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## **HIV/AIDS AND HUMAN RIGHTS IN THE CARIBBEAN: SITUATIONAL ANALYSIS**

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**Submitted to the Pan Caribbean Partnership Against HIV/AIDS (PANCAP)**

**CARICOM Secretariat  
Guyana**

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## GLOSSARY OF TERMS

ABA/ROLI	American Bar Association Rule of Law Initiative
AIDS	Acquired Immunodeficiency Syndrome
ARSH	Adolescent Sexual and Reproductive Health
ARV	Antiretroviral
BCC	Behavior Change Communication
CARICOM	Caribbean Community and Common Market
CARIFORUM	The Caribbean Forum
CBO	Community-based organization
CCJ	Caribbean Court of Justice
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRN+	Caribbean Regional Network of People Living with HIV and AIDS
CRSF	Caribbean Regional Strategic Framework on HIV and AIDS
CSO	Civil society organization
CSW	Commercial Sex Worker
CVC	Caribbean Vulnerable Communities Coalition
ECLAC	Economic Commission for Latin America and the Caribbean
FBO	Faith-based organization
GIPA	Greater Involvement of People Living with AIDS
HFLE	Health and Family Life Education (curriculum)
HIV	Human immunodeficiency virus
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IDLO	International Development Law Organization
ILO	International Labor Organization
IOM	International Organization on Migration
JN+	Jamaican Network of Seropositives
JFJ	Jamaicans for Justice
KP	Key Populations
LGBT	Lesbian, gay, bisexual and transgender
LRIDA	Labour Relations and Industrial Disputes Act
MARP	Most at-risk populations
MDG	Millennium Development Goals
MOH	Ministry of Health
MSM	Men who have sex with men
NCPI	National Commitments and Policies Instrument
NGO	Nongovernmental organization
NSP	National HIV/AIDS Strategic Plan

OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
OVC	Orphans and Vulnerable Children
PANCAP	Pan Caribbean Partnership Against HIV and AIDS
PLHIV	People living with HIV and AIDS
PMTCT	Prevention of mother to child transmission
PrEP	Pre-exposure Prophylaxis
PSWG	Policy and Strategy Working Group on Stigma and Discrimination
SASOD	Society Against Sexual Orientation Discrimination
SDG	Sustainable Development Goals
SRH	Sexual and Reproductive Health
STI	Sexually Transmitted Infections
TG	Transgender
UN	United Nations
UNAIDS	United Nations Joint Programme on AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGASS	United Nations General Assembly Special Session on HIV/AIDS
UNODC	United Nations Office of Drug Control
UPR	Universal Periodic Review
U-RAP	Faculty of Law Rights Advocacy Project, University of the West Indies
USAID	US Agency for International Development
UWI	University of the West Indies
WHO	World Health Organization

## EXECUTIVE SUMMARY

### HIV IN THE CARIBBEAN – A SUMMARY

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

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

### POSITIVE DEVELOPMENTS IN THE REGION

1. ***Strong Civil Society Activism:*** Human Rights Defenders and Civil Society Organizations (CSOs) in the Caribbean have, for the most part, taken the lead in championing and promoting the rights of people living with HIV (PLHIV), LGBT persons and persons in other vulnerable groups. Their actions have led to a wide scale exposure of human rights violations across the Caribbean region and, in at least three cases, have contributed to “judicial amendment”<sup>2</sup> of certain laws that affect the LGBT community. In July 2018, the Inter-American Commission on Human Rights (IACHR) ruled that the petition filed by Gareth Henry and Simone Edwards of Jamaica, challenging Jamaican law that discriminate against LGBT people and alleging State violation of its obligations under the American Convention on Human Rights, was admissible<sup>3</sup>. The case will now proceed to analysis of the merits. In 2016, Maurice Tomlinson initiated action in the Jamaican Constitutional Court challenging the buggery provisions of the Offences Against the Person Act. In 2010, SASOD of Guyana played a leading role in having the Supreme Court of Guyana pronounce on the legality of legislative provisions, which prohibit wearing attire of the opposite sex, in public. Also, for the most part, it is Civil Society Organizations and Human Rights Defenders that have led the way in educating and sensitizing representatives of the State (including the police and judicial officers), about the interconnectedness between concepts of justice, fairness, human rights and the rights of the

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<sup>1</sup> UNAIDS (2017) '[Ending AIDS: Progress towards the 90-90-90 targets](#)' [Accessed on May 7, 2018]

<sup>2</sup> In Belize, see *Caleb Orozco v AG of Belize* Claim No. 668 of 2010, unreported, (Supreme Court of Belize, 10 August 2016). In Trinidad and Tobago, see *Jason Jones v. Attorney General for Trinidad and Tobago*, Unreported. Claim CV2017-00720 (12 April 2018)

<sup>3</sup> However, the Commission found the allegations regarding state violation of obligations under the American Declaration to be inadmissible.

marginalized. It is also CSOs that have taken the lead in providing safe spaces and supportive services for PLHIV, LGBT individuals and other vulnerable groups.

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

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

1. ***The Jamaica National HIV Redress System:*** Through this redress mechanism, Jamaica Network of Seropositives (JN+) acts as a complaints handling bureau. The system is partnership-driven: JN+ receives and transmits complaints to relevant partner agencies; follows-up on behalf of complainants; and ensures that complaints to the various ministries, departments and agencies of government are being addressed. The respective "redress entities" are agencies of the State that have internal complaints, discipline and sanction mechanisms. These agencies include the Ministry of Labour, in relation to employment issues; the Office of the Public Defender for mal-administration in government; the Dispute Resolution Foundation for mediation and alternative dispute resolution; and non-governmental organizations engaged in human rights advocacy and strategic litigation, such as Jamaicans for Justice (JFJ). The complaints handling process is supported by a recently established (2017) program by CVC for the training and deployment of Community Paralegals.
2. ***The UWI Rights Advocacy Project (U-RAP), Faculty of Law, University of the West Indies, Barbados:*** U-RAP was established in 2009 by three pioneering Attorneys-at-Law (including the esteemed Tracy Robinson and Dr. Christopher Arif Bulkan), who also happened to be public law teachers at The University of the West Indies. The initiative was established as an outreach activity aimed at promoting social justice and human rights through strategic litigation, socio-legal research and legal education. Among the recent strategic litigation undertaken by U-RAP is the provision of legal assistance advice and representation in the "Cross-Dressing for an Improper Purpose Case": [Quincy McEwan et al vs. Attorney General of Guyana](#).

3. ***A Caribbean-wide panel of Attorneys who provide pro bono legal advice, assistance and representation:*** Under U-RAP, a Caribbean-wide panel of Attorneys, all duly qualified at the respective country level, has been established. Members of the panel commit their time and expertise to reviewing allegations of human rights violations; undertaking strategic litigation; and providing advice to civil society organisations, at no cost to the receiving party.
4. ***Training and Deployment of Community Paralegals:*** Since 2017, the Caribbean Vulnerable Communities Coalition (CVC) has been helping non-governmental organizations, engaged in human rights advocacy and strategic litigation - such as SASOD in Guyana and Jamaicans for Justice - to train and deploy laypersons in communities as Community Paralegals. Once trained, these Community Paralegals act as the first point of contact for individuals seeking redress for human rights violations. The Community Paralegals perform a “triage” function by helping complainants to understand which legal process or “redress entity” can assist them with resolving the issue/s they face.

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



## KEY FINDINGS AND RECOMMENDATIONS FOR PANCAP

### Factors contributing to human rights violations across the region

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

- (1) Structural issues, such as resource constraints; hours of operation; layout and organization of public health facilities increase the likelihood of “information leaks” which fuel fear and distrust of the public health system.
- (2) A permissive legal and policy framework, which allows stigma, discrimination and abuse to thrive.
- (3) Professional misconduct and neglect of professional duties by public officers within public health institutions.
- (4) Professional misconduct by police officers who either, through ignorance or a willful disregard, fail to uphold public order laws when PLHIV and LGBT persons face physical violence, abuse, intimidation and threats in public spaces which could result in a breach of the peace.

### Findings and Recommendations across key areas

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

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#### STIGMA, DISCRIMINATION AND SOCIAL EXCLUSION

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1. PLHIV and LGBT persons are subjected to physical violence, verbal abuse harassment and intimidation in public spaces, discrimination in employment, and discrimination against relatives.
2. Abuse of rights is most prevalent in public health institutions and in public spaces. Stakeholders indicated that there are still systematic violations of the rights of persons living with HIV and marginalized groups, primarily in healthcare settings, in public spaces, in their communities and even in their homes.
3. There are no laws which specifically target HIV-related hate speech, abuse and harassment, although legislation exists across the region which makes it an offence for a wide variety of behaviours including: using threatening, abusive, insulting, obscene, or profane language which may provoke a breach of the peace.<sup>4</sup> Legislation in Trinidad and Tobago makes it an offence to insult, humiliate or intimidate another person in public where the action is motivated by race, gender, ethnicity or religion and the actions of the offender are done with the intention of inciting racial, gender or religious hatred. However, sexual orientation, health status or disabilities are not included.

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<sup>4</sup> See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)

4. Across the Caribbean, legislation exists that criminalizes at-risk behaviors of key populations. These include male-to-male homosexuality, sex work, sex among adolescents, and substance use. Legislation and Regulations governing prisons also affect access by prisoners to commodities such as condoms.
5. The definition of communicable diseases under Public Health Acts and Quarantine Acts, which could result in quarantine, isolation or segregation, is broadly stated. The natural and ordinary meaning of the words include HIV/AIDS. Although there have been no instances of isolation or segregation of PLHIV, the law would provide a valid defense for any misguided conduct resulting in isolation, segregation and quarantine of persons because of their HIV status. A distinction should therefore be made in law, to make it clear that even if HIV is a communicable disease, it does not fall into the sub-category of contagious diseases and therefore the quarantine measures stipulated in the Acts, would not apply to HIV/AIDS.

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## ACCESS TO ESSENTIAL SERVICES

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### **Factor 1: Public Education and Access to Information**

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#### **Key Findings**

- 1.1. There is a lack of dedicated, age-appropriate services for most-at-risk adolescents and young people.
- 1.2. Generally, there is an absence of comprehensive sexual and reproductive health information in the school curricula.
- 1.3. Health professionals do not receive mandatory training in issues related to human rights, unconscious bias and diversity before qualification.
- 1.4. Training in issues related to human rights, unconscious bias and diversity issues is not a mandatory requirement for continuing medical education or licensure of medical practitioners and health professionals.
- 1.5. Auxiliary workers at health facilities are not generally included in human rights and diversity training.
- 1.6. There is a lack of specific measures for the disabled, indigenous and ethnic groups and persons who are speech, hearing or visually-impaired.
- 1.7. There is a lack of specific measures for undocumented migrants.
- 1.8. There is a lack of privacy in accessing services. This deters persons in the key populations from using public services.

#### **Priority Recommendations**

- (a) **Regulatory Bodies:** Provide technical and financial assistance to national authorities and their respective regulatory bodies, such as Medical Councils, to make training in human rights, diversity, conscious and unconscious bias, mandatory courses for continuing professional education and for re-licensure.
- (b) **Auxiliary staff:** Provide technical and financial assistance to national authorities to train auxiliary staff at public health facilities in human rights and to build their capacity to traverse issues such as diversity, confidentiality, conscious and unconscious bias in relation to PLHIV and other vulnerable groups.
- (c) **Use of sign language:** Provide technical and financial assistance to national authorities to train persons at public health facilities in sign language. This will ensure that there are personnel on staff who can communicate with persons who are speech or hearing impaired.
- (d) **Policy guidelines for prisons:** Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons, jails to define a minimum package of services and service delivery protocols for incarcerated persons generally, and transgender persons in particular.

### **Factor 2: HIV Prevention**

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## **Key Findings**

- 2.1 There is an absence of specific prevention strategies for incarcerated persons.
- 2.2 There is an absence of specific prevention strategies for the disabled, indigenous peoples and ethnic groups.
- 2.3 There is need for capacity building on gender identity and measures to improve health providers' knowledge about the physical and emotional health needs of transgender people.
- 2.4 Age of consent laws affect access to prevention interventions by most-at-risk adolescents.
- 2.5 PrEP is not widely used as a prevention measure among groups of persons at high risk.

## **Priority Recommendations**

- (a) **Flexible working hours:** Provide assistance to civil society testing facilities and government testing facilities to establish flexible working hours to reach key populations.
- (b) **PrEP:** Provide technical assistance to national authorities to rollout PrEP to key populations and other at-risk individuals, such as partners in sero-discordant relationships, as an additional prevention intervention.
- (c) **Advocacy for law reform:** Provide technical assistance to civil society organizations to undertake advocacy for law reform, aimed at lowering the age at which young people can access sexual and reproductive health services including obtaining an HIV test without the consent of a parent or guardian.
- (d) **Use of Braille and sign language:** Provide financial and technical assistance to national authorities to make HIV information, education and prevention programs available in braille, accompanied by sign language or other forms that are suitable for persons who are visually impaired or speech and hearing impaired.
- (e) **Gender-responsive prevention strategies:** Provide technical assistance to national authorities to develop gender-responsive prevention strategies that meet the specific needs of transgender persons.

## **Factor 3: Testing, Counselling and Referral**

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### **Key Findings**

- 3.1. Inflexible hours of operation: Government-owned facilities do not normally offer services with flexible hours for HIV testing that will enable key populations to be tested at times that are more convenient for them.
- 3.2. Limited use of self-testing: Only Trinidad and Tobago and Jamaica appear to have this type of test available.
- 3.3. Not all countries have specific legal frameworks governing testing by persons who are not medically trained.
- 3.4. Access to testing by sexually active persons below the age of 18 years is restricted in all countries.
- 3.5. Testing of prisoners upon admission and release is authorized by legislation, which pre-date the advent of HIV and AIDS.

### **Recommendations:**

- (a) **Self-administered HIV testing:** Provide technical and financial assistance to national authorities to rollout self-administered HIV testing. This could be rolled out initially in any or all the five territories with the highest HIV burden.

## **Factor 4: Treatment**

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### **Key Findings**

- 4.1. Violations of confidentiality, lack of anonymity, the location of treatment sites, disrespectful behavior, abuse, dehumanized care, a hostile attitude among healthcare workers, and the use of insensitive language, all deter persons from using health facilities.
- 4.2. Failure of healthcare professionals to follow established regulations or protocols.
- 4.3. Prejudice or moralizing in healthcare facilities: Stakeholders indicated that when they visit health facilities (especially young persons and persons in the LGBT community) they are subjected to lectures that morally judge their behaviors and practices.
- 4.4. Members of key populations are rarely aware about rights, local regulations and complaints mechanisms, in the public health sector, which constitute a barrier to exercising their rights.
- 4.5. Government-owned facilities do not normally offer services with flexible hours that enable key populations to get treatment and care at times that are more convenient for them.
- 4.6. Not all States have adopted the WHO's recommended antiretroviral therapy initiation threshold.
- 4.7. There is a lack of specialized services and service providers for key populations, e.g. transgender women, except, perhaps in the case of Barbados.

### **Priority recommendations**

- (a) **Mobile treatment services:** Provide technical support to national authorities to implement mobile treatment services and strategically locate services where the key populations are concentrated or in places that they frequent.
- (b) **Flexible hours for key populations:** Provide technical and financial assistance to national authorities and civil society organizations to enable flexible program hours with regular and reliable services tailored to key populations.
- (c) **Complaint and Grievance mechanisms:** Provide technical assistance to national health authorities to widely disseminate information on the complaint and grievance mechanisms, available inside and outside the health center, especially among key populations, to inform them about their rights and the remedies available to them when those rights are violated.
- (d) **Specialized services for trans-persons:** Governments are encouraged to use existing guidance such as implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions (the "TRANSIT") to scale up specialized services for trans-persons.

## **Factor 5: Social Protection and Material Assistance**

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### **Key Findings**

- 5.1. While existing social protection schemes address some aspects of social protection (such as access to social services for education, health and nutrition), there are gaps in relation to social insurance and labour market policies (especially HIV-related employment protection). Other gaps include: (i) access to benefits such as parental leave; (ii) survivor benefits for persons involved in same-sex relationships and; (iii) assistance to address the housing needs of LGBT persons and PLHIV who may not be able to afford housing in particular neighborhoods due to violence.
- 5.2. Standardized means tests to determine eligibility for social assistance focus on issues such as educational level, access to electricity, family structure and possession of durable goods. However, other specific social or legal barriers, which PLHIV and members of key populations such as LGBT and youth face, are not taken into account. For example, LGBT persons who are unable to live in low-rent communities - due to high levels of threats, intimidation and violence, may not qualify for social assistance under current social protection schemes - cannot affordable housing in other, more accommodating communities where the rent is considerable higher. *Underemployment* of LGBT persons, youth and persons who live in certain rural communities, due to stigma and discrimination, does not appear to be a factor that features in social protection assistance.
- 5.3. Data from the 2017 NCPI indicates that seven countries reported fear of stigma and discrimination as barriers to accessing social protection. These countries include: Bahamas, Barbados, Dominica, Dominican Republic, Haiti, Jamaica, and Saint Lucia. The data also shows that, in Dominica and Haiti, high out-of-pocket expenses are barriers to accessing social protection.
- 5.4. Absence of general anti-discriminatory laws that prohibit termination of employment based on HIV-status.
- 5.5. Life insurance and medical insurance policies are not usually available to people with HIV.

### **Priority recommendations**

- (a) **Social Security Admissions:** Provide technical assistance to national authorities to undertake actuarial reviews, assessments and capacity building for social security administrations to tailor their programmes to meet the needs of those who are most vulnerable. This will help countries better understand their HIV and social protection landscapes, and strengthen their capacities for planning and implementing robust HIV-sensitive social protection programmes. This would help deepen and extend the coverage of social protection programmes to people living with, at risk of or affected by HIV. The assessments would also assist countries to generate strategic information to help understand how to finance social protection programmes sustainably. Relevant costs for increasing the HIV sensitivity of social protection programmes would be obtained from the assessments.
- (b) **Educational Programmes for self-employed persons:** Provide technical assistance to national authorities to roll out educational programmes, for persons in the informal economy and self-employed persons, to increase their knowledge of how they can participate in national insurance schemes, either as self-employed persons or as voluntary contributors.

## **Factor 6: Protection of Privacy and Confidentiality**

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### **Key Findings**

- 6.1. The Constitutional right to privacy may not be enforceable in all States and not all States have substantive privacy laws.
- 6.2. Professional misconduct via regulatory agencies may provide an alternative form of redress, for breach of the right to privacy.

### **Priority Recommendation:**

- (a) **New practices:** Provide technical assistance to national authorities to adopt a practice, like that adopted in Barbados, through the Draft HIV and related Health Information Confidentiality Policy and Contract.

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## **EQUALITY OF PLHIV IN PUBLIC AND PRIVATE LIFE**

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## **Factor 7: Participation in political, social and cultural life**

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### **Key Findings**

- 7.1. Abuse of rights and violence is prevalent in public spaces.
- 7.2. There are no laws, which specifically target hate speech, abuse and harassment, but in Trinidad and Tobago, there is legislation that deals with inciting religions, racial or gender-based hatred in a public space. The Trinidad and Tobago legislation is limited in that “offensive behaviour” based on sexual orientation or health status is not covered.
- 7.3. Caribbean public order laws may be used to provide protection against verbal abuse and violence but there is no evidence that the police are using these laws to protect PLHIV and LGBT individuals from abuse and community violence.

### **Priority Recommendations**

- (a) **Obtaining a Fiat:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>5</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granting the fiat would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.

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<sup>5</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

- (b) **Guidebook for prosecutors and police officers:** Provide technical-legal and financial assistance to national authorities, to work with prosecuting authorities, to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons, under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

### **Factor 8: Family, Sexual and Reproductive Life**

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#### **Key Findings**

- 8.1. There is limited access to sexual and reproductive health services for disabled youth.
- 8.2. A woman's right to safe pregnancy and childbirth may be affected by the fact that abortion is illegal in almost every State.



### **Priority Recommendations**

- (a) **Age of consent legislation:** Provide technical-legal assistance to national authorities to amend age of consent legislation. This will ensure that the age, at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines (to be included in the amended legislation) and gives medical practitioners discretion to assess a person's capacity to consent.
  
- (b) **Sexual Offences Legislation:** Provide technical-legal assistance to national authorities to amend sexual offences legislation to provide good faith immunity against criminal prosecution for aiding, abetting or facilitating offences, to medical practitioners, guidance counsellors, outreach workers and social workers, persons who provide information, advice and other services to at-risk, sexually active adolescents, when the person in question is acting for the purpose of protecting the child from sexually transmitted infections, pregnancy or emotional harm.

### **Factor 9: Education and Training**

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#### **Key Findings**

- 9.1. Very few States have general anti-discrimination laws with anti-discrimination provisions guaranteeing education.
- 9.2. There is no framework to ensure continued education for pregnant girls and teen mothers in public educational institutions, except for two States – Jamaica and Guyana.
- 9.3. The classification of HIV as a notifiable disease and its inclusion in Notifiable Diseases Regulations without distinction from contagions could result in HIV positive individuals being excluded from schools.

#### **Priority Recommendation**

- (a) **Pregnant schoolgirls:** Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

### **Factor 10: Employment**

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#### **Key Findings**

- 10.1. PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice.
- 10.2. Most Caribbean States have labour law provisions that can provide redress, if employment is terminated based on HIV status.
- 10.3. While HIV & AIDS is recognized as a protected ground against discrimination, in employment, in some countries, the same is not the case for sexual orientation and gender identity.

- 10.4. Except perhaps in Trinidad and Tobago, job applicants and persons in pre-employment situations do not have the benefit of antidiscrimination protections or the unfair treatment provisions in employment legislation.

### **Priority Recommendations**

- (a) **Civil society advocacy:** Provide support to civil society organizations at the national level to advocate for: the enactment of anti-discrimination legislation; and legislation which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.
- (b) **Employment legislation:** Provide technical assistance to national authorities to amend employment legislation or adopt new legislation, like Barbados' draft Employment (Prevention of Discrimination) Bill, which cover areas such as the prevention of discrimination in job creation, recruiting and prevention of discrimination in employment. The Bill also imposes an obligation on employers to make reasonable adjustments for the accommodation of persons with disabilities. It also creates a prohibition against testing for medical conditions. The Bill seeks to protect persons from discrimination related to employment based on: race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.
- (c) **Employment legislation (non-discrimination provisions):** Provide technical assistance to national authorities to revise national employment legislation or adopt legislation, which reflects the non-discrimination provisions in Part III of the Trinidad and Tobago Equal Opportunities Act.

### **Factor 11: Public and Private Housing**

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- 11.1. There is an absence of National Housing Strategies or Action Plans to implement International Covenant on Economic, Social and Cultural Rights (ICESCR) Obligations and ensure access to Housing and Legal Security of Tenure.

### **Factor 12: Entry, Stay and Residence**

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- 12.1. Eight Countries in the Caribbean have no HIV specific restriction on entry or stay. These are: Antigua and Barbuda, Barbados, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, and Trinidad and Tobago.

### **Factor 13: Criminalization of HIV transmission**

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- 13.1. Saint Lucia, Belize and the Bahamas all have laws that criminalize transmission of HIV. The other territories have general criminal law provisions under which intentional and perhaps reckless transmission of HIV could be prosecuted.

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## **KEY POPULATIONS**

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### **Factor 14: Women**

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## Key Findings

- 14.1. Except for Guyana and Jamaica, there is an absence of a clear, appropriate re-entry policy and/or measures for pregnant schoolgirls that allows them to remain in formal education, sit exams and return to school after giving birth.
- 14.2. Disadvantaged groups of women, including: rural; Maroon and indigenous women; women with disabilities; and lesbian, bisexual, transgender and intersex women, continue to experience intersecting forms of discrimination, domestic abuse and violations of their human rights.
- 14.3. Although there is equal pay legislation, there are no monitoring institutions to ensure that women receive equal remuneration for work of equal value.

## Priority Recommendations:

- (a) **Re-Entry guidelines for pregnant schoolgirls:** Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.
- (b) **Equal Pay:** Provide technical-legal assistance to Ministries of Labour, Chambers of Commerce and Business Associations across the region to develop a practice guide for ensuring that women and men get equal pay for *work having equal value*, as distinct from similar work.

## Factor 15: Children and Youth

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### Key Findings

- 15.1. Marriage legislation permits early marriage at or below 16 years of age in some countries.
- 15.2. Some groups of children, in particular children with disabilities, children living in poverty, children of migrant parents and informally adopted children, suffer from discriminatory attitudes and disparities in accessing basic services.
- 15.3. Except for Guyana and Jamaica, there is an absence of re-entry policies, enabling adolescent mothers to return to school after pregnancy.
- 15.4. There is a lack of access to sexual and reproductive health information and services, including modern contraception methods, by adolescent girls, and thus a high rate of teenage pregnancies, abortions, and transmission of HIV.
- 15.5. For children with disabilities, there is a lack of access to adequate health care and to public spaces because of architectural barriers. For example, many public buildings such as schools, government buildings, churches, shops and police stations do not have ramps.

### Recommendations:

- (a) **Re-Entry guidelines for pregnant schoolgirls:** Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes,

that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

- (b) **Rights of disadvantaged groups of children:** Provide technical-legal assistance to national authorities to effectively implement laws to ensure access to basic services and effective remedies, in case of violation of the rights of disadvantaged groups of children, including rural, Maroon and indigenous children and children with disabilities.
- (c) **Age of consent:** Provide technical-legal assistance to national authorities to amend age of consent legislation, so that the age at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines. These guidelines should be included in the amended legislation so that it gives medical practitioners discretion to assess a person's capacity to consent.

## **Factor 16: People who use drugs**

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### **Key Findings**

Injecting drug users do not constitute a significant population in terms of HIV prevalence. However, there is a link between other substance uses and HIV prevalence. Most National HIV strategies have identified people who use drugs as key populations. The drug of choice has been identified primarily as either marijuana or crack/cocaine. The framework for services for drug users in the Caribbean is predominantly abstinence-based. Harm reduction does not appear to be an integral part of the national HIV response.

## **Factor 17: Adults engaged in sex work**

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### **Key Findings**

- 17.1. Except for Belize, Suriname and the Dominican Republic, sex work in the Caribbean is an illegal activity.
- 17.2. There is limited reach and social security protections for workers in the informal economy and those in non-standard forms of employment.

### **Recommendations:**

- (a) **Decriminalization of sex work:** Support civil society organizations to advocate for decriminalization of sex work as an important step to prevent sexual and labour exploitation of sex workers.
- (b) **Public order laws:** Provide technical-legal assistance to national authorities to amend public order laws and sexual offences legislation, to provide immunity to medical practitioners, guidance counsellors, outreach workers and social workers (persons who provide information, advice and other services to sex workers at places where they may engage in activities contrary to public order laws and other laws), against criminal prosecution for aiding, abetting or facilitating offences, once it is shown that the person/s in question is/are acting for the purposes of protecting the sex worker from sexually transmitted infection.

## **Factor 18: Transgender Persons and MSM**

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### **Key Findings**

- 18.1. Nine Caribbean States continue to criminalize same sex activity among males:  
**Antigua and Barbuda:** Sexual Offences Act 1995, Section 12(1)  
**Barbados:** Sexual Offences Act, Section 9  
**Dominica:** Sexual offences Act 1998, Section 16  
**Grenada:** Criminal Code, Section 431  
**Guyana:** Criminal Law (Offences) Act 1893, section 352, 353, 354  
**Jamaica:** Offences Against the Persons Act, Sections 76, 77, 79  
**Saint Kitts and Nevis:** Offences against the Person Ordinance, chapter 56 of the Revised Laws 1961, section 56  
**Saint Lucia :** Criminal Code, Section 133  
**Saint Vincent and the Grenadines:** Criminal Code, Sections 146 and 148
- 18.2. Sexual orientation is not a protected ground against discrimination in Caribbean constitutions.

### **Priority Recommendation:**

- (a) **Strategic litigation:** Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment,” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of LGBT persons or any other group.

## **Factor 19: People under State Custody**

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**Key Findings:** There are key barriers that prevent prison inmates from enjoying the same standard of health, as persons not incarcerated. These barriers include the absence of regulations, laws and administrative guidelines for how to address the needs of transgender prison inmates, who are housed according to their birth sex. In addition, outdated laws prevent access to condoms as a preventative measure.

### **Recommendations:**

- (a) **Treatment of prisoners:** Provide technical assistance to national authorities to develop standard minimum rules for the treatment of prisoners, to include protocols for: health care assessment, healthy food, provision of necessities, sexual abuse, self-harm and suicide prevention, protection of vulnerable prisoners, health care, personal dignity, grievances and access to courts.
- (b) **Incarcerated transgender persons:** Develop policy guidelines for jails and prisons for transgender persons: Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails to define a minimum package of services and service delivery protocols for incarcerated transgender persons.

## Factor 20: Legal Protections

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### Key Findings

- 20.1. There is a lack of law enforcement investigation and barriers in reporting crime, especially by LGBT persons.
- 20.2. Some Caribbean constitutions explicitly exclude access to justice for human rights violations, where the constitutional challenge relates to laws that existed before independence or before a specified date, and which affect those vulnerable to HIV.
- 20.3. Except for Trinidad and Tobago, there is an absence of national human rights institutions with a comprehensive mandate, but even the Equal Opportunities Commission of Trinidad and Tobago, is limited by its Statute and does not have a mandate in relation to all forms of inequality and discrimination.

### Recommendations

- (a) **Obtaining a fiat:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>6</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granting the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.
- (b) **National human rights institutions:** Provide technical assistance to national authorities to conduct the relevant assessments to determine the best way to use existing institutions such as offices of Ombudsmen and Public Defenders, as national human rights institutions, by extending their mandate.

## Factor 21: Legal Literacy

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**Key Findings:** Legal literacy is scarcely developed among members of the key populations in the region who, in general, also lack access to effective legal aid.

### Recommendation:

- (a) **Legal literacy materials:** Support production and dissemination of easy-to-understand, population-specific legal literacy materials focusing on HIV & AIDS and legal rights (e.g., brochures, directories of legal services, practice and training manuals, bench books for judges, and student texts) in both the English-speaking and non-English-speaking Caribbean territories.

## Factor 22: Access to Redress

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### Key Findings

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<sup>6</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

- 22.1. Broad-based anti-discrimination laws are mostly absent from Caribbean States.
- 22.2. Fear of being “found out” prevents persons from seeking redress.
- 22.3. Stigma and discrimination from police, armed forces, and judicial officials act as deterrents to approaching the police and the courts.
- 22.4. Most States do not have national human rights institutions with a comprehensive mandate.
- 22.5. Limited use and understanding of the Inter-American Human Rights System.

### **Recommendations**

- (a) **Use of the Inter-American Human Rights System:** Provide technical and financial support to Civil Society Organizations to make use of the Inter-American Human Rights System’s ability to issue Precautionary Measures and Provisional Measures.
- (b) **Criminal Prosecutions for Misbehavior in Public Office:** Provide technical and financial assistance to civil society organizations to hire an attorney who will pursue criminal prosecutions using the common law offence of misbehavior in public office. The Attorney will need to apply to the Office of the DPP for a fiat to prosecute and issue indictments against public sector employees who neglect PLHIV and LGBT at health facilities and police officers who fail to investigate complaints of human rights violations, discrimination and abuse.
- (c) **Civil Litigation for *Misfeasance* in Public Office:** Provide technical assistance to civil society organizations to undertake strategic civil litigation against public sector employees and police officers for misfeasance in public office.

## RECOMMENDATIONS TO IMPROVE THE DESIGN, IMPLEMENTATION AND MONITORING OF HUMAN RIGHTS INTERVENTIONS

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### *Addressing the impact of human rights interventions*

One of the principal challenges faced by the consultant in putting this work together is that HIV & AIDS human rights interventions are not designed, implemented and monitored in a way which makes it easy to identify implementation successes, gaps and challenges. To date, human rights-related activities at country level have focused largely on training and advocacy for law and policy reforms. Hardly any measures address the impact of the intervention. Most of the advocacy has been directed at political leaders. There is therefore a gap between the aspirational goals and the actual activities being implemented, with the result being that while there have been lots of activities, there have been few changes.

### *Results based work plans*

To ensure that interventions are designed and implemented in such a way that there is an equal focus on achieving impact or changes at the outcome level, it is recommended that technical assistance be provided to national authorities to develop results and performance frameworks to guide the implementation of future human rights related interventions. The technical assistance should focus on assisting national authorities to design results-based work plans with accompanying performance measurement frameworks and training a cadre of individuals in country to build their capacity to design, implement, monitor and report, using a results-based approach for human rights interventions. See [section 8 of this report](#) below and the [sample results framework](#).



## 1. BACKGROUND

In March 2011, the United Nations General Assembly Special Session adopted Resolution 65/277, giving way to a new Political Declaration, titled: “**Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS.**”<sup>7</sup> In June 2016, the General Assembly made another political commitment to end AIDS by 2030, endorsing the fast-track approach of UNAIDS. This 2016 Declaration characterizes AIDS as “*a paramount health... human rights and social challenge.*”<sup>8</sup> The 2016 Political Declaration sets out several HIV-related human rights concerns, targets to advance human rights and targets to reduce HIV-related stigma, discrimination and violence. In adopting the 2016 Declaration and the human rights chapter, member States reaffirmed the centrality of human rights in the AIDS response and recommitted to promote universal respect, observance, and protection of **all human rights** and fundamental freedoms. The member States committed to reform social, legal and policy frameworks to eliminate (in a general way), stigma, discrimination, and violence and to promote universal access to treatment and care.

Caribbean governments have taken the commitments enshrined in the various Political Declarations seriously and have begun to implement measures to meet the commitments. Among these measures was the 2001 establishment of the Pan Caribbean Partnership Against HIV and AIDS (PANCAP). Under PANCAP’s leadership, CARICOM member States have worked together to implement a regional response to HIV and AIDS in the Caribbean. The regional response is guided by successive editions of the Caribbean Regional Strategic Framework (CRSF) on HIV and AIDS, including its current edition: *the Caribbean Regional Strategic Framework (CRSF) on HIV and AIDS 2014-2018*. The CRSF recognizes and affirms the need for the HIV response to operate in an environment that promotes and protects the rights of those most vulnerable to infection. In this regard, PANCAP has been collaborating with partners to implement a programme of activities under the theme, *Justice for All*, as part of the 2014-2018 CRSF. The Justice for all program aims to address human rights challenges and HIV-related discriminatory practices. As part of advancing the *Justice for All* program and the elimination of HIV-related stigma and discrimination in the Caribbean, PANCAP hired a consultant to identify up-to-date, contextual information to facilitate advocacy, engage stakeholders across multiple sectors, and to deepen understanding of the broader human rights issues that affect those living with, and most at risk of contracting HIV. This report is the outcome of that consultancy.

## 2. METHODOLOGY

This report was written following a desk review (of secondary data) undertaken between April 2018 and May 2018 and field research undertaken between June 2018 and August 2018.

### *Desk Review*

Documents for the desk review were accessed through online (internet) searches or through email communications with authors of studies. The desk review followed the best practice methodology

<sup>7</sup> United Nations General Assembly, Resolution adopted by the General Assembly on 8 June 2016, [A/RES/70/266](#).

<sup>8</sup> Ibid, para. 33

recommended by the American Bar Association in its *Rule of Law HIV/AIDS Legal Assessment Tool (2012)*.<sup>9</sup> The *HIV/AIDS Legal Assessment Tool* was specifically designed to (i) conduct assessments of measures taken to protect the human and legal rights of PLHIV and key populations, (ii) provide a roadmap to address HIV-related discrimination and (iii) track compliance with the applicable international legal standards. In keeping with the methodology recommended by the *HIV/AIDS Legal Assessment Tool*, this review focused on National HIV & AIDS Strategic Plans, relevant laws, policies, recent reports studies and assessments (mostly within the last 5 years where available), the PANCAP Regional Advocacy Strategy, relevant United Nations periodic country assessment reports, regulations, policies, and action plans.

### ***Field Research***

Between June 2018 and August 2018, the consultant conducted face-to-face interviews, virtual interviews via telephone, Skype and GoToMeeting with stakeholders in Antigua and Barbuda, Barbados, Trinidad and Tobago, Guyana, Suriname and Jamaica. Information was also obtained via e-mail exchanges with stakeholders across 15 of the 16 CARIFORUM States, which are the focus of the review: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Suriname, Saint Lucia, St. Christopher and Nevis, Saint Vincent and the Grenadines Suriname, and Trinidad and Tobago.

The Consultant sought input from a wide cross-section of stakeholders, who it was believed had a deep understanding of the legal and human rights issues affecting persons vulnerable to, living with, or affected by HIV & AIDS. These stakeholders were identified in consultation with the National AIDS Coordinating Authority, of the respective countries, or were referred to the consultant by local stakeholders as persons who could authoritatively speak to the issues. The stakeholders identified included:

#### State actors:

- National AIDS Coordinating Authority
- HIV focal points in government agencies
- Ministries of Health, Labor, Education, and Justice
- Ministries of Legal Affairs and Attorneys General
- National Human and Women's rights bodies
- Staff of detention and correctional facilities

#### Non-State Actors:

- PLHIV and members of key populations
- Human Rights Defenders legal
- Civil society and AIDS service organizations
- Lawyers, bar associations, and legal aid centers

Interview questions were drafted for each category of interviewees and interviews followed a semi-structured format. The questions were organized to correspond with the four key areas outlined in the Analytical Framework, 22 factor statements and the delineated international standards. All persons

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<sup>9</sup> HIV/AIDS Legal Assessment Tool: [Assessment Methodology Manual, American Bar Association \(2012\)](#)

interviewed gave informed consent to participate and were assured that their participation was voluntary and that they had the right not to answer any or all questions and to terminate the interview at any time. No one was compensated for his or her participation in interviews or for answering questions. No statistical significance can be attributed to the findings in this report. Lack of availability of key stakeholders in the legal sector means that the findings indicated in this report did not benefit from a wide input of legal experts. Also, the absence of monitoring reports, with objectively verifiable indicators, baselines and targets for human rights activities (such as advocacy and law reform), means that it is not possible to assess the impact of ongoing initiatives or to track changes in the status quo.

Finally, although the primary focus of this report is *HIV-related human rights violations*, which includes issues of stigma and discrimination against PLHIV in public and private life, the report also looks at *key populations* - women, children, youth, people who use drugs, people in state custody, adults engaged in sex (sex workers), men who have sex with men and transgender people - who experience unique HIV vulnerabilities and therefore require special attention in line with the *principle of equity*. The findings are meant to provide only a descriptive assessment of the status of the various human rights issues for all the key populations, while the recommendations are intended to add further impetus to legal and policy reforms that can ensure the full realization of the fundamental human rights of all Caribbean citizens.

### 3. ANALYTICAL FRAMEWORK

In keeping with the *HIV/AIDS Legal Assessment Tool*, this assessment report is structured around twenty-two *Factor Statements* which serve as indicators or principles used to analyze domestic laws, policies, and practices in four key areas where HIV-related discrimination is likely to occur. These are as follows:

- 1) Access to Essential Services;
- 2) Equality of PLHIV in Public and Private Life;
- 3) Key Populations; and
- 4) Access to Justice.

