to human rights and HIV. Other than in the measurement relating to entry, stay and residence, CARICOM countries measure poorly on these parameters. The following table illustrates the problem well.

| <b>Laws, Regulations and Policies</b> | <b>YES<br/>(Countries)</b>                              | <b>NO<br/>(Countries)</b>   | <b>Comment</b>   |
|---------------------------------------|---|---|--|
| Against HIV Discrimination            | 5 (Bahamas, Dominica, Grenada, St. Lucia, and Suriname) | 9 (Antigua and Barbuda, Barbados, Belize, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines, Trinidad and Tobago) | Where anti-discrimination laws specifically mention HIV usually is in regards employment |
| Protect Vulnerable Sub-               | 4 (The Bahamas, Belize, St. Lucia,                      | 10 (Antigua and Barbuda, Barbados, Dominica, Grenada,   | Protection is mainly for   |

<sup>26</sup> Sir George Alleyne in a speech to mark the 2013 graduation exercise at Cave Hill, University of the West Indies

|  |  |   |  |
|--|--|---|--|
| Populations  | Trinidad and Tobago)   | Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname)                      | employment   |
| That Present Obstacles to Access Prevention, Treatment and Care Services | 11(The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Lucia, St. Kitts and Nevis, Suriname, Trinidad and Tobago) | 3 (Antigua and Barbuda, Haiti and St. Vincent and the Grenadines)   |  |
| HIV-Specific Restriction on Entry, Stay or residence                     | 11 (Other than Belize, none of the CARICOM countries have laws restricting entry, stay and residence)                                | 1 (Belize)  |  |
| That Criminalize HIV Transmission and Exposure                           | 3 The Bahamas, Barbados and Belize)  | Outside of the Bahamas, Belize and Barbados, no country has laws criminalizing HIV transmission or exposure |  |
| That Criminalize same-Sex Sexual Activities                              | 12 (All countries, except Haiti and Suriname)  | 2 (Haiti and Suriname)  | Barbados and Guyana allows for life imprisonment for same-sex relations, although this law is not enforced. In most countries, penalties could be imprisonment for up to 10 years. |
| Deeming Sex Work as Illegal  | 13 (All countries except Belize)   | 1 (Belize)  |  |
| That Impose Compulsory Treatment for Drug Users                          | 0 (No country makes provision for compulsory treatment of drug users)  | 15 (All countries provides for penalties for drug users)  |  |

Additional information relating to human rights and HIV in the Caribbean can be obtained in the reports from the LEHR Project and from the Mapping of punitive laws in Barbados and the OECS.<sup>27</sup>

<sup>27</sup> UNAIDS Office for Barbados and the OECS (November 2010). Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados

*One of the issues missing in most of the assessments and reviews is Age of Consent Laws and specifically the discrepancy between the age of sexual consent (16) and the age of medical consent (18). This is an important Sexual and Reproductive Health (SRH) and gender rights issue. The Justice for All Roadmap must take serious consideration of this gap in the human rights agenda.*

## **The Caribbean Parliaments Reluctant Approach to address Human Rights in the Context of HIV**

The roles of Parliaments and Parliamentarians have been marginal and under-resourced in the Caribbean's response to HIV. They have acted as if they are beholden to the notion that the majority rules at the expense of fundamental rights of all citizens. It is in this context that the human rights agenda of relevance in the fight against HIV finds a reluctant parliament and reluctant and uncertain parliamentarians.

In part, there is still a case that MPs are not as familiar with the issues that affect a human rights approach to solving the HIV dilemma. They must be made more aware of the issues so that they do not proceed on the assumption that the needs of some individuals are less important than others. In contradiction, MPs passionately profess their convictions of representing and speaking for the voiceless and seeking justice for ALL CITIZENS are also prisoners of the notion that the majority rules at all times, no matter if rights of a small group are violated.

In 2001, Guyana's Parliament passed a bill to amend the constitution and insert sexual orientation as an anti-discrimination basis in the fundamental rights section. The bill was unanimously passed by the House. The bill was prepared after a Special select Committee of the Parliament approved the recommendation that came from an Oversight Committee that was mandated to give effect to recommendations coming from the Constitution Commission of Guyana. However, when the bill was sent to the President of Guyana to give his assent, the religious community approached the President to withhold it. The Leader of the Opposition and Opposition MPs gave support to the faith-based leaders. These same politicians had voted unanimously for the amendment bill to ensure that a person's sexual orientation was not a basis for discrimination in the fundamental right section of the constitution. As a consequence the President withheld his assent to the bill and Guyana lost an opportunity to make progress. A Special Select Committee has been established in the present Parliament to recommend a way to address the violation of human rights in regards same-sex sexual relations. This action was precipitated by a request from the UNCHR for Guyana to bring its laws in compliance with the international human rights conventions that Guyana is a signatory to.

A similar situation exists in Jamaica which has recently been subjected to an assessment of its legal system as it relates to human rights and HIV. Both the IACHR and the UNCHR are engaged with Jamaica to bring its laws in compliance with UN conventions. Other Caribbean countries are or will be requested by the UNCHR to also make adjustment to their laws to bring them in compliance with the International Human Rights Conventions to which all CARICOM countries are signatories.

Parliaments in St. Kitts, Trinidad and Tobago, Belize and Jamaica are expected to address the issue of same-sex relations and sodomy laws in a short time. In Barbados, Parliamentarians came together across the political divide to bring attention to the cultural changes that are needed in order to continue to contain the spread of HIV virus and ensure the flourishing of life for all and in particular those especially affected by HIV. The

*Parliamentarians' Community Dialogues on HIV Prevention and Ending Stigma and Discrimination* was launched in July 2011. The project is supported by the United Nations System in Barbados with funding being provided through the UNAIDS Project Accelerated Funds facility. The Barbados National HIV/AIDS Commission (NHAC) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) are supporting the Office of the Speaker in the project's implementation. Previously, the Parliament of Barbados had approved "Barbados National HIV Policy: A Framework for Action 2008."

***The Justice for All Roadmap must include provisions for increased engagement of parliamentarians in a discussion on the PANACAP model legislation and model policy to increase their sensitization and by-in***

## **National Strategic Plans (NSPs) and the Human Rights Approach in the Caribbean**

It is an imperative that National Strategic Plans take cognizance of the changing HIV epidemiology across the region and the implications of an epidemic that is concentrated within a number of vulnerable populations. It is this changing epidemiology and its implications for targeted strategies for more effective responses and reaching most at risk populations that makes a human rights approach in HIV responses an imperative.

National Authorities, such as Ministries of Health and National AIDS Programs, recognize that the legal system plays both a positive and negative role in addressing the issue of discrimination in Caribbean countries. It is recognized that punitive laws, discriminatory and brutal policing and denial of access to justice for people with and at risk of acquiring HIV are fuelling the epidemic. These legal practices create and punish vulnerability. They promote risky behaviour, hinder people from accessing health care, prevention tools and treatment and exacerbate the stigma and social inequalities that make people more vulnerable to HIV.

How do NSPs in CARICOM countries address the problem of discrimination and a human rights approach? We reviewed ten (10) NSPs and also the PANACAP and PAHO *Regional HIV Regional Strategic Plan for HIV* to determine if these plans have a human rights approach in responding to discrimination in the context of HIV. Several NSPs for HIV now include priority strategic action plans to "develop policies, programs and legislation that promote human rights, including gender equality and reduce socio-cultural barriers in order to achieve universal access to prevention, treatment, and care and support services." This strategic action is specifically listed as a priority action in several countries. These countries include Antigua and Barbuda, Bahamas, Barbados, Belize, Guyana, Jamaica, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

Effective implementation of these plans requires a multisectoral approach which has not been institutionalized at the national level. Nor have countries been able to develop programme which empower the people whose rights are being violated. Most countries do not have programme which effectively reach sexual minority populations. Studies conducted in 11 countries show that only 27% of countries had budgetary allocations for targeting vulnerable groups, while 46% indicated budgetary allocations were in the process of being approved. Of the limited number of countries reporting on more at risk persons (MARPs) programmes in 2012, only Haiti and Jamaica reported reaching 80% of sex workers, with the Dominican Republic, Suriname and Guyana reaching fewer than 50%. These budgetary statistics are likely to refer only to prevention and treatment programme components, and given the low rates, the real question is: what is the level of funding for actions which specifically target stigma and discrimination?