#### I. Access to Essential Services

*Factor 1: Public Education, Research, and Information Exchange*

*Factor 2: HIV Prevention*

*Factor 3: Testing, Counseling, and Referral*

*Factor 4: Treatment, Care, and Other Health Services*

*Factor 5: Social Protection and Material Assistance*

*Factor 6: Protection of Privacy and Confidentiality*

#### II. Equality of PLHIV in Public and Private Life

*Factor 7: Political, Social, and Cultural Life*

*Factor 8: Family, Sexual, and Reproductive Life*

*Factor 9: Education and Training*

*Factor 10: Employment, Work, and Economic Life*

*Factor 11: Private and Public Housing*

*Factor 12: Entry, Stay, and Residence*

*Factor 13: Non-Criminalization of HIV Exposure and Transmission*

#### III. Key Populations

*Factor 14: Women*

*Factor 15: Children and Youth*

*Factor 16: People who Use Drugs*

*Factor 17: Adults Engaged in Sex Work*

*Factor 18: Men who Have Sex with Men, and Transgender People*

*Factor 19: People under State Custody*

#### IV. Access to Justice

*Factor 20: Legal Protection*

*Factor 21: Legal Awareness, Assistance, and Representation*

*Factor 22: Access to a Forum, Fair Trial, and Enforcement of Remedies*

## 4. FRAMING THE ISSUES

### 4.1 Overview of the HIV & AIDS Situation

In its *2017 Year in Review*, PANCAP reported that the HIV epidemic in the Caribbean has been stable over the last decade with a reported prevalence of 1.3% and an estimated 310,000 people living with the disease at the end of 2016.<sup>10</sup> Five countries in the Caribbean accounted for the majority (92%) of infections: Haiti (48%), Dominican Republic (22%), Jamaica (10%), Cuba (8%) and Trinidad and Tobago (4%).<sup>11</sup>

In the *2017 Global AIDS Update*<sup>12</sup> for the Caribbean, UNAIDS reported that

- The annual number of new infections among adults across the Caribbean has remained static for the last six years at an estimated 17 000 [15 000–22 000 in 2016].
- In Haiti and Trinidad and Tobago, new infections decreased by nearly a quarter between 2010 and 2016.
- New infections among children (aged 0–14 years) in the Caribbean decreased from an estimated 1800 [1500–2200] in 2010 to less than 1000 [<1000–1000] in 2016.
- The number of new infections among children (aged 0–14 years) in the Dominican Republic and Haiti, have declined by nearly 60%.
- There was a 54% reduction of AIDS-related deaths<sup>13</sup>.
- More than half (52%) of Caribbean people living with HIV were on treatment in 2016, an increase of approximately 24% from 2010.
- At least three of four people on treatment achieving viral suppression in Barbados, Dominica, Guyana, Saint. Lucia, Suriname and Trinidad and Tobago (2016)<sup>14</sup>.

### 4.2 Key Affected Populations in the Caribbean

Despite these gains, and although HIV prevalence is generally low, prevalence among [key affected populations](#), (which includes young people)<sup>15</sup> is particularly high. The PANCAP Regional Advocacy Strategy (2017) for the period 2017-2022, notes that throughout the region, HIV prevalence continues to be higher in key populations, including MSM, transgender, sex workers, youth, migrants and mobile populations, incarcerated persons and people who use drugs.<sup>16</sup> The Strategy notes “... *legal, social and cultural barriers ... drive transmission and prevent key populations from accessing comprehensive and high-quality health services [...and that] the need for law and policy reform is a challenge common to the vast majority of countries in the region.*”<sup>17</sup>

<sup>10</sup> [PANCAP Year in Review 2017](#) [Accessed on May 7, 2018]

<sup>11</sup> Ibid

<sup>12</sup> UNAIDS (2017) '[Ending AIDS: Progress towards the 90-90-90 targets](#)' [Accessed on May 7, 2018]

<sup>13</sup> UNAIDS (2014) '[The Gap Report 2014](#)' [Accessed on May 7, 2018]

<sup>14</sup> Ibid at page 144

<sup>15</sup> UNAIDS (2016) '[The Prevention Gap Report](#)' [Accessed on May 7, 2018]

<sup>16</sup> Insanally, Sarah (2017), Regional Advocacy Strategy, p. 7

<sup>17</sup> Ibid.

### 4.3 HIV-Related Stigmatization and Discrimination

The primary focus of this report is *HIV-related human rights violations*, which include issues of stigma and discrimination against PLHIV in public and private life. The report also looks at *key populations* - women, children, youth, people who use drugs, people in state custody, adults engaged in sex (sex workers), men who have sex with men and transgender persons - who experience unique HIV vulnerabilities and therefore require special attention in line with the *principle of equity*.

### 4.4 Definitions of Stigmatization & Discrimination

#### *Stigmatization*

Stigmatization, as defined by UNAIDS, is a dynamic process of devaluation that significantly discredits an individual in the eyes of others. HIV-related stigma refers to negative beliefs, feelings, and attitudes towards people living with or associated with HIV and AIDS. It mostly affects people with actual and perceived HIV status; people who are related to someone living with HIV (including children of HIV-positive parents); and people who are most at risk of HIV infection.<sup>18</sup> Stigma is expressed in discrediting language and behaviour, which can take the form of verbal harassment, social exclusion, ostracism, abandonment, blaming, and gossip. Stigma can be also internalized in the form of feelings of shame, self-blame, and worthlessness. Ultimately, stigma can lead to social inequality, discrimination, and other violations of human rights, including physical or mental violence, torture, and inhumane or degrading treatment or punishment.<sup>19</sup> HIV-related stigma is underpinned by many factors. It often stems from prejudice and fear caused by misconceptions about how HIV is transmitted; the incurability of AIDS; and the association of HIV & AIDS with already stigmatized and marginalized populations, such as sex workers, people who use drugs, MSM, transgender persons, and people under state custody. People who belong to these key populations experience multiple layers of stigmatization and often refrain from accessing HIV-related services out of a fear of being humiliated, rejected, treated differently, discriminated against, arrested, and imprisoned.<sup>20</sup>

#### *Discrimination*

Discrimination, as defined by UNAIDS, is any form of arbitrary distinction, exclusion, or restriction affecting a person, usually, but not only, by virtue of an inherent personal characteristic. HIV-related discrimination is therefore any measure entailing an arbitrary distinction that results in an unfair and unjust treatment of an individual based on his or her confirmed or perceived HIV status.<sup>21</sup> HIV-related discrimination is often described as *the enactment* of stigma attached to PLHIV and key populations. It may be intentional or unintentional, direct or indirect, and may result from action or omission. It may occur in the family, community, and institutional settings, and may be institutionalized through existing laws, policies, and practices at the national and local levels of the government. In its extreme form, discrimination includes harassment and violence perpetrated by the police, public officers and health care

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<sup>18</sup> UNAIDS, REDUCING HIV STIGMA AND DISCRIMINATION: A CRITICAL PART OF NATIONAL AIDS PROGRAMS (2007)

<sup>19</sup> UNAIDS, REDUCING HIV STIGMA AND DISCRIMINATION: A CRITICAL PART OF NATIONAL AIDS PROGRAMS (2007)

<sup>20</sup> *ibid*

<sup>21</sup> *Ibid*.

workers. Discrimination, irrespective of its form, constitutes a violation of human rights prescribed by international human rights law.

## 5. CARIBBEAN LEGAL AND POLICY FRAMEWORK

### *5.1 Introduction*

The Commonwealth Caribbean describes all Caribbean countries geographically located in the West Indies. The region is made up of both dependent and independent States. References to “The Commonwealth Caribbean” in this report is a reference to all Commonwealth Caribbean States except the dependent territories of:

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Montserrat
- Turks & Caicos Islands

### *5.2 Legal System*

Apart from Guyana and Saint Lucia, the legal system of the English-speaking Caribbean countries is based on the English Common Law system. The legal systems of Guyana and Saint Lucia are best described as “hybrid”, because Guyana has the influence of the Roman-Dutch tradition, while Saint Lucia has a strong influence of the French civil law. While many of the legal systems of the Commonwealth Caribbean have a very strong influence of the Common Law, there has been a reception of other legal systems, such as Hindu, Muslim and Indian law. These traditions and customs have been incorporated into the legislation of these countries. Nevertheless, the content of the laws of these countries today reflect their cultural, social, political and economic needs.

### *5.3 Court System*

The Caribbean Court of Justice (CCJ) is a regional judicial tribunal established on February 14, 2001 by the Agreement Establishing the Caribbean Court of Justice of 2001, which has been signed and ratified by 12 countries. The CCJ is designed to exercise both appellate and original jurisdiction. Ultimately, the intent of Caribbean governments is that the CCJ’s Appellate Jurisdiction will replace the UK-based Judicial Committee of the Privy Council as the final court of appeal for all Commonwealth Caribbean States. To date four States, (Dominica, Barbados, Guyana and Belize), have acceded to the Court’s Appellate Jurisdiction, thereby replacing the Judicial Committee of the Privy Council as the final court of appeal in these territories. The final court of appeal remains the Judicial Committee of the Privy Council for all other States. Inferior courts are courts of summary jurisdiction made up of magistrate courts, petty session courts and Coroners’ courts. They are limited in their jurisdiction by Statute and have a dual function – investigative and trial in civil and (some) criminal matters. There are also specialized courts/tribunals, which may be inferior, intermediate or superior courts, namely juvenile, family, divorce, administrative, gun, revenue and industrial courts.

The superior courts are usually divided into two tiers - High Court and Court of Appeal. They are popularly referred to as the Supreme Court. The High Court is the trial court or court of first instance. They have original and appellate jurisdiction over matters arising from the inferior courts. They have



unlimited jurisdiction over civil and criminal matters. The Court of Appeal has the appellate function of the Supreme Court. They hear appeals from the magistrate courts, high courts and special courts.

In the Eastern Caribbean, recognition is given to the regional court known as the Eastern Caribbean Supreme Court. This is a superior court of record for nine (9) member States, namely: Antigua and Barbuda, Dominica, Grenada, Saint Kitts-Nevis, Saint Lucia, Saint Vincent and the Grenadines and three British Overseas Territories, namely, Anguilla, the British Virgin Islands and Montserrat.

#### 5.4 International Law and Human Rights Treaties

All independent countries in the Commonwealth Caribbean belong to the Caribbean Community (CARICOM). These countries are signatories to most of the core international human rights instruments as well as regional and cooperative agreements, including:

- (a) Economic, social and cultural rights: The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;
- (b) Civil and Political Rights:
  - (i) International Covenant on Civil and Political Rights (ICCPR), 1966;
  - (ii) First Optional Protocol to the International Covenant on Civil and Political Rights, 1966;
- (c) Prevention of Discrimination based on race, religion or belief; and protection of minorities: International Convention on the Elimination of all forms of Racial Discrimination (ICERD), 1966;
- (d) Women's Human Rights: Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979;
- (e) Rights of the Child: Convention on the Rights of the Child, 1989;
- (f) Persons with disabilities: Convention on the rights of persons with Disabilities, 2006.

(a) *Economic, Social and Cultural Rights*

**The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.** In Article 2(2), “*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”<sup>22</sup>

Ten (10) of the Caribbean States, which are the subject of this review, are parties to the Covenant<sup>23</sup>:

Nation State	Accession/Ratification
Barbados	5 Jan 1973
Belize	Not available
Dominica	17 Jun 1993
Dominican Republic	4 Jan 1978
Grenada	6 Sep 1991
Guyana	15 Feb 1977
Jamaica	3 Oct 1975
Saint Vincent and the Grenadines	9 Nov 1981
Suriname	28 Dec 1976
Trinidad and Tobago	8 Dec 1978

(b) *Civil and Political Rights*

**(i) International Covenant on Civil and Political Rights (ICCPR) 1966:** Articles 2-5 (Part 2) obliges parties to legislate where necessary to give effect to the rights recognized in the Covenant, and to provide an effective legal remedy for any violation of those rights.<sup>24</sup> It also requires the rights be recognized “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>25</sup> and to ensure that women enjoy them equally.<sup>26</sup>

Thirteen (13) of the Caribbean States, which are the subject of this review, are parties to the ICCPR<sup>27</sup>

Nation State	Accession/Ratification
Bahamas	23-Dec-08
Barbados	5 Jan 1973
Belize	10 Jun 1996
Dominica	17 Jun 1993
Dominican Republic	4 Jan 1978
Grenada	6 Sep 1991
Guyana	15-Feb-77

<sup>22</sup> Office of the United Nations High Commissioner for Human Rights, [Status of Ratification](#) [Accessed May 15, 2018]

<sup>23</sup> Ibid.

<sup>24</sup> ICCPR, Article 2.2, 2.3.

<sup>25</sup> ICCPR, Article 2.1.

<sup>26</sup> ICCPR, Article 3.

<sup>27</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

Haiti	6 Feb 1991
Jamaica	3 Oct 1975
Saint Lucia	Not available
Saint Vincent and the Grenadines	9 Nov 1981
Suriname	28 Dec 1976
Trinidad and Tobago	21 Dec 1978

**(ii) First Optional Protocol to the International Covenant on Civil and Political Rights (1966):**

The Optional Protocol establishes an individual complaints mechanism for the ICCPR. Through the Protocol, State Parties agree to recognize the competence of the UN Human Rights Committee to consider complaints from individuals (citizens) who claim violations of their rights, under this Covenant.<sup>28</sup> Under Articles 2 and 3, complainants must have exhausted all domestic remedies, and anonymous complaints are not permitted. The Committee must bring complaints to the attention of the relevant party, which must respond within six months (Article 4).

Following consideration, the Committee must forward its conclusions to the party and the complainant. While not expressly provided for in the Protocol, the Human Rights Committee of the United Nations regards the recognition of its competence to hear complaints as imposing an obligation not to hinder access to the Committee and to prevent any retaliation against complainants.<sup>29</sup> It regards its findings as authoritative determinations of obligations under the Covenant, and their adoption as being required in order to provide an "effective remedy" under Article 2 of the ICCPR.<sup>30</sup>

Seven of the Caribbean States, which are the subject of this review, have acceded to the Optional Protocol, as follows:

Nation State	Accession/Ratification
Barbados	5 Jan 1973
Dominican Republic	4 Jan 1978
Guyana	5 Jan 1999
Jamaica	[3 Oct 1975]
Saint Vincent and the Grenadines	9 Nov 1981
Suriname	28 Dec 1976
Trinidad and Tobago	[14 Nov 1980]

However, the Governments of Jamaica and Trinidad have both denounced the Protocol<sup>31</sup>, which has implications for legal protections and access to an effective legal remedy (*see factors 20 and 22*).

- (c) ***Prevention of Discrimination based on Race, Religion, or Belief; and Protection of Minorities: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966:*** The Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races.<sup>32</sup>

<sup>28</sup> Article 1

<sup>29</sup> Paragraph 4, "[HRC General Comment 33: Obligations of States Parties under the Optional Protocol](#)" (PDF). UN HRC. 5 November 2008. Retrieved 15 May 2018.

<sup>30</sup> HRC General Comment 33, paragraphs 13–14.

<sup>31</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

Fourteen of the Caribbean States, which are the subject of this review, are parties to the ICERD.<sup>33</sup>

Nation State	Accession/Ratification
Antigua and Barbuda	25 Oct 1988
Bahamas	5 Aug 1975
Barbados	8 Nov 1972
Belize	14-Nov-01
Dominican Republic	25 May 1983
Grenada	10-May-13
Guyana	15-Feb-77
Haiti	19-Dec-72
Jamaica	4 Jun 1971
Saint Kitts and Nevis	13 Oct 2006
Saint Lucia	14 Feb 1990
Saint Vincent and the Grenadines	9 Nov 1981
Suriname	15 Mar 1984
Trinidad and Tobago	4 Oct 1973

(d) *Women's Human Rights*

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:** The convention focuses on a range of issues affecting women, including: discrimination, sex stereotypes, and sex trafficking and the economic and social rights of women, particularly focusing on education, employment, and health. Article 2 mandates that state parties, ratifying the Convention, declare intent to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women.<sup>34</sup> States ratifying the Convention must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organizations, and enterprises.<sup>35</sup>

All fifteen of the Caribbean States, which are the subject of this review, are parties to the CEDAW<sup>36</sup>, although Jamaica has indicated that it does not consider itself bound by Article 29 (dispute between States)<sup>37</sup>:

Nation State	Accession/Ratification
<b>Antigua and Barbuda</b>	1 Aug 1989
<b>Bahamas</b>	6 Oct 1993
<b>Barbados</b>	16-Oct-80
<b>Belize</b>	16-May-90
<b>Dominica</b>	15-Sep-80
<b>Dominican Republic</b>	2 Sep 1982

<sup>32</sup> [International Convention on the Elimination of All Forms of Racial Discrimination](#), Article 2

<sup>33</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

<sup>34</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) [Accessed May 15, 2018]

<sup>35</sup> Ibid.

<sup>36</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

<sup>37</sup> Ibid.

Nation State	Accession/Ratification
<b>Grenada</b>	30-Aug-90
<b>Guyana</b>	17-Jul-80
<b>Haiti</b>	20-Jul-81
<b>Jamaica</b>	19-Oct-84
<b>Saint Kitts and Nevis</b>	25 Apr 1985 a
<b>Saint Lucia</b>	8 Oct 1982 a
<b>Saint Vincent and the Grenadines</b>	4 Aug 1981 a
<b>Suriname</b>	1 Mar 1993 a
<b>Trinidad and Tobago</b>	12-Jan-90

(e) *Rights of the Child*

**Convention on the Rights of the Child, (CRC), 1989:** The Convention sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.<sup>38</sup>

All fifteen of the Caribbean States, which are the subject of this review, are parties to the CRC:<sup>39</sup>

Nation State	Accession/Ratification
Antigua and Barbuda	5 Oct 1993
Bahamas	20 February 1991
Barbados	9 Oct 1990
Belize	2 May 1990
Dominica	13 March 1991
Dominican Republic	11-Jun-91
Grenada	5 Nov 1990
Guyana	14-Jan-91
Haiti	8 Jun 1995
Jamaica	14 May 1991
Saint Kitts and Nevis	24-Jul-90
Saint Lucia	16-Jun-93
Saint Vincent and the Grenadines	26-Oct-93
Suriname	1 Mar 1993
Trinidad and Tobago	5 Dec 1991

(f) *Persons with Disabilities*

**Convention on the Rights of Persons with Disabilities (2006):** Parties to the Convention agreed to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law.

Fourteen of the Caribbean States, which are the subject of this review, are parties to the Convention.<sup>40</sup>

Nation State	Accession/Ratification
Antigua and Barbuda	7 Jan 2016

<sup>38</sup> *"Convention on the Rights of the Child"*. [Accessed on May 18, 2018]

<sup>39</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

<sup>40</sup> United Nations Treaty Collection, [Status of Treaties](#) [Accessed on May 15, 2018]

Bahamas	28-Sep-15
Barbados	27-Feb-13
Belize	2 Jun 2011
Dominica	1 Oct 2012
Dominican Republic	18-Aug-09
Grenada	27-Aug-14
Guyana	10-Sep-14
Haiti	23 Jul 2009
Jamaica	30-Mar-07
Saint Lucia	Not available
Saint Vincent and the Grenadines	29 Oct 2010
Suriname	29-Mar-17
Trinidad and Tobago	25-Jun-15

It must be noted that except for Guyana, the provisions of these Conventions do not automatically have the force of law in Caribbean States. All other Caribbean States require domestic legislation to be enacted for treaty provisions to have legal effect and to confer rights domestically. Guyana's legal system directly incorporates international conventions upon ratification, without the need for enabling domestic law.<sup>41</sup> More fundamentally, the Constitution recognizes the pre-eminence of international human rights law. Article 39(2) provides that the Constitution's fundamental rights provisions shall be interpreted in light of international human rights standards.

### 5.5 Non-Binding Standard-Setting Instruments

Caribbean States are signatories to several non-binding, standard-setting instruments, relevant to protection of the human rights of PLHIV. These include:

- (a) The 1994 International Conference on Population and Development Programme of Action regarding education, child and infant mortality, maternal mortality and access to reproductive and sexual health services, including family planning<sup>42</sup>;
- (b) The 1995 Beijing Declaration and Platform for Action on equal rights and inherent human dignity of women and men<sup>43</sup>;
- (c) The United Nations General Assembly Special Session on HIV/AIDS (UNGASS, 2001)<sup>44</sup>;
- (d) The United Nations General Assembly Political Declaration on HIV/AIDS in 2006, 2011 and 2016; and
- (e) The International Labor Organization (ILO) Code of Practice on HIV and the World of Work.

### 5.6 Regional Level Agreements and Policy Frameworks

<sup>41</sup> See Constitution of The Cooperative Republic of Guyana Act 1980 c. 1:01, sch., Art 154A.

<sup>42</sup> United Nations Population Information Network (POPIN) [Report of the ICPD \(94/10/18\)](#) [Accessed on May 15, 2018]

<sup>43</sup> <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> [Accessed on May 15, 2018]

<sup>44</sup> <http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html>

In terms of regional agreements, the Caribbean States, which are the subject of this review, are State Parties to the American Convention on Human Rights. Caribbean States (except for Belize, Barbados, Suriname, Saint Vincent and the Grenadines, Jamaica and the Republic of Suriname) adopted the 2012 Organization of American States (OAS) Resolution 2435 on Human Rights, Sexual Orientation, and Gender Identity.<sup>45</sup> As members of the Caribbean Community (CARICOM), they are partners to the Pan-Caribbean Partnership against HIV/AIDS (PANCAP) and the Caribbean Regional Strategic Framework (CRSF) on HIV and AIDS (2014-2018).

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<sup>45</sup> Organization of American States, [“Draft Resolution on Human Rights, Sexual Orientation, And Gender Identity And Expression”](#), Approved by the General Committee at its second meeting, held on June 5, 2013 [Accessed on May 15, 2018]

## 6. HUMAN RIGHTS SITUATION

In 2001, the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS (UNAIDS), published the International Guidelines on HIV/AIDS and Human Rights<sup>46</sup>. The Guidelines outline how human rights standards apply in the context of HIV & AIDS. It recommends measures that States should undertake to improve multi-sectoral coordination, reform laws to address HIV-related discrimination and increase community-level participation in the HIV& AIDS response. The 2016 Political Declaration on HIV and AIDS notes that AIDS is “...*a paramount health..., human rights and social challenge.*”<sup>47</sup> The Declaration reaffirms that the full realization of all human rights and fundamental freedoms for all, is an essential element in the global response to HIV. It emphasizes that addressing stigma and discrimination against all people living with, presumed to be living with, at risk of and affected by HIV is a critical element in combating the global HIV epidemic<sup>48</sup>. Against this background, the focus of this report is on the four key areas where HIV-related discrimination is likely to occur:

- (1) Access to Essential Services;
- (2) Equality of PLHIV in Public and Private Life;
- (3) Key Populations; and
- (4) Access to Justice.<sup>49</sup>

### SECTION 1: ACCESS TO ESSENTIAL SERVICES

The United Nations Office of the High Representative for the Least Developed Countries has defined<sup>50</sup> “essential services” to include education, health care, fresh water sources, sanitation and energy. In the broader human rights context, access to essential *medicines* is a critical part of the right to the highest attainable standard of health (“the right to health”).<sup>51</sup> The binding International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966 details the *progressive* realization of the right to health through concrete steps including through a comprehensive system of healthcare, which is available to everyone without discrimination, and economically accessible to all<sup>52</sup>.

<sup>46</sup> UNAIDS [International Guidelines on HIV/AIDS and Human Rights UNAIDS \(2006\)](#) [Accessed on May 7, 2018]

<sup>47</sup> United Nations General Assembly Resolution [A/RES/70/266](#) (June 8, 2016), paragraph 33: [Accessed on May 7, 2018]

<sup>48</sup> Ibid, paragraph 63(a).

<sup>49</sup> These key areas are based on the best practice methodology recommended by the American Bar Association it is HIV/AIDS Legal Assessment Tool Assessment Methodology Manual (2012)

<sup>50</sup> Briefing Paper 7 – [Access to Essential Services](#) [Accessed 4-11-2018]

<sup>51</sup> [Universal Declaration of Human Rights \(1948\)](#), Article 25 [Accessed on 11 April 2018]

<sup>52</sup> Committee on Economic, Social and Cultural Rights, [General Comment 14](#) at paragraphs 11-12



## FACTOR 1: PUBLIC EDUCATION AND ACCESS TO HIV-RELATED INFORMATION

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### 1.1. INTERNATIONAL GUIDELINES

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The **International Guidelines on HIV/AIDS and Human Rights** (“the Guidelines”) have identified structural and social factors, such as stigma, discrimination, human rights violations, gender inequality, and ignorance about HIV & AIDS as some of the key drivers of the HIV & AIDS epidemic.<sup>53</sup> To overcome ignorance and misinformation, which lead to stigma and human rights violations, the Guidelines (paragraph 6) recommend that States promote awareness about HIV & AIDS and actively seek to reduce HIV-related stigma and prejudice through:

- Education, training, and information exchange programs.
- Widespread provision of information about HIV through the mass media.
- Active public stigma and discrimination-reduction strategies.
- Making HIV-related information accessible in the workplace.
- Specific measures to facilitate access to information by women, children, and vulnerable groups.

The Guidelines also highlight the importance of States not censoring or otherwise impeding the dissemination of information about HIV & AIDS (paragraph 40). With respect to education within schools, the Guidelines recommend that States should take measures to foster responsible, informed decision-making about sexual behavior among young people. In this regard, unbiased, age-appropriate, life-skills based, and evidence-informed sex education, including information about HIV & AIDS, should be integrated into the education curricula, and should be presented in a way that is consistent with human rights.<sup>54</sup> School-based programs should promote respect of difference and reject discrimination. Further, the Guidelines recommend that States encourage employers to implement HIV-related educational initiatives in the workplace with an aim of bringing about change in personal attitudes and behaviors concerning HIV & AIDS. As recommended by ILO, such programs should provide accurate information about HIV transmission, dispel myths surrounding HIV, and consider the impact of HIV on the individual.<sup>55</sup> Ideally, such programs should address age, gender, and behavioral risk factors.<sup>56</sup> All HIV-related education and awareness-raising programs should be regularly monitored, rigorously evaluated, and periodically revised. States should also take concrete steps to facilitate inter-agency, multi-sectoral, and international exchange of information about medical, socio-economical, and legal aspects of the HIV & AIDS epidemic.

### 1.2. APPLICABLE HUMAN RIGHTS

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**The Right to Information:** Article 19 of the Universal Declaration of Human Rights provides, “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*”

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<sup>53</sup> See UNAIDS, [Reduction of HIV-related Stigma and Discrimination](#) (2014) [Accessed on May 15, 2018]

<sup>54</sup> See CRC, GENERAL COMMENT NO. 3 ON CHILDREN AND HIV/AIDS para. 16

<sup>55</sup> See ILO CODE OF PRACTICE ON HIV/AIDS AND WORK para 6

<sup>56</sup> Ibid.

### 1.3.SITUATION ACROSS THE CARIBBEAN

Having regard to the International Guidelines for State action, the obligations on States include implementing and supporting HIV-related awareness-raising, stigma-reduction, training, and information exchange programs. All the Countries included in this review have constitutional provisions guaranteeing the protection of freedom of expression. These provisions are *mutatis mutandis*, similarly worded to Article 19 of the Universal Declaration of Human Rights<sup>57</sup>. However, the Surinamese Constitution does not contain this or any similar provision. The closest reference in the Surinamese Constitution is Article 38(1): “*Everyone shall have a right to education and cultural expression.*” However, Article 8(2) of the Surinamese Constitution (1987) provides that no one should be discriminated against based on education. Further, under Article 39 of the Constitution, the State guarantees the right of all citizens to education. The State is obliged under Article 39 to execute its education policy in such a way that education meets the “...productive and social needs of the society.” Arguably, this places an obligation on the state to ensure that the informational and educational needs of the Surinamese people, with regard to HIV, are met, particularly the needs of those most vulnerable to HIV infection and abuse of rights.

In terms of awareness raising toward stigma reduction, this review found that all Caribbean States have National HIV/AIDS Strategic Plans that contain broad policy statements, and strategic actions aimed at providing access to HIV information, awareness raising, stigma reduction and training. However, at the time of writing, five of these Plans were for implementation periods that are no longer current (*Antigua and Barbuda, Grenada, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines*).

### 1.4.GAPS AND OPPORTUNITIES

- (a) **There is a possibility that certain informational and educational publications about HIV & AIDS or vulnerable groups could be viewed as “obscene”, “offensive” or contrary to “good morals” which could lead to censorship of HIV & AIDS information under existing law:** This review found no laws, policies or state-sanctioned measure that *specifically* restricts or censors HIV & AIDS information. However, a review of sample legislation from five (5) States reveals that Caribbean countries may have existing legislation that regulate “offensive” or “obscene” publications. In some contexts, certain informational and educational publications about HIV & AIDS may be viewed as “obscene,” “offensive” or contrary to “good morals,” thereby bringing them within the ambit of these pieces of legislation. Such legislation may have some legitimate purpose; for example, restricting indecent photographs of children, revenge pornography and public pornographic displays. However, in the absence of guidelines as to the degree and type of obscenity or the form in which it should be presented to become offensive, there remains the risk that these pieces of legislation could *potentially* be used to restrict access to HIV & AIDS information.<sup>58</sup>

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<sup>57</sup> **Antigua and Barbuda** - Section 12; **The Bahamas** - Chap III (23); **Barbados** - Chap III (20); **Belize** - Part II (12); **Dominica** - Chap I (10); **Dominican Republic** - Title II (Art. 49); **Grenada** - Chap I (10); **Guyana** - Chap XII Art. 146; **Haiti** - Chap II Sec. C Art. 28; **Jamaica** - Chap III (13)(3)(c); **Saint Kitts and Nevis** - Chap II (12); **Saint Lucia** - Chap I (10); **Saint Vincent and the Grenadines** - Chap I (10); **Trinidad and Tobago** - Chap I 4(i)

<sup>58</sup> In **Antigua and Barbuda**, the Seditious and Undesirable Publications Act (1938) and the Small Charges Act include provisions that criminalize seditious libel, insult to authority, and obscene publication or offense to public morality. The Small Charges Act penalizes the publication or circulation of any “indecent matter” or any “advertisement regarding the cure of venereal complaints or secret diseases”. In **Dominica**, the Seditious and Undesirable Publications Act criminalizes certain acts of libel against the State. In **The Dominican Republic**, Law No. 6132 Article 28 penalizes the offense to ‘good morals’. Section 6 of **Grenada Electronic Crimes Bill of 2013** criminalizes “grossly offensive” or “menacing” information communicated through

- (b) **Lack of health-related human rights and sensitivity training for public officers, auxiliary workers and healthcare professionals:** In the respective National HIV/AIDS Strategic Plans, reference to training is often a reference to training for healthcare professionals. With one notable exception in the case of Guyana<sup>59</sup>, this review found no plan, which mandates human rights training for public officers and officials as part of *continuing professional education*.<sup>60</sup> Further, despite the level of interaction that auxiliary workers have with persons who use public and private health facilities and the inexorable opportunity for auxiliary workers to encounter users of public health facilities, these workers are not included in training programs. Where human rights training is provided, the training curriculum is not standardized or certified. Healthcare professionals also do not receive mandatory pre-qualification training in human rights and diversity issues before entering public service.<sup>61</sup> In most instances, training around these issues take place after the health professional has already received his/her certifications, secured a license and is already on the job<sup>62</sup>. Three risks are inherent in this:
- i. The ‘after-I-am-qualified’ training may be attended only because a supervisor has requested attendance. Attendance in such circumstances will not necessarily secure behaviour change;
  - ii. The health professional may perceive the training as a non-essential part of the competencies and skills he/she is required to have, to carry out the job, because he/she is already licensed to practice. Again, participation in training in these circumstances may be nothing more than a “box-checking” exercise; and
  - iii. Behaviours that are inconsistent with human right norms and respect for diversity might have already been cemented.
- (c) **Absence of comprehensive age-appropriate health education in schools:** *See Factor 15 below.*
- (d) **Lack of specific measures for incarcerated persons, especially transgender persons:** Not all countries have policy actions to ensure that persons who are incarcerated have access to HIV information and generally, there are no frameworks which define and implement a minimum package of services and service delivery protocols for transgender persons who are incarcerated and how to meet their informational and health needs. *See Factor 19 below.*
- (e) **Lack of specific measures for the disabled, indigenous and ethnic groups and persons who are speech-, hearing- or visually-impaired:** Prevention program and educational programs (print, digital and audio) are not available in braille, accompanied by sign language or made available in other forms that are suitable for persons who are visually impaired or speech and hearing impaired. Health Centers do not have persons trained in signed language. In countries like Guyana and Suriname with recognized sub-populations and ethnic groups, religious groups and indigenous persons, there are no specific informational and prevention strategies that reflect the needs of these different ethnic groups such as the needs of people of Creole and Maroon descent. *See Factor 15 below.*

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electronic means. Grenada’s Libel and Slander Act, Section 15 criminalizes a newspaper’s publication of “indecent matter[s]” or “indecent medical, surgical or physiological details” arising out of judicial proceedings. The **Jamaican Obscene Publications Act** provides that a person who, for the purposes of trade, distribution, or public exhibition makes or produces or has in his possession any obscene Writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, commits an offense.

<sup>59</sup> See Government of Guyana, National Strategic Plan for HIV – HIVision at page 61.

<sup>60</sup> The media reports that on January 31, 2018, the Ministry of Health of The Bahamas launched the HIV Continued Medical Education for Physicians. See <http://www.bahamasnational.com/?q=node/9696> [Accessed on May 8, 2018]

<sup>61</sup> Interview with Dr. Rhonda Moore, Director National AIDS Program, Guyana. August 7, 2018.

<sup>62</sup> Interview with Ms. Lovette Byfield, Executive Director National Family Planning Board. Kingston. August 23, 2018

- (f) **Lack of specific measures for undocumented Migrants:** In a few Caribbean countries, the public sector provides full and free health services to all in need, no questions asked. For example, in discussions with stakeholders in Antigua, it was revealed that having identity cards is not a requirement to obtain primary health services. In Suriname, the Basic Health Insurance Act (BZSR) of 2014 mandates all residents to have insurance and provides an opportunity for migrants to obtain insurance. It is not clear whether undocumented migrants are able to obtain insurance under the 2014 legislative scheme. However, in other Caribbean countries immigrants, in particular undocumented migrants have limited access to health services. Limitations range from types of services offered, ability to pay fees for diagnostic and laboratory services, reluctance among undocumented migrants to use health services out of fear of deportation. More importantly, there tends to be language and cultural barriers, which limit migrants from gaining the full benefits of health services since they might be members of ethnic or language minority groups and might face specific challenges in adapting to the mainstream culture. For instance, Suriname has a large Brazilian migrant population and the State of Antigua and Barbuda has a high Spanish immigrant population, but interpretive services are not generally available within public health facilities.
- (g) **Lack of privacy and lack of anonymity:** Because most Caribbean communities are small and tend to have close-knit social networks, it can be difficult for individuals to seek HIV & AIDS services privately. Stakeholders who were interviewed noted that community members may see individuals visiting certain sites or may work at an organization where HIV testing or treatment services are provided. *“Many individuals may not have experienced direct discrimination but fear of being stigmatized based on what they have been told by others... combined with social stigma, the inability to privately access services deters people from getting tested for HIV or seeking care for HIV/AIDS.”*<sup>63</sup> In Barbados for example, the LadyMeade Reference Unit is the central point for everything HIV and STI related. *“...Once people see you going there, all your business out in the open.”*<sup>64</sup> Jason Shepherd, Senior Program Officer at the Caribbean Network of People Living with HIV (CRN+) pointed out that in one particular country the HIV treatment and testing site *“...is by itself... all the way up on a hill.... Once people see you going up that hill... or coming down that hill... they know it is AIDS related. Now, if I were a person who needs to use those services... knowing what I know.... Halfway up that hill I might turn back and not bother with testing or treatment at all.”*<sup>65</sup>

## 1.5.RECOMMENDATIONS

### (a) Priority Recommendations

- a.1. **Mandatory Continuous Professional Development Training in Human Rights and Unconscious Bias:** Provide technical and financial assistance to national authorities and their respective Medical Councils and Councils for professions allied to medicine and social work, to make training in human rights, diversity, conscious and unconscious bias, mandatory courses for continuing professional education and for re-licensure.
- a.2. **Training for Auxiliary Staff at Health Facilities:** Provide technical and financial assistance to national authorities to train auxiliary staff at public health facilities in human rights and to build their capacity to traverse issues such as diversity, confidentiality, conscious and unconscious bias in relation to PLHIV and other vulnerable groups.

<sup>63</sup> Interview with Robert Best, Barbados. July 3, 2018

<sup>64</sup> Ibid.

<sup>65</sup> Interview with Jason Shepherd, Guyana. August 27, 2018

- a.3. **Training of Health Professionals in Sign Language:** Provide technical and financial assistance to national authorities to train persons at public health facilities in sign language to communicate with persons who are speech or hearing impaired.
- a.4. **Develop Policy Guidelines for Jails and Prisons for Transgender Persons:** Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails to define a minimum package of services and service delivery protocols for incarcerated transgender persons.

**(b) Other Recommendations**

- b.1. **Integration of services:** Provide technical and financial assistance to national authorities to integrate HIV testing and treatment clinics into the general (non-HIV) outpatient departments and locations to improve uptake, reduce stigma and improve patient satisfaction.
- b.2. **Tools for information dissemination:** Provide technical and financial assistance to national authorities to develop and disseminate HIV information, education and prevention programs in braille, by sign language or other forms that are suitable for persons who are visually impaired or speech and hearing impaired.

## **FACTOR 2: HIV PREVENTION**

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### **2.1.INTERNATIONAL GUIDELINES**

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Access to HIV prevention interventions is an integral part of the right to health and the right to life. To realize the right to health, the International Guidelines recommend that States take measures aimed at prevention and control of epidemics. In the Declaration of Commitment and Political Declaration, States acknowledged that prevention of HIV infection must be the mainstay of the AIDS response and these States made commitments to intensify their HIV prevention efforts to overcome legal, regulatory, and other barriers that block access to effective HIV prevention. The International Guidelines recommend that States should ensure widespread availability of quality goods, services, and information for HIV prevention. States should:

1. Provide access to HIV information, education, and communication.
2. Provide access to essential commodities, including male and female condoms.
3. Provide access to harm reduction efforts related to drug use.
4. Ensure safe blood supplies.
5. Ensure and provide access to early and effective treatment of STIs.

The Guidelines emphasize that HIV prevention measures should be implemented with attention to vulnerable individuals and populations and should be accessible by all persons, on a sustained and equal basis (Guideline 6).

### **2.2.APPLICABLE HUMAN RIGHTS**

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The **Right to Health:** In *General Comment No. 4, paragraph 16*, the United Nations Committee on Economic, Social and Cultural Rights have noted that to realize the right to health, States must take measures aimed at prevention and control of epidemics. Inherent in this obligation is a requirement to establish prevention and education programs for behavior-related health concerns such as STIs and HIV & AIDS.

The **Right to Life:** The UN Human Rights Committee has interpreted the right to life, guaranteed under ICCPR, as including States' obligation to take measures aimed at reducing the spread of epidemics.<sup>66</sup>

### 2.3.SITUATION ACROSS THE CARIBBEAN

The proposed prevention interventions for all Caribbean countries typically focus on behaviour change and are often provided by means of outreach services. Outreach interventions usually include offering voluntary counselling and testing (VCT); HIV prevention education; condom and lubricant distribution; referral to HIV/STI services; prevention efforts among vulnerable groups<sup>67</sup>; and prevention of mother to child-transmission. Prevention interventions are typically implemented with the support of non-governmental organizations (NGOs). NGOs tend to have close working relations with hospitals, clinics, and social service agencies and use particular platforms, such as schools, neighborhood associations, prisons and busy public spaces or spots where the target groups tend to congregate. In some instances, for example in Antigua and Barbuda, the proposed program of action includes legislative reforms to address HIV & AIDS related discrimination. The respective Strategic Plans also recognize the need for differentiated levels of service for vulnerable groups, based on the local epidemiological profile and the social and economic context. An example of this can be found in the National Strategic Plan for The Bahamas, which proposes under Output 20, to implement initiatives to improve access to sexual and reproductive health services and medical care for adolescents (*see Government of The Bahamas National Strategic Plan, page 38*).