The lack of information on these key populations, including sero-prevalence rates, is also a telling sign of the insufficiency of efforts at the national level. The lack of data is both a result of stigma and discrimination and in turn fuels ignorance. One of the key things about this is that groups like MSM are treated homogeneously. Community-level participatory research supported by COIN is beginning to provide more information on sub-populations. This is a key indicator of the failure to develop relevant and appropriate approaches to addressing stigma and discrimination.

Dominica and St. Kitts and Nevis have launched an intervention package to achieve stigma-free HIV services. The intervention programs are coordinated by the National AIDS Programs of these countries and are implemented with technical support from the University of the West Indies and the USAID-funded Health Policy Project (HPP). The intervention package (appendix 11) includes:

- A comprehensive survey of all health facility staff
- Training for health staff and NGO leaders on stigma reduction in health facilities
- Development of policies and facility codes of conduct to reduce stigma
- Routine monitoring of stigma and discrimination
- Where possible, tracking progress on treatment adherence and uptake of testing, treatment and prevention

However, not all NSPs are current and the priority given to human rights approach in HIV in the NSPs varies. Further evaluation of progress towards achieving national targets, and particularly those related to stigma and discrimination continues to be a concern. Country assessments of the status of HLM goals have identified the elimination of stigma and discrimination and gender inequality as the two areas in which Caribbean countries have made the least progress. Only one of twelve reporting countries is on track for eliminating stigma and discrimination and three for eliminating gender inequality.

The NSPs of CARICOM countries must address human rights issues in a more focus manner and this must become a target for the *Justice for All* Roadmap. While the NSPs recognize the human rights approach and identify some laudable goals, progress in countries has not matched intentions. Most countries have NSPs that are expiring in 2013 or that are already ended before 2013. Some are current, but will end by 2015. This provides an opportunity to ensure that all new and revised NSPs build a strong Human Rights Agenda.

***The Justice for All Roadmap must include a PANCAP Human Rights Index that rates all NSPs in CARICOM countries in regards human rights and HIV. The NSP Human Rights Index should take into consideration legislative and regulatory environments to protect PLWHA in terms of employment and protection of LGBTI as it relates to Human Rights. The Human Rights and HIV Committee of PANCAP should issue this rating for all current NSP. In particular, the Index must track goals related to stigma and discrimination and gender inequality.***

Of the six (6) priority areas in the NSP (2012-2016) of **Antigua and Barbuda**, Priority Area #1 is to “Promote an enabling environment that fosters universal access to HIV prevention, treatment, care and support.” The strategic objectives in this priority area for Antigua and Barbuda include plans to develop policies, programme and legislation that promote human rights, including gender equality and reduce socio-cultural barriers in order to achieve universal access and plans to mitigate stigma and discrimination associated with HIV. These plans include the promotion of human rights approaches to LGBTI populations and sex workers.

The NSP of **Barbados** (2008-2013) includes three cross-cutting themes, one of which is Human Rights Policy and Legislation. The NSP of Barbados targets certain vulnerable populations, including sex workers and MSM

and bisexual men. It is hoped that the new NSP to be developed will strengthen the human rights approach in Barbados HIV response.

**Grenada's** NSP (2009-2015) includes Priority Area #2: Stigma and Discrimination Reduction. It takes into consideration the recommendations in PANCAP's 2009 "National HIV and AIDS Assessment – Law, Ethics and Human Rights in Grenada." The recommendations include legislations outlawing all forms of discrimination, the removal of discriminatory laws relating to entry, stay and residence in Grenada and the NSP specifically recognizes the need to strengthen the Human Rights Desk.

**Guyana's** HIVISION 2020 (NSP 2013-2020) has five (5) priority areas. Under Priority Area 1: Coordination one strategic line of action is to "Create a supportive environment that is based on human rights and facilitates delivery of services." Under Priority Area 2: Prevention one strategic line of action is to "decrease stigma and discrimination across all sectors."

**Jamaica** is currently developing a new NSP. Its present NSP (2007-2012) includes a vision of an enabling environment free of stigma and discrimination. One of its guiding principles is to promote and protect human rights. One of the four priority areas in the NSP 2007-2012 for Jamaica is to create an enabling environment for human rights and HIV. It recognizes the need to establish and sustain policy positions supported by legislation, particularly MSM-related stigma and discrimination.

**St. Kitts and Nevis** has a 2009-2013 NSP with an extensive list of guiding principles, including respect for human rights in which St. Kitts and Nevis will ensure all HIV-related services shall respect human rights and ensure no discrimination. Strategy #3 establishes that by 2013, St. Kitts and Nevis will introduce policies and legislation that will eliminate compulsory HIV testing and there will be legislation that will promote equal rights for all irrespective of sexual behaviour.

**St. Lucia's** NSP needs revision since it was a 2005-2009 Plan. The first strategy addressed advocacy, policy development and legislation for a human rights approach. Among the activities proposed was the development of legislation to protect human rights for PLWHA. But this NSP did not address the issues affecting LGBTI and sex workers.

**St. Vincent and the Grenadines** has a 2010-2014 NSP. Its guiding principle includes "equality before the law and freedom from discrimination." Priority Area # 1 in the NSP of St. Vincent and the Grenadines recognizes the need to develop legislative actions to reduce stigma and discrimination associated with HIV and vulnerable populations.

The NSP of **Suriname** (2009-2013) includes Priority Area #4 which seeks to push back stigma and discrimination related to HIV. One of the actions contemplated was a legal assessment to ensure the legal environment of Suriname provides a friendly, protective legal climate for PLWHA. Suriname included action to integrate human rights in its HIV response in accordance with the "International Guidelines for Human Rights and HIV."

Finally in **Trinidad and Tobago**, its NSP (2013-2018) has as one of its overarching goals the reduction of HIV-related stigma and discrimination. One of the guiding principles is respect for human rights for PLWHA and for all vulnerable populations. Priority area #3 in Trinidad and Tobago's NSP is Advocacy, Human Rights and an Enabling Environment. It assumes the Government is willing to remove all discriminatory laws.

***The Justice for All Roadmap must recognize that the NSPs reveal that no country in fact includes a comprehensive rights-based approach. Most countries omit actions to empower the people whose rights are being violated and this is a key missing piece. Because human rights commitments also impose the obligation to protect, the enforcement of protective laws, and the development of protective policies are areas in which most countries fall. NSPs do not provide resources to these populations to deal with stigma and discrimination like legal aide services.***

## **Caribbean Countries, the Law and HIV and the IACHR and the UNCHR**

The Caribbean countries are all members of the Organization of American States (OAS) and also of the UN system. They have human rights obligations under the various declarations and resolutions of these organizations. Under the OAS, the Inter-American Commission of Human Rights (IACHR) obligates the countries and monitors them the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man. All the states that belong to the OAS are bound by these declarations, even though only 24 countries have ratified them, six being from the Caribbean.

Lawyers and Human Rights activists could approach the Commission under these instruments to advocate for adherence to the commitments countries have made towards guaranteeing the human rights of all citizens. Clearly under the American Declaration on Human Rights, countries with punitive laws in the context of HIV are non-compliant. In this regards, it is pertinent to consider how the IACHR can be utilized as one mechanism to catalyse action towards removing punitive laws in the context of HIV:

- Prepare reports and special studies on the rights of persons infected with HIV and, more broadly, studies on issues pertaining to elimination of discrimination against such persons.
- Hold hearings during regular sessions having to do with alleged violations.
- Undertake consultations and prepare recommendations to member states regarding the modification of existing laws and articles related to the rights of persons vulnerable to and infected with HIV and AIDS.
- Make on-site visits to countries of the region. During the visits, the commission gathers information and investigates the most relevant problems related to persons living with HIV or AIDS.
- Draft admissibility and merits reports on case petitions as well as thematic, country and annual reports.