At the regional level, the Pan Caribbean Partnership against HIV and AIDS (PANCAP) and the Caribbean Vulnerable Communities Coalition, in partnership with the Centro de Orientacion e Investigacion Integral (CVC/COIN), have been awarded grants by the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) for the period 1 October 2016 to 30 September 2019. The goal of the CVC/COIN grant<sup>68</sup> is to reduce, across the Caribbean region, the spread and impact of HIV in key populations (KPs) and to reduce stigma and discrimination against people living with HIV (PLHIV) and against KPs. The goal of the PANCAP grant is to contribute to the removal of barriers that impede access to HIV and sexual and reproductive health (SRH) services for key populations. Among the objectives of the grant is to increase access to HIV and health services for key populations and improve their retention on the continuum of care.<sup>69</sup>

However, the 2017 Baseline Assessment (Insanally, 2017) has pointed out that many countries lack capacity for comprehensive HIV prevention programming and effective linkage to care and lack the capacity to develop and implement KP-specific programming along the prevention, diagnosis, treatment and care continuum. It is noted that migrant-specific interventions have been developed for Antigua and Barbuda, Barbados, Belize, the Dominican Republic, Trinidad and Tobago and Suriname. Key population specific interventions targeting MSM, sex workers and transgender persons have been implemented in Belize, Guyana, Haiti, Jamaica and Suriname.<sup>70</sup>

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<sup>66</sup> UN HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 6: THE RIGHT TO LIFE (*adopted* April 30, 1982)

<sup>67</sup> For obvious reasons, the definition is not uniform across the region

<sup>68</sup> Insanally, Sarah, "[Removing barriers to accessing HIV and sexual and reproductive health services for key populations in the Caribbean](#)", PANCAP (2017) at p. 6 [Accessed on May 9, 2018]

<sup>69</sup> *ibid*

<sup>70</sup> Insanally, Sarah (2017) at page 16

## 2.4. GAPS AND OPPORTUNITIES

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- (a) Absence of specific prevention strategies for incarcerated persons. *See Factor 19 below.*
- (b) Absence of specific prevention strategies for indigenous peoples and ethnic groups. *See Factor 1 above.*
- (c) Absence of specific prevention strategies for the disabled. *See Factor 1 above.*
- (d) There is need for capacity building on gender identities and measures to improve health providers' knowledge about the physical and emotional health needs of transgender persons. *See Factor 18 below.*
- (e) Age of consent laws affect access to prevention interventions by most-at-risk adolescents. *See Factor 8 below.*
- (f) Absence of comprehensive sexuality education in schools. *See Factor 15 below.*
- (g) PrEP is not widely used as a prevention measure among groups of persons at high risk. Government financed PrEP has been implemented in the Bahamas. Suriname, Saint Lucia, Grenada have a program financed by the government but only for serodiscordant couples. Barbados has a limited form of PrEP, but it is available through private physicians and is user-financed. Jamaica is in the process of implementing a similar initiative, funded by the Global Fund and PEPFAR.

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*Pre-exposure prophylaxis or PrEP is the use of antiretroviral drugs for HIV prevention in seronegative people. WHO currently recommends the use of regimens that include oral tenofovir (e.g., tenofovir and emtricitabine)*

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## 2.5. RECOMMENDATIONS

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Preventing new infections requires intensifying efforts and ensuring that the most vulnerable people have access to all options and new technologies, in a discrimination-free environment. PANCAP should:

(a) **Priority Recommendations:**

- a.1. **Establish Flexible Working Hours at civil society testing facilities to reach key populations:**  
To reach key populations and prevent late diagnosis, provide financial assistance to increase the number of civil society-operated testing centers, in which the test is administered by trained non-medical professional providers, with flexible hours and appropriate locations.
- a.2. **Roll-out PrEP to key populations as an additional prevention intervention:** In keeping with WHO recommendations, provide financial and technical assistance to national authorities and civil society organizations to offer PrEP<sup>71</sup> to people at high risk of contracting HIV, as an additional intervention from the package of combination prevention interventions. Caveat: If implemented, this intervention would need to be accompanied by strict monitoring, to ensure that the use of PrEP does not lead to increase in risky behaviours such as discontinuance of condom use. Resources will need to be made available for scientific evaluations to determine if there is

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<sup>71</sup> WHO. [Guideline on when to start antiretroviral therapy and on pre-exposure prophylaxis for HIV](#). Geneva: WHO; 2015. [Accessed on August 28, 2018]

any impact (+/-) on transmission of resistant viruses. Training will be required to eliminate bias or moral judgments about the use of PrEP. In July 2017, WHO published a [tool](#) for implementing PrEP programs with suggestions for the introduction and use of PrEP based on the available evidence and experience. This document includes information, not only for clinicians, but also for educators and activists, counselors, opinion-makers, pharmacists, regulatory agencies, planners and evaluators, HIV test providers, and PrEP users themselves.<sup>72</sup>

<b>Basic clinical elements for PrEP (WHO, 2017)</b>
<p><b>Indications for PrEP (by history over the past 6 months):</b>  HIV-negative <b>AND</b></p> <ul style="list-style-type: none"> <li>• Sexual partner with HIV who is not virally suppressed, <b>OR</b></li> <li>• Sexually active in a high HIV incidence/prevalence population <b>AND</b> any of the following: <ul style="list-style-type: none"> <li>○ Vaginal or anal sexual intercourse without condoms with more than one partner, <b>OR</b></li> <li>○ A sexual partner with one or more HIV risk factors, <b>OR</b></li> <li>○ A history of a sexually transmitted infection (STI) by lab testing or self-report or syndromic STI treatment, <b>OR</b></li> <li>○ Use of post-exposure prophylaxis (PEP), <b>OR</b></li> <li>○ Requesting PrEP.</li> </ul> </li> </ul> <p>Contraindications:</p> <ul style="list-style-type: none"> <li>• HIV-positive</li> <li>• Estimated creatinine clearance &lt;60 ml/min</li> <li>• Signs/symptoms of acute HIV infection, probable recent exposure to HIV</li> <li>• Allergy or contraindication to any medicine in the PrEP regimen.</li> </ul> <p><b>Rx:</b> for example, TDF 300 mg + FTC 200 mg PO daily.</p> <p><b>Counselling:</b> Link tablet use with a daily routine.  Develop a plan for contraception or safer conception and for STI prevention.</p> <p><b>Follow-up:</b>  Among other aspects:  Every 3 months: HIV test, check STIs, assess PrEP indications and use.  Every 6 months: creatinine clearance.</p>

*Source: WHO implementation tool for pre-exposure prophylaxis (PrEP) of HIV infection. Module 1: Clinical. 2017.*

**(b) Other Recommendations**

- b.1. **Access to services by minors:** Undertake advocacy to lower the age at which young people can obtain a HIV test, without the consent of a parent or guardian, based on the Convention on the Rights of the Child.
- b.2. **Tools for information dissemination:** Provide financial and technical assistance to national authorities to make HIV information, education and prevention programs available in braille, accompanied by sign language or other forms, that are suitable for persons who are visually impaired or speech and hearing impaired.

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<sup>72</sup> World Health Organization (WHO). WHO Implementation tool for pre-exposure prophylaxis (PrEP) of HIV infection. Module 1: Clinical. Geneva: WHO; 2017 (WHO/HIV/2017.17). Available from: <http://apps.who.int/iris/bitstream/10665/255889/1/WHO-HIV-2017.17-eng.pdf?ua=1>.



- b.3. **Gender-responsive prevention strategies:** Provide technical assistance to national authorities to develop gender-responsive prevention strategies that meet the specific needs of transgender persons and disabled persons.
- b.4. **Review of health and family life education:** Provide technical assistance to national authorities to undertake a review of the content, delivery and availability of health and family life education, with particular emphasis on reaching the disabled and persons who may have language barriers.
- b.5. **Revise and implement changes:** Provide technical and financial assistance to national authorities to revise and implement changes that are recommended as part of the above-referenced review.

## **FACTOR 3: TESTING, COUNSELLING AND REFERRAL**

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### **3.1.INTERNATIONAL GUIDELINES**

Health facilities are a key point of contact with people who may need HIV-related services. UNAIDS, WHO, and other UN bodies urge States to ensure that HIV testing does not compromise the rights to privacy, bodily integrity, and self-determination. Therefore, HIV testing should be voluntary and accompanied by informed consent, counseling, and confidentiality.<sup>73</sup> The International Guidelines stress that HIV testing should be carried out with the human rights-based approach, and that public health interests do not justify mandatory HIV testing (*Paragraph 120*). The Guidelines recommend that HIV testing should be a standard part of medical care for all patients attending health facilities in areas where the epidemic is generalized. Those who test positive should be provided with referral; their immediate needs should be assessed and prioritized; and they should receive assistance in accessing essential HIV-related services.<sup>74</sup> They should also receive protection from stigma, discrimination, and violence through a supportive social and legal environment.<sup>75</sup>

### **3.2.APPLICABLE HUMAN RIGHTS**

**The right to health, the right to liberty security and integrity of the person, and the right to be free from torture, inhumane or degrading treatment or punishment:** According to International guidelines, the right to liberty, security and integrity of the person encompasses the right to *freedom from non-voluntary testing*. The right to freedom from non-voluntary HIV testing is based on such internationally guaranteed rights as: the right to health, which includes the right to control one's health and body; and the right to be free from non-consensual medical and scientific experimentation, which is derived from the right to be free from torture and inhumane or degrading treatment or punishment.<sup>76</sup>

### **3.3.SITUATION ACROSS THE CARIBBEAN**

The key obligation on Caribbean States is to:

- a) ensure that HIV testing is always carried out with informed consent;

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<sup>73</sup> UNAIDS & WHO, POLICY STATEMENT ON HIV TESTING 1 (2004).

<sup>74</sup> U.S. Centers for Disease Control and Prevention, Revised Guidelines for HIV Counseling, Testing, And Referral (2001)

<sup>75</sup> Inter-Parliamentary Union, UNAIDS & UNDP, Taking Action Against HIV and AIDS: A Handbook for Parliamentarians

<sup>76</sup> ICCPR Articles 7, 9; ICESCR Art. 12; UN Committee on Economic, Social, and Cultural Rights, General Comment No.14. para. 8)

- b) ensure that the legal and policy framework provides protection of privacy and confidentiality as well as protection from stigma, discrimination and violence, and sanctions those who commit breaches;
- c) ensure that HIV testing is available as part of standard medical care for all patients attending health facilities and patients are given the opportunity to opt-out of testing; and
- d) ensure that there are adequate human and other resources and training and supervision of health care providers.

This review found that in general, Caribbean States are acting to ensure that there is access to testing for people who may need HIV and STI-related testing services. Guidelines for Management of HIV in the clinical setting are in place, articulating principles such as opt-out testing for provider-initiated testing.<sup>77</sup> The Strategic Plan for Caribbean States indicates that those who test positive are provided with referrals and attempts are made to trace sexual partners. For the most part, persons wishing to know their HIV status have access to the rapid test method and voluntary counselling and testing at outreach events, at “walk-in” sites, including NGOs that provide services to key populations and at STI (Sexually Transmission Infections) Clinics. However, persons in interior regions and hard-to-reach areas, such as the Maroon and Creole populations of Suriname, may not have access to testing services, given the dearth of facilities that serve the interior regions of Suriname. In addition, according to Insanally (2017), National programs continue to experience significant challenges in reaching key populations and meeting their needs. Most countries do not have KP-specific data to determine the status of linkage and retention in care, and many are not implementing KP-specific programming. Gaps in the response for KPs include: low coverage with prevention interventions; testing and treatment; and low retention and viral suppression rates.<sup>78</sup>

In addition, in discussion with stakeholders, they consistently reported that the issue of judgmental attitude by healthcare workers at public health facilities and societal stigma arising from the fact that “...everybody know *yu* business...”<sup>79</sup> are major deterrents for persons to seek testing.

### **3.4.GAPS AND OPPORTUNITIES**

- (a) **Inflexible hours of operation:** Government-owned facilities do not normally offer services with flexible hours for HIV testing that will enable key populations to be tested at times that are more convenient for them. Flexible services are generally provided by civil society and AIDS service organizations. Jamaica recently began offering “adolescent-friendly” clinics and adolescent-only hours of operations at community health centers.<sup>80</sup>
- (b) **Limited use of self-testing:** Only Trinidad and Tobago and Jamaica appear to have this type of test available. However, it is not linked to any sort of mechanism, which puts users into the health system.
- (c) **Not all countries have specific legal frameworks governing testing by persons who are not medically trained:** Persons who are medically trained or trained in disciplines supplementary to medicine, would be subject to the disciplinary mechanism established by their regulatory bodies (such

<sup>77</sup> See for example the [Clinical Management of HIV Disease Guidelines for Medical Practitioners, Jamaica](#) (2014) [Accessed June 2, 2018]

<sup>78</sup> Insanally, Sara (2017) at page 16

<sup>79</sup> Interview with Redress Officer, Jamaican Network of Seropositives. Kingston. August 24, 2018.

<sup>80</sup> Interview with Joy Chambers, Ministry of Health, Jamaica.

as the Pharmacy Council, Nursing Council and Dental Council). In Barbados, there is a National Policy on HIV Testing, which sets out general policy objectives and specific policy objectives for HIV rapid testing, testing of key populations, persons with disabilities, pregnant women and young persons. The Policy establishes a committee under the Chief Medical Officer to provide oversight for HIV rapid testing. The policy provides that only persons certified through the Ministry of Health’s training program can perform rapid testing. The Barbados Testing Policy falls short in relation to the most-at-risk persons below the age of consent, however, in that it does not permit testing of persons below the age of 18 years without parental consent. The Policy provides that “testing of people below the age of consent may only be done with the explicit permission of a parent or legal guardian.”<sup>81</sup> Jamaica has a Revised Draft National HIV Policy (2017) that articulates guiding principles and major policy statements for testing in Section 5.2<sup>82</sup> but this revised policy does not address certification or qualification of testers. Where no policy exists, the aggrieved person would perhaps have to take the matter up with the relevant human relations departments of the organization to which the individual is employed and perhaps also involve the Ministry of Health in the matter.<sup>83</sup>

(d) **Access to testing by sexually-active persons below the age of 18 years, is restricted in all countries:**

Across the region, age of consent laws restrict the ability of sexually active “mature” or “emancipated” minors who are below the age of 18 years old, to obtain services without parental consent. Greater still, such a prohibition in the legal framework puts any treat for all program at risk, if adolescents in need of HIV treatment cannot legally consent to such treatment. The Jamaican legislation provides an example: under the Law Reform (Age of Majority) Act, a child at age 16 can consent to ‘any surgical, medical or dental treatment’, including diagnostic and ancillary procedures. The consent of the parent or guardian of a child aged 16 or older is not required for such treatment/procedure. Two models drawn, one from Guyana and one from Jamaica are recommended. *See factor 15.*

*“(4) If the patient is... **a minor child** or otherwise unable to give valid consent, the attending medical practitioner has a responsibility to obtain the consent of an appropriate relative or guardian, **but urgent treatment should not be withheld in such cases if there is an immediate threat to the patients' life or health.**”*

*- Guyana: Regulations under the Medical Practitioners Act § 9(4)*

(e) **Testing of prisoners upon admission and release is authorized by legislation, which pre-date the advent of HIV & AIDS:** Correctional Rules, made under Prison Acts, authorize the medical examination of inmates upon admission and upon release.<sup>84</sup> Most of these pieces of legislation pre-date the advent of HIV & AIDS and so there are gaps that have since emerged which require attention. For example, the Jamaica Correctional Rules do not address post-test counselling and the psychological support that may need to be provided to an inmate who tests positive for the first time, upon admission to a correctional facility. The legislation also does not address which personnel in the

<sup>81</sup> Policy on HIV Testing in Barbados, National HIV/AIDS Program, Ministry of Health, Government of Barbados (2012), page 17

<sup>82</sup> National Family Planning Board, Revised National HIV Policy 2017, Jamaica [Accessed on August 30, 2018]

<sup>83</sup> Interview with Dr. Dale Babb. Ministry of Health, Antigua. Interview with Lovette Byfield, National Family Planning Board, Jamaica.

<sup>84</sup> See for example, Rule 27, Rule 28, Rule 136 and Rule 127 of the Jamaica Correction Rules

prison is authorized to have access to a prisoner's health information, nor are there specific sanctions for improperly accessing, using or acting upon that health information.

### 3.5.RECOMMENDATIONS

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#### (a) Priority Recommendation:

**a.1. Roll-out self-administered HIV testing:** Given the high rate of stigma in accessing testing and treatment at public health facilities, consideration should be given to providing financial and technical support to national authorities to enable them to roll-out self-administered HIV testing, which can be done at home. This could be rolled-out initially in any or all of the five territories with the highest HIV burden<sup>85</sup>. In the beginning, the testing kits should be available through promotional activities and giveaways to reduce any apprehension about having it in one's possession. A mechanism to link users of self-test with the health services will need to be put in place. The self-test will go a far way in helping countries to achieve the first of the 90-90-90 targets<sup>86</sup> by reducing the opportunity for stigmatizing behaviors, which drive persons away from testing. It is trite, that early diagnosis improves the quality of life of people with HIV and helps prevent new infections.

#### (b) Other Recommendations

**b.1. Who provides HIV rapid testing:** Provide technical support to national authorities to review, revise and adopt policies in relation to who can provide HIV rapid testing, following the Barbados example.

**b.2. Certification and training programmes:** Provide financial and technical support to national authorities to implement certification and training programmes, with appropriate monitoring and re-certification mechanisms, for persons who provide HIV rapid testing.

**b.3. Codes of conduct:** Provide technical assistance to national authorities to review, revise and adopt Regulations and Codes of Conduct for medical practitioners, other health professionals and social workers in relation to testing generally, and in relation to providing services to at-risk adolescents, following the Guyana example. *See factor 8 and Factor 15.*

**b.4. Amending domestic legislation:** Provide technical assistance to national authorities to amend their domestic legislation following the Barbados Employment (Prevention of Discrimination) Bill, which prohibits testing in employment for medical conditions.

## FACTOR 4: TREATMENT, CARE AND OTHER HEALTH SERVICES

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### 4.1.INTERNATIONAL GUIDELINES

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International law guarantees the right to health for all, including PLHIV. The UN Committee on Economic, Social, and Cultural Rights underlines that States have a core obligation to ensure the satisfaction of the core content of the right to health. These include: 1) essential primary care; 2) essential

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<sup>85</sup> UNAIDS 2017: Haiti (48%), Dominican Republic (22%), Jamaica (10%), Cuba (8%) and Trinidad and Tobago (4%).

<sup>86</sup> The Joint United Nations Programme on HIV/AIDS (UNAIDS) 90-90-90 goals are that by 2020, 90% of all people living with HIV will know their HIV status, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy (ART), and 90% of all people receiving ART will have viral suppression.

drugs; 3) equitable distribution of all health facilities, goods, and services; and 4) non-discriminatory access to health facilities, goods, and services, especially for vulnerable or marginalized groups.<sup>87</sup> To guarantee that PLHIV are treated equally in health care settings, States must provide appropriate training for health personnel, including education on health and human rights and sensitivity training, aimed at reducing stigma attached to HIV and eliminating conscious and unconscious bias against PLHIV.<sup>88</sup>

#### **4.2. APPLICABLE HUMAN RIGHTS**

**The Right to Health:** The Universal Declaration of Human Rights provides, in Article 25, that every person has the right to a standard of living adequate for his or her health and well-being, including the right to medical care and necessary social services. In Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States agreed to undertake steps to the maximum of available resources and by all appropriate means, to achieve progressively, the full realization of this right. Among others, States agreed to take the necessary steps to: 1) prevent, treat, and control epidemics, endemic, and other diseases; and 2) create conditions, which would assure everyone, medical service and medical attention in the event of sickness (ICESCR arts. 2, 12). **Right to Essential Medicines:** The UN Human Rights Council (2009) noted that access to medicine is a fundamental element in achieving progressively the full realization of the right to health. States are responsible to ensure access to all, without discrimination, of medicines, in particular essential medicines, that are affordable and of good quality.<sup>89</sup>

#### **4.3. SITUATION ACROSS THE CARIBBEAN**

To give effect to the right to health, the right of access to essential medicines and the right to life, the key obligation on Caribbean States is to ensure that there is a system of health protection, which provides **everyone** with equal opportunity to enjoy the highest attainable standard of health. This means that States must ensure that there is non-discriminatory access to health facilities, goods, and services, especially for vulnerable or marginalized groups.

In the Caribbean, provisions in the following Constitutions guarantee the Right to Health:

- a) The Dominican Republic: Article 61(1)
- b) Guyana: Article 24
- c) Haiti: Article 19
- d) Suriname: Article 36

All Countries propose interventions for treatment, care and support as priority areas for action in their National HIV/AIDS Strategies. These strategies include (a) measures to improve the number of persons accessing Anti-Retroviral Therapy; (b) the development and implementation of policies, programs and legislation that promote human rights and gender equality; and (c) the reduction of social, cultural and legal barriers, which impede access to prevention, treatment, care and support services.

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<sup>87</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 On the Right to Health para. 43.

<sup>88</sup> Ibid. para 44

<sup>89</sup> Access to Medicine in the Context of the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health paras. 1-2 (*adopted* October 12, 2009 by the UN Human Rights Council Res. 12/24, U.N. Doc. A/63/263).

#### 4.4.GAPS AND OPPORTUNITIES

Treatment requires an extensive system that facilitates access to HIV testing and counseling, diagnostic services, specialized clinical care, antiretroviral medications, psychological and social support. The following emerged as gaps from the review of various reports and from discussions with stakeholders:

- (a) **Access to Essential Medicines:** Across the region, anti-retroviral drugs are available through several subsidized governmental and non-governmental care providers. At the primary level, these include government-run health centers. At the secondary and tertiary levels, there are Ministry of Health operated general hospitals. CD4 and viral load testing are available free of cost, and ARV treatment has also been made available free of charge to persons diagnosed with HIV, HIV-infected mothers and children born to HIV infected mothers as prophylaxis.<sup>90</sup> Some stakeholders pointed out that although treatment for HIV is generally free in terms of accessing antiretroviral drugs, there are challenges with testing equipment downtime which affects diagnostics to enable viral load (VL) monitoring and ensure viral load suppression. In some cases, there here have been supply management issues and procurement of VL commodities, reagents and supplies.<sup>91</sup>
- (b) **Disrespect, lack of privacy and lack of anonymity:** stakeholders indicated that: violations of confidentiality; lack of anonymity; the location of treatment sites; disrespectful behavior; abuse; dehumanized care; a hostile attitude among healthcare workers; and the use of insensitive language, all deter persons from using health facilities.<sup>92</sup> The Jamaican Network of Seropositives, representative of the adolescent Health Unit at the Ministry of Health in Jamaica, and representative of the Caribbean Network of People Living with HIV (CRN+) all report that given the very negative attitudes at public health facilities, individuals have difficulty trusting that health care workers will not disclose their sexual practices and behaviors. The environment in public health facilities has led individuals to delay or avoid seeking healthcare; travel great distances to locations where their identities are unknown; or utilize private-sector health care that can come at a high cost. This has implications for the prevention, diagnosis, treatment and care continuum.
- (c) **Failure of healthcare professionals to follow regulations or protocols:** Many countries have protocols, procedures, and algorithms to guide interventions with the key populations; however, some health workers do not follow them.<sup>93</sup> For example, “...[JN+] is now looking into a case of one of our members who attends a public facility for treatment of cancer... each time she is told that because she is HIV positive she has to wait until everyone else use the machine... how much policy we have against this?”<sup>94</sup>
- (d) **Prejudice or moralizing in healthcare facilities:** Stakeholders indicated that when they visit health facilities (especially young persons and persons in the LGBT community), they are subjected to lectures that morally judge their behavior and practices.<sup>95</sup>
- (e) **User ignorance of regulations and practices:** Stakeholders indicated that ignorance by members of key populations about rights, local regulations and complaints mechanisms in the public health sector

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<sup>90</sup> In Jamaica, some private pharmacies charge “...a very minimal fee”: Interview with Ricky Pascoe, President, Jamaican Network of Seropositive. Kingston. August 23, 2018

<sup>91</sup> Interviews with Jason Shepherd, CRN+, Dr. Powe, Jamaica, Ricky Pascoe, Jamaica, Robert Best, Antigua

<sup>92</sup> Interview with MEN and 3H Network, Antigua. Interview with Redress Officer, JN+.

<sup>93</sup> Interview with Ricky Pascoe. Jamaican Network of Seropositives.

<sup>94</sup> Interview with JN+ Redress Officer. Kingston. August 24, 2018

<sup>95</sup> Interview with Robert Best. Barbados.

are barriers to exercising their rights. In some instances, stakeholders reported that exercising their rights have led to further acts of discrimination. In Jamaica for example, the Jamaican Network of Seropositives, through its redress mechanism, is helping with an incident involving a person who made a complaint to the Ministry of Health. The Complaint was forwarded to the relevant hospital for their response. However, the complaint was copied and placed on the health file of the patient and each time the patient visits the hospital, staff can review the complaint before providing services. This has resulted in new and repeating acts of discrimination and abuse.<sup>96</sup>

- (f) **Inflexible hours of operation:** Government-owned facilities do not normally offer services with flexible hours for HIV testing that will enable key populations to be tested at times that are more convenient for them. Flexible services are generally provided by civil society and AIDS service organizations. Jamaica recently began offering “adolescent-friendly” clinics and adolescent-only hours of operations at community health centers.
- (g) **Not all States have adopted the WHO’s recommended antiretroviral therapy initiation threshold:** in the 2017 report, UNAIDS noted that eight (8) countries in the Caribbean - Jamaica, Haiti, Dominican Republic Antigua and Barbuda, Barbados, Bahamas, Saint Vincent and the Grenadines and Trinidad and Tobago - have adopted the World Health Organization’s recommendation that antiretroviral therapy should be initiated in every person living with HIV at any CD4 cell count. Most of the other countries in the region (Saint Lucia, Grenada, Dominica, Belize and Guyana), except for Suriname, start antiretroviral therapy for individuals who have a CD4 count of under 500 cells/mm<sup>3</sup>. No data was available for Saint Kitts and Nevis.<sup>97</sup> The Strategic Plan for Suriname indicates that in keeping with the National HIV Treatment Protocol, a patient is eligible for antiretroviral therapy where the CD4 Count is below 200, ≤ 350 (if the person expresses motivation to start), all pregnant HIV positive women and TB patients.<sup>98</sup>
- (h) **Lack of specialized services and service providers for key populations:** Only Barbados has any dedicated facility for transgender persons at one of its Polyclinics. Insanally (2017) found that “many countries lack capacity for comprehensive HIV prevention programming and effective linkage to care and lack the capacity to develop and implement KP-specific programming along the prevention, diagnosis, treatment and care continuum.”<sup>99</sup> Stakeholders reported that in some instances, the attending doctor is not one who is a specialist in HIV care. A 2017 Report by the Economic Commission for Latin America and the Caribbean (ECLAC) found that while most Caribbean public health systems provided free care and medications, these services are heavily rationed due to limited availability and overstretched capacity. As a result, there is widespread use of private health services, even amongst persons with disabilities in lower income groups, for example for medication. Specialist services like speech and occupational therapy or costly assistive devices were often only available at a cost.<sup>100</sup> The Report also found that equal participation of the disabled were affected by the lack of an enabling environment, which facilitated reasonable accommodation. For example,

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<sup>96</sup> Interview with JN+ Redress Officer. Kingston. August 24, 2018.

<sup>97</sup> Ibid at page 141

<sup>98</sup> National Strategic Plan for a Multisectoral Approach of HIV in Suriname (2014-2020)

<sup>99</sup> Insanally, Sarah (2017) at page 16

<sup>100</sup> Economic Commission for Latin America and the Caribbean (ECLAC), [Report of the Expert group meeting on disability, human rights and public policy](#) (11 April 2017), Port of Spain, Trinidad and Tobago, paragraph 14.

many public buildings such as schools, government buildings, churches, shops and police stations, to name a few, presented serious obstacles because they were not designed and built to be easily accessible to persons with disabilities.<sup>101</sup> These buildings commonly lacked ramps, wheelchair accessible entrances, doors, elevators and emergency exits, accessible toilets, or reserved parking. Streets and pavements are often inaccessible due to their unevenness, the absence of audible or tactile signs, and curb cuts.<sup>102</sup> Further, even though 11 Caribbean Member States have ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD), only four Caribbean States have national legislation on disability, as of April, 2017<sup>103</sup>

- a. Guyana has a National Policy on the Rights of Persons with Disabilities (1997) and Persons with Disabilities Act became law in 2010;
- b. Jamaica established a National Policy for Persons with Disabilities (2000) and the Disabilities Act was passed in 2014;
- c. Trinidad and Tobago launched its National Policy in 2006;
- d. In The Bahamas the Persons with Disabilities (Equal Opportunities) Act was passed in 2014.

#### **4.5.RECOMMENDATIONS**

- (a) **Health professionals monitoring and compliance programme:** Provide technical assistance to national authorities to develop and implement a monitoring and compliance programme to ensure compliance by health professionals with existing protocols or policies.
- (b) **Flexible programme hours:** Provide technical and financial assistance to national authorities and civil society organizations to enable flexible programme hours with regular and reliable services tailored to key populations.
- (c) **Mobile treatment services:** Provide technical support to national authorities to implement mobile treatment services and strategically locate services where the key populations are concentrated or in places that they frequent.
- (d) **Diversity and human rights training:** Develop a model curriculum for diversity and human rights training and provide technical and financial assistance to national authorities to train staff of public health facilities and educational institutions to work with different key populations at all levels of the health services and monitor and evaluate sensitivity training.
- (e) **Complaint and grievance mechanism:** Provide technical assistance to national health authorities to widely disseminate information on the complaint and grievance mechanisms available inside and outside the health center, especially among key populations, to inform them about their rights and the remedies available to them when those rights are violated.

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<sup>101</sup> Ibid, para 17.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid at paragraph 1



## **FACTOR 5: SOCIAL PROTECTION AND MATERIAL ASSISTANCE**

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### **5.1. INTERNATIONAL GUIDELINES**

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Enjoyment of the right to an adequate standard of living is an important human right in the context of HIV & AIDS, because poverty and HIV & AIDS are inextricably linked. International Guidelines urge States to ensure that PLHIV and their families have access to HIV-sensitive support and assistance and with equal access to general social protection, i.e., unemployment and welfare benefits, life insurance, pension, and other forms of material assistance and support that enables them to achieve an adequate standard of living. The Guidelines urge States to ensure that PLHIV are not discriminatorily denied an adequate standard of living and social protection based on their health status.<sup>104</sup> States' antidiscrimination laws should cover PLHIV's access to social security and welfare benefits.<sup>105</sup> States should further ensure that there is no discrimination, on the basis of HIV status, against workers or their dependents in access to occupational insurance schemes and in relation to benefits under such schemes, including: life, health, and disability insurance, and death and survivors' benefits. ILO underlines that HIV testing should not be required as a condition of eligibility for national social security schemes, general insurance policies, occupational schemes, and health insurance.

### **5.2. APPLICABLE HUMAN RIGHTS**

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**Right to an Adequate Standard of Living:** Everyone has the right to: an adequate standard of living (including adequate food, clothing, and housing); the continuous improvement of living conditions; and social security and social insurance.<sup>106</sup> Paragraph 62(i) of the 2016 Political Declaration on HIV and AIDS contains a social protection target. The target encourages Member States to strengthen national social and child protection systems to ensure that by 2020, 75% of people living with, at risk of or affected by HIV benefit from HIV-sensitive social protection.

### **5.3. SITUATION ACROSS THE CARIBBEAN**

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Caribbean States have signed and ratified several multilateral human rights treaties including the International Covenant on Economic, Social and Cultural Rights (the ICESCR). Matters related to unemployment and welfare benefits, life insurance, pension, and other forms of material assistance and support fall under the description of economic, cultural and social rights and under the jurisdiction of the ICESCR. In addition, social protection is one of the four strategic objectives of the Decent Work Agenda, which define the core work of the ILO. However, these treaty provisions are not necessarily part of the system of legal protections to which a citizen is entitled. This is because Commonwealth Caribbean systems, based on the English common law, adopt a dualist approach to the relationship between International Law and national law. Thus, with respect to treaties, the State normally needs to pass domestic legislation to make the treaty provisions legally enforceable in the domestic courts. If a national law is not enacted to give effect to the treaty provisions, or the principles, concepts or measures of the treaty, citizens do not have the benefit of the treaty in question. In recent times, the full rigor of this approach has been softened by the concept of legitimate expectations: thus, in the decision of the Caribbean Court of Justice in *The Attorney General of Barbados et al v. Jeffrey Joseph and Lennox*

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<sup>104</sup> International Guidelines para. 148.

<sup>105</sup> Ibid. para. 22

<sup>106</sup> ICESCR arts. 9, 11

*Boyce* (CCJ Appeal No. CV2 of 2005), it was held that in some circumstances, ratification of a treaty could give rise to the *legitimate expectation* that the treaty will apply in some respects on the domestic plane, even if legislation has not brought the treaty into force locally.

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## EXISTING SOCIAL PROTECTION PROGRAMS

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- **Antigua and Barbuda's** Social Safety Net system provides a view of other Schemes across the Caribbean. The Scheme includes the School Uniform Grant; the School Meals Programme; the Home Improvement Grant; the Poverty Alleviation Grant; the GRACE Programme; Job Training initiatives; the Senior Citizens Utility Subsidy Programme and the Peoples Benefit Programme.<sup>107</sup> The Social Security Scheme provides benefits to insured persons and their beneficiaries when there is a loss or reduction of earnings because of sickness, pregnancy, invalidity, retirement and death. However, this coverage does not extend to HIV & AIDS and PLHIV.
- In **Barbados**, the needs of the most vulnerable are met by local social agencies such as the Welfare Department, the Ministry of Social Care and the National Assistance Board.
- In **Suriname**, Article 24 of the Constitution gives the State the general obligation to create an environment in which optimal fulfillment of the basic need to work can be achieved. Two other Articles provide citizens (specifically employees infected with or affected by HIV or AIDS) with some protection of their right to work. These are Article 26, which States that everyone has the right to work within his capacities, and Article 8(2), which provides that no one shall be discriminated against because of birth, sex, race, language, religion, education, political opinion, economic position or any other status. The 'other status' quality implies that no one, including those with disabilities, should be discriminated against, which arguably may include someone who is HIV positive.
- In **Belize**, the Constitution protects an individual from being denied the right to gain a living by work that he/she freely chooses or accepts. However, the Labour Act does not specifically prohibit discrimination on the grounds of HIV and/or AIDS.
- The right to work is also protected in the Constitutions of **Haiti and Guyana**.
- In **Jamaica**, the Public Assistance Division of the Ministry of Labour and Social Security administers various non-contributory social assistance programs. The principal ones are The Programme of Advancement Through Health and Education (PATH) and the Rehabilitation Programme. The Rehabilitation Program is comprised of four (4) types of grants: Rehabilitation Assistance Grant; Compassionate Assistance Grant; Emergency Assistance Grant; Education and Social Intervention Grant. PATH is a conditional cash transfer programme targeting "vulnerable" households. There are also programs specific to health and education, such as the School Feeding Programme, the National Health Fund, the Drug Serv programme and the NI gold programme.

### 5.4.GAPS AND OPPORTUNITIES

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- (a) **Gaps in the social protection schemes:** While existing social protection schemes address some aspects of social protection (such as access to social services for education, health and nutrition), there are gaps in relation to social insurance and labour market policies (especially employment protection). Other gaps include access to benefits such as parental leave and survivor benefits for persons involved in same-sex relationships, and assistance to address the housing needs of LGBT

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<sup>107</sup> National HIV Strategic Plan at page 13

persons and PLHIV who may not be able to afford housing in particular neighborhoods due to violence.

- (b) **Standardized means tests to determine eligibility for social assistance focus on issues such as educational level, access to electricity, family structure and possession of durable goods.** However, other specific social or legal barriers, which PLHIV and members of key populations such as LGBT and youth face, are not taken into account. For example, LGBT persons who are unable to live in low-rent communities due to high levels of threats, intimidation and violence, may not qualify for social assistance to find affordable housing in other, more accommodating communities, where the rent is considerable higher. *Underemployment* of LGBT persons, youth and persons who live in certain rural communities, due to stigma and discrimination, does not appear to be a factor that feature in social protection assistance.
- (c) **Barriers to accessing social protection:** Data from the 2017 NCPI indicates that seven countries reported fear of stigma and discrimination as barriers to accessing social protection: Bahamas, Barbados, Dominica, Dominican Republic, Haiti, Jamaica, and Saint Lucia<sup>108</sup>. The data also shows that in Dominica and Haiti, high out of pocket expenses are barriers to accessing social protection.<sup>109</sup>
- (d) **There is limited reach and protections for workers in the informal economy and those in non-standard forms of employment:** These workers face disadvantages because of the limited coverage of existing social security systems. The Social Security Scheme (e.g. National Insurance Scheme in Guyana and Jamaica - a pay-as-you-go social security system) provides benefits only to employed persons who have contributed, and their beneficiaries, when there is a loss or reduction of earnings because of sickness, pregnancy, invalidity, retirement and death. Immigrants for example and self-employed individuals, who do not contribute to this scheme, will not have these benefits.
- (e) **Absence of general anti-discriminatory laws:** All countries have either National HIV Strategies and/or National HIV/AIDS Workplace Policies setting out objectives to mitigate the socio-economic impact of HIV and AIDS on individuals and families. However, not all countries have laws that prohibit termination of employment based on *HIV-status*. Even where countries have laws that make it unfair to terminate employment based on HIV status, those provisions do not address discrimination *in the hiring process*. In those States without general anti-discrimination laws, there is no law or policy prohibiting the denial of housing, forced evictions, and other forms of threats and violence related to HIV status. In those States without general anti-discrimination laws, there is no law or policy prohibiting discrimination in life insurance coverage and in pension, based on HIV status.
- (f) **Life insurance and medical insurance policies are not usually available to people with HIV:** A number of financial products are not available to people with diagnosed HIV. This includes life insurance, private medical insurance, critical illness coverage and income protection. In interviews, stakeholders indicated that the insurance legislation and the current environment allows for discriminatory treatment of persons living with HIV. Where mortgages are concerned, testing is required for loans above a certain amount.<sup>110</sup> Applications for life insurance, critical illness coverage

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<sup>108</sup> AIDSInfo. National Commitments and Policy Instruments Database.  
<http://www.aidsinfoonline.org/ncpi/libraries/asp/home.aspx> [Accessed on 8/31/2018]

<sup>109</sup> Ibid.

<sup>110</sup> Interview with Ministry of Social Transformation and Welfare Division, Antigua and Barbuda. June 19, 2018

and income protection insurance will require applicants to do a HIV test. If a person is HIV positive, they are only able to access basic life insurance.<sup>111</sup> Across the region, Insurance Legislation typically provide that the insurance provider is only exempted from liability under the policy on the grounds of a matter relating to the state of health of the person whose life is insured, if the applicant made an untrue statement or failed to disclose something, known or believed by him, in relation to his state of health.<sup>112</sup> Thus, an applicant for insurance above certain limits must tell the truth regarding his/her HIV status. If the applicant omits the truth about their HIV status, it could result in the insurance provider denying a claim, when a claim is made, leaving dependents without financial help.

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<sup>111</sup> Interview with Jamaican Network of Seropositives (JN+). Kingston. August 23, 2018.

<sup>112</sup> See for example, Section 89 of the Insurance Act (Cap 150) of Grenada.

## 5.5.RECOMMENDATIONS

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- (c) **Undertake actuarial reviews:** Provide technical assistance to national authorities to undertake actuarial reviews, assessments and capacity building for social security administrations to tailor their programs to meet the needs of those who are most vulnerable. This will help countries better understand their HIV and social protection landscapes, and strengthen their capacities for planning and implementing robust HIV-sensitive social protection programmes. This would help deepen and extend the coverage of social protection programmes to people living with, at risk of or affected by HIV. The assessments would also assist countries to generate strategic information to help understand how to sustainably finance social protection programmes. Relevant costs for increasing the HIV sensitivity of social protection programmes would be obtained from the assessments.
- (d) **Training for Government labour and social security officers:** Host regional training workshops for Government labour and social security officers to assist them in tailoring their programs to meet the needs of those who are most vulnerable.
- (e) **Programmes for workers in the informal economy:** Provide technical assistance to national authorities to roll out programmes to meet the needs of workers in the informal economy and those in non-standard forms of employment to increase their knowledge of how they can participate in national insurance schemes, either as self-employed persons or as voluntary contributors.

## FACTOR 6: PROTECTION OF PRIVACY AND CONFIDENTIALITY

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### 6.1.INTERNATIONAL GUIDELINES

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The legal concept of privacy refers to the legal protection accorded to an individual to control access and use of personal information. The term “confidentiality” extends and enlarges the protection of the right to privacy to specific situations and relationships, e.g., between health care professionals and their patients. Privacy protection is of paramount importance in the context of HIV & AIDS. Possible consequences of the loss of privacy and confidentiality, if HIV status is disclosed, may include stigmatization, discrimination, loss of employment, rejection by the community and family, retribution, harassment, and violence. Protection of privacy and confidentiality are important not only for individual human rights protection, but also for public health reasons, as it increases peoples’ trust in the health care system and makes them more likely to utilize HIV-related services. International Guidelines<sup>113</sup> urge States to enact confidentiality and privacy laws and ensure protection of privacy and confidentiality in the context of HIV & AIDS. States are encouraged to:

1. Ensure that HIV-related information is included within the definitions of personal/medical data, subject to privacy protections;
2. Protect confidentiality of all information relating to a person’s HIV status obtained during HIV testing;
3. Prohibit unauthorized use and publication of health-related information;

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<sup>113</sup> International Guidelines 5, 10, paras. 20, 22, 64, 119-121.

4. Ensure that health care workers undergo minimum ethics and/or human rights trainings, including confidentiality guidelines and the duty to provide treatment;
5. Establish an independent agency to redress breaches of confidentiality; and
6. Ensure that professional bodies (e.g., of health care workers or journalists) develop codes of conduct and use them to discipline breaches of confidentiality and unreasonable invasion of privacy as professional misconduct.

## **6.2.APPLICABLE HUMAN RIGHTS**

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**Right to Privacy:** Everyone has the right to respect for his or her private life. Arbitrary or unlawful interference with one’s privacy is prohibited. Everyone has the right to the protection of law against such interference.<sup>114</sup>

## **6.3.SITUATION ACROSS THE CARIBBEAN**

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*“All workers, including professionals and volunteers, are required to sign this document “HIV and related health information confidentiality policy and contract... By signing this document, an employee of the HIV/AIDS programme, Ministry of Health, National Insurance and Social Security is agreeing to uphold the confidentiality policy and acknowledging that they are aware of the consequences of breaching the policy.”*

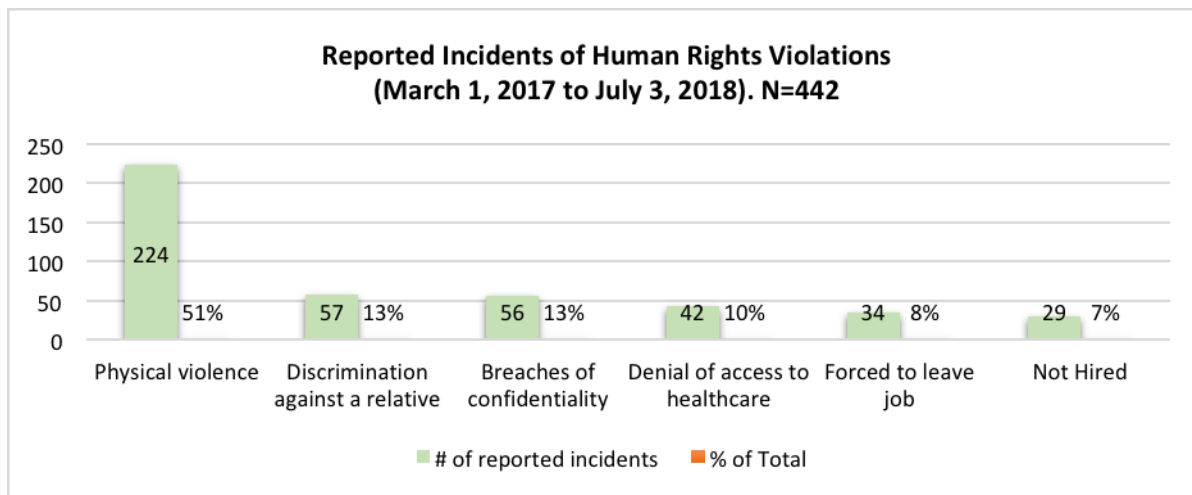
- Barbados: Draft HIV and Related Health Information Confidentiality Policy and Contract

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Based on International Guidelines, to give effect to the right to privacy, the key obligation on States is to ensure that: the legal and regulatory framework prescribe strict rules for protection of health information; HIV & AIDS information is subject to privacy and confidentiality protections; there is redress for breaches of confidentiality; and that measures are put in place to ensure that PLHIV enjoy effective protection of their right to privacy and confidentiality in practice. An analysis of data compiled by the Caribbean Vulnerabilities Coalition (CVC), as part of a region-wide shared human rights incidence-reporting database reveals that breach of confidentiality appears among the most prevalent forms of violations that were uploaded to the database, for the period starting March 1, 2017 and ending July 3, 2018:

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<sup>114</sup> ICCPR art. 17



#### 6.4.GAPS AND OPPORTUNITIES

- (a) **The Constitutional right to privacy may not be enforceable in all States:** For example, the Constitutions of Barbados<sup>115</sup> and Dominica<sup>116</sup> declare that individuals are entitled to the fundamental rights and freedoms of the individual, including the right to protection for the privacy of his home. This provision typifies that found in other Constitutions, including Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts/Nevis and Grenada. The Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, at Section 13(3)(j) guarantees protection of the right to privacy in terms of *private and family life, property and of communication (personal correspondence)*. What is not clear however is whether this right to privacy can be enforced in all Caribbean States, by simply invoking the redress provisions of the Constitution. For example, although the Constitution of Barbados declares the right to privacy in Section 11, the enforcement provision of the Constitution excludes section 11. It provides that if there is an allegation of infringement in relation to the rights found in sections 12 to 23, the aggrieved party may seek redress. Enforcing the right to privacy under the redress provisions of the Constitution seem more likely in the case of the Dominican Republic<sup>117</sup>, Trinidad and Tobago and Belize. Arguably, this is also true for Antigua and Barbuda and Saint Kitts/Nevis. **If there is a breach of privacy and confidentiality by a medical practitioner or a person employed in one of the regulated professions, there are possible alternatives in relation to professional misconduct. See below.**
- (b) **Not all States have Privacy Legislation which defines protected health information etc.:** Although confidentiality is incorporated as one of the key guiding principles in the respective National HIV/AIDS Policies, Strategic Plans, and HIV/AIDS Workplace Policies, very few States have broad, substantive laws protecting data and fewer still, have laws that classify and regulate what amounts to protected health information, authorized uses and penalties for improperly accessing, using and disclosing the protected data. The Bahamas<sup>118</sup>, Dominican Republic, Trinidad

<sup>115</sup> Section 11

<sup>116</sup> Section 1

<sup>117</sup> Article 44

<sup>118</sup> [Chapter 324A-1](#)

and Tobago<sup>119</sup> and Saint Lucia have privacy laws. It is worth elaborating on some of the privacy protection mechanisms in the Dominican Republic Law: Article 44 of the Constitution provides a broad right to privacy and personal honor, establishing that all persons have the right to privacy -- non-interference with privacy, family, home and correspondence of the individual, as well as the right to honor, good name and reputation. Any authority or individual (public or private) that violates such right is obliged to compensate the right-holder according to law.<sup>120</sup> In addition, the law provides specific/sectoral rules on privacy/data protection in the several specialized contexts, including the: Tax Code; Criminal Procedure Code; Code for the Protection of Children; the Criminal Code; the General Law on Access to Public Information; Regulation of credit information companies and protection to the holder of the information;<sup>121</sup> Monetary and Finance Code;<sup>122</sup> Law on Acquired Immune Deficiency Syndrome;<sup>123</sup> General Health Law;<sup>124</sup> Telecommunications Law;<sup>125</sup> and Regulations for Authorization of Telephone Interventions.<sup>126</sup>

(c) **Professional misconduct may provide an alternative form of redress, for breach of the right to privacy:** Constitutional redress for infringement of rights is available only with respect to those rights contained in the enforcement provisions.

*“(4) Every medical practitioner shall take particular care to respect the confidence and rights of adolescents notwithstanding the tradition, which regards such information as the property of their parents or guardian.”*

*- Guyana: Medical Practitioners Act Regulations. Reg 10(4)*

However, the substantive laws governing certain professions such as medical doctors, pharmacists, nurses and midwives, establish regulatory bodies that have responsibility for regulating the profession and for discipline of members. In the case of Jamaica for example, the Medical Council of Jamaica<sup>127</sup>,<sup>128</sup> the Nursing Council of Jamaica<sup>129</sup>, the Pharmacy Council of Jamaica<sup>130</sup> and the

<sup>119</sup> Parliament of the Republic of Trinidad and Tobago, [Act No. 3 of 2011](#)

<sup>120</sup> Constitution Article 44: Specifically establishes that: 1) The home address and any private person shall be inviolable, except in cases that are ordered in accordance with the law, by competent judicial authority or in case of a flagrant crime; 2) Everyone has the right to access information and data to his or her assets, whether they are located in official or private records, and to know the destination and the use made of them, with the limitations set by the law. The processing of personal data and information assets must comply with the principles of quality, legality, loyalty, security and purpose and may apply to the competent judicial authority the update, oppose the processing, modification or destruction of information affecting those rights unlawfully; as well as 3) The inviolability of correspondence, documents or physical formats private messages, digital, electronic or any other type. They may be accessed, intercepted or recorded, only by order of a competent judicial authority, by law and subject to due process; 4) The handling, use or processing of data and information from official authorities that collect the prevention, prosecution and punishment of crime, may only be processed or communicated to the public records, who was involved from an opening proceeding in accordance with the law

<sup>121</sup> Law Number 288-05

<sup>122</sup> Law Number 183-05

<sup>123</sup> Law Number 55-93

<sup>124</sup> law Number 42-01

<sup>125</sup> Law Number 153-98

<sup>126</sup> Law Number 122-07

<sup>127</sup> Established under the Medical Act (1976)

<sup>128</sup> Established under the Professions Supplementary to Medicine Act (1969)

<sup>129</sup> Established under the Nurses and Midwives Act (1966), (Jamaica). See also Nurses and Midwives Regulations 1966.

<sup>130</sup> Established under the Pharmacy Act (1966) [amended 1975]. See also the Pharmacy Regulations 1975



Police (Civilian Oversight) Authority<sup>131</sup> have broad legislative mandates, which enable them to deal with acts of professional misconduct. In Barbados, the specific laws that relate to health professionals' duty to preserve the confidentiality of patients is expressed in the Medical Registration Act CAP 371 and the Health Services Act Chapter 44. Within the Health Services Act, special attention must be paid to the (Communicable and Notifiable) Diseases Regulations 1969. However, none of the enabling legislation for these Regulatory Bodies make specific reference to any form of discrimination or breach of privacy *as a basis for disciplinary action*. Most refer to acts of negligence, professional incompetence, breach of confidence and criminal behaviour. In Guyana, Regulations under the Medical Practitioners Act establishes a joint code of conduct for medical practitioners and related professions. The language of the Guyana Regulations is modern and obliges medical practitioners to keep up to date on the obligations contained in international human rights treaties (Regulation 5). The Guyana Regulations also include a duty to respect the privacy of adolescents, notwithstanding the tradition of regarding adolescents' health information as the property of their parents (See Regulation 10(4)).

- (d) **Absence of Anti-discrimination Legislation:** Most States do not have anti-discrimination legislation and it is not clear the extent to which HIV-related discrimination amounts to either professional misconduct or maladministration by public bodies. In the absence of such legislation or regulations, it seems certain that the legal framework does not sanction arbitrary or unwarranted disclosure of health information and HIV status. In Barbados, the Ministry of Health has adopted measures under which every person employed to the National AIDS Program and even volunteers, are required to sign a HIV and Related Health Information Confidentiality Policy and Contract. The Policy provides that violations of the policy, regarding confidentiality, can result in a recommendation for disciplinary action against the worker and possible exclusion from the programme.

## **6.5.RECOMMENDATIONS**

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### **(a) Priority Recommendation:**

a.1. **Adopting best practices:** Provide technical assistance to national authorities to adopt a practice like that adopted in Barbados through the Draft HIV and Related Health Information Confidentiality Policy and Contract. The Barbados practice is highly recommended because it provides an objective basis for human resource managers to act when there is a specific complaint regarding breach of privacy and confidentiality. Importantly, Human Rights Defenders and Activists can make use of Access to Information / Freedom of Information Legislation to obtain copies of employment contracts and use the contracts as evidence of maladministration if there are breaches, but no action is taken against the employee.

### **(b) Other Recommendations**

b.1. **Independent redress mechanism:** Provide technical-legal assistance to national authorities and civil society organizations to advocate for and promote the establishment of an independent agency to redress breaches of confidentiality.

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<sup>131</sup> Established under the Police (Civilian Oversight) Authority Act (2005). See also the Police Service Regulations, 1961.

- b.2. **Anti- discrimination legislation:** Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- b.3. **CARICOM high level discussions:** With a view to ensuring that Heads of government take action towards implementing the above recommendation, PANCAP and Civil Society Organizations should engage and have discussions with the current Minister of the Quasi Cabinet of CARICOM with responsibility for Justice and Governance, Hon. Dean Barrow of Belize and the Current Minister of the Quasi Cabinet of CARICOM, with responsibility for Human Resource Development, Health and HIV & AIDS, Hon. Timothy Harris of Saint Kitts/Nevis,
- b.4. **Legal Affairs committee of CARICOM:** Engage the Legal Affairs Committee of CARICOM and lobby for a fixed agenda item regarding the legal, ethical and human rights issues as part of the meetings of the Council for Human and Social Development.
- b.5. **Amendment of national regulations:** Provide technical-legal assistance to national authorities to amend national Regulations governing medical practitioners and related professions such as nursing and social work, to include provisions like the Joint Code of Ethics contained in the Regulations made under the Guyana's *Medical Practitioners Act*.

## SECTION II: EQUALITY OF PLHIV IN PUBLIC AND PRIVATE LIFE

The right of all people to equality and inclusion in political, social, and cultural life is particularly significant for PLHIV, HIV & AIDS advocates, and service workers because of the high levels of stigma and discrimination they face in the public and private spheres. Ensuring that PLHIV enjoy freedom of expression, association, and free participation in public affairs is key to addressing misconceptions about HIV & AIDS and protecting the health and dignity of PLHIV and key populations. The importance of these rights for PLHIV is reflected in the principle of greater involvement of people living with or affected by HIV [hereinafter GIPA], which was endorsed at the 1994 Paris AIDS Summit and subsequently reiterated in numerous international standard-setting documents.<sup>132</sup> GIPA recognizes the critical role that PLHIV must play in any public response to the HIV & AIDS epidemic.<sup>133</sup> This, in turn, requires that PLHIV, HIV & AIDS advocates, and service-workers must not be deterred from freely communicating, organizing, or seeking public positions.

<sup>132</sup> International Guidelines 2, Paras. 17-18;

<sup>133</sup> UNAIDS, *From Principle to Practice: Greater Involvement of People Living with Or Affected By HIV/AIDS (GIPA)* (1999)

## FACTOR 7: POLITICAL, SOCIAL, AND CULTURAL LIFE

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### 7.1. INTERNATIONAL GUIDELINES

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International Guidelines suggest that the right to equality and inclusion engages several distinct human rights: (a) the right to freedom of opinion and expression; (b) the right to political participation; (c) the right to participate in social and cultural life; and (d) the right to freedom of assembly and association. To give effect to these rights, States should ensure that PLHIV, HIV & AIDS activists, and service-workers are unimpeded in their ability to seek, receive, and impart information and ideas of all kinds, are free to participate in public affairs and have equal access to public goods and services. The Guidelines therefore urge States to:

- Extend anti-discrimination laws to areas that are as broad as possible, including transport and other services.
- Ensure that community organizations are able to carry out their activities effectively.
- Decriminalize laws and regulations that restrict the movement or association of members of vulnerable groups.
- Refrain from making HIV & AIDS outreach workers and service workers liable for aiding or abetting criminal offences, when providing information or services to groups engaged in activities proscribed by the criminal law.
- Involve PLHIV in all aspects of the response to HIV.
- Ensure that PLHIV enjoy the right to equal access to any place or service intended for the public, including public transportation.

### 7.2. APPLICABLE HUMAN RIGHTS

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**Right to Hold Opinions and Freedom of Expression:** Everyone has the right to hold opinions, without interference, and the right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, either orally, in writing, in print, in the form of art, or through any other media. Freedom of expression can be restricted only in circumstances prescribed by the law for the protection of the rights of others, national security, public order, or public health or morals.<sup>134</sup> **Right to Political Participation:** International law guarantees everyone the equal right to participate in public affairs and the political process, by voting or serving in public office.<sup>135</sup> **Right to Participate in Social & Cultural Life:** Everyone has the right to take part in cultural life. States are required to respect the freedom indispensable for creative activity.<sup>136</sup> **Right to Peaceful Assembly & Association:** Everyone has the right to peaceful assembly and association, including the right to join trade unions. These rights can be restricted only in circumstances prescribed by the law, which are necessary in a democratic society, for the protection of the rights of others, national security, or public safety, order, health, or morals.<sup>137</sup>

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<sup>134</sup> ICCPR art. 19

<sup>135</sup> UDHR art. 21; ICCPR art. 25

<sup>136</sup> ICESCR art. 15

<sup>137</sup> UDHR art. 20; ICCPR arts. 21-22

### 7.3.SITUATION ACROSS THE CARIBBEAN

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**“...YOU CAN’T WALK DOWN THE ROAD. I HAVE LOTS OF FRIENDS – GAY, TRANS – EVERYBODY [IS] SCARED... TO WALK...” – INTERVIEW WITH MEL, GUYANA<sup>138</sup>**

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The Universal Declaration of Human Rights (UDHR)<sup>139</sup>, which marked an important milestone in the history of human rights, expresses the fundamental human rights, which are inherent to all people. The International Covenant on Civil and Political Rights (ICCPR)<sup>140</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>141</sup> both emerged from the UDHR. Article 2 of both the ICCPR and the ICESCR treaties provide that the rights proclaimed, are to be enjoyed “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”<sup>142</sup>. This provision has been interpreted as assuring non-discrimination based on real or perceived HIV status. The General Committee of the ICESCR has noted that “State parties should ensure that a person’s actual or perceived health status is not a barrier to realizing rights under the Covenant.”<sup>143</sup> Further, “...restrictions are discriminatory for example, when HIV status is used as the basis for differential treatment with regard to access to...employment...”<sup>144</sup> State parties should therefore “...adopt measures to address widespread stigmatization of persons on the basis of their health status...”<sup>145</sup>

### 7.4.GAPS AND OPPORTUNITIES

(a) *Abuse of rights and violence is prevalent in public spaces:* Stakeholders indicated that although more persons have accepting attitudes, than perhaps a decade ago, there is still systematic violation of the rights of persons living with HIV and marginalized groups. PLHIV, MSM and Transgender stakeholders report that they experience abuse of rights in public spaces, in their communities and even in their homes. In the community and in public spaces there is stigmatization, verbal abuse, emotional abuse, humiliation and in some instances, physical violence against MSM and transgender persons. In discussions with representatives of the LGBT community, they indicated that members of the community report being harassed and alienated by their family members, relatives, neighbors and friends - “...information travel fast” expressed one interviewee in Antigua. The fear of being rejected by family and friends has led LGBT people and PLHIV to take extreme care in hiding their

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<sup>138</sup> Interview as reported in Schoenholtz, Gómez-Lugo and Binetti: “*TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana*” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018), page 56

<sup>139</sup> UN General Assembly, “Universal Declaration of Human Rights” 10 December 1948

<sup>140</sup> The International Covenant on Civil and Political Rights (ICCPR), 1966

<sup>141</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

<sup>142</sup> Ibid, *ibid*.

<sup>143</sup> Sidibe, Michel “Judging the Epidemic: A Judicial Handbook on HIV, Human Rights and the Law”, UNAIDS (2013) at p. 27

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

HIV status, their sexuality and to remain silent at home, at work and in public spaces for fear of being “outed” and to avoid further acts of discrimination and abuse. Sexually active young persons (particularly girls) also face stigma and disapproval, judgmental attitudes, and hostility in the delivery of services. As a result, individuals in these groups have difficulty trusting that health care workers will not disclose their sexual practices and behaviors, leading them to delay or avoid seeking healthcare; travel great distances to locations where their identities are unknown; or utilize private-sector health care that can come at a high cost.

In 2017, the Caribbean Vulnerabilities Coalition launched a region-wide incident-reporting database. Participation in the database is open to all non-governmental and governmental organizations but to date, only non-governmental organizations have been using the database. At the time of writing this report, there were 28 non-governmental entities using the database. Data uploaded to the database from the participating organizations between 2016 and 2017 shows the following:

**Table 1: Types of Incidents**

Incident Type	2016	2017	2018 - April	Total	% of total
<b>Physical violence</b>	23	45	34	102	56%
<b>Breach of confidentiality</b>	2	12	11	25	14%
<b>Discrimination against relative</b>	3	9	7	19	10%
<b>Forced to leave job</b>	2	8	5	15	8%
<b>Not Hired</b>	1	6	2	9	5%
<b>Denied access to healthcare</b>	1	4	2	7	4%
<b>Not accepted into school</b>	0	1	2	3	2%
<b>Forced to leave school</b>	1	1	0	2	1%
<b>Forced to leave home/community</b>	0	0	0	0	0%
<b>Harassment/verbal abuse</b>	0	0	0	0	0%
<b>Denied housing</b>	1	0	0	1	1%
<b>Total</b>	<b>34</b>	<b>86</b>	<b>63</b>	<b>183</b>	<b>100%</b>

**Table 2: Where incidents take place**

Incident Type	INCIDENT LOCATION (3-1-2017 to 7-3-2018)											
	Church	Community	Gov. Agency	Health Facility Public Private	Home	Law Enforcement	Private Businesses	School	Work	Total	% Total	
Physical violence	1	94	0	5	2	84	27	12	4	18	247	49%
Breach of confidentiality	0	11	1	22	4	11	0	4	0	11	64	13%
Discrimination against relative	2	19	1	6	1	21	1	0	3	4	58	11%
Forced to leave job	0	1	4	0	0	3	0	9	0	22	39	8%
Not Hired	0	5	4	1	1	0	0	10	0	7	28	6%
Denied access to healthcare	0	3	1	27	3	2	1	0	1	4	42	8%
Not accepted into school	0	1	0	0	0	0	0	0	1	0	2	0%
Forced to leave school	0	2	0	0	0	0	0	0	5	0	7	1%
Forced to leave home/community	0	0	0	0	0	0	0	0	0	0	0	0%
Harassment/verbal abuse	0	0	0	0	0	0	0	0	0	0	0	0%
Denied housing	0	2	0	1	0	16	0	0	0	1	20	4%
<b>Total</b>	<b>3</b>	<b>138</b>	<b>11</b>	<b>62</b>	<b>11</b>	<b>137</b>	<b>29</b>	<b>35</b>	<b>14</b>	<b>67</b>	<b>507</b>	<b>100%</b>

In summary:

- 49% (n=247) of all incidents added to the database between 3-1-2017 and 7-3-2018 were incidents of physical violence. 34% of these occurred in the home while 38% took place in the community
- 13% of all incidents added to the database between 3-1-2017 and 7-3-2018 were reported as breaches of confidentiality. 34% of these reportedly took place at a public health facility.
- Overall, 27% (n=138) of all reported incidents took place in community. Approximately 64% of these (n=94) were acts of physical violence. An equal number (27%, n=137) of all reported incidents took place at home. Approximately 61% of these (n=84) were acts of physical violence.

(b) *There are no laws which specifically target HIV-related hate speech, abuse and harassment, although legislation exists across the region which makes it an offence for a wide variety of behaviours including using threatening, abusive, insulting, obscene, or profane language which may provoke a breach of the peace.*<sup>146</sup> Legislation in Trinidad and Tobago makes it an offence to insult, humiliate or intimidate another person in public where the action is motivated by race, gender, ethnicity or religion and the actions of the offender are done with the intention of inciting racial,

<sup>146</sup> See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)

gender or religious hatred. However, sexual orientation, health status or disabilities are not included. Section 7 of the [Equal Opportunities Act of Trinidad and Tobago](#) provides:

“7. (1) A person shall not otherwise than in private, do any act which—  
(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;  
(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and  
(c) which is done with the intention of inciting gender, racial or religious hatred.”

- (c) ***Caribbean Public Order Laws provide some measure of protection against verbal abuse and violence but there is no evidence that these laws are being used by the police to protect PLHIV and LGBT individuals from abuse and community violence:*** Civil Society Stakeholders from Barbados, Trinidad and Tobago, Jamaica and Antigua and Barbuda all indicated that the issue faced by vulnerable groups is perhaps less discrimination and more societal stigma, verbal abuse, unprovoked violence, harassments and threats. Caribbean public order legislation makes it an offence to use any threatening, abusive, insulting, obscene, or profane language, which may provoke a breach of the peace.<sup>147</sup> Despite these legislative protections across the Caribbean, interviewees reported that merely walking down the street is likely to provoke a range of abuse from verbal harassment, threats and up to physical violence, with some perpetrators inciting others to join in. Stakeholders were not able to say whether PLHIV and LGBT were aware of these laws or whether any had ever been utilized to deal with community-level abuse and harassment. There was no information on whether the police are aware of these provisions. Stakeholders however report not getting any sort of resolution when complaints are made to the police. Verbal assaults in public places like “kill a batty bwaay” and popular dancehall “anthems” with inflammatory lyrics would arguably fall squarely within these public-order legislative prohibitions against disturbing the peace. Take two examples:

‘Bumbo Red’, the 1990’s Jamaican Dancehall song by Dancehall Artiste Capleton, which is today still popular:

*“Bumbo Red! Lick a shot inna a battyman head! Bumbo Red. Lick a shot inna a lesbian head! Bumbo Red! All sodomite dem fi dead, Bumbo Red!”*<sup>148</sup>

Then, there is the ever-popular ‘Head Out’ by Jamaican Dancehall Artiste, Sizzla: “... *Head Out, the batty bwaay brain's gonna go spread out.*”

The first song incites the shooting of gay and lesbian people in their heads and the second invites some form of violence, which would cause the brain of the victim to “spread out.” It is hard to imagine more worthy candidates for prosecution under the public-order laws, for inviting a breach of the peace.

- (d) ***Although not enforced, there are provisions in Public Health Acts and Quarantine Acts that may be used to justify blatantly discriminatory conduct:*** In several Caribbean States, legislation exists which, if acted upon, could be used to justify conduct that would otherwise be discriminatory and

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<sup>147</sup> See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)

<sup>148</sup> See [http://www.soulrebels.org/dancehall/e\\_songs\\_more.htm](http://www.soulrebels.org/dancehall/e_songs_more.htm) [Accessed on August 29, 2018]

offensive to human rights, including isolation, segregation and quarantine. For example, in Grenada, it is unlawful for anyone suffering from an infectious disease to be employed to work in a bake house. HIV & AIDS is not specifically mentioned in the definition of infectious diseases, but the ordinary meaning of the word “infectious” could be applied to include HIV and AIDS. In addition, under Section 59 of the Public Health Act, the Sanitary Authority has the power to make regulations for the prevention of diseases, which include the isolation, and detention of persons suffering from an infectious disease.

The Grenada Quarantine Act and Regulations 87-100 of the Public Health Regulations also make provisions for isolation and quarantine of persons suspected of suffering from an infectious disease. In Jamaica HIV and AIDS are classified as notifiable diseases under the Public Health (Notifiable Diseases) Order (2003)<sup>149</sup>, which is made under Section 2(1) of the Public Health Act of 1985. Classifying HIV & AIDS as notifiable diseases triggers an obligation on a medical practitioner to make a report to the Surveillance Unit of the Ministry of Health. The danger arises from the fact that this classification has the effect of including HIV in the category of illnesses subject to the **Quarantine Act** and for which segregation is permissible under the Public Health Act.

In relation to education, Rule **31(1)** of the Jamaican Education Regulations provide that a student shall be excluded from school during any period in which he is known to be suffering from a communicable disease or infestation. The Regulations also provide that arrangements may be made to enable students who have been suspended or excluded from school for health reasons to sit important examinations in connection with the completion of their education. **There is no evidence of anyone acting upon these Regulations.** The danger is that their existence may one day be called in aid and be used to justify otherwise discriminatory conduct. There is indeed international case law, in particular, jurisprudence of the European Court of Human Rights<sup>150</sup> and the UN Human Rights Committee (Toonen v Australia)<sup>151</sup> which suggests that under certain circumstances the mere existence of legislation, even if not enforced, may justify a natural or legal person to be considered a victim of a violation of his or her rights under an international human rights instrument.

## **7.5.RECOMMENDATIONS**

Given the frequency of threats, harassment and lack of safety in public spaces for PLHIV and LGBT persons, Caribbean public order laws provide an immediate framework to prevent violence and abuse. These laws also provide a framework for advocacy groups to hold the police and the State accountable when abusive and threatening behaviour occur in a public place, without any redress. These laws also provide objective grounds for showing bias when police fail to act, since the threshold for committing an offence under these laws is quite low: any action that tend to provoke a breach of the peace.<sup>152</sup> Unlike

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<sup>149</sup> The Public Health Act (Class 1 Notifiable Diseases Order) 2003, Jamaica: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_132636.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_132636.pdf) [Accessed on August 26, 2018]

<sup>150</sup> Norris v Ireland (1991) 13 EHRR 186 [33]

<sup>151</sup> Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

<sup>152</sup> Breach of the peace is a common law concept which is used to prevent unlawful violence against people or property. It is now widely accepted that the correct definition for breach of the peace is that which was given by the Criminal Division of the English Court of Appeal in *R.v. Howell (1981)*, i.e., that the behaviour of the person involved caused the police officer (or private citizen) to believe that (1) a breach of the peace had or would occur. That is to say, the “victim” or Officer reasonably apprehend that there would be violence; and (2) that the behaviour related to harm which was actually done or likely to be done to a person or, in his/her presence, their property. No actual violence needs to occur. Citation: R v. Howell [1982] QB 416; [1981] 3 ALL ER 383.



cases of actual violence, the proof required here is that there was *reasonable apprehension* of violence in the immediate future, because of the actions of the offender. No actual violence need be committed.

**(a) Priority Recommendations**

- a.1. **Obtaining a fiat:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>153</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granted the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.
- a.2. **Development of a guidebook:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

**(b) Other recommendations**

- b.1. **Human rights training:** Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of LGBT persons by police officers and provide on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.
- b.2. **Regional training:** Provide financial support to organize regional training and capacity building sessions for national-level human rights defenders, PLHIV, LGBT persons, law enforcement officers and prosecuting authorities on the critical elements of the Caribbean public order laws.
- b.3. **Anti-discrimination legislation:** Provide support to civil society organizations at the national level to advocate for the enactment of anti-discrimination legislation and legislation, which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.
- b.4. **Legal assistance:** Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information: The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

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<sup>153</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

## FACTOR 8: FAMILY, SEXUAL AND REPRODUCTIVE LIFE

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### 8.1. INTERNATIONAL GUIDELINES

According to International Guidelines, laws and practices that restrict PLHIV's rights to marry and form a family, or have the effect of denying family unity, constitute examples of health-related discrimination and violate internationally recognized human rights.<sup>154</sup> The Guidelines stress, however, that PLHIV's rights to marry, form a family, and engage in sexual relations do not release them from a responsibility to practice abstinence or safer sex in order to protect their partners from exposure to HIV infection. Regarding sexual and reproductive life, the Guidelines urge States to:

- a) Ensure that PLHIV have access to appropriate health information and services.
- b) Strengthen and ensure access to confidential reproductive and sexual health care for women, men, children, and adolescents, as means of reducing their vulnerability to HIV.
- c) Enhance policy and program coordination between HIV & AIDS and sexual and reproductive health by integrating HIV & AIDS intervention into sexual and reproductive health care services.
- d) Ensure that women have access to accurate information about the risks of vertical transmission of HIV.
- e) Ensure that women have access to voluntary and confidential prenatal HIV testing, counseling, and prevention education (including information on safe infant feeding and the future use of contraception).
- f) Ensure access to effective pre- and post-natal treatment for mothers and their babies (including anti-retroviral therapy and, where appropriate, breast-milk substitutes).

### 8.2. APPLICABLE HUMAN RIGHTS

**Rights to Marry & Form a Family:** International law guarantees everyone the right to respect for family life and the right to legal protection in the event of arbitrary or unlawful interference with one's family. All men and women of marriageable age have the right to marry and form a family. Spouses are entitled to equal rights and responsibilities as to marriage, during marriage, and at its dissolution<sup>261</sup>. Because equality of spouses extends to all matters arising from their relationship, prohibition of discrimination should include all the grounds and procedures for separation, divorce, child custody, visiting rights, and the loss or recovery of parental authority.<sup>155</sup>

**Right to Safe Pregnancy & Childbirth:** Women's right to safe pregnancy and childbirth is supported by several internationally recognized human rights, including the right to life, health, equality, and dignity.<sup>156</sup> Expectant and new mothers have the right to special protection, including appropriate pre- and post-natal health care.<sup>157</sup> States should ensure that all women have access to appropriate, and, when necessary, free services related to pregnancy, confinement, and the post-natal period.<sup>158</sup>

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<sup>154</sup> INTERNATIONAL GUIDELINES para. 118.

<sup>155</sup> UDHR arts. 12, 16; ICCPR arts. 17, 23

<sup>156</sup> UN Human Rights Council (2009)

<sup>157</sup> UDHR art. 25; ICESCR art. 10; CRC art. 24

<sup>158</sup> CEDAW art. 12

### 8.3.SITUATION ACROSS THE CARIBBEAN

- (a) **Limited access to sexual and reproductive health services for disabled youth:** Stakeholders in Antigua and Jamaica report that “teen clinics” operated at various locations under the Ministry of Health, as part of an NGO, or through outreach,<sup>159</sup> provide a safe and prioritized space for young persons. However, disabled youth who are sexually active, particularly those who are speech or hearing impaired, and those in rural areas,<sup>160</sup> have challenges accessing these services and facilities because there are no interpreters at these facilities (for example persons trained in sign language) to communicate with them.<sup>161</sup>
- (b) **Age of consent laws generally restrict access to services by persons below age 16:** In most Caribbean countries, the legal age of consent to sex is sixteen (16)<sup>162</sup>, but the legal age of majority is eighteen (18). Below the age of majority, the law requires parental consent for medical treatment. This effectively restricts access to contraception, advice, counseling and other aspects of care and prevention for 16 and 17-year-old minors, although they are legally allowed to have sex. This makes it difficult to provide prevention interventions and to treat infected and at-risk youth. Access to contraceptives, which is a form of medical treatment, would fall within the restrictions. Access to counselling services and commodities do not appear to be governed by any legislation. Barrier methods of contraception, such as condoms, would not qualify as medical treatment and therefore there are no age-restrictions. Although there are no specific provisions regarding access to HIV testing, the general rule on medical treatment would apply. For example:
- In Barbados, the Minors Act recognizes children up to 18 for several purposes, but the medical age of consent is not mentioned as one of the categories. Under the Drug Abuse (Protection and Control) Act 1990, persons 15 years or older can receive controlled drugs without parental consent. It is not clear whether contraceptives and other sexual and reproductive treatment and services fall under the category of ‘controlled drugs’. If they do, a gap still exists in relation to sexually active persons below 15 years of age. Age is not a protected ground against discrimination under Section 13 of the Constitution of Barbados.<sup>163</sup>
  - In Jamaica, Section 8 of the Law Reform (Age of Majority Act) 1979 empowers persons aged 16 years of age (and older) to consent on their own behalf, to surgical, medical and dental treatment. This leaves a gap for sexually active persons below the age of 16.
  - In Saint Lucia, the Affiliation Ordinance defines a child as one below sixteen (16) years old. However, the Civil Code permits a person under the age of sixteen (16) to marry, with parental consent. Like childbirth, the act of marriage would, under common law, automatically give those

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<sup>159</sup> Interview with Antigua Planned Parenthood. June 19, 2018

<sup>160</sup> Interview with UNICEF, Jamaica. August 30, 2018

<sup>161</sup> Interview with UNICEF, Jamaica. August 30, 2018

<sup>162</sup> See Sealy-Burke, Jacqueline “[Protecting Children Affected by AIDS in the Caribbean Recommendations for Legal Reform in Saint Lucia](#)”, World Bank (2006): [Accessed on May 9, 2018]; Allen, Caroline “[Situation Analysis of Adolescent Sexual and Reproductive Health and HIV in the Caribbean](#)” PAHO (2013) [Accessed on May 9, 2018]; and Insanally, Sarah, “[Removing barriers to accessing HIV and sexual and reproductive health services for key populations in the Caribbean](#)”, PANCAP (2017) at p. 32 [Accessed on May 9, 2018]

<sup>163</sup> Henry, Ruth “[A Legal Gap Analysis of Adolescent Sexual and Reproductive Health and Rights in Barbados](#)” (2011)

persons capacity (competence) to seek sexual and reproductive health services. However, there remains a gap for persons who are below the age of majority.<sup>164</sup>

- In Saint Vincent and the Grenadines, Section 4 of the Age of Majority Act 1987 enables young people to consent to medical treatment at the age of sixteen (16).<sup>165</sup>
- In Guyana, [Regulations under the Medical Practitioners Act](#) provides that urgent treatment should not be withheld from any patient, if there is an immediate threat to the patient’s life or health. Arguably, the health of a person below 18 years of age, who requests sexual and reproductive health services, without parental involvement, is put at risk if the individual is turned away based on age, without any consideration for the person’s lifestyle and risk exposure.

(c) **Safe pregnancy and childbirth:** A woman’s right to safe pregnancy and childbirth may be affected by the fact that abortion is illegal in almost every State. The Offences Against the Person Act, in most jurisdictions, governs the law concerning abortion<sup>166</sup>. Sections 72 of the Jamaican Act sets out the offense, and this language is replicated, *mutatis mutandis*, in the laws of the Caribbean territories:

*“Every woman, being with child, who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with like intent... shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.”*

At first blush, the above provision appears to contemplate life imprisonment for abortion, but this is not necessarily the case. In the Caribbean, the term “*imprisonment for life*” is normally interpreted to mean the maximum punishment that *may* be inflicted for the offence; which is not the same thing as saying that all acts of procuring an abortion *will* lead to life imprisonment. It must also be noted that the Act also ensures that doctors or other persons participating in procuring the miscarriage will be subject to serious criminal charges.<sup>167</sup> Of the countries reviewed, only Guyana has laws permitting abortion without any restriction on reason:

1. Prohibited altogether without any legal exception	Dominican Republic, Suriname
2. To save woman’s life	Antigua and Barbuda, Dominica
3. To save woman’s life / preserve her physical health***	Bahamas, Grenada
4. To save woman’s life / preserve her physical or mental health***	Jamaica, Saint Kitts and Nevis, Trinidad and Tobago, Saint Lucia
5. To save woman’s life / preserve her physical or mental health or for socio-economic reasons	Barbados, Saint Vincent and the Grenadines, Belize
6. Without restriction as to reason	Guyana

<sup>164</sup> Sealey-Burke, Jacqueline: [Protecting Children Affected by AIDS in the Caribbean Recommendations for Legal Reform in Saint Lucia](#)

<sup>165</sup> Ibid.

<sup>166</sup> In Barbados, the matter is governed by the Medical Termination of Pregnancy Act

<sup>167</sup> See Offences Against the Person Act (Jamaica), § 72 and § 73

- In Saint Lucia, rape or incest provides additional grounds for termination of pregnancy
- In Barbados, rape, incest, fetal impairment, or parental authorization are additional grounds for termination of pregnancy
- In Belize, fetal impairment provides additional grounds for termination of pregnancy.

**\*\*\* Special Note:**

Although Section 72 of the Act makes no exceptions, it is widely believed that the common law process of judicial interpretation has amended the Act. The Offences Against the Person Acts of the region are transplants of the English Offences Against the Person Act. In the United Kingdom in 1939, MacNaghten J. in *R. v. Bourne*<sup>168</sup> held that the Act prohibited a person from acting unlawfully and concluded that there were lawful ways of procuring a miscarriage. For MacNaghten J., lawful ways included the procurement of an abortion to preserve the life of the mother. Cases following *Bourne* have extended the category of lawful termination of pregnancy to those required to preserve the mother's health, including her mental health.<sup>169</sup> These cases are of persuasive authority and provide guidance to judges in the Caribbean. The primary difficulty with the current situation (and the need to rely on persuasive judicial authority to decide whether termination of a pregnancy is lawful), is that there is no guarantee that a judge today or in some future case will rely on the reasoning of MacNaghten J. in *R v. Bourne*.