In mid-March 2013, the UNHRC issued its concluding observations on Belize. The Committee, which is charged with reviewing states' compliance with the International Covenant on Civil and Political Rights (ICCPR), issued its concluding observations on Belize. Belize acceded to the binding human rights treaty in 1996. Two years earlier, the Committee had ruled that discrimination on the ground of sexual orientation violated the treaty's anti-discrimination provisions. The Committee concluded that Belize's patent discrimination against gays (as found in the country's anti-sodomy law, as well as the Immigration Act, which bans the entry of homosexuals) is irreconcilable with the country's treaty obligations. AIDS-Free World is supporting a domestic challenge to the anti-sodomy law, and has also launched a case before the highest regional court, the Caribbean Court of Justice, seeking a repeal of the homophobic provisions in the Immigration Act.

The Committee's observation on these cases and Belize's treatment of homosexuals is found below:

*13. The Committee takes note that certain individuals in the State party have instituted proceedings challenging the constitutionality of section 53 of the Criminal Code, which prohibits same sex relations, and of section 5(1)(e) of the Immigrations Act, which includes homosexuals on the list of prohibited persons for purposes of*

*immigration. The Committee further notes that as such these matters are subjudice [being considered by a court]. However, it is concerned that the State party lacks any constitutional or statutory provision expressly prohibiting discrimination on grounds of sexual orientation or gender identity. The Committee is further concerned at reports of violence against LGBT persons (arts. 2, 12 and 26).*

*The State party should review its Constitution and legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited. The Committee further urges the State party to include in its initial report information on the outcome of the case challenging the constitutionality of section 53 of the Criminal Code and section 5(1)(e) of the Immigration Act. The State party should also ensure that cases of violence against LGBT persons are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.*

While the Committee's recommendations are largely unenforceable, such a strong condemnation of anti-gay discrimination by the UN will be extremely helpful in the cases that AIDS-Free World has filed in Belize and around the Caribbean. Presently the IACHR is also looking into the laws of Guyana and Jamaica.

***The Justice for All Roadmap must draw on the principles and rulings enunciated by the IHAC and to incorporate these in its comprehensive compass for combating Stigma and Discrimination***

## CHAPTER 4

### The Global Action Platform – a Human Rights Approach

Countries have established a Human Rights Platform as one indispensable pillar on which to confront the HIV and AIDS epidemic. Governments, the UN system and civil society have embraced the link between HIV, human rights, and effective responses. The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 12 of the *Universal Declaration of Human Rights*, which states that “all human beings are free and equal in dignity and rights.” This must therefore apply to the entitlement of all people, including lesbians, gay, bisexual and transgender persons to enjoy the protections provided for by international human rights law, including in respect of right to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

The Global and Regional Commitments that constitute the platform for a firm human rights approach include:

- UN Universal Declaration of Human Rights – 1948
- International Covenant on Civil and Political Rights
- Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child
- PAHO/WHO Resolution CD/50/12 – 2010: Health and Human Rights
- UN Declaration of Commitment on HIV and AIDS (2001)
- UN Political Declaration on HIV and AIDS (2006)
- UN Political Declaration on HIV and AIDS: Intensifying our efforts to eliminate HIV/AIDS (2011)
- The Human Rights Council of the UN Resolution on LGBTI
- PAHO Resolution CD52.R6

#### Landmarks in HIV Human Rights Response

Several Global commitments provide landmarks that must be considered in any *Justice for All* Roadmap

#### The 2001 UNGASS and the political declarations of 2006 and 2011

The historic 2001 UN General Assembly Special Session on HIV ended with the *Declaration of Commitment on HIV/AIDS*. The 2001 Declaration (Appendix 12) reaffirmed the central importance of human rights to the HIV response and countries, including every Caribbean country, made commitments to protecting the rights of those living with and vulnerable to HIV, as well as protecting women and girls by, among other things, promoting gender equality and freedom from violence. But the 2001 Declaration also highlighted the need for laws that protect the rights of those living with and vulnerable to HIV.

The 2006 Political Declaration on HIV (Appendix 13) at the UN made very specific commitments to human rights objectives, as well as to those involving the legal environment relevant to HIV. In particular, countries committed to overcoming legal barriers to HIV services and enact laws against discrimination. Countries also pledge to eliminate gender inequality and violence against women.

In the 2011 political declaration (Appendix 14), countries pledged to “fulfil obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all” in response to HIV. They committed themselves to enabling legal environments for the HIV response and to scaling up key programs to end discrimination and increase access to justice in the context of HIV.

## **The UNAIDS Zero Agenda**

The focus on human rights and legal responses in the context of HIV has deepened in the last decade. The UNAIDS “Getting to Zero” Strategy (Appendix 3) challenges the world to move forward and improve the AIDS response with the latest tools and information on what works nationally, regionally and globally. The “Getting to Zero” Strategy describes three strategic directions for global, regional and national responses to HIV:

- Revolutionizing HIV prevention
- Catalysing the next generation of treatment, care and support programs
- *Advancing the human rights and gender equality for HIV responses*

As part of the “Getting to Zero” Strategy, human rights and gender equality have been firmly put at the same level of importance in the AIDS response as HIV prevention, and treatment. The strategy has specifically identified cutting the number of countries that have punitive laws related to HIV and key populations.

The focus that “Getting to Zero” placed on the human rights approach in the fight against HIV builds on the 2006 “Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies.” The conceptual framework of the Approach requires that the UN and particularly UNAIDS place themselves squarely between governments and civil society to support and push governments to realize and protect human rights in the context of HIV and to support civil society to know and claim their rights in the context of HIV.

## **UNAIDS Seven Priority Programs to Fight Stigma and Discrimination**

UNAIDS has advanced seven key programs to advance human rights and gender equality for HIV responses and has recommended that these key programs become part of National Strategic Plans. These seven key programs are consistent with the International Guidelines on HIV and AIDS and Human Rights 2006 Consolidated Version (Appendix 15) which builds on the Second and Third International Consultation on HIV and AIDS and Human Rights held in September 1996 and July 2002 and jointly organized by the Office of the United Nations Human Rights Commissioner and UNAIDS.

The UNAIDS seven key programs and recommended approaches in implementing these programs are:

| # | Key Programs  | Some Recommended Approaches   |
|---|---|---|
| 1 | <p><b>Stigma and Discrimination Reduction</b></p> <p><i>Research has shown that there are three actionable causes of stigma and discrimination: ignorance about the harm of stigma, continuing irrational fears of HIV infection and moral judgment</i></p> | <ul style="list-style-type: none"> <li>• Community interaction and focus group discussion involving people living with HIV and members of populations vulnerable to HIV infection</li> <li>• Use of media, including advertising campaigns, entertainment designed to educate as well as to amuse (edutainment), and integration of non-stigmatizing messages into TV and radio shows,</li> <li>• Engagement with religious and community leaders, and celebrities</li> </ul> |

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|   |   | <ul style="list-style-type: none"> <li>• Inclusion of non-discrimination as part of institutional and workplace policies in employment and educational settings;</li> <li>• Measurement of HIV-related stigma through the People Living with HIV Stigma Index including in health care settings and communities; and</li> <li>• Peer mobilization and support development for and by people living with HIV aimed at promoting health, well-being and human rights.</li> </ul>   |
| 2 | <p><b>HIV-Related Legal Services</b></p> <p><i>HIV-related legal services can facilitate access to justice and redress in cases of HIV-related discrimination such as breaches in privacy and confidentiality, illegal police action, discrimination in employment, education, housing and social services etc.</i></p> | <ul style="list-style-type: none"> <li>• Legal information and referrals ;</li> <li>• Legal advice and representation;</li> <li>• Alternative / community forms of dispute resolution;</li> <li>• Engaging religious or traditional leaders and traditional legal systems (e.g. village courts) with a view to resolving dispute and changing harmful traditional norms; and</li> <li>• Strategic information</li> </ul>   |
| 3 | <p><b>Monitoring and reforming Laws, Regulations and Policies Related to HIV</b></p> <p><i>Laws, regulations and policies relating to HIV can negatively or positively impact a national HIV epidemic, as well as lives and human rights of those living with or vulnerable to HIV</i></p>                              | <ul style="list-style-type: none"> <li>• Review of law enforcement practices to see whether they impact the response to HIV positively or negatively;</li> <li>• Assessment of access to justice for people living with or vulnerable to HIV;</li> <li>• Advocacy and lobbying for law reform;</li> <li>• Engagement of Parliamentarians and Ministers of Justice, Interior, Corrections, Finance, Industry, Labour, Women’s Affairs, Education, Immigration, Housing, Defence, Health and Trade, religious and traditional leaders, among others; and</li> <li>• Promotion of the enactment and implementation of laws, regulations and guidelines that prohibit discrimination and support access to HIV prevention, treatment, care and support.</li> </ul> |
| 4 | <p><b>Legal Literacy (“Know Your Rights and Know the Law” Campaigns)</b></p> <p><i>Legal literacy programs teach those living with or affected by HIV about human rights and the national laws relevant to HIV.</i></p>   | <ul style="list-style-type: none"> <li>• Awareness-raising campaigns that provide information about rights and laws related to HIV through media (e.g. TV, radio, print, Internet),</li> <li>• Community mobilization and education;</li> <li>• Peer outreach; and</li> <li>• Telephone hotlines.</li> </ul>   |
| 5 | <p><b>Sensitization of Law-makers and Law Enforcement Agents</b></p> <p><i>These programs seek to sensitize those who</i></p>   | <ul style="list-style-type: none"> <li>• Sensitization of police regarding HIV and how it is and is not transmitted, the importance of reaching out to and accessing populations at risk; the importance of appropriately addressing domestic and sexual</li> </ul>  |

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|   | <p><i>make the laws and those who enforce the laws (Ministers and Parliamentarians, police and prison officers, judges and lawyers etc.) about the important role of the law in the response to HIV.</i></p>   | <p>violence cases in the context of HIV; and the negative consequences of illegal police activity on justice and on the HIV response.;</p> <ul style="list-style-type: none"> <li>• Facilitated discussions and negotiations among HIV service providers, those who access services and police to address law enforcement practices that impede HIV prevention, treatment, care and support efforts;</li> <li>• Information and sensitization sessions for Parliamentarians, personnel of Ministers of Justice and Interior, judges, prosecutors, lawyers, and traditional religious leaders on the legal, health and human rights aspects of HIV and on relevant national laws and the implications for enforcement, investigations and court proceedings;</li> <li>• Training for prison personnel reading the prevention, health care needs and human rights detainees living with or at risk of HIV infections; and</li> <li>• HIV in the Workplace programmes for law makers and enforcers.</li> </ul>  |
| 6 | <p><b>Training for Health Care Providers on Human Rights and Medical Ethics Related to HIV</b></p> <p><i>Human rights and ethics training for health care providers focus on two objectives: Health care providers are aware of their own human rights to health (HIV prevention, treatment, care and support) and reduce stigmatizing attitudes in health care settings</i></p> | <ul style="list-style-type: none"> <li>• Individual health care providers to raise awareness of their own human rights in the context of HIV, and the negative impact that stigma, breaches of confidentiality and neglect of informed consent in health care settings have on patient’s lives as well as to address fears and misconceptions about HIV transmission and to promote understanding, compassion and professionalism;</li> <li>• Health Care administrators to ensure that health care institutions provide the information, supplies and equipment necessary to make sure health care workers have access to HIV prevention (including the universal precautions needed for prevention of occupational transmission of HIV) and treatment and are protected against discrimination; and</li> <li>• Health care regulators to ensure enactment and implementation of policies that protect the safety and health of patients and health care workers, and prevent discrimination against people living with and vulnerable to HIV.</li> </ul> |
| 7 | <p><b>Reducing Discrimination Against Women in the Context of HIV</b></p>  | <ul style="list-style-type: none"> <li>• Strengthening the legal and policy environment to ensure that laws protect women and girls from gender inequality and violence;</li> </ul>  |

|   |  |
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| <p><i>These programs address gender inequality and gender-based violence as both causes and consequences of HIV infection</i></p> | <ul style="list-style-type: none"> <li>• Efforts to reform domestic relations and domestic violence laws and law enforcement where these fail to sufficiently protect women or create barriers to HIV prevention, treatment, care and support;</li> <li>• Efforts to property, inheritance and custody laws to ensure equal rights for women, children and caregivers affected by HIV;</li> <li>• Age-appropriate sexuality and life-skills education programmes that also seek to reduce gender inequality and gender – based violence;</li> <li>• Programmes to reduce harmful norms and traditional practices that put women, girls, men and boys at risk of HIV infection, including capacity development of civil society groups working for women’s rights and gender equality;</li> <li>• Programmes to increase access to education and economic empowerment opportunities for women living with vulnerable to HIV infections; and</li> <li>• Integrated health services with a well-functioning referral system, including post rape case and post exposure prophylaxis (PEP).</li> </ul> |
|---|--|

***The Justice for All Roadmap must include elements of these seven priorities***

## **The Global Commission on HIV and the Law**

***The law alone cannot stop AIDS. Nor can the law alone be blamed when HIV responses are inadequate. But the legal environment can play a powerful role in the well-being of people living with HIV and those vulnerable to HIV. Good laws, fully resourced and rigorously enforced, can widen access to prevention and health care services, improve the quality of treatment, enhance social support for people affected by the epidemic, and protect human rights that are vital to survival and save the public money.***

### ***Global Commission on HIV and the Law***

The *Global Commission on HIV and the Law* was established in July 2010 by UNDP and UNAIDS. The commission met three times, held regional dialogues in seven regions, and has received and reviewed hundreds of submissions from countries on the impact of the law on national HIV responses and key populations. Several reports have been prepared.

In early 2012, the Commission issued its Final Report with findings and recommendations concerning how the law can better support human rights and public health in the context of HIV. This report is accessible on the Commission’s website at <http://www.HIVlawcommission.org>. The Global Commission made a number of recommendations. These were made under six headings: Discrimination, Criminalization of Transmission,

Exposure and Non-Disclosure, Key Populations, Women, Children and Youth and Intellectual Property Law and the Global Fight for Treatment (Appendix 16). The Global Law Commission believes that the legal environment – laws, enforcement and justice systems – has immense potential to better the lives of persons living with HIV and to help turn the crisis around. In this regard, the Commission believes that many countries have “squandered the potential of the legal system” to contribute to reversing HIV and instead have “fuelled the epidemic.”

The Commission found the following that contribute to weak responses from a human rights perspective:

- 123 countries have legislation to outlaw discrimination based on HIV and 112 countries legally protect some populations based on vulnerability to HIV. But these laws are often ignored, laxly enforced or aggressively flouted
- In over 60 countries it is a crime to expose another person to HIV or to transmit it, especially through sex. Women and girls account for half of the population living with HIV. Laws and customs like genital mutilation and denial of property rights produce profound gender inequality, domestic violence and also rob women and girls of personal power.
- Where sex education, harm reduction and comprehensive reproductive and HIV services are accessible to youth, young people’s rates of HIV and other sexually transmitted infections (STIs) drop. But these interventions are rare.
- In many countries the law dehumanizes many of those at risk for HIV: sex workers, transgender people, MSM, people who use drugs, prisoners and migrants. For example same-sex activity is a crime in 78 countries.