- (d) **Prevention of mother to Child Transmission:** In all States, the health system is structured to prevent vertical transmission of HIV from mother to child. Clinically, all pregnant women have access to pre-natal HIV testing and related counselling services. Those women that are HIV positive have access to Anti-Retroviral Therapy and counselling; infants born to HIV positive mothers receive prophylaxis and there is monitoring of the infant's conditions. According to UNAIDS<sup>170</sup>, as of 2016 the rate of mother-to-child transmission was 9%, a reduction of 52% from 2010.

Further, as of 2016:

- 97% of women attend at least one antenatal check-up,
- 94% of deliveries took place in hospitals
- 78% of pregnant women were tested for HIV, and
- 74% of pregnant women living with HIV had antiretroviral therapy to protect their health and significantly reduce the possibility of transmitting the virus to their children during pregnancy, delivery or breastfeeding.<sup>171</sup>

In December 2017, UNAIDS reported that the World Health Organization (WHO) had certified the elimination of mother-to-child transmission of HIV and syphilis in six Caribbean States, two of which are part of this review: Anguilla, Antigua and Barbuda, Bermuda, Cayman Islands, Montserrat and Saint Kitts and Nevis.

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<sup>168</sup> (1939) 1 KB 687

<sup>169</sup> See, e.g., *R v. Newton and Stungo* (1958) Criminal Law Review p. 469.

<sup>170</sup> [http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2017/december/20171201\\_caribbean](http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2017/december/20171201_caribbean)

[Accessed on August 11, 2018]

<sup>171</sup> Ibid.

## 8.4.RECOMMENDATIONS

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### (a) Priority Recommendations:

a.1. **Amend age of consent legislation:** Because consent is required for persons below the age of 16 years, medical professionals can be sued in trespass or some other civil wrong, if they proceed to provide medical treatment to such persons without parental consent. Furthermore, this places the need for parental involvement above the health and well-being of the sexually active adolescent at risk. It is therefore recommended that PANCAP provide technical-legal assistance to national authorities to amend age of consent legislation, so that the age at which a person is able to access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines to be included in the amended legislation and which gives medical practitioners a discretion to assess a person's capacity to consent.

a.2. **Amend criminal laws to provide immunity against prosecution to medical practitioners etc.:** Generally, Caribbean Sexual Offences Legislation makes it an offence for anyone to have sex with a person who is under the age of 16. This is the primary offence. However, there is a risk that providing information and advice about safe sexual practices or providing barrier devices such as condoms to adolescents could be construed as causing, encouraging or assisting a child sexual offence. This creates a real risk that medical practitioners, health care providers, parents, guidance counsellors, educators and outreach workers could be arrested and charged for secondary offences of aiding and abetting a child sexual offence. This risk of prosecution impacts on health providers' ability to provide services to young persons, at risk of contracting HIV, and other sexually transmitted infection. Aiding and abetting offences are not treated as distinct offences, only as a derivative of the primary offence. The person accused of aiding and abetting is himself guilty of the principal offence and as such, become liable to the same penalties. Bearing this in mind, it surely is against public policy to equate the actions of a medical practitioner, who acts, not for his/her own sexual gratification, but to prevent harm to the physical, emotional and mental health of an adolescent, with the actions of a child-sex offender. It is therefore recommended that PANCAP provide technical-legal assistance to national authorities to amend public order laws and sexual offences legislation, to provide immunity to medical practitioners, guidance counsellors, outreach workers and social workers (persons who provide information, advice and other services to sex workers at places where they may engage in activities contrary to public order laws and other laws), against criminal prosecution for aiding, abetting or facilitating offences, once it is shown that the person/s in question is/are acting for the purpose of—

- (i) protecting the child from sexually transmitted infection;
- (ii) protecting the physical safety of the child;
- (iii) preventing the child from becoming pregnant, or
- (iv) promoting the child's emotional well-being by the giving of advice, and
- (v) in none of the above situations, the person can be shown to have been either— (a) acting for his/her own sexual gratification, or (b) for the purpose of causing or encouraging a child-sex offence, or (c) the child's participation in a child sex offence.

### (b) Other Recommendations

b.1. **Making SRH information widely available:** Provide financial and technical assistance to national authorities to make sexual and reproductive information and prevention services

available and accessible to the disabled, particularly in braille, sign language or other forms that are suitable for persons who are visually impaired or speech and hearing impaired.

- b.2. **Amend national regulations:** Provide technical assistance to national authorities to amend national Regulations governing medical practitioners and related professions such as nursing and social work, to include provisions like the Joint Code of Ethics, contained in the Regulations, made under the Guyana's *Medical Practitioners Act*.

## **FACTOR 9: EDUCATION AND TRAINING**

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### **9.1. INTERNATIONAL GUIDELINES**

According to the UN Committee on Economic, Social, and Cultural Rights, education in all its forms and at all levels should be: 1) available; 2) accessible to everyone; 3) acceptable; and 4) adaptable. Apart from physical and economic *accessibility*, the accessibility requirement includes *non-discrimination*<sup>172</sup>. To ensure equal access to education for PLHIV, the Guidelines recommend that States should:

- 1) Guarantee non-discrimination in primary, secondary and higher education, and in vocational trainings.
- 2) Prohibit educational institutions from requiring HIV-testing for enrolment and access to scholarships and student loans.
- 3) Prohibit differential treatment in educational institutions, such as segregation or isolation.

States should further ensure that educational institutions maintain strict protection of confidentiality of their students' personal data, including their HIV status. Finally, States should adopt an educational strategy, which addresses HIV concerns in the sphere of education.

### **9.2. APPLICABLE HUMAN RIGHTS**

**Right to Education:** Everyone has the right to education. To realize fully, the right to education, States should ensure that: 1) primary education is compulsory and available, free to all; 2) secondary education (including technical and vocational training) is generally available and accessible to all; and 3) higher education is equally accessible to all.<sup>173</sup>

### **9.3. SITUATION ACROSS THE CARIBBEAN**

- (a) **Discrimination:** Very few States have general anti-discrimination laws with anti-discrimination provisions guaranteeing education. The Anti-discrimination laws that do exist mostly relate to discrimination in employment. In the absence of such legislative protections, there is the risk in all countries (except those with specific constitutional or other provisions protecting the right to education) for HIV-related discrimination in educational institutions, for breaches of privacy and confidentiality in all educational institutions or more extreme dangers, such as segregation of persons

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<sup>172</sup> CESCR, GENERAL COMMENT NO. 13: THE RIGHT TO EDUCATION para. 6 (*adopted* December 3, 1999, U.N. Doc. E/C.12/1999/10).

<sup>173</sup> UDHR art. 26; ICESCR art. 13; CRC art. 28

living with HIV. There is no evidence that this is even whispered of in any Caribbean State. It is mentioned here only to highlight the risk presented by gaps in the protective framework.

- (b) **Absence of a framework to ensure continued Education for Pregnant Girls and teen mothers in public educational institutions:** Except for Guyana and Jamaica, there appears to be no explicit legislative requirement for teenage mothers to be re-admitted to the formal educational system after childbirth or for them to be allowed without discrimination to continue their education while they are pregnant.
- (c) **Not all States have a policy framework for management of HIV in educational institutions:** However, even in those countries that have a policy, the policy is not legally enforceable. In a legal dispute, the legal value of the policy may lie only in terms of showing that the acts of the offending party fell below acceptable standards of behaviour.
- (d) **The right to education is not guaranteed in all States:** In Jamaica, The Charter of Rights provides that every child who is a citizen of Jamaica has a right to publicly funded tuition in a public educational institution at the pre-primary and primary levels.<sup>174</sup> This is a justiciable right; the redress provision of the Charter<sup>175</sup> places this among one of the rights for which a remedy, for acting or failure to act<sup>176</sup>, may be sought by way of Application to the Supreme Court. Saint Kitts/Nevis and Saint Lucia have similar provisions in their respective Education Acts. Section 14 establishes a progressive right to education by providing that all persons are entitled to receive an education programme, appropriate to their needs, subject however to available resources. Section 28 prohibits discrimination in admission to public educational institutions and to assisted schools. The prohibited grounds are “*race, place of origin, political opinion, colour, creed, sex, or mental or physical handicap.*” **HIV & AIDS or health status are not protected grounds.** In Saint Vincent and the Grenadines, the Education Act (2006) as amended in 2015, establishes universal access to primary and secondary education for children between 5 and 16 years of age, the provision of early childhood education and care to most children between 3 and 5 years of age.
- (e) **The classification of HIV as a notifiable disease and its inclusion in Notifiable Diseases Regulations without distinction from a contagious disease could result in HIV positive individuals being excluded from schools:** This review found no reported instances of segregation of, or establishment of special schools for persons who are living with or affected by HIV. It must be noted however that in several Caribbean States, legislation exist which, if acted upon, could be used to justify conduct, which would otherwise be discriminatory and offensive to human rights, including segregation and quarantine. For example, in Grenada, under Section 59 of the Public Health Act, the Sanitary Authority has the power to make Regulations for the prevention of diseases, which include the isolation, and detention of persons suffering from an infectious disease. Regulations 87-100 of the Public Health Regulations also make provisions for isolation and quarantine of persons *suspected* of suffering from an infectious disease. In Jamaica HIV and AIDS are classified as notifiable diseases under the Public Health (Notifiable Diseases) Order (2003)<sup>177</sup>, which is made under Section

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<sup>174</sup> Section 13(3)(k)

<sup>175</sup> Section 19(1)

<sup>176</sup> Section 20(1)

<sup>177</sup> The Public Health Act (Class 1 Notifiable Diseases Order) 2003, Jamaica: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_132636.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_132636.pdf) [Accessed on August 26, 2018]



2(1) of the Public Health Act of 1985. Classifying HIV & AIDS as notifiable diseases triggers an obligation on a medical practitioner to make a report to the Surveillance Unit of the Ministry of Health. The danger arises from the fact that this classification has the effect of including HIV in the category of illnesses subject to the **Quarantine Act** and for which segregation is permissible under the Public Health Act. In relation to education, Rule **31(1)** of the Jamaican Education Regulations provide that a student shall be excluded from school during any period in which he is known to be suffering from a communicable disease or infestation. The Regulations also provide that arrangements may be made to enable students who have been suspended or excluded from school for health reasons to sit important examinations in connection with the completion of their education. **There is no evidence of anyone acting upon these Regulations.** The danger is that their existence may one day be called in aid and be used to justify otherwise discriminatory conduct. There is indeed international case law, in particular, jurisprudence of the European Court of Human Rights and the UN Human Rights Committee (*Toonen v Australia*), which suggests that under certain circumstances the mere existence of legislation, even if not enforced, may justify a natural or legal person to be considered a victim of a violation of his or her rights under an international human rights instrument.

- (f) **Provisions in some education regulations could result in compulsory HIV testing and improper handling of protected personal and health information:** Under Section 24 of the **Jamaican Education Act**, the Minister is empowered to compel the parents/guardian of children in a compulsory education area, to submit the child to a medical officer for examination. If the parent/guardian fails to submit the child for medical examination upon notification, they are liable to criminal prosecution. There is no provision for confidentiality of medical information in these circumstances and the compulsion under the Act, removes any notion of voluntary submission to testing. No duty of confidentiality is imposed on the minister or any person to whom the information may be passed. There is no obligation to limit dissemination of medical information to only those to whom it is necessary. In **Grenada**, the Education Act, 2002 section 22(3) places on a parent of a child, who is under the age of eighteen, the duty to make known to the principal of the school, information of any medical or other condition that the child has. Section 23 imposes on every principal the obligation to establish and maintain a student record for each student. This section also gives to the student, the parent and sponsor of the student, the right to examine the record. There is no provision for confidentiality of medical information in these circumstances. No duty of confidentiality is imposed on any person to whom the information may be passed. There is no obligation to limit dissemination of medical information to only those to whom it is necessary. In **Dominica**, Sections 32 and 33 of the Education Act – Act No. 11 of 1997 provides that a student suffering from or exposed to a “contagious disease” shall not be admitted to or permitted to remain in any school.
- (g) **Appropriate re-entry policy for pregnant schoolgirls:** Except for Guyana and Jamaica, there is an absence of a clear, appropriate re-entry policy and/or measures for pregnant schoolgirls that allows them to remain in formal education, sit exams and then return to school after giving birth.
- (h) **Impact of HIV on teachers and quality supply of education:** The most crucial effect on the supply of education is the decreased availability of experienced teachers. Two key questions are: how vulnerable teachers are to HIV infection; and what steps need to be taken to support prevention at all stages of their career. There does not appear to be any plan of action that addresses or forecast effects of HIV and AIDS on education supply and the quality of education supplied. From a human rights

perspective, HIV and AIDS may negatively affect the quality of education, in terms of learning outcomes and classroom processes, if there is a loss of trained and experienced teachers, the reduction in teacher productivity through illness and psychological stress and the loss of management capacity in the sector. In turn, this could affect the overall human right to education. It does not appear that any country in the Caribbean region has undertaken any comprehensive impact assessment of this nature.

#### **9.4.RECOMMENDATIONS**

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**(a) Priority Recommendation:**

a.1. **Re-entry policy/measures for pregnant schoolgirls:** Provide technical assistance to national authorities to elaborate and institute clear, appropriate re-entry policies and/or measures for pregnant schoolgirls. Such policies/measures will allow them to remain in formal education, sit exams and then return to school after giving birth. The policies/measures should include approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

**(b) Other Recommendations**

**b.1. Anti- discrimination legislation:**

- a. Provide assistance to civil society organizations to advocate for and promote the enactment of anti-discrimination legislation and legislation which defines protected personal and health information
- b. Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

b.2. **Right to education:** Provide technical assistance to national authorities to include explicitly the right to education for all without discrimination in their normative frameworks such as through the revision of national Education Acts or adopt legislation, which reflects the non-discrimination provisions in Part V of the Trinidad and Tobago Equal Opportunities Act.

b.3. **Assess the impact of HIV and AIDS on Caribbean teacher supply:** Undertake a Caribbean-wide assessment of impact on the supply of education in the Caribbean region, with a country-by-country analysis, country-specific HIV prevalence projections and estimates of the number of HIV-positive teachers and AIDS deaths and likely impact on the delivery and quality of education.

## FACTOR 10: EMPLOYMENT, WORK, AND ECONOMIC LIFE

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### 10.1. INTERNATIONAL GUIDELINES

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According to International Guidelines and ILO Recommendation, States should:

- a) Recognize HIV & AIDS as a workplace issue;
- b) Develop a national policy on HIV and the workplace;
- c) Effectively prohibit discrimination and stigmatization of workers on the grounds of actual or perceived HIV status by employers, clients, and unions.
- d) Ensure that workers are not required to undergo HIV screening, undertake an HIV test, or disclose their HIV status for any purpose (e.g. to access workers' compensation, benefits, training, or promotion).

### 10.2. APPLICABLE HUMAN RIGHTS

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**Right to Work:** States recognize the right to work, including the right of everyone to the opportunity to gain his or her living by work, which he or she freely chooses or accepts. To achieve the full realization of the right to work, States are obliged to implement technical and vocational guidance and training programs, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment (*UDHR art. 23; ICESCR art. 6*).

**Right to Just and Favorable Conditions of Work:** Everyone has the right to the enjoyment of just and favorable conditions of work, including: 1) fair wages and equal remuneration for work of equal pay, without distinction of any kind; 2) safe and healthy working conditions; 3) equal opportunity for everyone to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence; and 4) rest, leisure, and reasonable limitation of working hours (*UDHR art. 23; ICESCR art. 7*).

### 10.3. SITUATION ACROSS THE CARIBBEAN

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- (a) **Caribbean States have taken both a “soft law” and a “hard law” methodology to dealing with HIV & AIDS as a workplace issue:** The “soft law” methodology is typified by National Workplace Policies on HIV/AIDS, and National Strategic Plans, which propose interventions to deal with HIV & AIDS as a workplace issue. For example, in the Republic of Trinidad and Tobago, the National Workplace Policy on HIV/AIDS (2017) has, among its objectives<sup>178</sup>,
- “2.3.2 To provide equal access to employment for people living with HIV.”
  - “2.3.3 To provide equal opportunities for career advancement for people living with HIV.”
  - “2.3.4 To reduce stigma and discrimination in the workplace against persons living with or affected by HIV.”

In **Saint Vincent and the Grenadines**, the Statement of Policy in the National Tripartite Workplace Policy on HIV and AIDS (2011), is as follows: “*All employers must adopt comprehensive HIV and AIDS workplace programmes which should clearly articulate the policy in relation to HIV and AIDS*”

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<sup>178</sup> The National Workplace Policy on HIV/AIDS (2017), the Republic of Trinidad and Tobago, page 16

*at the work place, namely... The provision of a working environment that prevents and prohibits stigma and discrimination against persons known or perceived to be living with HIV, and or affected by HIV and AIDS...*<sup>179</sup>

**Jamaica** adopted a National HIV/AIDS Workplace Policy in 2012, which, like the policy of its Caribbean neighbours<sup>180</sup>, served to encourage non-discrimination regarding PLHIV in the workplace, as well as increasing prevention and training programs in accordance with ILO principles.<sup>181</sup> In addition, all Caribbean States have ratified the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. C-111).<sup>182</sup> Article 2 of Convention C-111 provides for the right to equality of opportunity and treatment at Work. Discrimination is defined as "...any distinction, exclusion or preference... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."<sup>183</sup>

Caribbean States have also signed the Termination of Employment Convention, 1982 (No. 158). This Convention provides that a dismissal is only validated by a reason "connected with the capacity or conduct of the worker or based on operational requirements." Further, temporary absences from work due to illness, whether occupationally related or not, does not constitute a valid reason for dismissal.<sup>184</sup> However only Antigua and Barbuda and Saint Lucia have ratified this Convention.<sup>185</sup> Although the provisions of these Conventions do not automatically have the force of law in Caribbean States, it is fair to assume that these Conventions and International Treaties have helped Caribbean States set desirable goals of public policy, as articulated in the various National HIV/AIDS Strategic Plans and National HIV/AIDS Workplace Policies.

- (b) **PLHIV and LGBT persons have difficulties finding and maintaining employment due to discrimination and prejudice:** Despite the adoption of workplace policies and programmes, civil society stakeholders indicated that PLHIV and LGBT individuals still encounter prejudice and abusive situations in seeking jobs and within the workplace. These negative encounters, they believe, are directly attributable to their health status, sexual orientation or gender identity. For example, the Jamaican Network of Seropositives is now actively pursuing at least one case reported in 2018 where an individual was forced into resigning from employment, because that individual's HIV status had

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<sup>179</sup> The National Tripartite Workplace Policy on HIV and AIDS, Revised Draft (2011), Saint Vincent and the Grenadines, page 11

<sup>180</sup> See among others, Antigua and Barbuda, "Policy for HIV and AIDS at the Workplace", Barbados: "Code of Practice for HIV in the Public Sector" and "Social Partners of Barbados Code of Practice o HIV/AIDS and other life-threatening illnesses in the workplace";

<sup>181</sup> The two main pillars of the ILO's framework for addressing HIV and AIDS are the *Recommendation concerning HIV and AIDS and the World of Work*: R200- HIV and AIDS Recommendation, 2010 (No. 200) and the *Code of Practice on HIV and AIDS and the World of Work*: ILO Code of Practice on HIV/AIDS and the world of work; ILO, Geneva 2001. *Both set out guidelines for addressing HIV and AIDS in workplaces in a context of evidence-based, human rights considerations as well as a decent work framework: Decent work sums up the aspirations of people in their working lives. The ILO has developed an agenda for the community of work, to be achieved through implementing the ILO's four strategic objectives, with gender equality as a cross-cutting objective of promoting jobs, guaranteeing rights at work, extending social protections, promoting social dialogues:* [www.ilo.org/global/about-the-ilo/decent-work-agenda](http://www.ilo.org/global/about-the-ilo/decent-work-agenda)

<sup>182</sup> International Labor Organization, [Ratifications of C111 - Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) [Accessed on May 11, 2018]

<sup>183</sup> Article 2(1)(a)

<sup>184</sup> International Labor Organization, [Termination of Employment Convention, 1982 \(No. 158\)](#), Article 6 [Accessed on May 11, 2018]

<sup>185</sup> Ibid.

become known.<sup>186</sup> A 2018 report by the Georgetown Law Human Rights Institute, Georgetown University Law Center, found that in Guyana LGBT individuals have “...difficulties in finding formal employment as a result of discriminatory policies and attitudes.”<sup>187</sup>

(c) **Most Caribbean States have labour law provisions that can provide redress, if employment is terminated based on HIV status:** Such redress may be either by way of a claim for wrongful termination and/or for unjustified dismissal. For example:

- In **Belize**, the [Labour \(Amendment\) Act 2005 \(No. 3 of 2011\)](#) provides, HIV status *does not* constitute a good and sufficient ground for terminating employment (see Section 42(1)(i)).
- In **Jamaica**, the Labour Relations and Industrial Disputes Act (LRIDA), provides a remedy for wrongful termination. “Wrongful” includes termination based on discrimination<sup>188</sup>, termination based on retaliation, and termination without good cause when there is a written employment contract. There is also the possibility of an action for “unjustified dismissal”; a dismissal may be unjustified in law, either because of the reason behind it and/or the way in which it was carried out. Given current medical knowledge and evidence, as well as the existence of a National Policy on HIV/AIDS and the National HIV/AIDS Workplace Policy, a good argument can be made that dismissal based on a person’s HIV status would amount to unjustified dismissal. However, there is yet no case before the Industrial Disputes Tribunal to test whether dismissal based on HIV status meets the definition of unjustified dismissal. Furthermore, cases that go before the Industrial Disputes Tribunal must allege either (1) breach of a legal right or (2) that a dispute exists between workers and management in relation to the terms and conditions of employment. In the latter case there would be little difficulty - a contract would exist between the worker and the company and the terms and conditions in dispute may be relatively clear. In the former case however, the complainant would need to establish that the act complained of is a breach of some legal right. In the absence of a constitutional provision on HIV-related discrimination, it remains to be seen if the National HIV Workplace Policy or the National HIV Policy is sufficient to prove the existence of such a *legal* right.
- In **Guyana**, although not specific to HIV & AIDS, Section 8 of [Termination of Employment and Severance Pay](#) Act provides that dismissal may be unfair if termination occurs due to an employee’s absence from work because of sickness or injury certified by a registered medical practitioner. In this respect, the provision does appear to be wide enough to accommodate HIV-related illnesses, if a medical practitioner certifies the sickness. The Constitution and the Prevention of Discrimination Act (1997) protect individuals from discrimination in employment, training, recruitment and membership of professional bodies and guarantees equal remuneration to men and women who perform work of equal value. The law however does not include sexual orientation, gender identity or gender, as protected classes against discrimination, thus leaving transgender persons and openly homosexual persons without the benefit of a legal remedy.

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<sup>186</sup> Interview with Redress Officer, Jamaican Network of Seropositives. August 24, 2018.

<sup>187</sup> Schoenholtz, Gómez-Lugo and Binetti, “TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018)

<sup>188</sup>It is not certain the extent to which this “discrimination” extends in law to grounds not specifically set out in the Constitution such as HIV, health status or sexual orientation. Only a legal decision on the matter will be conclusive.

- In **Saint Lucia**, Section 131 of the [Labour Code \(2006\)](#) makes provisions for unfair dismissal based on sexual orientation (section 131(1)(a) and perception. The perception must be that the employee has or is carrying HIV or AIDS, unless the employee is engaged in work established as putting other persons at risk of contracting HIV or AIDS or unless the inherent requirements of the job permit the removal (Section 131(1)(f)).
- In **Barbados**, Section 27 of the [Employment Right Act \(2012\)](#) provides that an employee has the right not to be unfairly dismissed by his employer. Under Section 30(1)(v) of the Act, a dismissal would be unfair if the reason offered is that the employer believed that the employee had, or was believed to have HIV or AIDS, or any other life-threatening illness or disease. Regarding discrimination, Barbados also has in draft, the Employment (Prevention of Discrimination) Bill. The Bill refers specifically to the right to work and to just and favourable conditions of work. The draft legislation seeks to protect persons from discrimination related to employment based on race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.
- In **Grenada**, Section 74 of the Employment Act 1999 prohibits dismissal of an employee unless there is a valid reason for doing so. Although Section 74 does not list HIV and AIDS as protected grounds, it is arguable that in light of policy statements adopted by the government, the National Policy on HIV/AIDS, and the current state of medical knowledge, dismissal based on a person's HIV status would not be justified. Furthermore, under Section 80, an employee may claim constructive dismissal if he is "forced out of the job." That is to say, where the employer's conduct has made it unreasonable to expect the employee to continue his employment.
- In **Trinidad and Tobago**, Part III of the [Equal Opportunity Act of Trinidad and Tobago](#) provides a framework for the prevention of discrimination against job applicants, discrimination against employees and discrimination in vocational training.

#### **10.4. GAPS AND OPPORTUNITIES**

- (a) **While HIV & AIDS is recognized as a protected ground against discrimination in employment in some countries, the same is not the case for sexual orientation and gender identity.**
- (b) **Except perhaps in Trinidad and Tobago, job applicants and persons in pre-employment situations do not have the benefit of anti-discrimination protections or the unfair treatment provisions in employment legislation:** International Guidelines recommend that all employment groups should be protected from targeted HIV testing and related discrimination (i.e. job applicants, job seekers, laid off or suspended workers, those in training, interns, apprentices, volunteers and persons in any employment or occupation, regardless of description such as truck drivers, sailors, hospitality and tourist industry workers, armed forces, and uniformed services). However, in most instances, the labour laws of the States reviewed, provide redress only for persons *already* in a contractual relationship. The laws are also silent on the issue of HIV testing for the purposes of securing employment and there are no legislative protections against employers requiring an applicant to be negative, as an inherent job requirement. For clarity, if a job is based on an inherent requirement, it would not be discriminatory to not offer someone, who fails to meet this requirement, the job. For this reason, in the absence of legislative restrictions against these underhanded practices,

it would not legally be discriminatory, if an employer were to exclude an HIV positive person from a job, using some creative means to show that *being HIV negative* is an inherent job requirement.

## 10.5. RECOMMENDATIONS

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### (a) Priority Recommendations

- a.1. **Anti-discrimination legislation:** Provide support to civil society organizations at the national level to advocate for the enactment of anti-discrimination legislation and legislation, which defines protected personal, and health information. The CARICOM Model Anti-discrimination legislation is a good starting point for national legislative drafters and should be used by activists and human rights defenders to engage with Ministers at the national level.
- a.2. **Employment legislation:** Provide technical assistance to national authorities to amend employment legislation or adopt new legislation like **Barbados' draft Employment (Prevention of Discrimination) Bill**, which cover areas such as the prevention of discrimination in job creation, recruiting and prevention of discrimination in employment. The Bill also imposes an obligation on employers to make reasonable adjustments for the accommodation of persons with disabilities. It also creates a prohibition against testing for medical conditions. The Bill seeks to protect persons from discrimination related to employment based on race, origin, political opinion, colour, creed, sex, social status, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age.
- a.3. **National Employment legislation:** Provide technical assistance to national authorities to revise national Employment legislation or adopt legislation, which reflects the non-discrimination provisions in **Part III of the Trinidad and Tobago Equal Opportunities Act**.

### (b) Other Recommendations

- b.1. **Anti-discrimination legislation:** Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation, which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.

## FACTOR 11: PUBLIC AND PRIVATE HOUSING

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### 11.1. INTERNATIONAL GUIDELINES

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The UN Committee on Economic, Social, and Cultural Rights has noted that inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.<sup>189</sup> Consequently, it determined that housing is one of the underlying determinants of health. Therefore, States core obligations, relating to the right to health, include ensuring access to basic shelter, housing, and sanitation. The Committee has stressed that the right to adequate housing applies to everyone. Therefore, enjoyment of this right must not be subject to any form of discrimination.<sup>190</sup>

### 11.2. APPLICABLE HUMAN RIGHTS

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**Right to Adequate Housing:** The right of everyone to an adequate standard of living includes the right to adequate housing and to the continuous improvement of living conditions (*UDHR art. 25*;

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<sup>189</sup> CESCR, GENERAL COMMENT NO. 4 ON THE RIGHT TO ADEQUATE HOUSING para. 8.

<sup>190</sup> Ibid, paragraph 6

ICESCR art. 11; CEDAW art. 12; CRC art. 27). In Article 11 of the ICESCR State parties recognized “...the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...”

### **11.3. SITUATION ACROSS THE CARIBBEAN**

Access to housing falls under the rubric of economic, social and cultural rights, as opposed to political and civil rights (such as freedom of association). As far as civil and political rights are concerned there appears to be some degree of compatibility between most Caribbean domestic systems and international law, as evidenced by the Bill of Rights in the respective Constitutions. These Bills of Rights contain the civil and political rights set out in the Universal Declaration on Human Rights. Of the fifteen member States reviewed, ten (10) are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The four States that have so far remained outside this regime are: Antigua, the Bahamas, Saint Kitts-Nevis and Saint Lucia. In terms of political rights, thirteen (13) of the Caribbean States, which are the subject of this review, are parties to the ICCPR. It is worth recalling here that the right to adequate housing is set out in the ICESCR.

Professor Stephen Vasciannie has noted that:

*“... within the Caribbean Region there is some degree of skepticism on the question whether all economic and social rights are actually rights properly so-called. Specifically, the Caribbean tradition, drawn mainly from the common law, has been to regard rights as entitlements that may be enforced within a court of law; thus, for example, freedom of association is clearly justiciable in the courts, and is therefore widely accepted as a human right. In contrast, some economic and social rights (such as the right to employment and the right to social security) may not be cognizable in the courts of the Region, and so, are not regarded as rights properly so-called. This is not merely a terminological debate. Caribbean Governments simply do not have the means to ensure that all citizens have an enforceable claim for some economic and social benefits...”<sup>191</sup>*

This perhaps provides a frame through which to examine what protections are available and what measures have been undertaken in the Caribbean regarding the right to adequate housing and the right to an adequate standard of living. Further (although not stated here as a defence of any state), it is worth noting the specific commitment made by state parties to the ICESCR. In Article 2, States agreed to an incremental approach to ensure that citizens were able to realize the rights set out in the Covenant. States agreed to “...take steps... to achieving progressively... the rights in the Covenant by all appropriate means, including particularly, the adoption of legislation.”<sup>192</sup>

### **11.4. GAPS AND OPPORTUNITIES**

**1. There is an absence of National Housing Strategies or Action Plans to implement ICESCR Obligations and ensure access to Housing and Legal Security of Tenure:** A 2017 Report by Human Rights Watch<sup>193</sup> found that in the seven (7) Eastern Caribbean States<sup>194</sup> there continues to be

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<sup>191</sup> Vasciannie, Stephen, Caribbean Perspectives on Human Rights, page 349

<sup>192</sup> United Nations, [International Covenant on Economic, Social and Cultural Rights \(1966\)](#), Article 2(1) [Accessed on May 12, 2018]

<sup>193</sup> Human Rights Watch, [“I have to Leave to be me” Discriminatory Laws against LGBT People in the Eastern Caribbean](#) (2017)



widespread hostility within family homes, abuse and evictions<sup>195</sup>, exclusion from church<sup>196</sup> and bullying and exclusion from schools.<sup>197</sup>

In its concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April–17 May 2013), the United Nations’ Committee on Economic, Social and Cultural Rights, expressed “...concern at the acute housing situation in the State party, including the fact that almost a quarter of the population live as squatters on land they neither own nor lease, ... the rapid growth of squatter communities in urban areas in overcrowded, unsafe and dilapidated housing... as well as the lack of effective programmes and policies to address the issue. The Committee recommends that the State party adopt a comprehensive national housing strategy with a view to ensuring access to adequate and affordable housing with legal security of tenure for everyone...”<sup>198</sup>

**Barbados** has reported<sup>199</sup> that the government assists persons living with HIV who request urgent housing accommodation and that the Ministry of Housing and Lands currently provides rental accommodation for fifteen (15) PLHIV. In addition to rental accommodation, repairs are also undertaken to the homes of persons living with HIV. Approximately 20 persons have benefitted from repairs to their homes from 2013–2017.<sup>200</sup> It is not clear if these are *ad hoc*, accessible only by persons who happen to make requests, or part of a strategic, systematic process, to address the needs of persons living with HIV. The government of Trinidad and Tobago has reported “that 5% of all housing is reserved for distribution to senior citizens and members of the differently-abled community” and the provision of housing grants to low income home owners.<sup>201</sup> The extent to which these initiatives are extended to persons who are HIV positive and who are non-homeowners remains unclear.

- 2. Absence of comprehensive anti-discrimination framework law:** In Article 2 of the ICESCR, State Parties “... undertake to guarantee that the rights... will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>202</sup> The prohibited grounds of discrimination in the Bill of Rights of most Caribbean States is limited to sex<sup>203</sup>, race, place of origin, social class, colour, religion or political opinions, thus failing to prohibit discrimination based on other grounds, such as sexual orientation, disability and health. The absence of domestic legislation dealing with discrimination on this basis means that citizens do not have the benefit of the ICESCR in the domestic legal order and these “rights” cannot be invoked before domestic courts. The Constitution of **Guyana** is particularly

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<sup>194</sup> Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines

<sup>195</sup> Human Rights Watch, [“I have to Leave to be me” Discriminatory Laws against LGBT People in the Eastern Caribbean](#) (2017), page 28

<sup>196</sup> *Ibid*, page 34

<sup>197</sup> *Ibid*, page 37

<sup>198</sup> [Concluding observations \(2013\) E/C.12/JAM/CO/3-4](#) [Accessed on May 12, 2018]

<sup>199</sup> United Nations General Assembly: National Report of Barbados to the United Nations Human Rights Working Group on the Universal Periodic Review (2018), [A/HRC/WG.6/29/BRB/1](#), page 10 [Accessed on May 12, 2018]

<sup>200</sup> *Ibid*.

<sup>201</sup> United Nations General Assembly: National Report of Trinidad and Tobago on the Universal Periodic Review (2016), [A/HRC/WG.6/25/TTO/1](#) [Accessed on May 12, 2018]

<sup>202</sup> United Nations, [International Covenant on Economic, Social and Cultural Rights \(1966\)](#), Article 2(2) [Accessed on May 12, 2018]

<sup>203</sup> In the case of Jamaica this is stated as “being male or female”

novel in the region, in terms of its approach to providing protection against discrimination. Articles 40 and 149 of the Constitution of 1980 guarantees the fundamental rights and freedoms of all individuals *in the State*, (not just citizens). Further, Article 154(A) of the Constitution stipulates that every individual is entitled to the rights enshrined in the international human rights treaties acceded to by the State party. This has the effect of bringing treaty rights into the domestic legal framework and the basket of rights to which citizens are entitled.

3. **Most States do not have national human rights institutions with a comprehensive mandate:** In some States (in Jamaica for example), there are national bodies such as the Office of the Public Defender with a mandate to investigate maladministration in government and the Independent Commission of Investigations (INDECOM) with a mandate to investigate police excesses and extra-judicial conduct by police officers. There is however, no national human rights institution with a comprehensive mandate over broad human rights issues, including on economic, social and cultural rights. In Barbados, the Office of the Ombudsman, established under the Ombudsman Office Act (Laws of Barbados Cap 8A), investigate complaints regarding the actions of government, ministries or statutory agencies. It does not extend to private individuals. Part III of the Equal Opportunities Act of **Trinidad and Tobago** deals with discrimination in employment, access to goods and services, accommodation and some other areas. The Equal Opportunities Tribunal established under the Act, has power to investigate and provide redress for discrimination. There are limitations however, in that the discrimination protections do not extend to sexual orientation, gender identity or age. In 2016, Suriname established the National Human Rights Institute, but the same is not yet operational. Guyana adopted the Amerindian Act in 2006 and established the Indigenous Peoples Commission to address discrimination and marginalization faced by Amerindian children, and other measures taken to address discrimination against Amerindians. However, there is prevalence of discrimination against Amerindian children, and children with disabilities. Furthermore, there is discrimination against children based on sexual orientation and/or gender identity.

## **11.5. RECOMMENDATIONS**

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**Human Rights Institutions:** For financial and sustainability reasons, national institutions may not have the resources to set up new human rights institutions. It is recommended that PANCAP provide technical assistance to national authorities to conduct the relevant assessments to determine the best way to use existing institutions such as offices of Ombudsmen and Public Defenders as national human rights institutions, by extending their mandate. The enabling legislation for these institutions should define discrimination to protect the rights set out in the Covenant on Economic, Social and Cultural Rights and, address health status, social status, sexual orientation, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age. The institution should have investigative powers, with broad competence in the field of human rights, including migration, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

## FACTOR 12: ENTRY, STAY, AND RESIDENCE

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### 12.1. INTERNATIONAL GUIDELINES

The term HIV-related restrictions on entry, stay and residence was adopted in 2008 by UNAIDS to capture travel restrictions where:

- 1) HIV is a *formal and explicit* part of the law or regulation;
- 2) HIV is referred to *specifically*, apart from other comparable conditions; and
- 3) Exclusion or deportation occurs because of *HIV-positive status only*.<sup>204</sup>

International Guidelines state that restrictions based on HIV status are discriminatory, violate the right to equal protection before the law, and cannot be justified by public health concerns. UNAIDS recommends that HIV testing related to entry and stay in a country only be carried out with informed, voluntary consent; with pre- and post-test counseling; and with strict protection of confidentiality. International law also prohibits the return of a person to a State where there are substantial grounds for believing that the person would face a real risk of torture or other cruel, inhuman, or degrading treatment or punishment. The UN Human Rights Committee has held that return in these circumstances would be in violation of the prohibition against torture and cruel, inhuman or degrading treatment and punishment under ICCPR.<sup>205</sup>

### 12.2. APPLICABLE HUMAN RIGHTS

The United Nations Committee on Economic, Social, and Cultural Rights has affirmed the right of migrants to the same health services as nationals of any State.<sup>206</sup>

### 12.3. SITUATION ACROSS THE CARIBBEAN

This review considered only laws or policies in Caribbean States with HIV-specific restrictions on entry, stay and residence; that is, where the law or regulation of the country explicitly refers to HIV or AIDS. Based on UNAIDS guidelines, if a country has laws that refer to “contagious” or “transmissible” diseases, that explicitly include HIV in their definition of these diseases, such a law is also considered here.

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<sup>204</sup> See UNAIDS, Report of The International Task Team On HIV-Related Travel Restrictions: Findings and Recommendations 7 (2008).

<sup>205</sup> The European Court of Human Rights (ECHR) and the Inter-American Commission on Human Rights have each issued a landmark decision where the principle was used to protect PLHIV from deportation based on human rights. In a landmark 1997 case *D v. United Kingdom*, ECHR found that a State may, in very exceptional cases, violate prohibition of inhumane treatment if it deports a severely ill person with HIV to a State where adequate treatment is unavailable and where there is no family to care for him or her. It needs to be noted, however, that the “exceptional” standard has since been narrowly interpreted by ECHR. For example, it excludes cases where HIV treatment is, in principle, available in the receiving country and where the disease has not reached a terminal stage. The Inter-American Commission on Human Rights has also used a three-prong threshold test to recommend that the United States refrain from deporting an HIV-positive individual to Jamaica. The test included: 1) extraordinary hardship; 2) availability of medical care in the receiving country; and 3) availability of social services and support, in particular the presence of close relatives.<sup>205</sup> See HUMAN RIGHTS WATCH, RETURNED TO RISK: DEPORTATION OF HIV-POSITIVE MIGRANTS 7-9 (2009).

<sup>206</sup> CESCR, GENERAL COMMENT NO. 14 ON THE RIGHT TO HEALTH para. 18.