The Commission found that there were instances where the legal and justice systems played a constructive role in responding to HIV. For example, the Commission found:

- Where the police cooperate with community workers, condom use can increase and violence and HIV infection among sex workers can decrease. Where governments promulgate harm reduction, such as clean needle distribution programs and safe injection sites, HIV infection rates among people who use drugs can drop significantly.
- Effective legal aid can make justice and equality a reality for people living with HIV and this can contribute to better health outcomes. Advocates can creatively use traditional laws in progressive ways to promote women’s rights and health. Court actions and legislative initiatives, informed by fairness, and pragmatism, can help nations shrug off the yoke of misconceived criminalization, introduce gender-sensitive sexual assault law and recognize the sexual autonomy of young people.

The Commission made a number of recommendations. Among these recommendations were the following:

- Outlaw all forms of discrimination and violence directed against those who are vulnerable to or living with HIV or are perceived to be HIV-positive. Ensure that existing human rights commitments and constitutional guarantees are enforced.
- Repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them. Enact no laws that explicitly criminalize HIV transmission, exposure or non-disclosure of HIV status.
- Work with guardians of customary and religious law to promote traditions and religious practice that promote rights and acceptance of diversity and that protect privacy.
- Decriminalize private and consensual adult sexual behaviours, including same-sex sexual acts and voluntary sex work.
- Prosecute the perpetrators of sexual violence, including marital rape and rape related to conflict, whether perpetrated against female, male or transgender people.

- Abolish all mandatory HIV-registration, testing, and forced treatment regimens. Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilization of HIV-positive women and girls.
- Reform approaches towards drug use. Rather than punish persons who use drugs but do no harm to others, governments should offer them access to effective HIV and health services, including harm reduction programs and voluntary, evidence-based treatment for drug dependence.
- Enforced all laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
- Ensure that enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty, or coercion to procure people into commercial sex or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.
- In matters relating to HIV, offer the same standard of protection to migrants, visitors and residents who are not citizens as is extended to citizens. Restrictions that prohibit people living with and affected by HIV and AIDS from entering a country and/or regulations that mandate HIV tests for foreigners within a country should be repealed.
- Enforce a legal framework that ensures social protection to children living with and affected by HIV. Laws must protect guardianship, property and inheritance rights and access to age-appropriate, comprehensive sex education, health and reproductive services.
- Develop an effective IP regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.

***The Justice for All Roadmap will endorse the call of The Global Commission on HIV and the Law for renewed and vigorous international collaboration in response to HIV; on donors, civil society and the UN to hold governments accountable for their human rights commitments; on groups outside governments to develop and implement humane, workable HIV-related policies and practices and to fund action on law reform, law enforcement and access to justice. Such efforts should include educating people about their rights and the law, preventing violence, as well as challenging the stigma and discrimination within families, communities and workplaces that continue to feed a worldwide epidemic that should have ended a long time ago.***

## **The OSLO Declaration**

A group of 20 expert individuals and organizations from civil society around the world working to end inappropriate criminal prosecutions for HIV non-disclosure, potential exposure and non-intentional transmission from around the world came together in Oslo, Norway, on 13 February 2012 to create the *Oslo Declaration on HIV Criminalization*.

The *Oslo Declaration* consists of the following 10 points:

1. A growing body of evidence suggests that the criminalization of HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.

2. A better alternative to the use of the criminal law are measures that create an environment that enables people to seek testing, support and timely treatment, and to safely disclose their HIV status.
3. Although there may be a limited role for criminal law in rare cases in which people transmit HIV with malicious intent, we prefer to see people living with HIV supported and empowered from the moment of diagnosis, so that even these rare cases may be prevented. This requires a non-punitive, non-criminal HIV prevention approach centred within communities, where expertise about and understanding of, HIV issues is best found.
4. Existing HIV-specific criminal laws should be repealed, in accordance with UNAIDS recommendations. If, following a thorough evidence-informed national review, HIV-related prosecutions are still deemed to be necessary they should be based on principles of proportionality, foreseeability, intent, causality and non-discrimination; informed by the most-up-to-date HIV-related science and medical information; harm-based, rather than risk-of-harm based; and be consistent with both public health goals and international human rights obligations.
5. Where the general law can be, or is being, used for HIV-related prosecutions, the exact nature of the rights and responsibilities of people living with HIV under the law should be clarified, ideally through prosecutorial and police guidelines, produced in consultation with all key stakeholders, to ensure that police investigations are appropriate and to ensure that people with HIV have adequate access to justice.

We respectfully ask Ministries of Health and Justice and other relevant policymakers and criminal justice system actors to also take into account the following in any consideration about whether or not to use criminal law in HIV-related cases:

6. HIV epidemics are driven by undiagnosed HIV infections, not by people who know their HIV-positive status. Unprotected sex includes risking many possible eventualities - positive and negative - including the risk of acquiring sexually transmitted infections such as HIV. Due to the high number of undiagnosed infections, relying on disclosure to protect oneself - and prosecuting people for non-disclosure - can and does lead to a false sense of security.
7. HIV is just one of many sexually transmitted or communicable diseases that can cause long-term harm. Singling out HIV with specific laws or prosecutions further stigmatizes people living with and affected by HIV. HIV-related stigma is the greatest barrier to testing, treatment uptake, disclosure and a country's success in "getting to zero new infections, AIDS-related deaths and zero discrimination."
8. Criminal laws do not change behaviour rooted in complex social issues, especially behaviour that is based on desire and impacted by HIV-related stigma. Such behaviour is changed by counselling and support for people living with HIV that aims to achieve health, dignity and empowerment.
9. Neither the criminal justice system nor the media are currently well-equipped to deal with HIV-related criminal cases. Relevant authorities should ensure adequate HIV-related training for police, prosecutors, defence lawyers, judges, juries and the media.
10. Once a person's HIV status has been involuntarily disclosed in the media, it will always be available through an internet search. People accused of HIV-related 'crimes' for which they are not (or should not be found) guilty have a right to privacy. There is no public health benefit in identifying such individuals in the media; if previous partners need to be informed for public health purposes; ethical and confidential partner notification protocols should be followed.

***The Declaration provides clear guidelines for the Justice for All roadmap for policymakers and criminal justice system actors to ensure a linked, cohesive, evidence-informed approach to produce a restrained, proportionate and appropriate use of the criminal law, if any, to cases of HIV non-disclosure, potential exposure and non-intentional transmission.***

## **The Montevideo Consensus on Population and Development (2013)**

The Montevideo Consensus on Population and Development was the result of the first Latin American and Caribbean Inter-Governmental Conference on Population and Development (ICPD), which concluded in Montevideo, Uruguay, on August 15, 2013. There, the 38 governments of the region reached an unprecedented and ground-breaking consensus to advance sexual and reproductive health and rights, including a call to revise restrictive laws on abortion and sexual rights. The Montevideo Consensus is the most forward-looking document on sexual and reproductive health and rights ever agreed to at any diplomatic negotiation. As we develop the *Justice for All* Roadmap, this consensus statement agreed to among the countries of Latin America and the Caribbean must be considered.

Among the issues addressed in the consensus statement were:

- Adolescent Sexual and Reproductive Health and Rights
- Reproductive Health, Including Abortion
- **Sexual Rights, Sexual Orientation and Gender Identity**
- Violence
- **Gender Equality and Women's Empowerment**

### **Sexual Rights, Sexual Orientation and Gender Identity**

Regarding sexual and reproductive rights more broadly, governments agreed to “promote policies that enable persons to exercise their sexual rights, which embrace the right to a safe and full sex life, as well as the right to take free, informed, voluntary and responsible decisions on their sexuality, sexual orientation and gender identity, without coercion, discrimination or violence, and that guarantee the right to information and the means necessary for their sexual health and reproductive health,” thus agreeing to a definition of “sexual rights” for the first time ever in an inter-governmental negotiation.

The governments also agreed to design policies and programs to eradicate discrimination based on sexual orientation and gender identity, bearing in mind that “violence against girls, women and LGBT persons (lesbian, gay, bisexual and transsexual), in particular sexual violence, is a critical indicator of marginalization, inequality, exclusion and gender discrimination against women and affects their autonomy, self-determination, individual and collective health and the exercise of human rights.” They also noted “that discrimination and violence on the basis of sexual orientation and gender identity places persons of diverse sexuality in a vulnerable position, preventing their access to equality and to the full exercise of citizenship.”

### **Violence**

The governments agreed to take specific measures to stop violence against children and to “enforce existing policies and adopt, on the one hand, preventative and punitive measures, and on the other measures for protecting and caring for women in order to eradicate all forms of violence and stigma against women in public and private spheres, especially the gender-motivated violent murder of girls and women, and ensure effective and universal access to fundamental services for all victims and survivors of gender-based violence, with special attention to women in high-risk situations, such as older women, pregnant women, women with disabilities, culturally diverse groups, sex workers, women living with HIV or AIDS, lesbians, bisexuals, transsexuals, Afro-descendant, indigenous and migrant women, women living in border areas, asylum-seekers and victims of trafficking.”

This list of persons vulnerable to violence was unprecedented in such an agreement, and it was the first time sex workers, lesbians, bisexuals and transsexuals were explicitly mentioned in any inter-governmental agreement outside the field of HIV and AIDS. In other sections, governments agreed specifically to guarantee indigenous women and Afro-descendant women and girls the exercise of their sexual and reproductive health and rights.

## Looking Forward

Similar regional negotiations on population and development took place in September for Africa in Addis Ababa, Ethiopia and for Asia and the Pacific, in Bangkok, Thailand. The outcome of all these regional negotiations will help set the global agenda for sustainable development when the Millennium Development Goals expire in 2015. Will governments in other regions put forward their vision for the future, as their Latin American and Caribbean counterparts just did so eloquently? In order to have true sustainable development, they need to commit to gender equality and ensure sexual and reproductive rights and health for all.

**The *Justice for All* Roadmap will benefit from the thrust of the consensus Montevideo statement which asserted the crucial importance of “sexual rights and reproductive rights for the achievement of social justice and the national, regional and global commitments to the three pillars of sustainable development: social, economic and environmental”—pillars which will form the basis of the post 2015 development agenda.**

## CHAPTER 5

### Monitoring the Human Rights Approach to HIV

The *Justice for All Roadmap* must make provision for a monitoring and evaluation mechanism especially geared toward assessing implementation or non-implementation of the global commitments to create a more effective human rights approach in the HIV response. This is multi-dimensional and involves global, regional and national programs, and civil society efforts for which there are templates and models.

1. **UNGASS Country Reports and National Composite Policy Index:** The UN plays a critical role in monitoring how countries are implementing their commitments in accordance with the Human Rights Platform for the HIV Response. It is true that the 2001, 2006 and 2011 Declarations on HIV/AIDS did not create numerical targets or indicators for human rights and laws in the context of national response to HIV. But UNAIDS in coordinating the UNGASS Country Reports has added a section that included questions in the National Composite Policy Index to which states and civil society groups provide information as to whether certain laws, policies and programs were in place to support human rights protection in the context of HIV. It is in these reports that for example reveals that nearly one-third of reporting countries do not have laws against discrimination on HIV status.

- The UN Global Report on AIDS: This is an annual report and is the most comprehensive report on progress being made in the HIV responses around the world. It is usually released in time for World AIDS Day each year.
- Global AIDS Response Reporting (GARPR), an online tool in which countries submit their most recent data on global indicators
- For a country to country breakdown of reports under the National Composite Policy Index, please see <http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/2010nationalcompositereports-countries>
- See also UNAIDS “Guidelines on Construction of Core Indicators 2010 Reporting, UNAIDS/09.10E/JC1676E (2009) [http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/manual/2009/jc1676\\_core\\_indicators\\_2009\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/manual/2009/jc1676_core_indicators_2009_en.pdf)
- Global AIDS Response Progress Reporting 2012, UNAIDS/JC2215E. This can be accessed at <http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/2010nationalcompositereports-countries>
- Non-discrimination in HIV Responses UNAIDS/PCB[26]/10.3 (May 2010). This report can be found at [http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100526\\_non\\_discrimination\\_in\\_HIV\\_em.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100526_non_discrimination_in_HIV_em.pdf)

2. **The ILGA List of Countries that Criminalize the Conduct of Sexual Minorities:** This list is maintained by the International Lesbian and Gay Association and documents those countries that impose sanctions on same-sex sexual conduct. Such laws are discriminatory and also act as obstacles to the roll-out and uptake of HIV prevention, treatment and care services for men who have sex with men and transgender people.

- International Lesbian, Gay, Bisexual, Trans and Intersex Association: *State-sponsored homophobia: A World Survey of Laws Prohibiting Same-Sex Activities between Consenting Adults* (2010). See [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2010.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf)

- International Lesbian, Gay, Bisexual, Trans and Intersex Association *Homophobia Report* (March 2008). See at <http://ilga.org/ilga/en/article/1165>
- See also #3 below

3. **Human Rights Count, Global Criminalization Scan (GCS) and Stigma Index for and by People Living with HIV:** Various non-governmental organizations also monitor the human rights situation in the context of HIV. The Global Network of People Living with HIV (GNP+) has implemented *Human Rights Count*, a project that documents human rights abuses against people living with HIV. Under this project, GNP+ developed a questionnaire to help elicit qualitative and quantitative data regarding human rights violations.

The **Stigma Index for and by People Living with HIV** is a tool for measuring HIV-related stigma. It is a product of a joint effort among several partners. Thus far fourteen (14) countries have conducted the index and published a report. Another thirty-six (36) countries are in the process of conducting the index. This includes two Caribbean countries: Jamaica and the Dominican Republic.

GNP+ also conducts a **Global Criminalization Scan** (GCS) which monitors the countries that criminalize people living with HIV by prosecuting them for HIV non-disclosure, exposure and transmission. See <http://www.gnpplus.net/criminalisation>

4. **HIV Travel Restrictions Database:** This database is housed at the International AIDS Society. It lists countries that restrict entry, stay and residence based on positive HIV status. Such travel restrictions are considered discriminatory and without any public health benefit.
- UNAIDS: *Mapping of Restrictions on Entry, Stay and Residence of People Living with HIV* (first published in 2009 and revised in 2010). See [http://www.unaids.org/en/media/unaids/.../pub/.../jc1727\\_mapping\\_en.pdf](http://www.unaids.org/en/media/unaids/.../pub/.../jc1727_mapping_en.pdf)
  - UNAIDS Report: *Report of the International Task Team on HIV-Related Travel Restriction* (December 2008) at [http://www.unaids.org/en//media/unaids/contentassets/dataimport/pub/report/2009/jc1715\\_report\\_inter\\_task\\_team\\_HIV\\_en.pdf](http://www.unaids.org/en//media/unaids/contentassets/dataimport/pub/report/2009/jc1715_report_inter_task_team_HIV_en.pdf)
  - United States Department of State, Bureau of Democracy: 2009 Country Reports on Human Rights Practices.

5. **The Human Rights Desk in CARICOM Countries:** The establishment of Human Rights Desks in CARIFORUM countries was one of the initiatives in the Global Fund Grant of CRN+ in 2004. Human Rights Desks were set up in eleven (11) countries: Antigua and Barbuda, the Dominican Republic, Guyana, Grenada, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. The purpose of the Human Rights Desk was to receive, document and respond to complaints of stigma and discrimination and unfair treatment filed by PLWHA and to educate PLWHA on their rights and avenues for redress.