- (a) **Eight Countries in the Caribbean have no HIV-specific restriction on entry or stay:** The following countries have no HIV-related restrictions on entry, stay or residence: Antigua and Barbuda, Barbados, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, and Trinidad and Tobago.
- (b) **Two Caribbean States have HIV-specific restrictions on entry, stay and residence:** A 2009 Study by the Joint United Nations Programme on HIV/AIDS (UNAIDS)<sup>207</sup> found that Belize and the Dominican Republic had some form of HIV-specific restriction on entry, stay and residence that is based on positive HIV status. These include those that completely ban entry of HIV-positive people for any reason or length of stay and/or are applied to visa applications for very short stays (e.g. tourist visas) and/or are applied to visa applications for longer stays (visas for residency, immigration, labor migration, asylum or resettlement, study, international employment, and consular service).
- (c) **Two Caribbean States – Belize and Trinidad and Tobago - have restrictions on entry, as homosexuals and sex workers who are visitors.** In Trinidad and Tobago, Section 8 of the Immigration Act prohibits entry for *homosexuals* and in Belize, Section 5 of the Immigration prohibits entry of *homosexuals and sex workers*. This raises an issue for a key population and the right of a person to enter, stay or reside in a country solely based on sexual orientation. It must be noted that if a legal claim were made, the action would need to be framed at the national level (such as a claim that the legislation has an *indirect discriminatory effect*, or that it infringes a right to equal protection of the law). However, a claim that the mere existence of the legislation is not in conformity with what is required of the State, by reason of its international obligations, is not likely to succeed without proof of actual prejudice to the claimant.<sup>208</sup>
- (d) **Declaration of HIV Status for entry or stay:** Except for those countries that have HIV-specific restrictions, this review found no law, policy or published reports of Caribbean States requiring a declaration of HIV status for entry or stay, resulting, for HIV-positive people, in either a bar to entry/stay or the need for discretionary approval, including through granting waivers. The review also did not find any law, policy or published reports of Caribbean States that deny applications for entry by HIV positive people for short stays for personal, business or professional reasons such as tourism, visiting family and/or friends, meetings, conferences or educational events. There are no reports or laws, which require the States to review to deport people once their HIV-positive status becomes known.
- (e) **Some Caribbean States deny employment visas based on HIV status:** Saint Kitts and Nevis, Saint Vincent and the Grenadines, Belize and the Dominican Republic have laws that deny employment visas and/or work permits based on HIV status.<sup>209</sup>
- (f) **At least one Caribbean State applies HIV-specific regulations to visitors from high prevalence areas:** Suriname is listed among countries that apply HIV-related entry, stay and residence

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<sup>207</sup> [Mapping of restrictions on the entry, stay and residence of people living with HIV](#) (2009)

<sup>208</sup> See *Tomlinson v The State of Belize and Tomlinson v The State of Trinidad and Tobago*, Decision of the Caribbean Court of Justice [2016] CCJ 1 (OJ); INTERNET: <https://www.gaylawnet.com/laws/cases/2016/16BZ-TT-10JN.pdf> [Accessed on August 26, 2018].

<sup>209</sup> [Mapping of restrictions on the entry, stay and residence of people living with HIV](#), page 9

regulations to nationals from regions with high HIV prevalence.<sup>210</sup> This Caribbean State requires HIV tests from visitors travelling from Africa, Asia and Eastern Europe.

- (g) **At least one Caribbean State denies applications to HIV positive students:** Saint Kitts and Nevis is listed as one of the countries that denies applications by HIV-positive students<sup>211</sup>.

#### **12.4. RECOMMENDATIONS**

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- (a) **HIV-specific entry restrictions:** Provide technical assistance to national authorities with HIV-specific restrictions on entry to repeal such legislation and enact legislation, policies and guidelines that ensures protection from discrimination on the grounds of health status, sexual orientation or gender identity.
- (b) **Remedies for migrant workers:** Provide technical assistance to civil society organizations and national authorities to develop and issue bulletins and guidelines through social media, electronic and print media to inform migrant workers of remedies available to them.
- (c) **Needs of migrants and mobile populations:** Provide technical assistance to national authorities to ensure that the HIV-related needs of migrants and mobile populations are integrated into existing health care programs and HIV responses and to ensure migrants and mobile populations have equitable and sustainable access to comprehensive HIV-related services, as nationals.
- (d) **Laws protecting rights of migrant workers:** Provide technical assistance to national authorities to fully implement existing laws protecting the rights of migrant workers, especially any discrimination against migrant women and children, particularly in the areas of education, housing and access to health care.

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<sup>210</sup> Ibid at 9

<sup>211</sup> Ibid at 10

## FACTOR 13: NON-CRIMINALIZATION OF HIV EXPOSURE AND TRANSMISSION

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### 13.1. INTERNATIONAL GUIDELINES

According to UNAIDS, instead of applying criminal law to HIV exposure and transmission, States should expand programmes which have been proved to reduce the spread of HIV, while protecting human rights of both PLHIV and people who are HIV-negative. Such measures should include addressing HIV-related discrimination, which is necessary to encourage people to disclose their HIV-positive status without the fear of prosecution or other negative consequences. According to experts, there is no data indicating that the broad application of criminal law to HIV exposure and transmission will achieve criminal justice or public health goals (that of preventing HIV transmission), or that the threat of criminal sanctions significantly changes or deters risky behaviors. Experts believe that the relevant criminal provisions are likely to be disproportionately applied to people belonging to ethnic minorities, migrants, and key populations, because these groups are often blamed for transmitting HIV. Consequently, UNAIDS and the UN Special Rapporteur on the Right to Health have urged States to limit criminalization to cases of intentional transmission, and to immediately repeal laws criminalizing unintentional transmission of, or exposure to HIV. Prosecution *is* justified only in cases that meet all the following criteria: 1) a person knows his or her positive HIV status; 2) the person acts with malicious intent to transmit HIV (i.e., intentionally engages in risky behavior to harm an unknowing partner); and 3) transmission of HIV does, in fact, occur.<sup>212</sup> UNAIDS urges States to: 1) ensure that criminal law is not used inappropriately in the context of HIV (e.g., to target or punish people simply because of their HIV-positive status or membership in a particular social group); 2) limit police and prosecutorial discretion in application of criminal law, by clearly and narrowly defining intentional transmission; by stipulating that an accused person's responsibility for HIV transmission be clearly established beyond a reasonable doubt; and by clearly indicating circumstances that should mitigate against criminal prosecution; and 3) ensure that any application of general criminal law to HIV transmission is consistent with international human rights law.<sup>213</sup>

### 13.2. APPLICABLE HUMAN RIGHTS

UNAIDS and experts agree that broad application of criminal law to HIV exposure and unintentional transmission has numerous negative consequences. It:

- Exposes large numbers of people to possible prosecution without them being able to foresee their criminal liability;
- Discourages voluntary HIV testing, since ignorance about one's status might be seen as the best defense in case of prosecution;
- Places legal responsibility for HIV prevention exclusively on PLHIV, thus undermining the public health message of shared responsibility for safer behaviors;
- Creates a false sense of security because people may wrongly assume that their partners are HIV-negative if they did not disclose their status as required;
- Reinforces the stereotype that PLHIV are immoral and irresponsible;

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<sup>212</sup> THE WORLD BANK, LEGAL ASPECTS OF HIV/AIDS: A GUIDE FOR POLICY AND LAW REFORM 10-12 (2007)

<sup>213</sup> UNAIDS & UNDP, POLICY BRIEF: CRIMINALIZATION OF HIV TRANSMISSION (2008)

- Deters PLHIV from using health care services;
- Increases the risk of violence directed towards affected individuals, particularly women.

### 13.3. SITUATION IN THE CARIBBEAN

According to the Global network of People Living with HIV, “Criminalization of HIV” is a phrase that is used to refer to enacting of laws directed at punishing behaviours that may transmit HIV and the application of general laws in a manner that targets those with HIV who may transmit or expose another person to HIV.”<sup>214</sup> The following situation exists in the Caribbean in relation to the criminalization of intentional or willful transmission:

- (a) In **Belize**, sections 46.01 and 73.02 of the Criminal Code chapter 101 of the revised edition of Laws 2000 list reckless or willful transmission of HIV or AIDS as a criminal offence.
- (b) In **The Bahamas**, Section 8(2) of the Sexual Offences provides that: “...*(2) Any person who knows that he is infected with a virus causing, or known to cause, acquired immune deficiency syndrome (commonly known as "AIDS") and who has sexual intercourse with any other person, with the consent of that other person but without disclosing the fact of the infection to that other person, is guilty of an offence and liable to be detained for a term of five years...*”
- (c) **St Vincent and the Grenadines, Guyana, Barbados, and Suriname** and other CARICOM countries do not list such offences. However, in St Vincent and the Grenadines, under section 291 of the Criminal Code cap. 124, any person who unlawfully or negligently does any act which he knows, or has reasons to believe, to be likely to cause the spread of any infectious or contagious disease, is guilty of an offence and liable to imprisonment for one year. It appears that a person who deliberately infects another person with HIV, knowing that he is living with that disease, may be prosecuted under that provision.
- (d) In **Barbados**, section 19 and 26 of the Barbados Offences against the Person act could be used to prosecute persons who, in section 19, “endanger life and safety” and in section 26 “assault another occasioning harm.”
- (e) **Jamaica** does not have HIV-specific criminal law. However, willful HIV transmission can be prosecuted under Section 22 of the Offences against the Person Act 1864.
- (f) **Trinidad and Tobago** has no law that specifically criminalizes HIV transmission, but willful transmission could be prosecuted under various provisions of the Offences Against the Person Act, including Sections 12, 14 and 17. In addition, the Sexual Offences Amendment Act of 2000 inserted a new provision under which civil penalties may be imposed on a person, found to be HIV positive, and on the balance of probabilities, the virus was contracted as a result of the offence committed by the defendant (See Section 34).
- (g) In **Saint Lucia**, Section 140 of the Criminal Code provides: “*Transmission of HIV - 140. - (1) Any person who, knowing that he or she suffers from Acquired Immune Deficiency Syndrome commonly known as AIDS intentionally or recklessly infects another person with the human immunodeficiency virus known as HIV, whether through sexual intercourse or any other means by which the disease may be transmitted to another person commits an offence of aggravated sexual assault and is liable*

<sup>214</sup> Global Network of People Living with HIV, [Criminalization Scan Information Sheet](#) [Accessed on May 12, 2018]

*on conviction on indictment to imprisonment for ten years. (2) it is no defense for a person charged with an offence under subsection (1), to prove that the act was committed with the consent of the other person”*

- (h) In **Grenada, Guyana, St Kitts and Nevis and Dominica**, there is no specific legislation regarding willful transmission.

This review found no laws or regulations that, without more, creates a legal duty to disclose HIV status or laws that criminalizes a failure to disclose HIV status.



## SECTION III: KEY POPULATIONS AND VULNERABLE GROUPS

The World Health Organization (WHO) has defined “Key Populations” as groups who, due to specific, higher-risk behaviors, are at increased risk of HIV irrespective of the epidemic type or local context.<sup>215</sup> These groups often have legal and social issues related to their behaviours that increase their vulnerability to HIV. On the other hand, the WHO defines “vulnerable populations”<sup>216</sup> as groups of people who are particularly vulnerable to HIV infection in certain situations or contexts, such as adolescents (particularly adolescent girls), orphans, street children, people with disabilities and migrant and mobile workers.

The WHO defines five groups as key populations: (i) sex workers, (ii) men who have sex with men (MSM), (iii) people in prisons and other closed settings, (iv) injecting drug users, and (v) transgender persons.<sup>217</sup> Although these populations have been identified as having the highest risk of contracting and transmitting HIV, they also have the least access to prevention, care, and treatment services, because their behaviors are often stigmatized, and even criminalized. The WHO notes that while the risk behaviors and vulnerabilities of these populations and their networks determine the dynamics of HIV epidemics, these disproportionate risks reflect both (a) behavior common among members of these populations and (b) specific legal and social barriers that further increase their vulnerability. These legal and social barriers can lead to inadequate coverage and poor quality of services for these populations. This in turn can undermine the overall HIV response. Accordingly, States have been advised that an essential component of the HIV response is reaching these key populations, understanding their needs and providing equitable, non-discriminatory, accessible and acceptable services.

### FACTOR 14: WOMEN

#### 14.1. INTERNATIONAL GUIDELINES

The international community has recognized that: 1) the global HIV & AIDS epidemic disproportionately affects women and girls and reinforces gender inequalities; and that 2) gender equality and empowerment of women are fundamental not only to reducing women’s susceptibility to HIV, but also to reversing the epidemic in its totality<sup>218</sup>. In line with gender-specific recommendations formulated in the: Declaration of Commitment; Political Declaration; International Guidelines; Beijing Declaration and Platform of Action; Resolution on Women; the Girl Child and HIV/AIDS; and the UNAIDS Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV (2010-2014), States are urged to, among other things:

- Implement a gender-sensitive response to HIV & AIDS.
- Reflect the gender dimension of the epidemic in all national HIV policies, strategies, and budgets.
- Ensure women’s equal access to HIV-related services.
- Provide women and girls with life-skills based sex education.
- Address the situation of women and girls who drop out from school due to HIV or AIDS.

<sup>215</sup> World Health Organization: “[Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations](#)” [Accessed on 11 April 2018]

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> DECLARATION OF COMMITMENT paras. 14, 59

- Strengthen and enforce women’s rights to employment, property, and inheritance.
- Ensure women’s access to adequate, integrated, health care services for HIV & AIDS, TB, sexual and reproductive health, nutrition, and harm reduction.

## 14.2. APPLICABLE HUMAN RIGHTS

**Right to non-discrimination:** women have the right to be free from discrimination (i.e. any distinction, exclusion, or restriction, made based on sex). States are obliged to pursue a policy of eliminating discrimination against women by any person, organization, or enterprise (including public institutions), through all appropriate measures. States must also ensure the full development and advancement of women as well as effective protection of women against any acts of discrimination. In particular, States must modify or abolish laws, regulations, customs, practices, as well as the social and cultural patterns of conduct that are based on the idea of the inferiority of either of the sexes or on stereotyped roles for men and women (*CEDAW art 1*).

## 14.3. SITUATION IN THE CARIBBEAN

In all Strategic Plans reviewed, the State recognizes women as a key population in the context of HIV & AIDS. In the Guyana National Strategic Plan (2013-2020), “prisoners, miners and loggers”<sup>219</sup> have been included in the definition of *Key Populations* to be targeted for delivery of services, while the Jamaica Plan<sup>220</sup> includes persons with disabilities.

Despite gender equality legislation, in several countries, three main issues affect women’s equality in the Caribbean:

- Except for Guyana<sup>221</sup> and Jamaica<sup>222</sup>, there does not appear to be a clear, appropriate re-entry policy and/or measures for pregnant schoolgirls that allow them to remain in formal education, sit exams and then return to school after giving birth.<sup>223</sup>
- Disadvantaged groups of women, including rural, Maroon and indigenous women, women with disabilities, and lesbian, bisexual, transgender and intersex women, continue to experience intersecting forms of discrimination, domestic abuse and violations of their human rights. For example, the United Nations’ Committee on the Elimination of Discrimination against Women in its March 2018 [Concluding observations on the combined fourth to sixth periodic reports of Suriname](#)<sup>224</sup>, noted<sup>225</sup> the following as areas of concern for Suriname:

*“...neither the Constitution nor the national legislation includes a definition of discrimination against women in accordance with article 1 of the Convention, covering direct and indirect discrimination in both the public and private spheres and recognizing*

<sup>219</sup> National Strategic Plan (2013-2020), Priority Area 2: Prevention, page 60.

<sup>220</sup> National Integrated Strategic Plan for Sexual and Reproductive Health (2014-2019), page 53

<sup>221</sup> Information for Guyana provided by Nicole Cole, Commissioner, Women & Gender Equality Commission. August 17, 2018

<sup>222</sup> Ministry of Education, Jamaica, [National Policy – Reintegration of School Age Mothers into the Formal School System \(2013\)](#)

<sup>223</sup> Information on Jamaica provided by Kristal Tucker-Clarke, Director Community Liaison, Bureau of Gender Affairs.

<sup>224</sup> Adopted by the Committee at its sixty-ninth session (19 February-9 March 2018). [Accessed on May 12, 2018].

<sup>225</sup> United Nations Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined fourth to sixth periodic reports of Suriname](#) (2018), paragraph 10 *et seq.*

*intersecting forms of discrimination... disadvantaged groups of women, including rural, Maroon and indigenous women, women with disabilities, and lesbian, bisexual, transgender and intersex women, continue to experience intersecting forms of discrimination and violations of their human rights... the lack of political will on the part of policymakers to adopt, as a matter of priority, legal provisions to protect women's rights, noting that such provisions as the draft law on the Equal Treatment of Men and Women, the draft Labour Law and the establishment of a complaint mechanism on gender-based discrimination have been pending since 2002... [and] The absence of a national policy on gender since the Gender Work Plan 2013."*

A full set of issues that the Committee noted as areas of concern for Suriname can be accessed [here](#):

- (c) **Although there is equal pay legislation, there are no monitoring institutions to ensure that women receive equal remuneration for work of equal value:** For example, in discussions with the Senior Legal Officer at the Ministry of Labour and Social Security in Jamaica, she pointed out that the spirit of equal pay legislation has been defeated by the absence of monitoring institutions and institutions that provide interpretation and guidance on the legislative provisions. As a result, equality is made synonymous with similar work, but not the *value* of the work<sup>226</sup>. The point is further borne out in the Human Rights Committee on the International Covenant on Civil and Political Rights [Concluding observations on the fourth periodic report of Jamaica](#), in which the following concerns are noted:<sup>227</sup>

*"...legislation provides women and girls with only limited protection against violence, including domestic violence... the Sexual Offences Act (2009) reflects a narrow understanding of rape and protects against marital rape only in certain circumstances, the Domestic Violence Act (2004) does not cover sexual abuse and the draft Sexual Harassment Bill does not include sexual harassment in public spaces.... [there is a] wage gap between men and women who perform equal work or work of equal value... section 2 of the Employment (Equal Pay for Men and Women) Act is limited to guaranteeing equal pay for "similar" or "substantively similar" work, rather than "equal remuneration for work of equal value"*

**... [there is a] lack of comprehensive legislation clearly prohibiting gender discrimination and sexual harassment in employment...**the general criminalization of abortion in the Offences against the Person Act, including in cases of pregnancies resulting from rape, incest and fatal fetal abnormality; [and] the lack of access by girls below the age of 16 years to sexual and reproductive health information and services without parental consent, especially in the light of the high incidence of adolescent pregnancy and incest.

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<sup>226</sup> Interview with Khadrea Folkes. Senior Legal Officer. Ministry of Labor and Social Security. Kingston. August 20, 2018.

<sup>227</sup> Adopted by the Committee at its 118th session (17 October-4 November 2016).

## 14.4. RECOMMENDATIONS

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### (a) Priority Recommendations:

- a.1. **Re-entry policy:** Provide technical assistance to national authorities to elaborate a clear, appropriate re-entry policy and measures for pregnant schoolgirls that allows them to remain in formal education, sit exams and then return to school after giving birth, including using approaches such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.
- a.2. **Practice Guide for equal pay:** Provide technical-legal assistance to Ministries of Labour, Chambers of Commerce and Business Associations across the region to develop a practice guide for ensuring that women and men get equal pay for *work having equal value* as distinct from similar work.
- a.3. **Guidebook for prosecutors and police officers:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.
- a.4. **Strategic litigation:** Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of women or any other group
- a.5. **Decriminalize sexual relations:** Support civil society advocacy to decriminalize sexual relations between consenting adults of the same sex and to end prejudices and the social stigmatization of homosexuality.
- a.6. **Access to effective remedies in rights violation cases:** Provide technical-legal assistance to national authorities to effectively implement laws to ensure access to effective remedies in case of violation of the rights of disadvantaged groups of women, including rural, Maroon and indigenous women, women with disabilities, and lesbian, bisexual, transgender and intersex women.
- a.7. **Human Right training:** Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of lesbian, bisexual and transgender women by police officers and provide on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.

## FACTOR 15: CHILDREN AND YOUTH

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### 15.1. INTERNATIONAL GUIDELINES

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For the purposes of this review:

- a child is any person between zero and 18 years of age;
- an adolescent is any person between 10 and 19 years of age; and
- youth (young people) are people between 15 and 24 years of age.

In its General Comment No. 3<sup>228</sup>, the CRC has identified four groups of children who face acute vulnerability to HIV infection and HIV-related discrimination:

- a) Children who are HIV-positive.
- b) Children who have lost a parental caregiver due to HIV or AIDS.
- c) Children whose families or communities are severely strained by the impacts of HIV & AIDS.
- d) Children who are most prone to HIV.

The CRC has also noted that while all children can be rendered vulnerable to HIV by various political, economic, social, and cultural factors, their susceptibility to HIV infection is elevated by: 1) lack of access to education, including sex education; 2) lack of access to HIV prevention measures; 3) early marriage and other harmful traditional practices; 4) early sexual initiation and inability to negotiate safe sex practices; 5) sexual abuse, exploitation, and trafficking in persons; 6) use of drugs; 7) migration and displacement; 8) detention; 9) poverty; 10) conflict; and 11) disability. The United Nation's UN Population Fund (UNFPA) has identified four core areas of action that target HIV risk and vulnerability reduction among young people:

- 1) Information to acquire knowledge.
- 2) Opportunities to develop life skills necessary to change attitudes and risk behaviors.
- 3) Appropriate health services; and
- 4) Creation of safe and supportive environment.

States are strongly encouraged to address the four core areas in their national strategies on children, youth, and HIV & AIDS.

Finally, in relation to the young person's ability to access health care, the UN Committee on the Rights of the Child has noted that children are more likely to use health care services that are friendly, supportive, and non-discriminatory; that give them the opportunity to participate in decisions affecting their health; that are confidential and non-judgmental; and that do not require parental consent<sup>229</sup>. The UN Committee on the Rights of the Child underlines that children have the right to express their views and be involved in practices and decisions relating to their own health care in a manner consistent with their evolving capacities. The child's views must be given due weight when a professional case-by-case analysis indicates that the child can form her or his own views in a reasonable and independent manner. States should develop a good practice for assessing the evolving capacity of the child and ensure that

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<sup>228</sup> CRC, GENERAL COMMENT NO. 3 ON CHILDREN AND HIV/AIDS para. 3.

<sup>229</sup> CRC, GENERAL COMMENT NO. 3 ON CHILDREN AND HIV/AIDS para. 20.

children have access to confidential, medical care, medical counselling and advice without parental consent where this is needed for their safety or well-being. Children may need such access, for example, where they need reproductive health education or services. International Experts suggest that *the right to counselling and advice* is distinct from the right to give medical consent and should not be subject to any age limit. Establishing a fixed age at which the right to consent to medical intervention transfers to the child is encouraged. States should, however, ensure that due weight is given to the views of younger children who can demonstrate capacity to express informed opinions on their treatment.<sup>230</sup>

## **15.2. APPLICABLE HUMAN RIGHTS**

**Rights to Health and Information:** Each child has the right to the highest attainable standard of health and the right to seek, receive, and impart information of all kinds, including information about HIV & AIDS. States must take measures to: 1) diminish infant and child mortality; 2) ensure the provision of and children's access to the necessary medical assistance and health care; and 3) develop preventative health care and family planning services.<sup>231</sup> Furthermore, States must ensure that children have access to information from diverse sources, especially those aimed at promotion of their well-being and health (*CRC arts. 13, 17, 24*).

## **15.3. SITUATION IN THE CARIBBEAN**

Having regard to the International Guidelines, States are obliged to take all appropriate measures to reduce specific HIV vulnerabilities of children and youth, eliminate HIV-related discrimination against them, and provide them with equitable and sustainable access to comprehensive HIV-related services. This includes ensuring early detection and treatment of HIV in children and ensuring access to HIV information and prevention commodities (including access to condoms).

Among other things, the United Nations Committee on the Rights of the Child has noted the following matters of concern in Caribbean States:

### **1. Antigua and Barbuda: [Concluding observations \(2017\) CRC/C/ATG/CO/2-4](#)**

- (a) Concern that the Marriage Act includes exceptions that allow marriage from the age of 16;
- (b) Some groups of children, in particular children with disabilities, children living in poverty, children of migrant parents and informally adopted children, suffer from discriminatory attitudes and disparities in accessing basic services;
- (c) The absence of a standard legal definition of a child with a disability, combined with the lack of reliable data and of a national policy on children with disabilities hinders the delivery and evaluation of services for them;
- (d) There is no explicit legal provision mandating the provision of services for children with disabilities or their access to public buildings, public spaces and all service delivery areas;

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<sup>230</sup> UN COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 12: THE RIGHT OF THE CHILD TO BE HEARD paras. 44, 98-102 (*adopted* July 20, 2009, U.N. Doc. CRC/C/GC/12).

<sup>231</sup> CRC art. 24;

- (e) Full inclusion of children with intellectual and psychosocial disabilities remains unsatisfactory owing to a shortage of trained specialists, including speech therapists, mental health professionals and psychologists;
- (f) There is a shortage of qualified child psychiatrists and community-based mental health services;
- (g) Sexual and reproductive health is not part of the school curricula;
- (h) There is no legislation banning the sale and use of controlled substances to and by children;
- (i) Is concerned by the increasing number of girls infected with HIV and that social stigmatization and discrimination prevent HIV-positive patients from seeking medical treatment; and
- (j) There is a lack of adequate counselling for adolescent students and shortage of schools and educational materials.

2. **Barbados:** [Concluding observations \(2017\) CRC/C/BRB/CO/2](#)

- (a) Despite the National Youth Policy of 2011, there is a lack of a comprehensive policy to specifically promote and protect children's rights;
- (b) Is concerned that although the minimum age of marriage is 18 years, children may still be married from the age of 16 with the consent of their parents;
- (c) While the Constitution provides for non-discrimination on the grounds of race, place of origin, political opinions, colour, creed or sex, there is persistent discrimination against migrant children and children with disabilities;
- (d) The State's legislation does not provide strong protection against child sexual abuse, and there is need for a comprehensive policy to address the sexual exploitation of children;
- (e) There is a lack of information on measures taken by the state in relation to the assessment, prevention, early detection, intervention, treatment and rehabilitation of children with disabilities, their access to social services and inclusive education;
- (f) There is a lack of access to sexual and reproductive health information and services, including modern contraception methods, by adolescent girls and thus a high rate of teenage pregnancies, abortions, and transmission of HIV;
- (g) There is a need for re-entry policies, enabling adolescent mothers to return to school after pregnancy; and
- (h) There is need for a national plan of action for human rights education, including education on children's rights.

3. **Dominican Republic:** [Concluding observations \(2015\) CRC/C/DOM/CO/3-5](#)

- (a) There is a need for laws, policies and programmes related to children's rights, including by allocating adequate human, financial and technical resources;
- (b) There is a need for systematic accountability for all children's rights, including by facilitating effective access to justice and ensuring that the relevant laws, policies and programmes are monitored and evaluated;

- (c) While the National Development Strategy 2010-2030 addresses some child-rights issues, there is need for a comprehensive policy on children;
- (d) There is persistent discrimination against gender stereotyping of women and girls, often perpetuated in the media and in campaigns for promoting tourism, which contribute to the high prevalence of gender-based violence, particularly against girls of Haitian origin; there is prevalent discrimination against children of Haitian origin, especially with regard to their right to education; and continuous discrimination and/or violence against children with disabilities, children living with HIV or AIDS, children in marginalized urban and rural areas, children in street situations, lesbian, gay bisexual, transgender and intersex children and children from disadvantaged and marginalized communities;
- (e) There is lack of regulations to protect the privacy and safety of children accessing information and communications technology (ICT) and the lack of a comprehensive strategy to ensure equal access to it;
- (f) There is no minimum age for sexual consent in the Criminal Code and the definition and sanctions of crimes relating to sexual exploitation and abuse are not in full accordance with international standards;
- (g) There is insufficient implementation of the national Action Plan to Eradicate all Forms of Abuse and Commercial Sexual Exploitation of Girls, Boys and Adolescents (2006-2016);
- (h) Although the minimum age for marriage is set at 18 for both girls and boys, child marriage, especially of girls, remains highly prevalent in the state party. The Committee is particularly concerned that 15-year-old girls and 16-year-old boys can enter marriage with the written consent of their parents and that even younger children can be allowed to marry with the authorization of a judge;
- (i) In 2013, only 52% of schools received students with disabilities, of which around 60% had no specialized staff, strategies or resources to implement inclusive education; and
- (j) There is a lack of access for children with disabilities to adequate health care, to public spaces because of architectural barriers, and to adequate spaces for recreation and participation.

4. **Guyana: [Concluding observations \(2013\) CRC/C/GUY/CO/2-4](#)**

- (a) Awareness and knowledge about HIV remain low among Amerindian and socio-economically disadvantaged persons, as well as in the rural and interior regions of the State party and there has been a significant increase in HIV cases for persons between 15 and 19 years of age;
- (b) The absence of a National Plan of Action for Children and has no comprehensive policy or strategy for the implementation of the Convention;
- (c) The level of awareness and working knowledge on the Convention is inadequate among professionals working with or for children; law enforcement officials, social workers and personnel working in childcare institutions, are not adequately and systematically trained;
- (d) Although Guyana adopted the Amerindian Act in 2006, the establishment of the Indigenous Peoples Commission to address discrimination and marginalization faced by Amerindian children, and other measures taken to address discrimination against Amerindians, there is



prevalence of discrimination against Amerindian children, and children with disabilities. Furthermore, there is discrimination against children based on sexual orientation and/or gender identity;

- (e) Sexual exploitation and abuse of children remain prevalent and socially tolerated, in particular of girls; there are inadequate reporting and enforcement mechanisms on instances of such abuse, with little or no prosecution for such offences;
- (f) There is a lack of detailed and disaggregated data hindering the state party formulating and taking effective measures to address the needs of children with disabilities;
- (g) Societal discrimination against children with disabilities remains widespread;
- (h) Accessible health treatment and rehabilitation services for children with disabilities are extremely limited in the hinterland;
- (i) Inclusive education and training of teachers for its provision remain severely limited, particularly for children with sensory, cognitive, and/or mental impairments, which leads to the majority of children with disabilities staying at home, resulting in isolation, stigmatization and compromised access to employment opportunities and social services;
- (j) Sex and reproductive education are not included in the education syllabus of the State party. Furthermore, stigma and discrimination hinder access to services and education by pregnant adolescents and adolescent mothers;
- (k) Pregnant adolescents and adolescent mothers frequently face obstacles to the continuation of their education and there is a high rate of alcohol, tobacco and drug consumption among adolescents;
- (l) The quality of education is low and there is a shortage of trained teachers. There is a high rate of student withdrawals from schooling, particularly in the transition between primary and secondary schools; and
- (m) There are significant disparities along regional, socio-economic, ethnic and gender lines at the secondary level of education.

5. **Haiti: [Concluding observations \(2016\) CRC/C/HTI/CO/2-3](#)**

- (a) There is no single government entity responsible for the overall coordination of the policies, laws and programmes relating to children's rights;
- (b) Under Article 133 of the Civil Code, girls may be married as of age 15 and boys as of age 18. The legal status of a child of 15 years of age may be waived by parental decision, leading to his or her treatment as an adult under the law. A child engaging in marriage is automatically granted the status of majority, which is irrevocable, including in the event of marriage dissolution, which may place a child in a vulnerable situation, particularly girls who may be married at the age of 15;
- (c) There is persistent discrimination against girls who are subjected to gender stereotypes and violence;
- (d) There is ongoing de facto discrimination against children with disabilities, children in street situations, children engaged in child labour and children born out of wedlock or abandoned by their father, and discrimination, threats and attacks against lesbian, gay, bisexual, transgender and intersex children;

- (e) There are high levels of gender-based violence, including sexual and domestic violence, against women and girls, supported by gender-biased attitudes, that blame the female victim;
- (f) There is frequent refusal by police officers, prosecutors and judges to investigate cases of gender-based violence, including that of corruption;
- (g) Victims of gender-based violence need to present a medical certificate in cases of rape to initiate criminal proceedings and are required to pay a fee to have their case prosecuted;
- (h) There is a lack of comprehensive statistical data on gender-based violence against women and girls;
- (i) Forced or arranged marriages continue to occur, in particular in the event of rape or pregnancy; and
- (j) Children with disabilities, are subjected to marginalization and social exclusion and there is a lack of access to basic services for the vast majority of children with disabilities; very limited access to education for children with disabilities, which is only provided by a few special schools with poor infrastructure, which are not fully accessible, as well as the insufficient measures taken to enable inclusive education.

6. **Jamaica: Concluding observations (2015) CRC/C/JAM/CO/3-4**

- (a) There are inadequate human and financial resources for the full and effective implementation of the Child Care and Protection Act;
- (b) Although there are various national plans of action relating to children, the delay in the adoption and implementation of the draft National Framework of Action for Children means that there is lack of a more comprehensive policy and strategy to effectively monitor progress in the implementation of children's rights throughout the country;
- (c) There is insufficient coordination at the national level for the implementation of laws and policies regarding children with disabilities;
- (d) Children with disabilities continue to face discrimination and are not effectively integrated into all areas of social life, including the education system;
- (e) Training for teachers who work with children with disabilities is insufficient;
- (f) There is a lack of public awareness of the rights of children with disabilities;
- (g) There is insufficient support for caregivers of children with disabilities;
- (h) Sufficient and adequate facilities for children with disabilities, including schools, sports and leisure facilities and residential facilities are lacking;
- (i) There is a general shortage of health-care providers and the lack of access by children to quality health care, and there is limited access to mental health care and psychosocial rehabilitation for children, especially in relation to depression and suicide attempts;
- (j) There is a high teenage pregnancy rate, widespread prevalence of sexually transmitted infections among adolescents and a high rate of HIV infection, especially among adolescent girls;

- (k) There is poor access to sexual and reproductive health-care information and services, and no access to health-care services without parental consent for adolescents under the age of consent; and
- (l) There has been no comprehensive study to assess the nature and scope of adolescent health problems, including with respect to HIV & AIDS.

7. **Saint Lucia: [Concluding observations \(2014\) CRC/C/LCA/CO/2-4](#)**

- (a) There is need for a comprehensive legislative framework to ensure the effective implementation of child-related laws at the national, provincial and municipal levels;
- (b) There has been no comprehensive study to assess the nature and scope of adolescent health problems;
- (c) 16- and 17-year-olds cannot access sexual and reproductive health-care services without parental consent;
- (d) Sexually transmitted infections among adolescents are prevalent, and the rate of HIV & AIDS is increasing;
- (e) There is need for a comprehensive policy and strategy to effectively monitor progress in the implementation of children's rights throughout the country;
- (f) There is a high level of incest and sexual abuse of boys and girls, with insufficient support for victims of sexual abuse;
- (g) While there is a stipulated age of consent for girls regarding sexual relations, there is not one for boys, which puts them at increased risk of sexual exploitation and abuse;
- (h) The revised Criminal Code of 2004 limits the reporting of child sexual abuse to that committed against "young persons" and therefore does not protect children under 12 years of age from sexual abuse and other forms of child abuse and neglect;
- (i) There is a lack of information on laws, policies, measures, and resources for preventing and combating child sexual abuse, as well as ongoing training for all professionals on the subject;
- (j) The necessary legislative and policy reforms to secure the rights and active participation of children with disabilities in all spheres of society have not taken place;
- (k) Training for teachers who work with children with disabilities is insufficient;
- (l) Children with disabilities are not effectively integrated into all areas of social life;
- (m) Sufficient and adequate facilities for children with disabilities, including schools, sports and leisure facilities and residential facilities, are lacking;
- (n) There is a lack of education programmes for basic child health, and the lack of developmental pediatricians for children with developmental disabilities on the island; and
- (o) There is an insufficient number of specialists in children's mental health facilities and outpatient services for psychosocial rehabilitation, especially in relation to depression and suicide attempts.

8. **Suriname: [Concluding observations \(2016\) CRC/C/SUR/CO/3-4](#)**

- (a) There is need for a comprehensive legislative framework to ensure the effective implementation of child-related laws at the national, provincial and municipal levels;
- (b) There is a need for measures to ensure that all children enjoy equal rights, both in law and in practice, without discrimination, and to ensure the effective elimination of any form of discrimination against children from Amerindian and Maroon communities, children of Haitian migrants, children living with HIV & AIDS, lesbian, gay, bisexual, transgender and intersex children and other groups of children in marginalized situations;
- (c) There is a high rate of child sexual abuse and exploitation, including incest, especially against girls;
- (d) Children with disabilities continue to face discrimination and are not effectively integrated into all areas of social life, including the education system, in particular in the interior areas;
- (e) Inadequate care is provided in residential care institutions, and abuse and violence, including sexual abuse, by service providers and family members persist;
- (f) Insufficient training is provided to teachers who work with children with disabilities;
- (g) Facilities for children with disabilities, including schools, sports and leisure facilities and residential facilities, are insufficient and inadequate;
- (h) There is a need to strengthen the implementation of the National Strategic Plan on HIV/AIDS, the Prevention of Mother-to-Child Transmission programme and the Ministry of Health special prevention programmes for children and youth (aged 10 to 19 years), including the availability of rapid testing in the interior areas of the State party, and ensure access to antiretroviral treatment;
- (i) There is a high teenage pregnancy rate, widespread prevalence of sexually transmitted infections among adolescents and a high rate of HIV infections, especially among adolescent girls;
- (j) There is poor access to sexual and reproductive health care information and services;
- (k) There has been no comprehensive study to assess the nature and scope of adolescent health problems, including with respect to HIV & AIDS; and
- (l) There is a high rate of alcohol, drug and tobacco use among children.

9. **Saint Vincent and the Grenadines** (March 2017):<sup>232</sup>

- (a) The 2016 national policy framework for the protection of children does not promote the rights of the child;
- (b) Measures to ensure the allocation of funds for the development and protection of children in vulnerable situations, even in situations of crisis, are lacking;
- (c) There is a lack of regulations, legislation and procedures to protect children from exploitation in the tourism sector and to ensure legal accountability of business enterprises;

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<sup>232</sup> [Concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines](#), 13 March 2017, CRC/C/VCT/CO/2-3 [Accessed on May 12, 2018]

- (d) The age of marriage under the Marriage Act (1926) is 15 years for girls and 16 years for boys, giving rise to the need to amend the Act to raise the minimum age of marriage to 18 years for girls and boys;
- (e) Although the Status of Children Act (2011) eliminated provisions discriminating against children born out of wedlock in matters of inheritance, the legislation's anti-discrimination provisions do not adequately address the needs of Children with disabilities, including children with intellectual and psychosocial disabilities; and Children living with or affected by HIV & AIDS;
- (f) There is de jure and de facto discrimination against lesbian, gay and bisexual children, in particular the criminalization of consensual same-sex conduct between men under the Criminal Code (1990), which may penalize boys above 16 years of age for same-sex sexual activity;
- (g) There is a perception, reflected in policies and practices, that lesbian, gay and bisexual children have a psychosocial disorder;
- (h) The Criminal Codes allow for legal defence arguments to be based on a statement by the perpetrator, the she/he believed the victim was over 15 years of age;
- (i) Restrictive laws and practices on abortion that lead adolescent girls to resort to unsafe, clandestine, abortions, which in turn results in increased morbidity;
- (j) There is need for a comprehensive gender-sensitive sexual and reproductive health policy for adolescents in which it is recognized that unequal access by adolescents to such information, commodities and services amounts to discrimination; and
- (k) Sexual and reproductive health education should be made part of the mandatory school curriculum and is directed at adolescent girls and boys.

Up-to-date reports (within the last 5 years) were not available for the following States and therefore are not included in this review:

<b>State</b>	<b>Most recent Report</b>
Belize:	<a href="#">Concluding observations (2005) CRC/C/15/Add.252</a>
The Bahamas:	<a href="#">Concluding observations (2005) CRC/C/15/Add.253</a>
Dominica:	<a href="#">Concluding observations (2004) CRC/C/15/Add.238</a>
Grenada:	<a href="#">Concluding observations (2010) CRC/C/GRD/CO/2</a>
Saint Kitts and Nevis:	<a href="#">Concluding observations (1999) CRC/C/15/Add.104</a>
Trinidad and Tobago:	<a href="#">Concluding observations (2006) CRC/C/TTO/CO/2</a>

A 2018 UNFPA study<sup>233</sup> of the delivery of comprehensive sexuality education<sup>234</sup> in eight Caribbean countries found that, except for Suriname, most countries have a defined structure with responsibility for the delivery of sexuality education in the country.<sup>235</sup> The study found that in most countries the CARICOM Health and Family Life Education Guideline inform the teaching of comprehensive sexuality

<sup>233</sup> Edmund, Xysta, *State of the Art Diagnosis of Comprehensive Sexuality Education (CSE) Implementation in the English and Dutch Speaking Caribbean*, UNFPA (2018)

<sup>234</sup> Comprehensive sexuality education is defined by UNFPA as a rights-based and gender focused approach to sexuality education in school or out of school (UNFPA, 2014). It is an age-appropriate, culturally relevant approach to teaching about sexuality and relationships by providing scientific and realistic non-judgmental information in a manner that is acceptable and accessible to the target group and other related stakeholders (UNESCO, 2009).