A good review of the operation of the Human Rights Desk was provided by Veronica S.P Cenac, a Board Member of the Caribbean Vulnerable Communities Coalition in St. Lucia, in *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine.

The effective functioning of these desks would have provided valuable database for stigma and discrimination in CARIFORUM countries and would have represented a powerful tool within countries to advocate for a better environment to prevent stigma and discrimination based on HIV status. An urgent review and reinvigoration of these desks must be an imperative of the *Justice for All* Programme.

## CHAPTER 6

### The Roadmap

#### Creating a Facilitating Environment to Reduce and Eliminate HIV-Related Stigma and Discrimination in the Caribbean

Throughout this desk review suggestions for issues for inclusion into the *Justice for All Roadmap* have been highlighted. These issues may for convenience be actioned under three separate but complementary categories

- Creating a Facilitating environment
- Fostering a protective environment
- Removing punitive laws and practices

The actions identified under these categories provide an inventory of recommendations that have been referred to and discussed in the various documents, declarations, meetings and other fora. The list of recommendations is not intended to be exhaustive nor final. It is merely presented as possible inputs into the roadmap and a PAN CARIBBEAN DECLARATION

**Creating a facilitating environment:** The cross cutting activities are intended to facilitate behaviour change, communication and awareness, mobilization of partners etc. Some of these activities are intended to strengthen the basis and set the stage for the implementation of activities in the other two categories.

**Fostering a Protective Environment:** This group of actions contemplates the enactment of legislation, development of policies and other actions that protect people living with HIV and AIDS from stigma and discrimination , protect their confidentiality, and informed consent, provide for access to prevention, treatment and care. Place emphasis on gender equality, violence against women and girls that increase their vulnerability to infection and provide children and their caregivers with social and legal protection.

**Removal of Punitive Laws and Practices:** The third group of actions target existing laws and practices that act as obstacles in the fight against HIV. These actions were extensively discussed and identified with priorities #3 and 6 of the UNAIDS Seven Priority Programs. The actions contemplated include the removal of punitive laws that contribute to the persistence of HIV-associated stigma and discrimination.

## The Roadmap to Reduce and Eliminate HIV-Related Stigma and Discrimination

| <b>Cross-Cutting Activities for a Facilitating Environment</b> |   |   |  |
|--|---|---|--|
| <b>#</b>   | <b>Priority Action</b>  | <b>Activities</b>   | <b>Indicator</b>   |
| <b>1</b>   | Establish a HR Committee as part of PANCAP  | The committee will comprise PANCAP, PLWHA, Universities, Legal Community, IACHR   | An annual report on progress in the HR approach in the HIV responses in CARICOM countries  |
| <b>2</b>   | Develop a PAN CARIBBEAN DECLARATION   | The Declaration will commit countries to a human rights approach and will identify specific areas for actions, including the 6 elements identified in the <i>Justice for All</i> Concept Note | The Declaration is adopted by Heads of Government  |
| 3  | A bold regional advocacy and communication campaign to support inclusion efforts  | Bold messages on TV, Radio and Printed Media, in the tradition of the LIVE-UP Campaign  | The presence of an aggressive media campaign   |
| 4  | Adaptation of PANCAP's Model Anti-Discrimination Legislation by countries   | NAPS must work to ensure that the model legislation is adapted for legislation in each country  | At least 2 countries adapting the legislation by end of 2015   |
| 5  | Ensure National HIV Plans are Human Rights driven   | PANCAP and UNAIDS work with each country to adapt each NSP for HIV includes a Human Rights approach. Guyana is an example   | All NSPs are adapted by 2015 and are compatible with a Human Rights approach   |
| 6  | Mobilize networks of people living with HIV and vulnerable populations  | Networks of PLWHA and LGBTI groups working together to promote legal literacy and advocating for empowering laws and removal of punitive laws   | At least one network in each country and at least three networks regionally working together to promote a human rights agenda for HIV  |
| 7  | Dissemination of international human rights norms, standards, and mechanisms that relate to people living with HIV and vulnerable populations such as LGBTI | UNAIDS to work with NAPS and national and regional networks to disseminate relevant documents, including the "International Guidelines for Human Rights and HIV                               | Documents are available on websites in each country and publications are available for hard copy distribution in each country          |
| 8  | Disseminate compendium of court judgments and cases relating to HIV, Ethics, Human Rights and the Law   | Prepare simple version of compendium for easy reading<br><br>Make accessible decisions and court rulings in selected cases  | Ensure latest compendium are on websites and simple versions are accessible in print for use by PLWHA and other vulnerable populations |
| 9  | Regional conference for the legal fraternity on HIV, Ethics, Human Rights and the Law   | Promote greater awareness among parliamentarians and the legal fraternity on HIV, Ethics, Human Rights and the Law  | A joint conference with parliamentarians and the legal fraternity to consider HIV, Ethics, Human Rights and the Law                    |
| 10   | Include HIV, Ethics, Human Rights and the Law in Curricula for medical school,  | Develop a model standardized curricula for NAPS to promote in various training institutions, including medical, nursing, medical technology, pharmacy schools, and                            | At least ten institutions in the Region have incorporated the model curricula in within their educational and training                 |

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|    | other health curricula, law school and in disciplined services training programs | disciplined services training programs and in law schools  | programs   |
| 11 | Develop a Regional Anti-Discrimination Charter for HIV and Employment            | With the help of the ILO, Business Coalitions and Trade Unions, develop a model Anti-discrimination charter, for example like the one in Barbados, | At least half of the CARICOM countries having Anti-Discrimination Charters for Employers and Employees             |
| 11 | Champion for Change speaking out against stigma and discrimination in HIV        | Mobilize leading politicians, church leaders, sports personalities, and popular artistes to speak out against stigma and discrimination in HIV     | At least twenty personalities are regularly speaking out prominently against HIV stigma and discrimination by 2015 |

**Fostering a Protective Environment to Reduce and Eliminate HIV-Related Stigma and Discrimination**

| # | Priority Action   | Activities   | Indicators  |
|---|---|--|---|
| 1 | Remove stigmatizing practices in the HIV response   | <p>Advocate for the removal of compulsory screening and testing of military and police applicants and staff and prisoners</p> <p>End compulsory notification of HIV cases</p> <p>End compulsory screening of pregnant women and substitute with a voluntary program within the context of PMTCT</p> <p>End screening of persons applying for visas and citizenship</p> <p>End mandatory testing of persons applying for work permits</p> <p>End re-employment testing</p> <p>Advocate against the introduction of criminal laws to punish wilful transmission of HIV</p> | At least half countries of CARICOM have measureable indication that all or some of these stigmatizing practices have been changed |
| 1 | Inclusion of anti-discriminatory clauses and provisions in national legal environment (constitutions, laws) consistent with global agreements and particularly those involving employment and access to social services and education | <p>Mobilize national and regional groups for Advocacy and lobbying for law reform in CARICOM countries</p> <p>Advocacy at national and regional levels for national implementation of the Model HIV Anti-Discrimination Legislation in CARICOM countries</p> <p>PANCAP to coordinate the engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labour, Women's Affairs, Children and Youth, Education and Housing, Immigration, Health and</p>  | At least half of the countries have included anti-discrimination clauses in their constitutions or in their laws and regulations  |