<sup>235</sup> Edmund (2018), p. 42

education. However, implementation varies across countries. In Trinidad and Tobago, there is a standard guideline implementation. In Barbados and Suriname, there is selective implementation with implementation of only some topics as part of the health and family life curriculum. In Saint Lucia, Jamaica and Belize, there is modified implementation - the countries reviewed the CARICOM Guidelines and drafted a new document to be implemented in country. In Guyana and Grenada, implementation follows a combination of the selective and modified approaches.<sup>236</sup> The mode of instruction also varied across countries. In some countries, the information is given as a core subject with sexuality and sexual health taught using the HFLE or other curriculum through weekly timetabled sessions. In others, sexuality and sexual health topics are addressed, *where relevant*, in the topic areas of other subjects, e.g. Health Sciences, Social Studies, Integrated Science, includes examinations or other methods of assessment.<sup>237</sup> The majority of countries indicated that implementation of CSE was moderate, due to the national policy position, the influence of faith-based organizations, and the position of the school or preference of a class teacher.<sup>238</sup> From interviews with stakeholders, it appears that the situation is as indicated in the various reports. State actors suggest that the HFLE is working and meets the age-appropriate needs of children, while non-state actors highlight the result of knowledge, attitude and behaviour surveys as pointing to the fact that the HFLE curriculum is not meeting the desired objectives.

#### 15.4. RECOMMENDATIONS

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- (a) **Re-entry policy:** Provide technical assistance to national authorities to elaborate a clear, appropriate re-entry policy and/or measure for pregnant schoolgirls that allows them to remain in formal education, sit exams and then return to school after giving birth, including through the use of approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.
- (b) **Access to services:** Provide technical-legal assistance to national authorities to effectively implement laws to ensure access to basic services and access to effective remedies in case of violation of the rights of disadvantaged groups of children, including rural, Maroon and indigenous children and children with disabilities.
- (c) **Age of consent legislation:** Provide technical-legal assistance to national authorities to amend age of consent legislation, so that the age at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines to be included in the amended legislation and which gives medical practitioners a discretion to assess a person's capacity to consent and which is based on the framework of the Convention on the Rights of the Child allowing adolescents to provide informed consent "for her/himself, while informing the parents if that is in the 'best interest of the child.'"

### FACTOR 16: PEOPLE WHO USE DRUGS

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#### 16.1. INTERNATIONAL GUIDELINES

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UNAIDS has stated that harm reduction programs and HIV prevention information are among the most

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<sup>236</sup> Ibid. p. 44

<sup>237</sup> Ibid.

<sup>238</sup> Ibid. p. 45

efficient and cost-effective measures to prevent the HIV epidemic among people who use drugs. International Guidelines urge States to repeal any restrictions on the availability of preventative measures, such as condoms, bleach, and clean needles and syringes. The Guidelines urge States to refrain from imposing targeted coercive and compulsory health measures on people who use drugs, such as forced HIV or drug testing or treatment, since these measures constitute an arbitrary interference with the right to liberty and security of persons; the right not to be subjected without free consent, to medical or scientific experimentation; and the right to health whose cornerstone is informed consent to treatment. Together with discrimination by health care workers, coercive health measures contribute to the HIV vulnerability of people who use drugs by pushing them away from health care services. According to WHO, UNAIDS, and UNODC, services should be offered voluntarily in an enabling environment created by supportive legislation, policies and strategies. The Guidelines note that States' obligation to protect the human rights of people who use drugs implies the duty to ensure that government officials, prosecutors, law enforcement officers, judges, health care providers, social workers, and community and religious leaders are sensitized to the multiple layers of HIV vulnerability affecting people who use drugs. They should also be trained to protect and respect their human rights, including the right to non-discrimination in the provision of HIV-related services.

## **16.2. APPLICABLE HUMAN RIGHTS**

Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. *International Guidelines (Guideline 4)*.

## **16.3. SITUATION IN THE CARIBBEAN**

Among the groups identified as “Key Populations” in the Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), are people who use crack cocaine<sup>239</sup>. The Strategy notes that in Caribbean countries, people who use crack cocaine are at higher risk of becoming infected with HIV, perhaps because of the association between drug use and transactional sex and risky sex. It was reported that in Trinidad and Tobago, a significant number of people living with HIV report a history of crack use<sup>240</sup> and similar evidence exists from the Dominican Republic and Jamaica, particularly among people who have been deported from the United States of America.<sup>241</sup>

The National HIV/AIDS Strategic Plans for The Bahamas, Barbados, Belize, Grenada, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Suriname do not recognize drug users as either vulnerable, at risk or members of “key populations.” All others have some reference to the link between drug use and HIV vulnerability. For example, in the Strategic Plan for Antigua and Barbuda (2012-2016) drug users are included in the definition of vulnerable and most at risk populations (section 4.2), but it is noted that “marijuana is the drug of choice” in Antigua and Barbuda. It is

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<sup>239</sup> Caribbean Community (CARICOM), Pan Caribbean Partnership Against HIV and AIDS (PANCAP), Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), page 26

<sup>240</sup> [http://data.unaids.org/publications/fact-sheets01/trinidad-tobago\\_en.pdf](http://data.unaids.org/publications/fact-sheets01/trinidad-tobago_en.pdf)

<sup>241</sup> Figueroa, J.P. The HIV epidemic in the Caribbean: meeting the challenges of achieving universal access to prevention, treatment and care. *West Indian Medical Journal* 2008; 57 (3): 195-203.

noted in the Plan however that there are no reports of injecting drug use.<sup>242</sup> In Jamaica, surveillance data suggests that **injecting drug** users do not constitute a significant population in terms of HIV prevalence. However, over a five-year period from 2008-2012, 43% of all HIV cases reported among drug users have been IDU<sup>243</sup>. Drug users are included in the definition of “key populations” outlined in the National Strategic Plan.<sup>244</sup> The Guyana Strategic Plan – HIVision - has proposed interventions under priority area 2.3, related to increasing awareness.

From a review of the National Strategic Plans for HIV, it appears that the framework for services for drug users in the Caribbean is predominantly abstinence-based. Harm reduction does not appear to be an integral part of the national HIV response. Common harm reduction strategies, such as those mentioned below, are absent from the various National Strategic Plans:

- a) Teaching drug users about the risks of different drugs and their use.
- b) Information on using drugs more safely and reducing the harm of overdoses.
- c) Education and referral to drug treatment opportunities.
- d) Initiatives that would permit drug users to exchange used syringes for new ones or buy new syringes.<sup>245</sup>
- e) Outreach services in areas where drug sales occur.

There is also no information on human rights training and education for various professionals who work with drug users and no information on the level of psychosocial support and mental health services for this population. It must be noted however, that although the respective HIV Strategic Plans may not contain specific information on harm reduction, there is evidence that States are pursuing demand reduction interventions, although perhaps without making the link with HIV prevention and risk reduction.

The consultant reviewed periodic evaluations of progress in drug control by Caribbean States, which were carried out by the Inter-American Drug Abuse Control Commission (CICAD), through the Multilateral Evaluation Mechanism<sup>246</sup>.

In terms of demand reduction, the CICAD evaluations found the following, for example:

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<sup>242</sup> See page 24

<sup>243</sup> Jamaica, National Integrated Strategic Plan for Sexual and Reproductive Health (2014-2019), at page 37

<sup>244</sup> Ibid, page 56 at section 3.3

<sup>245</sup> In the Caribbean context, with its focus on marijuana and crack cocaine, this may not be relevant.

<sup>246</sup> The Multilateral Evaluation Mechanism (MEM) is an instrument designed to measure the progress of actions taken by the member States of the Organization of American States (OAS) to address the hemispheric drug problem and other related crimes. See Organization of American States: [http://www.cicad.oas.org/main/template.asp?file=/mem/septima\\_ronda/default\\_eng.asp](http://www.cicad.oas.org/main/template.asp?file=/mem/septima_ronda/default_eng.asp)



**Antigua and Barbuda (2011)<sup>247</sup>***Prevention / Demand Reduction Program*

<i>Population Group</i>	<i>Name of program</i>	<i>Type of Program</i>
<i>Elementary/primary: 10-11 years - (Grades 5 &amp; 6</i>	<i>D.A.R.E Molding Young Minds</i>	<i>Universal Universal</i>
<i>Junior high &amp; high school (secondary school): 11-14 years</i>	<i>Health and Family Life Education Molding Young Minds</i>	<i>Selective Universal</i>

There were no reports of interventions for pre-school or university students or the street population, whether programs are offered for families, gender-based groups, the community, migrants and refugees or workers in the workplace.

In terms of treatment, the report for Antigua noted that the “.... *The country provides no information regarding public financing allocated for treatment activities, and reports that the Crossroads Centre is an international private residential treatment facility, and therefore funding is not provided by the government... there are no official operating standards in place for specialized facilities that provide treatment services for persons with problems associated with drug use, nor does it have an official licensing procedure for such facilities. The country does not have an official register of facilities that provide treatment services, and there is no monitoring system in place for these facilities. The country’s primary health care (PHC) facilities provide psychiatric outpatient clinics to address problems associated with drug use. Antigua and Barbuda reports that eight PHC facilities delivered specialized care for problems associated with drug use each year during the 2006–2009 period. Antigua and Barbuda provides data on the total number of Antiguan patients treated at the Crossroads Centre during the evaluation period: 38 cases in 2006, 44 cases in 2007, 35 cases in 2008 and 30 cases in 2009. Unlicensed treatment facilities in Antigua and Barbuda provide 29-day residential treatment programs. Regarding aftercare programs, the country reports that Crossroads offers transitional living and weekly aftercare groups. Activities are carried out through the Crossroads Centre to follow up on patients discharged after completion of their prescribed treatment plan”*

<sup>247</sup> Organization of American States: [Evaluation of Progress in Drug Control \(2011\), Antigua and Barbuda](#) [Accessed on May 13, 2018]

### **The Bahamas (2010)<sup>248</sup>**

“The Bahamas reports that it is carrying out drug abuse prevention programs that target key populations as follows:

<i>Population Group</i>	<i>Name of program</i>	<i>Type of Program</i>
<i>Pre-school: 2.5 - 5 years</i>	<i>Drug free schools</i>	<i>Universal</i>
<i>Elementary/primary: 6 – 12 years</i>	<i>Drug Free Schools</i>	<i>Universal</i>
<i>Junior high &amp; high school (secondary school): 13 – 15 years</i>	<i>Drug Free Schools</i>	<i>Universal</i>
<i>16 – 18 years</i>	<i>Drug Free Schools</i>	<i>Universal</i>
<i>Community</i>	<i>Family Island Demand Reduction Programme (FIDR)</i>	<i>Indicated</i>

*“The Bahamas is carrying out drug abuse prevention programs for pre-school, primary, secondary and community populations and training courses were offered to professionals in drug prevention during the reporting period. However, CICAD observes the non-implementation of prevention programs for university students, workers in the workplace or incarcerated individuals. Regarding treatment... Primary Health Care facilities perform specific activities to address problems associated with drug use and the country has four centers offering aftercare programs. However, CICAD notes the lack of official operating standards for specialized treatment facilities that provide treatment services for persons with problems associated with drug use. Likewise, CICAD notes that the country does not have an official licensing procedure to authorize the operation of specialized facilities that provide treatment services and has partial data on the number of cases treated in drug use treatment facilities.”*

Reports for the other Caribbean States can be accessed [here](#).

#### **16.4. RECOMMENDATIONS**

Data contained in the national HIV Strategic Plans suggest that injecting drug users do not constitute a significant population in terms of HIV prevalence in the Caribbean. It appears that while demand reduction and treatment programs are being undertaken in the law enforcement arena, there is a need for coordination and harmonization with HIV & AIDS programs, to ensure that prevention and harm reduction interventions are reaching those most at risk of HIV and STI infection.

It is recommended that PANCAP

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<sup>248</sup> Organization of American States: [Evaluation of Progress in Drug Control \(2010\), The Bahamas](#) [Accessed on May 13, 2018]

- (a) **Harm Reduction Measures:** Provide technical assistance to national authorities to implement specific harm reduction measures, in areas known to be frequented by members of key populations, especially MSM and sex workers, to:
- a.1. Teach drug users about the risks of different drugs and their use.
  - a.2. Provide information, education and referral to drug treatment opportunities.
  - a.3. Provide outreach services in areas where drug sales occur.
- (b) **Legally enforceable operating standards:** Provide technical assistance to national authorities to develop legislative or legally enforceable operating standards, regulating treatment facilities that provide treatment services for persons with problems associated with drug use.

## **FACTOR 17: ADULTS ENGAGED IN SEX WORK**

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### **17.1. INTERNATIONAL GUIDELINES**

HIV & AIDS research literature suggests that adults engaged in sex work<sup>249</sup> are at a higher risk of acquiring HIV than the general population<sup>250</sup>. According to experts, the increased vulnerability of sex workers to HIV is explained by their stigmatization, marginalization, and the criminalization of their status, which – according to many human rights experts – diminishes their “bargaining power” to choose clients and negotiate safer sex practices (particularly condom use). The socio-legal context also exposes them to human rights abuses and limits their access to essential services. Since most States do not recognize transactional sex as a legitimate form of employment, the vast majority of adults engaged in commercial sex do not have access to state benefits, health insurance, and are not protected by occupational health and safety regulations. The prohibition of commercial sex also renders any sex transaction agreement illegal, on the grounds of being contrary to public policy, resulting in no legal recourse. Sex workers who use drugs are at further risk: the combination of commercial sex and drug taking puts them beyond the protection of the law and makes them particularly vulnerable to exploitation and abuse, often by those in positions of authority.

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<sup>249</sup> Sex workers are female, male and transgender adults who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not consciously define those activities as income-generating. *See* UNAIDS, *GETTING TO ZERO: 2011-2015 STRATEGY* 60 (2010).

<sup>250</sup> See for example The Gap Report, UNAIDS (2014) [Internet]: <http://www.unaids.org/en/resources/documents/2014/Sexworkers> [Accessed on May 5, 2018]

UNAIDS suggests that protection of sex workers in the context of HIV & AIDS should rest on three pillars:

1. Assuring universal access to comprehensive HIV-related services for all sex workers and their clients;
2. Building supportive environments, strengthening partnerships, and expanding choices (including alternatives to the sex industry for those who want to leave it); and
3. Addressing structural factors that disempower sex workers, contribute to their HIV vulnerability, and exacerbate the HIV epidemic. These factors include social exclusion, discrimination, lack of meaningful protection, limited economic opportunities, poverty, gender inequality, mobility, displacement, and exposure to risks associated with the sex industry, such as violence, harassment, and sexual exploitation.

## **17.2. APPLICABLE HUMAN RIGHTS**

Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients: *International Guidelines, Guideline 4.*

## **17.3. SITUATION IN THE CARIBBEAN**

Criminal Law and laws regulating public spaces<sup>251</sup> across the Caribbean have created offenses of prostitution and related offenses such as solicitation in a public place for the purposes of prostitution<sup>252</sup>, loitering in open spaces<sup>253</sup>, indecent exposure<sup>254</sup>, keeping of brothels<sup>255</sup>, and living off the earnings of prostitution<sup>256</sup>. The term “prostitution” is now universally accepted as offensive, and one that stigmatizes and is often used to denigrate women. For this reason, the term has been replaced by the concept of “sex work.” In this review, use of the word “prostitute” or “prostitution,” is merely to report faithfully, the actual provisions of the various Statutes.

Across the Caribbean, the respective National Strategic Plans recognize sex workers as a key population in the context of HIV & AIDS. However, the criminal law and public order laws of most Caribbean States, have made the act of engaging in sex work illegal. The fact that the act is illegal by statute means that those engaged in the act are un-apprehended felons.<sup>257</sup> For this reason, HIV & AIDS outreach workers and peer educators are at risk of criminal prosecution for aiding and/or abetting a criminal offence because providing information and advice about safe sexual practices, or providing barrier devices such as condoms to sex workers, while they are at a brothel or, while they are soliciting in a public place for the purposes of sex work, could be construed as causing, encouraging or assisting the primary offence. This creates a real risk that outreach workers could be arrested and charged for secondary offences of aiding and abetting. Aiding and abetting offences are not treated as “new”, distinct

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<sup>251</sup> For example, the Town and Communities Act in Jamaica

<sup>252</sup> Town and Communities Act, Jamaica, Section 3(r)

<sup>253</sup> Ibid, section 7

<sup>254</sup> Ibid, section 9

<sup>255</sup> Offences Against the Person Act, Jamaica. Section 68

<sup>256</sup> Sexual Offences Act, Jamaica. Section 23(1)

<sup>257</sup> see *Tan Eng Hong v Attorney General of Singapore* [2012] SGCA 45 (at paragraph 184)

offences, only as a derivative of the primary offence. The person accused of aiding and abetting is him/herself guilty of the principal offence and as such, become liable to the same penalties. Having regard to these risks, it is evident why sex work increases a sex worker's vulnerability. A review of previous studies<sup>258</sup> and the laws of the respective States reveal that except for Belize<sup>259</sup>, Suriname<sup>260</sup> and the Dominican Republic<sup>261</sup>, sex work in the Caribbean is an illegal activity.

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<sup>258</sup> See in particular, Kempadoo, Kamala, *Prostitution, Sex work and Transactional Sex in the English, Dutch and French Speaking Caribbean* (2009).

<sup>259</sup> "[W]hile prostitution in itself is 'legal' in Belize, contracting the services of a commercial sex worker is illegal. There are also offenses such as pimping, owning or operating a brothel, or living off the proceeds of prostitution, which are punishable by law." Benjamin Flowers, "Regional Prostitution Laws Challenged but Sex Work Already Legal in Belize," *reporter.bz*, Apr. 22, 2016

<sup>260</sup> "Although the law prohibits sexual exploitation, including prostitution, in practice prostitution was tolerated and common." US Department of State, "2009 Country Report on Human Rights Practices: Suriname," *state.gov*, Mar. 11, 2010

<sup>261</sup> "Prostitution is legal in the Dominican Republic, and, as a result of globalization, the country has become a sex tourism hotspot for foreigners." - Olivia Marple, "Machismo, Femicide, and Sex Tourism: An Overview of Women's Rights in the Dominican Republic," *coha.org*, June 4, 2015

The main criminal statutes<sup>262</sup> and their respective provisions are as follows:

<b>CARIBBEAN STATE</b>	<b>STATUTORY PROVISION (CRIMINAL)</b>
<b>ANTIGUA AND BARBUDA</b>	<a href="#">Sexual Offences Act 1995</a> Section 22, solicitation and living off earnings of prostitution
<b>BAHAMAS</b>	<a href="#">Statute Law of The Bahamas Penal Code</a> Section 137, Suppression of Brothels Section 138, Solicitation and trading in prostitution Section 212(13), loitering in a public place for the purposes of prostitution <a href="#">Sexual Offences Act 1991</a> Section 8, solicitation and living off earnings of prostitution
<b>BARBADOS</b>	<a href="#">Sexual Offences Act 1993</a> . Section 18, Suppression of Brothels Section 19, solicitation and living off earnings of prostitution
<b>DOMINICA</b>	<a href="#">Sexual Offences Act 1998</a> . Section 24, Suppression of Brothels, Section 25, solicitation and living off earnings of prostitution
<b>GRENADA</b>	<a href="#">Criminal Code</a> . Section 137(30), Acting as a common prostitute
<b>GUYANA</b>	<a href="#">Criminal Law (Offences) Act</a> . Section 355, Common nuisance Section 356, suppression of brothels <a href="#">Summary Jurisdiction Offences Act 1892 Cap 8:08</a> Section 165, suppression of brothels Section 166, Solicitation and living off earnings of prostitution
<b>JAMAICA</b>	<a href="#">Town and Communities Act, Jamaica</a> Section 3(r), loitering and soliciting in a public place Section 7, disturbing the peace Section 9, indecent exposure Section 11, Noisy and Disorderly Conduct in public places <a href="#">Offences Against the Person Act, Jamaica</a> . Section 68, Suppression of brothels <a href="#">Sexual Offences Act 2011</a> . Section 23, living off earnings of prostitution, using a house as a brothel
<b>SAINT LUCIA</b>	<a href="#">Criminal Code Revised Edition 2004</a> . Section 143, prohibitions on keeping brothels Section 147, trading in prostitution Section 149, trading in prostitution by females Section 150, Soliciting prostitution Section 151, living on earnings of prostitution Section 502, 503, 504, indecent exposure
<b>TRINIDAD AND TOBAGO</b>	<a href="#">Sexual Offences Act 1986</a> Section 22, suppression of brothels Section 23, living on earnings of prostitution Section 24, aiding and abetting prostitution <a href="#">Summary Offences Act 1921</a> . Section 46(j), loitering and soliciting in public for prostitution

<sup>262</sup> This table does not include public order laws, although these should be borne in mind for any discussion of which laws affect sex work in the Caribbean

Finally, Immigration Acts such as in Barbados, the Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago designate prostitutes and those organizing prostitution or living on the earnings of prostitution as “prohibited immigrants” or “prohibited aliens.” These laws are intended to refuse such persons, entry into the country and define them as ineligible for the grant of immigrant status (Robinson 2008).<sup>263</sup>

#### **17.4. RECOMMENDATIONS**

Although most States recognize sex workers as a key population in the context of HIV & AIDS and measures are being undertaken to mitigate HIV vulnerability among sex workers, Caribbean States have not put the necessary legal infrastructure in place to prohibit abuse, physical violence and discrimination against sex workers. Although the laws against loitering and soliciting, for the purposes of prostitution, are rarely enforced, they remain valid laws and may facilitate an environment for abuse by those who see sex work as morally wrong. In addition to violence and abuse against sex workers, criminal and other laws may place outreach workers at risk of aiding and abetting offenses, while engaged in outreach. As far as this review could ascertain, no Caribbean State is actively pursuing measures to decriminalize or legalize consensual adult sex work at this time.

It is recommended that PANCAP:

- (c) **Decriminalization of sex work:** Support civil society organizations to advocate for decriminalization of sex work as an important step to prevent sexual and labour exploitation of persons engaged in sex work.
- (d) **Amend public order laws:** Provide technical-legal assistance to national authorities to amend public order laws and sexual offences legislation to provide immunity against criminal prosecution for aiding, abetting or facilitating offences, to medical practitioners, guidance counsellors, outreach workers and social workers who provide information, advice and other services to sex workers at places where they may engage in activities, contrary to public order laws and other laws, once it is shown that the person in question is acting for the purpose of—
  - (i) protecting the sex worker from sexually transmitted infection;
  - (ii) promoting the sex worker’s general health and emotional well-being; and
  - (iii) in none of the above situations, the person can be shown to have been either— (a) acted for his/her own sexual gratification, or (b) for the purpose of causing or encouraging trafficking in persons, exploitation or, a child-sex offence.
- (e) **Anti-discrimination legislation:** Provide technical-legal assistance to national authorities to adopt general anti-discrimination legislation to give protection to sex workers against discrimination in health, housing and access to public goods and services.
- (f) **Guidebook for prosecutors and police officers:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical

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<sup>263</sup> In Kempadoo, Kamala, Prostitution, Sex work and Transactional Sex in the English, Dutch and French Speaking Caribbean (2009).

attacks against sex workers under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

- (g) **Human rights training:** Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of sex workers by police officers and provide, on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.

## **FACTOR 18: TRANSGENDER PERSONS AND MEN WHO HAVE SEX WITH MEN (MSM)**

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### **18.1. INTERNATIONAL GUIDELINES**

Research literature suggests that adult men, who have sex with other men<sup>264</sup> and their partners, are at a higher risk of acquiring HIV than the general population<sup>265</sup>. The prevalence rate of HIV, among MSM, is high in all regions of the world, with rates as high as 22% in regions outside Sub-Saharan Africa, 6% in Sub-Saharan Africa, and 12% globally.<sup>266</sup>

The UN Special Rapporteur on the Right to Health has pointed out that the criminalization of same-sex conduct between consenting adults infringes not only upon the right to health but also upon other human rights, including the rights to privacy and equality. The International Guidelines suggest that criminalization perpetuates discriminatory beliefs, including among some health care providers, who consider homosexuality and transgender behavior as diseases or disorders. These attitudes and practices disempower affected individuals to realize fully, their right to health by accessing health care settings.

The Guidelines urge States to reduce HIV vulnerability among MSM and transgender people<sup>267</sup> by eliminating discrimination against them and by protecting their human rights. States are urged to:

- 1) Review, with the aim of repeal, criminal laws prohibiting same-sex conduct between consenting adults in private;
- 2) Enact penalties for vilification of adults who engage in same-sex relationships;
- 3) Give legal recognition to gender identity as well as same-sex marriages and/or relationships and govern such relationships with consistent property, divorce and inheritance provisions;
- 4) Reconcile the age of consent to sex and marriage for both heterosexual and homosexual relationships;
- 5) Ensure adequate legal protection in cases of assault against MSM and transgender people;
- 6) Ensure that criminal law does not impede the provision of HIV prevention, treatment, and care

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<sup>264</sup> The term MSM describes males who have sex with other males, regardless of whether or not they have sex with women or have a personal or social identity associated with that behavior, such as being gay or bisexual. See UNAIDS, Action Framework: Universal Access For Men Who Have Sex With Men And Transgender People (2009).

<sup>265</sup> See for example [The Gap Report, UNAIDS \(2014\)](#) [Accessed on May 5, 2018]

<sup>266</sup> Joint United Nations Program on HIV/AIDS (UNAIDS), [Global AIDS Update 2017](#), page 27

<sup>267</sup> The term transgender comprises individuals whose gender identity and/or expression of their gender differs from social norms related to their gender of birth. The term transgender people describe a wide range of identities, roles and experiences, which can vary considerably from one culture to another. See UNAIDS, GETTING TO ZERO STRATEGY 2011-2015 at 61 (2010).



services to MSM or transgender people;

- 7) Prohibit compulsory, coercive and abusive health measures targeting MSM, such as compulsory HIV and STI testing, treatment of sexual orientation, or coercive gender reassignment; and
- 8) Ensure the participation of MSM and transgender people in the planning, implementation and review of HIV-related responses.

This report recognizes the differences between sexual orientation and gender identity<sup>268</sup>. The report also recognizes that lesbian women face discrimination and specific HIV vulnerabilities because of structural factors, including sexual violence. Nevertheless, this section of the report addresses MSM and transgender people together due to their similar HIV risks and for this reason, specific emphasis has been placed on MSM and trans-women (male-to-female transgender people – See Factors 2, 4, 8 and 14 above) because HIV risks are significantly higher among MSM and trans-women due to physiological factors associated with the mode of HIV transmission.

## **18.2. APPLICABLE HUMAN RIGHTS**

***The right to legal recognition, the right to State protection and the right to access healthcare and other public goods and services, without discrimination:*** These rights are listed in the Yogyakarta Principles *Plus 10*<sup>269</sup> – a document adopted in Geneva, on November 10, 2017, by the world’s renowned human rights experts. It outlines the application of international human rights law in relation to sexual orientation and gender identity.<sup>270</sup>

## **18.3. SITUATION IN THE CARIBBEAN**

As seen in [section 5.4 of this report](#), Caribbean States have ratified the ICCPR and ICESCR, which require States to enact legislation “prohibit[ing] any discrimination and guarantee[ing] to all persons equal and effective protection against discrimination on any ground including “sex . . . or other status.”<sup>271</sup> The United Nations Human Rights Committee has also stated that the references to “sex” in ICCPR Arts. 2(1) and 26 encompass sexual orientation.<sup>272</sup> To give effect to the rights set out in the Yogyakarta Principles, Caribbean States should therefore: 1) ensure that all sexual and reproductive health services respect the diversity of sexual orientations and gender identities and 2) facilitate educational campaigns that promote tolerance and address discrimination among the general population, law enforcement personnel, and health care providers.

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<sup>268</sup> Sexual orientation is defined as a person’s capacity for profound emotional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender. *Gender identity* refers to a person’s deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth. See THE YOGYAKARTA PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY (2007).

<sup>269</sup> The Yogyakarta Principles Plus 10 [Internet]: [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf) [Accessed on April 13, 2018]

<sup>270</sup> The Yogyakarta Principles were first adopted in 2006. In response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia, to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a guide to human rights which affirm binding international legal standards with which all States must comply. See: <https://yogyakartaprinciples.org/>

<sup>271</sup> ICCPR, Article 26

<sup>272</sup> Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

## 18.4. GAPS AND OPPORTUNITIES

- (a) **LGBT persons face verbal abuse, harassment and physical violence in public spaces:** [See Factor 7 above](#).
- (b) **Nine Caribbean States continue to criminalize same sex activity among males:** Although most States recognize MSM and transgender people as key populations in the context of HIV & AIDS, criminal and other laws still exist, that have the effect of impeding measures to mitigate HIV vulnerability among MSM and transgender people and provide them with HIV-related services. A 2016 Survey – Survey of Sexual Orientation Laws report by The International Lesbian, Gay, Bisexual, Trans and Intersex Association<sup>273</sup> shows that almost all Caribbean States criminalize same-sex activities among consenting adults. The territories where same sex activities between consenting adults in private continue to be illegal, and the applicable criminal law provisions, are as follows:
1. **Antigua and Barbuda:** Sexual Offences Act 1995, Section 12(1)
  2. **Barbados:** Sexual Offences Act, Section 9
  3. **Dominica:** Sexual offences Act 1998, Section 16
  4. **Grenada:** Criminal Code, Section 431
  5. **Guyana:** Criminal Law (Offences) Act 1893, section 352, 353, 354
  6. **Jamaica:** Offences Against the Persons Act, Sections 76, 77, 79
  7. **Saint Kitts and Nevis:** Offences against the Person Ordinance, chapter 56 of the Revised Laws 1961, section 56
  8. **Saint Lucia:** Criminal Code, Section 133
  9. **Saint Vincent and the Grenadines:** Criminal Code, Sections 146 and 148

In April 2018, the Supreme Court of Trinidad and Tobago in [Jason Jones v. Attorney General of Trinidad and Tobago](#)<sup>274</sup> struck down Sections 13 and 16 of the Sexual Offences Act, which criminalized buggery. The basis of the court’s decision is that the provisions infringed the dignity of the claimant, an openly gay man, and was therefore in violation of the Constitution of Trinidad and Tobago. In 2016, the Supreme Court of Belize made a similar ruling in relation to Section 53 of the Belize Criminal Code in [Caleb Orozco and Others v. The Attorney General of Belize](#)<sup>275</sup>.

The ruling by the Trinidad and Tobago High Court brings the number of Caribbean States, where same sex activities between consenting adults in private, are no longer illegal, to six. They are The Dominican Republic, Suriname, Haiti, Belize, Trinidad and Tobago and the Bahamas. At the time of writing, there is no evidence that those States that retain criminal provisions against same sex relationships are actively pursuing measures to decriminalize sexual acts between consenting adults in private. In Guyana,<sup>276</sup> there are laws that criminalize cross-dressing, which in some respects prevent transgender men and women from exercising the right to freedom of expression. One interviewee in Antigua recounted: “...*One time I travelled to Barbuda... one officer at the airport took my picture,*

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<sup>273</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., [State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalization, protection and recognition](#) (Geneva; ILGA, May 2016)

<sup>274</sup> Unreported. Claim CV2017-00720 (12 April 2018)

<sup>275</sup> Unreported. Claim 668 of 2010 (10 August 2016)

<sup>276</sup> See for example the Summary Jurisdiction (Offences) Act, 1983 in Guyana, which establishes the offence of appearing in public in clothing or attire which is not attributable to a person’s perceived sex assigned at birth for an improper purpose

*searched my wallet and then asked me for my passport... then he said I need to show him two different forms of ID... they need training.*<sup>277</sup>

- (c) **Sexual orientation is not a protected ground against discrimination:** The Constitution of most Caribbean States do not prohibit discrimination based on sexual orientation and gender identity and there are no general anti-discrimination laws protecting MSM and transgender persons. In the absence of such legislation, MSM and transgender persons may be able to pursue a claim for constitutional redress for breach of the right to equality, but only where the Constitution provides protection against discriminatory treatment and makes that provision justiciable.

## **18.5. RECOMMENDATIONS**

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### (a) Priority Recommendations

- a.1. **Factor 7:** Implement the recommendations made in relation to [Factor 7 above](#).
- a.2. **Strategic litigation:** Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of LGBT persons or any other group.
- a.3. **Sexual and reproductive health services:** Provide technical and financial assistance to national authorities to implement measures that will ensure that all sexual and reproductive health services respect the diversity of sexual orientations and gender identities.

### (b) Other Recommendations

- b.1. **Anti- discrimination legislation:** Provide technical and financial assistance to civil society organizations to advocate for the enactment of comprehensive anti-discrimination legislation to prohibit all forms of discrimination.
- b.2. **Decriminalization of sexual relations:** Provide technical and financial assistance to civil society organizations to advocate for the decriminalization of sexual relations between consenting adults of the same sex to bring legislation into compliance with the International Covenant on Civil and Political Rights and put an end to prejudices and the social stigmatization of homosexuality.
- b.3. **Cases of human rights violations:** Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of lesbian, bisexual and transgender women by police officers and provide, on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.
- b.4. **Guidebook for prosecutors and police officers:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender

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<sup>277</sup> Interview with Joseph [pseudonym], Antigua. June 19, 2018.

persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

## **FACTOR 19: PEOPLE UNDER STATE CUSTODY**

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### **19.1. INTERNATIONAL GUIDELINES**

International Guidelines note that the state, through prison authorities, owe a duty of care to all people in custody, including the duty to protect the rights to life and health. Therefore, prison administrations have the responsibility to safeguard the confidentiality of prisoners' HIV status; establish effective protection from HIV-related discrimination; and define and put in place, policies and practices that will create a safer environment and diminish the risk of HIV transmission. Further, in line with the principle of equivalence articulated, among others, in the UN Basic Principles for the Treatment of Prisoners, people under state custody are entitled, without discrimination, to a standard of health care at least equivalent to that available in the outside community. Therefore, States should make all HIV-related services available to people in custody at least to the level available to the general population. According to International Guidelines and the UN Committee against Torture, denial to prisoners of access to adequate medical care, including HIV-related services, could constitute cruel, inhuman or degrading treatment or punishment.

### **19.2. APPLICABLE HUMAN RIGHTS**

International law prohibits torture and all forms of discrimination against prisoners, including children, and guarantees persons, deprived of liberty, the right to dignity and humane treatment. According to the International Guidelines and the UN Committee against Torture, denial to prisoners of access to adequate medical care, including HIV-related services, could constitute cruel, inhumane or degrading treatment or punishment<sup>278</sup>.

### **19.3. SITUATION IN THE CARIBBEAN**

In the Caribbean, as elsewhere, many prisoners are vulnerable to HIV due to several factors, including the relative lack of knowledge about the virus, among this population, overcrowding, lack of access to protection and good quality health services and violent conditions.<sup>279</sup> A 2009 study in the OECS<sup>280</sup> shows that 'HIV prevalence among male prison inmates was three times higher than the estimated OECS population prevalence.' In **Antigua and Barbuda**, the HIV prevalence rate (2009) was three percent (3.0%) in the prison population.<sup>281</sup> The National Strategic Plan for Antigua and Barbuda has identified prisoners as a key population and has proposed the implementation of HIV/STI policies and prevention services in the prison system under Priority Area 3 – Prevention. In **Belize**, the National Strategic Plan

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<sup>278</sup> UN COMMITTEE AGAINST TORTURE, CONCLUDING OBSERVATIONS: NEW ZEALAND para. 175 (*adopted* August 5, 1998, U.N. Doc. A/53/44)

<sup>279</sup> Joint United Nations Program on HIV and AIDS (UNAIDS), [New monitoring centre helps tackle HIV in prisons in Latin America and the Caribbean](#) (April 2011) [Accessed on May 14, 2018]

<sup>280</sup> EV Boisson; C Trotman: [HIV sero-prevalence among male prison inmates in the six countries of the organization of eastern Caribbean States in the Caribbean](#), West Indian Medical Journal vol. 58 no. 2 Mona Mar. 2009 [Accessed on May 14, 2018]

<sup>281</sup> *Ibid.*

reported a HIV prevalence rate (2005) of 4.9% at the Belize Central Prison.<sup>282</sup> In its 2014 Global AIDS Country Progress Report, Belize indicated that there are existing regulations at the prison that prohibit the distribution of condoms among the prison population.<sup>283</sup> The National Integrated Strategic Plan for Sexual and Reproductive Health for **Jamaica** (2014-2019), notes that HIV prevalence among prison inmates was 1.9%<sup>284</sup> but that no HIV testing facility is available on site for prison inmates [and] testing is only available through visiting phlebotomists.<sup>285</sup> The Plan identifies prison inmates as members of key and vulnerable populations and proposes interventions under strategic outcome 2, aimed at reducing by half, new infections among key populations, including prison inmates.<sup>286</sup> In its 2014 Global AIDS Response Progress Report, Jamaica reported that

*“...the delivery of prevention and VCT services to inmates was institutionalized in 2013 and is now a standard intake procedure within the Department of Correctional Services. There is a designated Reproductive Health Coordinator, funded by the National HIV Programme, with responsibility for providing HIV-related services in the national prisons. With the integration of HIV into these facilities, every inmate that enters the system is offered opt-out screening for HIV and syphilis. Inmates who are found positive are then provided with follow-up care.”*

In an interview with the Director for Medical Services for the Department of Corrections<sup>287</sup> one issue highlighted was that there are not enough medical personnel for each correctional facility. The result is that visits by medical practitioners occur at least once per week. The largest correctional facilities will have more frequent visits and if emergency situations arise, inmates are taken to health centers or to the nearest public general hospital. There are no specialized facilities for persons who are transgender, and there are only three psychologists offering services. Routine psychological and mental health services are not offered but if there are indications of depression or mental health issues, referrals will be made.<sup>288</sup> On the question of segregation and isolation, interviewees<sup>289</sup> pointed out that there are no laws that permit isolation or segregation of prisoners *because of their health status or sexual orientation*. Public Health laws may have provisions regarding quarantine. However, in the prisons, openly gay men are separated from the general population for their own safety due to the risk of violence from others.<sup>290</sup>

In **Saint Vincent and the Grenadines**, the National HIV Strategic Plan has identified HIV prevalence among male prisoners as a top priority for monitoring<sup>291</sup> and has noted that the prevalence rate for all inmates tested in 2005 was 4.1%, with half of the HIV positive inmates between the ages of 20 to 29 years.<sup>292</sup> Under Priority Area 3 – Prevention - targeted interventions for at-risk populations (which is defined to include prisoners), are proposed. In its 2015 Global AIDS Response Progress Report, **The Bahamas** reports that it carries out outreach testing at the Department of Corrections and that

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<sup>282</sup> Belize, National HIV-TB Strategic Plan (2016-2020), pp 13, 75

<sup>283</sup> See Page 76

<sup>284</sup> Jamaica, National Integrated Strategic Plan for Sexual and Reproductive Health for Jamaica (2014-2019), page 62

<sup>285</sup> Ibid, page 54

<sup>286</sup> Ibid, page 62

<sup>287</sup> Interview with Dr. Donna Royer-Powe, Director Medical Services, Department of Correctional Services. June 26, 2018

<sup>288</sup> Ibid.

<sup>289</sup> Interview with Dr. Royer-Powe, Jamaica and the Officer in Charge, on behalf of Superintendent, Barbados Prison Service.

<sup>290</sup> Ibid.