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|   |   | <p>Trade</p> <p>PANCAP, working with ILO, UNDP, UNAIDS and National and Regional groups, to coordinate mobilization of MPs to outline a legislative policy and agenda, outlawing discriminatory practices and creating a legal framework that is empowering through obligations and entitlements which are necessary to protect any society against the harms of HIV.</p> <p>Mobilize Business Coalitions and Trade Unions to advocate for anti-discrimination laws related to HIV</p> <p>Mobilize Business Coalition to prepare an Anti-discrimination charter for HIV and employment</p>   |   |
| 2 | Improving legal literacy and capacity of people living with and vulnerable to HIV regarding their human rights  | <p>PANCAP, working with NAPS in each country and with other relevant groups, to prepare Legal Information and Referrals Booklet</p> <p>Working with various organizations representing vulnerable populations to conduct education and awareness programs for legal literacy</p>   | More people are aware of their human rights and are prepared to advocate for these rights   |
| 3 | Empowering persons living with and those vulnerable to HIV to access legal services to seek remedies when they experience or perceive stigma and discrimination through mechanisms such as legal aid programs and access to Human Rights Commissions where they exist nationally and or seeking redress at bodies such as the Inter-American Human Rights Commission/Court. | <p>National AIDS Programs to assist in establishing a Legal Group to provide legal advice and representation for persons who might feel they were discriminated against. In some countries, work through Legal AID Organizations, where these exist</p> <p>Working through national alternative or community forms of dispute resolution. For example, the National Dispute Resolution Programs</p> <p>Engaging religious or community leaders with a view to resolving dispute and changing harmful traditional norms</p> <p>Where Human Rights Commission exist, take cases of discrimination to such bodies</p> <p>Internationalize discrimination practices by petitioning IACHR and UNCHR</p> | <p>At least half of the countries have mechanisms through the public sector, or through NGOs, to provide access to legal services for PLWHA and from vulnerable populations</p> <p>A measurable increase in the number of motions filed to the relevant bodies asking for HR remedies</p> |
| 4 | Strengthening the Stigma Index and the Human Rights Count and strengthening the Human Rights Desks in CARIFORUM countries.  | <p>Develop a strategy to establish or strengthen Human Rights Desk in CARICOM Countries</p> <p>Build capacity of the Human Rights Desk to implement the Stigma Index and the</p>   | <p>All CARICOM countries have a HR Desk for HIV and for LGBTI</p> <p>At least 75% of countries have functioning Stigma Index and Human</p>  |

|   |  | Human Rights Count  | Rights Count  |
|---|--|---|---|
| 5   | Building capacity among health care workers that diminish stigma and discrimination in health care settings  | <p>Prepare booklet of stigma and discrimination practices and behaviour in health settings</p> <p>Conduct frequent seminars to sensitize health care providers on stigma and discrimination practices in health settings</p> <p>Include HIV-Related Stigma and Discrimination and Human Rights in health care providers' curricula (medical and dental Schools, Nursing Schools, and Pharmacy Schools etc.)</p> <p>Develop and Implement National Health Clients (patients) Rights Charters and ensure these charters specifically provide for the rights of all citizens to health services without discrimination</p> <p>Review health legislations to ensure there is no provision that limit access to health</p> | <p>Every health care provider have access to booklets in the form of hard copies or e-copies</p> <p>At least 10% of health care providers have attended a seminar on HIV, Ethics, Human Rights and the Law by end of 2015</p> <p>HIV, Ethics, Human Rights and the Law is part of the curricula in at least 10 institutions in the Region</p> |
| 6   | Creating a more efficacious environment for enforcing sexual and domestic violence acts in the various countries   | <p>Develop a Caribbean Network of Female Parliamentarians to advocate and to bring to national attention the special vulnerabilities of women girls and boys.</p> <p>Working with and supporting police forces to enforce laws against gender-based and domestic violence</p> <p>Establish a Gender-Based and Domestic Violence Index Data Base through organizations such as National Parliaments or Gender and Women Equality Commission where they exist</p>   | <p>A functioning sexual and Domestic Violence Index Data Base is functioning in at least three countries</p>  |
| 7   | Training programs in the police force and the judiciary to prevent abuse, stigma and discrimination against people living with HIV and those vulnerable to HIV such as MSMs, sex workers and drug addicts. | <p>Prepare booklet of stigma and discrimination practices and behaviour in the disciplinary and prison services and in the judiciary</p> <p>Conduct frequent seminars for the disciplined forces and judiciary personnel on stigma and discrimination practices in health settings</p> <p>Prepare a compendium of discrimination cases for magistrates and judges to bring greater awareness about these cases</p>  | <p>At least five countries training programs for disciplined services include HIV, Ethics, Human Rights and the Law in their training programs</p> <p>At least 10% of all members of the disciplined services have attended a seminar on HIV, Ethics, Human Rights and the Law by end of 2015</p>   |
| <b>Elimination of Punitive Laws Linked to HIV-Related Stigma and Discrimination</b> |  |   |   |

| # | Priority Action   | Activities   | Possible Implementers  |
|---|---|--|--|
| 1 | Punitive laws related to issues affecting the full realization of human rights of persons who are lesbians, gays, bisexuals, transgender and intersex (LGBTI) | <p>Advocacy and lobbying for law reform</p> <p>Engagement of MPs and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labour, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade</p> <p>MPs to outline a legislative policy and agenda, outlawing discriminatory practices and creating a legal framework that is empowering through obligations and entitlements which are necessary to protect any society against the harms of HIV.</p> <p>Review of Laws and Law Enforcement Practices to see whether they impact the response to HIV positively or negatively</p> <p>Examination of Anti-discriminatory Laws related to HIV from outside the Caribbean and using the non-Caribbean experience to improve the HIV-Non-Discrimination Provisions in Employment Legislations of Caribbean countries</p> <p>Parliaments to act to repeal offending laws</p> <p>In the face of Parliaments failure to act, the courts, particularly the Caribbean Court of Justice, should be asked to provide a remedy for the conundrum. This can be done through a legal challenge.</p> <p>Encourage groups that might file constitutional motions in national courts and the CCJ to approach the IACHR and the UNCHR</p> | The UNAIDS Strategy proposes the removal of punitive laws that affect sex workers, people who use drugs and men who have sex with men in half of the countries that have them by 2015. |
| 2 | Punitive laws related to sex work   | <p>Advocacy and lobbying for law reform as they relate to sex workers</p> <p>Engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labour, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade to reach out to sex workers to promote safe sex</p>  | At least three countries have removed punitive laws for sex workers  |
| 3 | Punitive laws related to criminalization of HIV   | <p>Advocacy and lobbying for law reform</p> <p>Engagement of Parliamentarians and</p>  | Reduce by 50% the number of CARICOM countries with laws  |

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|   | transmission   | Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labour, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade   | criminalizing HIV  |
| 4 | Punitive laws related to freedom of movement (migration)   | Advocacy and lobbying for law reform<br><br>Engagement of MPs and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labour, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade | UNAIDS proposes that there is a reduction by half of the countries that have laws that restrict entry, stay and residence by 2015 and zero tolerance for gender-based violence, including sexual violence. |
| 5 | Eliminating pre-screening provisions for employment and for entry into the police and disciplined services | Working with national authorities to remove pre-screening requirements for employment and for entry into the disciplined forces   | Reduce by 50% the number of countries where these requirements exist   |

***We struggled against apartheid in South Africa...because black people were being blamed and made to suffer for something we could do nothing about – our very skin. It is the same with sexual orientation. It is a given. I could not have fought against the discrimination of apartheid and not also fight against the discrimination that homosexuals endure, even in our churches and faith groups***

***Bishop Desmond Tutu***

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6. Motion adopted by the Parliament of Guyana (2011), September 8, 2011
7. Motion # 50 establishing a Special Select Committee on Guyana’s Commitment with Regard to the Decriminalization of Consensual Adult same-Sex Relations and Discrimination Against LGBT Persons (2012)
8. Nassau Declaration, CARICOM (2001)
9. Guidance Notes Publication of UNAIDS: Ending overtly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations (2013)
10. Caribbean Partnership Commitment establishing PANCAP (2001)
11. USAID Health Policy Project in Dominica and Grenada (2012)
12. Declaration of Commitment on HIV/AIDS, UN General Assembly (2001)
13. Political Declaration on HIV/AIDS, UN General Assembly (2006)
14. Political Declaration on HIV/AIDS: Intensifying our efforts to eliminate HIV/AIDS (UN Resolution 65/277) (2011)