<sup>291</sup> Saint Vincent and the Grenadines HIV/AIDS Strategic Plan 2010-2014, page 18

<sup>292</sup> Ibid at page 29

there is testing of accused persons, who are remanded to State custody.<sup>293</sup> **Barbados** has reported that the effectiveness of the National AIDS Programme is challenged by the high levels of stigma and discrimination in Barbados that restrict programme efforts to reach most at-risk populations, such as prisoners.<sup>294</sup>

In **Guyana**, the National HIV Strategic Plan (2013 – 2020), identifies prisoners among the key populations at higher risk and aims to provide strengthened HIV prevention, care and treatment services for this population in the effort to ensure equitable access to health services. In its Global AIDS Response Progress Report for 2015, Guyana indicated that it carries out outreach programmes in prisons, which had a prevalence rate (2008/2009) of 5.24%<sup>295</sup> and that there was referral of inmates to care and treatment services.<sup>296</sup>

**Saint Vincent and the Grenadines** reports<sup>297</sup> that as the prison population has been identified as a most-at-risk group, the HIV & AIDS prevention and control programme has strategically attached a counsellor to attend to the prisoners where VCT services and other prevention activities are offered. In **Trinidad and Tobago**, the National Strategic Plan 2013-2018 identifies vulnerable and key populations as MSM, sex workers, youth, PLHIV, substance users, prisoners. A 2015 rapid HIV situational assessment of key populations in Trinidad and Tobago noted that: *“Trinidad and Tobago’s centralized health service delivery approach has led to challenges in effective programming for key populations. HIV-related stigma and discrimination against men who have sex with men, sex workers and transgender people remain high. These and other structural barriers hinder access, uptake, and retention in services, and have further marginalized members of key populations. Many of the elements of a comprehensive network model are in place, but outreach modalities need to be updated based on current evidence, and case management models need to be strengthened to ensure that individuals who are referred to care and treatment remain within the network.”*<sup>298</sup> In its 2016 Global AIDS Response Progress Report, Trinidad and Tobago has identified technical assistance to coordinate prison interventions as an area of need<sup>299</sup> and that the absence of necessary human resources, with correct skills, mix to implement and follow up on data management activity, has affected availability of data for key populations, including prisoners.

It is evident from the foregoing that Caribbean States have begun the process of implementing initiatives to reduce specific HIV vulnerabilities of people under state custody and provide access to HIV-related services. There is explicit recognition in the National HIV/AIDS Strategic Plans of prison inmates as a key population in the context of HIV & AIDS and measures are being undertaken in correctional facilities to mitigate HIV vulnerability, including voluntary and confidential HIV testing. However, there are key barriers that prevent prison inmates from enjoying the same standard of health, as persons not incarcerated. These barriers include the absence of regulations, laws and administrative

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<sup>293</sup> Government of The Bahamas Global AIDS Response Progress Report 2015, page 16

Ibid at page 25

<sup>294</sup> Government of Barbados Global AIDS Response Progress Report, 2010, page 16

<sup>295</sup> Government of Guyana Global AIDS Response Progress Report, 2015, Page 28

<sup>296</sup> Ibid, Page 33

<sup>297</sup> Government of Saint Vincent and the Grenadines Global AIDS Response Progress Report 2010, page 14

<sup>298</sup> Guillin, Vincent and Morrison, Ken, *Reality and Responses: Rapid HIV Situational Assessment for Key Populations in Trinidad and Tobago*, 2015 in Insanally Sarah, [Removing barriers to accessing HIV and sexual and reproductive health services for key populations in the Caribbean \(2017\)](#)

<sup>299</sup> UNGASS 2016, page 53

Ibid at page 55

guidelines for how to address the needs of transgender prison inmates, who are housed according to their birth sex. In addition, outdated laws prevent access to condoms as a preventive measure.

In discussion with prison officials from Jamaica and Antigua, they confirmed that men who have sex with men are also present in the prison environment, ranging from openly gay prisoners to situational/circumstantial bisexual or heterosexual men who will choose same-sex partners in the absence of female partners. However, under Prison Regulations, condoms are treated as contraband, and therefore are not permitted among prisoners. In addition, because the criminal law prohibits buggery, prison officials state that they cannot be seen to be breaking the law, by facilitating or encouraging anal intercourse between men, by making condoms available to them. Prison officials also note that socially, condom distribution in prisons might be perceived, not only as an acknowledgment of homosexual activity, but also as an endorsement of it. In the context of highly religious societies, this kind of intervention would be resisted by the outside world and within the prison population itself. HIV testing is available to prisoners in most Caribbean countries, as well as access to antiretroviral treatment. The largest challenge to HIV-positive inmates is not treatment in prison but continuity of treatment on release. Finally, there is a lack of written HIV/infectious disease protocols for prison health programmes, which would also help to safeguard the health and rights of staff, inmates and prison guards.

#### **19.4. RECOMMENDATIONS**

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- (a) **Standard minimum rules for the treatment of prisoners:** Under existing Regulations, prisoners are entitled to and may obtain medical care from within the correctional institution or outside where deemed necessary by the designated officers. Beyond duties outlined in the Regulations, there appear to be no Standard Minimum Rules to meet certain human rights needs of prisoners, primarily related to prevention information and necessities. It is recommended that PANCAP provide technical assistance to national authorities to develop standard minimum rules for the treatment of prisoners living with HIV, to include protocols for the education of prisoners regarding safe practices, healthful food, provision of necessities, sexual abuse, self-harm and suicide prevention, health care, personal dignity, grievances and access to courts.
  
- (b) **Develop Policy Guidelines for Jails and Prisons for Transgender Persons:** Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails to define a minimum package of services and service delivery protocols for incarcerated transgender persons.

## SECTION IV: ACCESS TO JUSTICE

According to International Guidelines, law reform in this area should encompass not only norms embodied in the formal legal system, but also those stemming from traditional and customary laws. The Guidelines note however, that the rights contained in legal instruments, will have little practical value without legal protections through which they can be enforced by national justice institutions. According to UNDP, legal protection means that the rights of disadvantaged people are recognized within the scope of the criminal and civil justice systems, thus giving entitlement to remedies. Further, protecting human rights in the context of HIV & AIDS means that mechanisms, such as human rights commissions or ombudspersons, have a mandate to monitor and document instances of HIV-related mistreatment and discrimination.

### FACTOR 20: LEGAL PROTECTION

#### 20.1. INTERNATIONAL GUIDELINES

International standards affirm that the existence of an effective remedy for the violation of a right is integral to the full realization of that right. The Guidelines note that laws that prohibit and provide redress for HIV-related discrimination, harassment, and other human rights violations are not, by mere enactment, sufficient to ensure effective protection of the rights of PLHIV. States should enact anti-discrimination and other protective laws – including laws prohibiting HIV vilification – **but systems must be put in place to provide for speedy and effective administrative and civil remedies.** Mechanisms for monitoring whether these laws are appropriately administered and enforced by the formal and informal justice systems must also be established. States are therefore urged to:

- 1) Support and strengthen HIV& AIDS-related expertise in relevant government agencies (e.g. by establishing HIV focal points in ministries of justice and health); and
- 2) Ensure that human rights commissions, ombudspersons, and/or health complaint units document individual and systemic cases of HIV-related discrimination or mistreatment.

In addition, National institutions with a mandate to investigate and adjudicate complaints of discrimination or other human rights abuses, should issue public pronouncements and reports with a focus on the legal protection of PLHIV, and make recommendations for systematic redress. States should ensure that professional bodies (e.g., of health care workers or journalists) assert and protect the human rights of PLHIV including the right to privacy – through their codes of professional conduct. The International Guidelines specifically urge States to establish an independent agency to redress breaches of confidentiality. Lastly, States are encouraged to recognize the competence of international human rights bodies to receive complaints or communications from individuals who claim that their rights have been violated.

#### 20.2. APPLICABLE HUMAN RIGHTS

**Right to Effective Remedy:** States are required to adopt laws and other measures (including sanctions) that are necessary to establish legal protection of, and give effect to, human rights and freedoms,



guaranteed under international law. Any person whose rights or freedoms are violated has the right to an effective remedy and judicial protection, notwithstanding that the violation has been committed by persons acting in an official capacity (*UDHR art. 8; ICCPR art. 2; CEDAW art. 2; CRC art. 4*).

### **20.3. SITUATION ACROSS THE CARIBBEAN**

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*“[The police harassed me at the station], that is normal in Guyana. It is wrong... I should be treated as any other individual who comes to make a serious report... but as a gay [or transgender] person, you totally receive other treatment... this is the normal routine...”*

**- Interview with Prince, Georgetown, Guyana.<sup>300</sup>**

The typical Commonwealth Caribbean constitution sets out a broad range of civil and political rights in a separate chapter. These civil and political rights include, among others,

- (i) The Right to Life,
- (ii) Freedom from Inhuman or Degrading Punishment or Treatment,
- (iii) Freedom of Thought, Conscience and Religion,
- (iv) Freedom of Expression,
- (v) The Right to a Fair Trial,
- (vi) Freedom of Movement,
- (vii) Freedom from Discrimination on certain grounds,
- (viii) The Right to Property,
- (ix) Freedom from Arbitrary Arrest or Detention, and
- (x) The Due Process of Law (including the Right to a Fair Trial).

With a few exceptions, the prohibited grounds of discrimination in the Bill of Rights of most Caribbean States is limited to sex<sup>301</sup>, race, place of origin, social class, colour, religion or political opinions, thus failing to prohibit discrimination based on other grounds, such as sexual orientation, gender identity and expression, disability and health status.

The absence of domestic legislation dealing with discrimination on these grounds mean those citizens do not have access to an effective remedy for discrimination perpetrated on these grounds. They may also lack the financial resources to mount alternative legal challenges. In addition, not all constitutions permit citizens to seek constitutional redress against another citizen. Most constitutions provide for vertical action – between state and citizen, but not horizontal actions – between citizens. One example is Guyana. Section 16 of the Constitution gives persons who allege that any of their fundamental rights have been, is being or is likely to be contravened, the right to apply to the High Court for redress. However, the provision applies only between Citizen and the State. If the allegation is against the state, an application for redress may be made under this provision. However, if his /her fellow citizen inflicts the breach, there is no redress under this provision. Jamaica’s Charter of Rights and Fundamental Freedoms is on the other side. It provides for both vertical and horizontal claims for constitutional redress.

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<sup>300</sup> Interview as reported in Schoenholtz, Gómez-Lugo and Binetti, “*TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana*” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018)

<sup>301</sup> In the case of Jamaica this is stated as “being male or female”

## 20.4. GAPS AND OPPORTUNITIES

(a) **Denial of access to an effective remedy:** Some Caribbean constitutions explicitly exclude access to justice for human rights violations, where the laws being challenged existed before independence or before a specified date, and many of these laws affect those vulnerable to HIV. These are the so-called savings law provisions. For example, in Jamaica, the Charter of Rights provides that the provisions of the Offences Against the Person Act, which has the effect of criminalizing sexual intimacy between males, is not inconsistent with the rights guaranteed by the constitution. *See Factor 22 below.*

(b) **There is a lack of law enforcement investigation and barriers in reporting crime, especially by LGBT persons:**

In an interview with representatives of the LGBT community in Antigua, one interviewee, Peter [pseudonym] commented: “... one time I was robbed at night and made a complaint. The police were more interested in my lifestyle than in taking information regarding the incident... Took a long while to investigate... three times I followed up with them, till I just forget about it... They don’t take it seriously.”<sup>302</sup> A 2018 research report<sup>303</sup> into violence and

*“... In the course of the proceedings, the Chief Magistrate told [them] that they were confused about their sexuality... and that they must go to church and give their lives to Jesus Christ...”*

*- Evidence of the applicants*

*McEwan et. al. v. Attorney General for Guyana.  
Claim No. 2010-M21.*

*Supreme Court of Judicature of Guyana.  
Decision of the Chief Justice dated September 6,  
2013. p. 8.*

discrimination faced by LGBT persons in Guyana, found that police abuse and intimidation by police officers created obstacles to reporting crime by LGBT persons. The research findings indicate that, among other things, LGBT persons are prevented from entering police stations<sup>304</sup>, police officers fail to take reports and are dismissive<sup>305</sup>, and LGBT people are subjected to humiliation by police officers. Such action by police officers set up a barrier to accessing an effective remedy and the entire legal process, since in criminal cases and cases of breaches of the peace and public order, the police is the first line of contact and the point at which the legal process is initiated. If the police fail to take complaints, investigate, or investigate in a timely way, the likelihood of any complainant obtaining “justice” is diminished to the point of being non-existent.

(c) **Most States do not have national human rights institutions with a comprehensive mandate.**

Although some States have various bodies that deal with particular issues, such as Ombudsmen that deal with maladministration in government, there are no national human rights institutions, with a

<sup>302</sup> Interview with Peter. Antigua. June 19, 2018.

<sup>303</sup> Schoenholtz, Gómez-Lugo and Binetti, “TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018)

<sup>304</sup> Ibid, page 73

<sup>305</sup> Ibid, page 72

comprehensive mandate over broad human rights issues, including on economic, social and cultural rights. [See Factor 11 above.](#)

- (d) **Public Order Laws may be used to address verbal abuse, harassment and violence, which PLHIV and LGBT persons face in public spaces and in communities.** Caribbean culture is replete with references to “anti-man”, “batty man” and “batty bwaay.” These are derogatory terms used in reference to a homosexual male, or a man who is perceived to be effeminate. In public spaces, it is not uncommon for transgender persons and persons perceived to be homosexual to be shouted at and referred to in these terms. These terms are often accompanied by threats and other intimidating terms including “fire bun” – a term that draws on biblical references to brimstone and fire and conveys rejection of what is considered sinful conduct. In the face of these challenges that are encountered – not only in the private sphere – but in communities and public spaces, PLHIV and LGBT persons often feel that there is no safety for them, whether in private or in public, although legislation exists across the region which makes it an offence for a wide variety of behaviours which may result in a breach of the peace. For example, there exists legislation that makes it an offence to use any threatening, abusive, insulting, obscene, or profane language that may provoke a breach of the peace.<sup>306</sup> Stakeholders were not able to say whether PLHIV and LGBT were aware of these laws or whether any had ever been utilized to deal with community-level abuse and harassment. There was no information on whether the police are aware of these provisions. Stakeholders however report not getting any sort of resolution when complaints are made to the police. [See also Factor 7 Above – Equal Right to Participate in Political, Social and Cultural Life.](#)

## **20.5. RECOMMENDATIONS**

- (a) **Obtaining a fiat:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>307</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granted the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.
- (b) **Human Rights Institutions:** Provide technical assistance to national authorities to conduct the relevant assessments to determine the best way to use existing institutions such as offices of Ombudsmen and Public Defenders as national human rights institutions, by extending their mandate. The enabling legislation for these institutions should define discrimination to protect the rights set out in the Covenant on Economic, Social and Cultural Rights and in particular, address health status, social status, sexual orientation, marital or domestic partnership status, pregnancy, maternity, family

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<sup>306</sup> See for example in Jamaica the Town and Communities Act [1843], §. 3(m) and in Guyana, see Summary Jurisdiction (Offences) Act, § 141(b)

<sup>307</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

responsibility, medical condition, disability and age. The institution should have investigative powers, with broad competence in the field of human rights, including migration, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

- (c) **Guidebook for prosecutors and police officers:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.
- (d) **Human rights training:** Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of PLHIV and LGBT persons by police officers and provide on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.

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“[I]T IS REVOLTING TO HAVE NO BETTER REASON FOR A RULE OF LAW  
THAN THAT, SO IT WAS LAID DOWN IN THE TIME OF HENRY IV.”

JUSTICE OLIVER WENDEL HOLMES, “THE PATH OF THE LAW”, 10 HARV. L.  
REV. 459, 469 (1897)

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- (e) **National-level human rights defenders:** Provide financial support to organize regional training and capacity building sessions for national-level human rights defenders, PLHIV, LGBT persons, law enforcement officers and prosecuting authorities on the critical elements of the Caribbean public order laws.
- (f) **Anti-discrimination legislation:** Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- (g) **Strategic litigation:** Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of women or any other group

## **FACTOR 21: LEGAL AWARENESS, ASSISTANCE, AND REPRESENTATION**

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### **21.1. INTERNATIONAL GUIDELINES**

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The duty of States to develop, implement, and support services that educate PLHIV and key populations, about their legal rights, is emphasized in several international instruments, including International

Guidelines and the Political Declaration. Among the core legal services identified by the International Guidelines and UNAIDS as essential to securing the rights of PLHIV are access to legal information, advice, and representation. States are urged to support production and dissemination of legal materials focusing on HIV/AIDS and legal rights (e.g., brochures, directories of legal services, practice and training manuals, bench books for judges, and student texts) and integrate HIV & AIDS into standard legal education curricula, both within law schools and in the context of continuing legal education for legal professionals. States are urged to ensure that where applicable, PLHIV have access to professional legal advice and representation through legal aid systems. States should also support and facilitate cooperation between lawyers and other providers of HIV-related services, particularly healthcare practitioners. Such cooperation can be accomplished, for example, through development of referral networks, general outreach initiatives and medical-legal partnerships under which legal professionals train healthcare providers to identify legal issues that affect their patients' health and integrate free legal services in healthcare settings.

## **21.2. SITUATION IN THE CARIBBEAN**

- (a) **Legal Literacy:** A 2017 Baseline Assessment Report found that “Legal literacy is scarcely developed among the KPs in the region who, in general, also lack access to effective legal aid.”<sup>308</sup> With donor support, Civil Society Organizations have been implementing training and awareness building workshops for PLHIV and LGBT individuals on various legal topics, including human rights.
- (b) **Community Paralegals:** In 2017 The Caribbean Vulnerable Communities Coalition (CVC) began a process of training Community Paralegals to help PLHIV and LGBT individuals understand the legal options open to them when there is a violation of their human rights (see below).
- (c) **Legal Assistance and Representation:** Trinidad & Tobago, Barbados and Jamaica have established state-funded legal aid schemes under which persons are able to access the services of qualified and competent Attorneys at subsidized fees. Legal aid is available for civil and criminal matters. It could not be ascertained whether the legal aid scheme allows for representation in claims for constitutional redress. In addition, several countries in the Caribbean have functioning legal aid clinics / legal aid centers: Jamaica, Guyana, Grenada, Belize, Dominica, Antigua and Barbuda and Saint Lucia. In addition, the Law Schools operating under the Treaty establishing the Council of Legal Education in Jamaica, The Bahamas and Trinidad and Tobago all operate legal aid clinics, which provide legal advice, representation and support services to poor persons, in addition to serving as a place for practical training for law students pursuing the final stages of qualification to become Attorneys-at-Law.
- (d) **The Faculty of Law Rights Advocacy Project (U-RAP), at the Faculty of Law, University of the West Indies, Barbados,** provides assistance with civil society organizations through strategic litigation, socio-legal research and legal education: U-RAP was established in 2009 by three pioneering Attorneys-at-Law (including the esteemed Tracy Robinson and Arif Bulkan), who also happened to be public law teachers at The University of the West Indies. The initiative was

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<sup>308</sup> See Insanally, Sara, “Removing barriers to accessing HIV and sexual and reproductive health services for key populations in the Caribbean” (2017)

established as an outreach activity aimed at promoting social justice and human rights through strategic litigation, socio-legal research and legal education. Among the recent strategic litigation undertaken by U-RAP is the provision of legal assistance advice and representation in the “Cross-Dressing for an Improper Purpose Case”: [Quincy McEwan et al vs. Attorney General of Guyana](#).

- (e) **The U-RAP Caribbean-wide panel of Attorneys provide pro bono legal advice, assistance and representation:** Under U-RAP, a Caribbean-wide panel of Attorneys, all duly qualified at the respective country level, has been established. Members of the panel, commit their time and expertise to review allegations of human rights violations, undertake strategic litigation and provide advice to civil society organisations, at no cost to the receiving party.

### **21.3. RECOMMENDATIONS**

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Education in legal literacy helps low-income people and those whose rights are most susceptible to abuse, to become effective self-advocates, access available resources, and identify and work with legal professionals to attend to legal problems at their earliest, most easily resolved stage. However, while a number of initiatives are ongoing in the English-speaking Caribbean, it is not clear the extent to which legal literacy and legal representation programs are being implemented in non-English-speaking territories. It is recommended that PANCAP:

- (a) **Legal literacy materials:** Support production and dissemination of easy-to-understand, population-specific legal literacy materials focusing on HIV & AIDS and legal rights (e.g., brochures, directories of legal services, practice and training manuals, bench books for judges, and student texts) in both the English-speaking and non-English-speaking Caribbean territories. For example, Children and the Law. Health Law and Obligations of Medical Practitioners, Rights of the Disabled etc.
- (b) **Community paralegals:** Support the roll out and training of a cadre of Community paralegals drawn from the PLHIV and LGBT communities as a way of increasing legal literacy among these communities.

## **FACTOR 22: ACCESS TO A FORUM, FAIR TRIAL, AND ENFORCEMENT OF REMEDIES**

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### **22.1. INTERNATIONAL GUIDELINES**

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The International Guidelines note that even if a forum is affordable, physically accessible and independent, PLHIV and vulnerable groups may be deterred from using it if they fear loss of privacy, unauthorized disclosure of HIV status, intimidation, harassment, or stigmatization during legal proceedings. The Guidelines urge States to take measures to address all these aspects of the dispute-resolution process so that PLHIV, HIV advocates and service-workers are empowered to invoke their legal rights through formal or informal justice systems, as well as alternative forms of dispute resolution. Where appropriate, States should encourage the judiciary to consider diversion of cases to informal forums and empower informal justice sector to consider a wider range of cases. To ensure that all forums administering justice treat all persons, including PLHIV, HIV advocates and service workers, equally, International Guidelines stress the importance of providing HIV education and sensitivity trainings to court and law enforcement officers to eliminate bias and prejudice based on HIV status and ensure that

PLHIV are protected from stigma, harassment, and intimidation during legal proceedings. To accomplish the above-stated objectives, States are urged to disseminate International Guidelines throughout their judicial systems and use them in the development of jurisprudence, conduct of court cases involving HIV-related matters, and HIV-related training of judicial officers. States should also ensure that prohibition of discrimination on any ground, including HIV status, be entrenched in the relevant professional codes of conduct, with accompanying mechanisms to implement and enforce these codes.

## **22.2. APPLICABLE HUMAN RIGHTS**

**Right to a Hearing:** Everyone claiming a remedy for a violation of human rights should have these rights determined by competent judicial, administrative, or legislative authorities (*UDHR art. 8; ICCPR art. 2*)

## **22.3. SITUATION IN THE CARIBBEAN**

(a) **Denial of access to an effective remedy:** the constitutions of Barbados, Jamaica and Trinidad and Tobago contain “savings law clauses” regarding certain provisions in pre-independence legislation. In summary, these clauses have been judicially interpreted as meaning that no law, which was valid before the date of independence from Britain, can be struck down as unconstitutional today. This interpretation freezes the law as of the date of independence, so that even if a pre-independence law is in violation of human rights or is in conflict with other provisions of the written Constitution and the Bill of Rights, the law (or provision) will remain valid. According to this judicial interpretation, the impugned law cannot be struck down by the courts and will only lose its effect when Parliament has acted to modify it or repeal it. In some cases, the pre-independence savings clause may be restricted. For instance, in the case of Belize, laws that predate independence were saved from constitutional scrutiny only for the first five years after independence; now however, pre-independence laws in Belize may be struck down if they are held by the courts to be inconsistent with basic human rights. On a purposive interpretation of Caribbean written Constitutions, the judicial interpretation of savings law provisions cannot stand. It is therefore common for political representatives and legislators to raise this interpretation as a defense for government or private acts that are inconsistent with human rights.

The judicial interpretation applied to date has had the effect of frustrating not only an established technique of interpreting constitutional Bill of Rights as living documents, which are responsive to society’s changing needs, it also has the effect of undermining the very notion that the Caribbean written Constitutions, embody the Supreme Law. In advising against the blind application of legal doctrines, Justice Oliver Wendell Holmes wrote in 1897 that “[i]t is revolting to have no better reason for a rule of law than that, so it was laid down in the time of Henry IV.”<sup>309</sup>

(b) **Broad-based anti-discrimination laws are mostly absent from Caribbean States:** The Bill of Rights of the typical Caribbean Constitution guarantees discrimination against a limited class, drawn ultimately from the European Convention on Human Rights. Age, health status, disability and sexual orientation are not included in the protected classes in Caribbean Constitutions and no Caribbean constitution explicitly provides protection against sexual orientation discrimination and

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<sup>309</sup> O.W. Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 469 (1897).

health status-related discrimination. The protected grounds are typically race, place of origin, social class, colour, religion or political opinions. In the absence of constitutional protection or protection via ordinary legislation, there is no act of unlawful HIV-related discrimination and unlawful discrimination on the grounds of health status or sexual orientation. This is because the general jurisprudential approach to determining whether there has been a breach is to compare the act complained of, with the protected grounds set out in the constitution to see if there has been differentiated treatment or favoritism. Usually, the favoritism and differentiation in treatment is measurable only against grounds that have been laid out in the Constitution. In the Guyanese case of *Nieslon v. Barker* (1982) 32 W.I.R. 254 at page 280, Massiah, J.A. noted:

*"The word "discriminatory" ... does not bear the wide meaning assigned to it in a dictionary. It has a precise and limited connotation. Although it contains the elemental constituent of favouritism or differentiation in treatment its application is confined only to favouritism or differentiation based on "race place of origin political opinions colour or creed." No other kind of favouritism or differentiation is "discriminatory" within the narrow constitutional definition of that word in article 149(2). It is to be profoundly in error to think that there has been a contravention of a person's fundamental rights under section 149 where the alleged discrimination is based on some ground other than those referred to above no matter how reprehensible such grounds may appear to be. Such a situation clearly does not come within the purview of the constitutional guarantee although there may well be other means for its investigation and for securing redress."*

For persons who allege that they have been subjected to discriminatory action, the alternative legal (Constitutional) claim could be framed as a breach of Constitutional rights to equality before the law. A claim for breach of the constitutional provisions guaranteeing equality may be more likely to succeed where the Constitution confers protection against discriminatory laws and discriminatory treatment by a person or authority. This is different from discrimination as to matter falling within one of the specified rights and freedoms, such as discrimination based on race. For example, the constitution of Jamaica provides for protection against discriminatory laws. If a law is implemented so that the implementation results in discrimination, a claim for breach of the protection to equality before the law could be pursued. Therefore, in the absence of ant-discrimination legislation or provisions guaranteeing protections against discrimination based on health status or sexual orientation, the alternative claim for a breach of the guarantee to equality before the law and freedom from discriminatory treatment, is recommended. In Suriname, Chapter IV, Article 8(2) of the Constitution, provides that no one shall be discriminated against based on birth, sex, race, language, religion, education, political opinion, economic position or *any other status*. It is arguable whether this provision is enforceable at all. The Constitutions of the OECS Territories (Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Barbados, and Grenada) are very similar. No provision is made for "other status" that may arguably envisage categories including health status, disability or sexual orientation.



(c) **Fear of being “found out” prevents persons from seeking redress:** In interviews with civil society stakeholders, interviewees pointed out that one of the biggest issues that prevent persons from accessing redress is the fear of being found out. “...Sometimes for example, a person is unfairly dismissed from a job, but to lessen the shame and the stigma, and to reduce the likelihood that their family members would find out, [about their status or their orientation] the person just let things go. They have too much to lose.”<sup>310</sup>

(d) **Stigma and discrimination from police, armed forces, and judicial officials act as deterrents to approaching the police and the courts:** Insanally (2017) notes that in Jamaica

“...PLHIV and other KPs are not interested in approaching the courts for constitutional redress for human rights breaches, as the remedies currently available do not merit risking exposure of their HIV or other status... One of the major deterrents of reporting is stigma and discrimination from police, armed forces, and judicial officials. Efforts to address this through training have had limited coverage, have not been systematic and sustained, and have not been shown to be effective.” “...In Haiti... the police and justice system routinely do not protect the LGBT community. FACSDIS reported that lesbians who are raped are afraid to tell police that their rape was motivated by their sexual orientation. According to one FACSDIS member, “if we told them it would be like we were being raped all over again, they just tell us it’s our fault.”<sup>311</sup>

A 2018 report of violence against LGBT persons in Guyana also made similar observations regarding LGBT individual’s willingness to file complaints with the police.<sup>312</sup>

(f) **Most States do not have national human rights institutions with a comprehensive mandate.** Although some States have various bodies that deal with particular issues, such as Ombudsmen that deal with maladministration in government, there are no national human rights institutions with a comprehensive mandate over broad human rights issues, including on economic, social and cultural rights. [See Factor 11 above.](#)

(g) **For incarcerated persons, Rules under Correctional Regulations provide a means for hearing of grievances.** For example, Rule 7(2) of the Jamaica Correctional Institution (Adult Correctional Center) Rules 1991 provides that the “*Superintendent shall ensure that every inmate having a complaint to make or a request to prefer, shall have ample facilities for so doing and the Superintendent shall redress any grievance or take such steps as may be necessary in each case.*” Under Rule 5, the Superintendent serves as the medium of communication between an inmate and outside authorities such as the Public Defender. The Superintendent is obligated by Rule 5(2) to forward, without delay, to the Commissioner any report, petition or complaint received by him and addressed to a superior authority and may append thereto any comments he may think fit to make. Rule 2 makes provision for a board of visiting justices. What is not clear is the mechanism in place to

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<sup>310</sup> Interview with PLHIV representative in Barbados. July 3, 2018

<sup>311</sup> Insanally, Sara, “Removing barriers to accessing HIV and sexual and reproductive health services for key populations in the Caribbean (2017)” at p. 30

<sup>312</sup> See Schoenholtz, Gómez-Lugo and Binetti, “[TRAPPED - Cycles of Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Persons in Guyana](#)” Georgetown Law Human Rights Institute, Georgetown University Law Center (May 2018) at page 61

insulate the prisoner from discriminatory acts and acts of retaliation. The Rules are silent on matters of privacy and confidentiality in the proceedings and who should have access to the records.

- (h) **Jamaica has a partnership-driven complaint handling and redress system through the National HIV Discrimination Redress System:** The National HIV Redress Mechanism in Jamaica through the Jamaican Network of Seropositives (JN+). Through this redress mechanism, JN+ acts as a complaints handling bureau. It receives and transmits to relevant partner agencies, complaints by persons living with HIV. The respective agencies have internal mechanisms, which include legal and other sanctions. These agencies include the Ministry of Labour in relation to employment issues, the Office of the Public for mal-administration in government, the Dispute Resolution Foundation for mediation and alternative dispute resolution and non-governmental organizations engaged in human rights advocacy and strategic litigation, such as Jamaicans for Justice.
- (i) **The UWI Rights Advocacy Project (U-RAP), at the Faculty of Law, University of the West Indies, Barbados,** provides assistance with civil society organizations through strategic litigation, socio-legal research and legal education. U-RAP was established in 2009 by three pioneering Attorneys-at-Law (including the esteemed Tracy Robinson and Arif Bulkan), who also happened to be public law teachers at The University of the West Indies. The initiative was established as an outreach activity aimed at promoting social justice and human rights through strategic litigation, socio-legal research and legal education. Among the recent strategic litigation undertaken by U-RAP is the provision of legal assistance advice and representation in the “Cross-Dressing for an Improper Purpose Case”: [Quincy McEwan et al vs. Attorney General of Guyana](#).
- (j) **The U-RAP Caribbean-wide panel of Attorneys provide pro bono legal advice, assistance and representation:** Under U-RAP, a Caribbean-wide panel of Attorneys, all duly qualified at the respective country level, has been established. Members of the panel, commit their time and expertise to review allegations of human rights violations, undertake strategic litigation and provide advice to civil society organisations, at no cost to the receiving party.
- (k) **There are Community Paralegals in some countries:** Since 2017, the Caribbean Vulnerable Communities Coalition (CVC) has been providing assistance to non-governmental organizations engaged in human rights advocacy and strategic litigation, such as SASOD in Guyana and Jamaicans for Justice to train and deploy laypersons in communities as Community Paralegals. Once trained, these Community Paralegals act as the first point of contact for individuals seeking redress for allegations that their human rights have been infringed. The Community Paralegals perform a “triage” function by helping complainants to understand which legal process or “redress entity” can assist them with resolving the issue they face.
- (l) **Limited use and understanding of the Inter-American Human Rights System:** The inter-American system of human rights is made up of three main bodies: The Organization of American States (OAS), the Inter-American Commission on Human Rights (IACHR or Commission) and the Inter-American Court of Human Rights (Court). The Commission receives, analyzes, and investigates individual petitions alleging violations of specific human rights protected by the American Convention on Human Rights. In discharge of its mandate, the Commission, among other

things, conducts on-site visits to examine members' general human rights situation or to investigate specific cases, issues member States with recommendations that, if adopted, would improve the human rights situation in that member state, and refers cases to the Inter-American Court of Human Rights. The Court hears and adjudicates on cases of alleged human rights violations referred to it and issues opinions on matters of legal interpretation, brought to its attention by other OAS bodies or member States. Although the process for lodging a complaint before the Commission is (a) relatively informal, (b) entirely free of charge, (c) does not require personal appearance; and (d) does not require the assistance of an Attorney, Caribbean Human Rights advocates seem unaware of the institution and the body of law that it applies and seldom approaches the Court or the Commission for redress, when domestic remedies are exhausted or when domestic remedies simply do not exist. In short, there has been limited use of the System in the Caribbean. Several factors may account for this, including:

- a. **Language Barriers:** Although English is an official language and one of two working languages of the Organization of American States (OAS), it seems that because the OAS is comprised largely of Latin American countries that share a common language and similar civil law traditions, Spanish has become the *de facto* language of the Inter-American Human Rights System. More legal issues seem to emanate from Latin American countries.
- b. **Lack of Jurisdiction:** Although Jamaica, Trinidad and Tobago, Grenada and Dominica have ratified the American Convention on Human Rights, they have refused to accept the contentious jurisdiction of the Court, making it impossible for the Inter-American Court of Human Rights to hear cases emanating from these countries
- c. **Non-Binding Commission Recommendations:** The Commission, a quasi-judicial body, based in Washington D.C., does not issue “rulings” but rather “recommendations” to Member States if there is a finding of fault.
- d. **Individual citizens of the OAS member States cannot take cases directly to the Court:** Only the Commission and Member States that have accepted the court’s contentious jurisdiction may petition the Court. An individual who wishes to petition the Court must first lodge a complaint with the Commission and have that body rule on the admissibility of the claim. If the Commission finds the claim to be both admissible and the State to be at fault, the Commission will generally serve the State with a confidential list of recommendations to make amends for the violation. Only if the state fails to abide by these recommendations, or if the Commission decides that the case is of particular importance or legal interest, will the case be referred to the Court.
- e. **It is a system of last resort:** By practice and by its Statute, the System is one of last resort. Stakeholders interviewed indicate that when there is a complaint for human rights violations, the Inter-American System is almost never thought of as a possible source for redress. Secondly, in accordance with its rules of procedure and Article 46 of the American Convention, a petitioner must demonstrate that it has exhausted all domestic remedies before the case is admitted by the Commission (there are some exceptions to this). Domestic remedies must be adequate and effective to satisfy the “exhaustion of domestic remedies” condition. That is to say, the domestic remedy must provide suitable redress for the rights

infringed. If petitioners are able to convince the Commission that existing remedies are not effective, the Commission may agree to examine the merits of the case.

#### 22.4. RECOMMENDATIONS

- (a) **Obtaining a fiat:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>313</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granted the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.
- (b) **Inter-American Human Rights System:** Provide technical and financial support to Civil Society Organizations to make use of the Inter-American Human Rights System’ ability to issue Precautionary Measures and Provisional Measures. Unfamiliarity with the System and time limitations may make seeking redress through the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights a daunting endeavor. However, there are two “devices” available to Civil Society Organizations that can be employed to get Caribbean governments to address a human rights issue relatively quickly: Precautionary Measures issued by the Inter-American Commission and Provisional Measures ordered by the Inter-American Court:
- **Precautionary Measures:** Under Article 25 of its Rules of Procedure, the commission may, on the request of a party, request that a State adopt precautionary measures when there are “... serious and urgent situations presenting a risk of irreparable harm to persons...”<sup>314</sup> The text makes it clear that these are urgent measures the States must take to prevent the risk from materializing and to avoid irreparable harm to an individual’s life or personal integrity. Human Rights Defenders, Activists and Advocates in the Caribbean for example, who face threats of harm and intimidation could seek precautionary measures to oblige the State to put measures in place to ensure that their rights are not infringed because of their advocacy. The same would be true for vulnerable persons such as LGBT individuals, who face threats and violence for seeking redress before local courts. Once the precautionary measures have been issued, governments are expected to negotiate with the beneficiaries to ensure that the measures will respond to their needs. An example: On August 8, 2018, the IACHR decided to request the adoption of precautionary measures in favor of Adelaida Sánchez Mercado, Braulio José Abarca Aguilar, Meyling Johana Gutierrez Pérez, Glenda Maria Arteta Arauz, and Haydée Isabel Castillo Flores, as well as their families, in Nicaragua. The request for precautionary measures alleges that the proposed beneficiaries are in a situation of risk as a

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<sup>313</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

<sup>314</sup> [Rules of Procedure for the Inter-American Commission on Human Rights](#) [Accessed on August 30, 2018]

consequence of death threats, being followed and harassed, which are presumably due to their work in the defense of human rights<sup>315</sup>

- **Provisional Measures** ordered by the Inter-American Court: Pursuant to Article 27 of its Rules of Procedure,<sup>316</sup> the Court may “...order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.” Article 63(2) of the American Convention provides that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

Thus, like precautionary measures, issued by the Commission, the Court is empowered to make orders binding upon member States to put measures in place to safeguard persons from irreparable damage, even if no petition is before the Court. These two “devices” in combination with press briefings, advocacy and other forms of strategic litigation will serve to bring more exposure to the issues, raise awareness in the public and complement other initiatives to make the domestic human rights framework more responsive to the needs of those most in need of protection.

- (c) **Undertake strategic litigation and criminal prosecutions using the common law offence of misbehavior in public office, to address institutionalized human rights violations, discrimination and abuse:** Strategic litigation transcends simply seeking judicial redress. Its aim is to achieve regulatory, legal, institutional and cultural changes. In this regard, given the apparent institutionalized prevalence of stigma, discrimination, neglect and abuse in the public health sector, misconduct by the police, and misconduct by public sector employees, this review strongly recommends pursuing a particular form of strategic litigation: misbehavior in public office. The common law action has both a criminal aspect and a civil aspect.

### CRIMINAL ASPECT

**This involves a criminal indictment for neglecting a public duty.** Civil Society Organizations can use incident reports that they collect to petition Ministers of Legal Affairs, Attorneys General and Directors of Public Prosecution to file criminal indictments against public officers for misbehavior (neglect of duty) in public office. The media is a powerful ally in this regard. The common law offence is not limited to corruption, fraud or dishonesty; dishonesty is perhaps more widely used as the basis for legal action, but it is simply one way in which a public official can misbehave in public office. At common law, the offence is directed principally at the neglect of a public duty. The leading case, which has never been overturned or departed from, is *R v. Bembridge* [1783] 3 Doug KB 327. In that case, Lord Mansfield said:

*“... here there are two principles applicable: first, a man accepting an office of trust concerning the public, especially [if he is paid], is answerable criminally to [the State]*

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<sup>315</sup>Resolution 59/18: PM 847-18, 738-18, 737-18, and 736-18 - Adelaida Sánchez Mercado et al, Nicaragua <http://www.oas.org/en/iachr/decisions/precautionary.asp> [Accessed on August 30, 2018]

<sup>316</sup>Inter-American Court of Human Rights, [Rules of Procedure](#) [Accessed on August 30, 2018]

*for his misbehavior in his office; this is true, by whomever and in whatever way the officer is appointed... Secondly, where there is a breach of trust, fraud or imposition... the matter is indicatable.”*

It is clear from the above dictum that the public officer is ***criminally*** responsible when he *misbehaves* and secondly when there is a *breach of trust or fraud* in carrying out his office. An example: In AG’s Reference (No. 3 of 2003),<sup>317</sup> several police officers were charged with manslaughter and misconduct when they neglected to attend a prisoner in their custody who was in some physical distress. The prisoner died when he was left unattended. The English Court of Appeal held that the critical question was whether the police officers had willfully neglected to perform their duty or willfully misconducted themselves in looking after the prisoner.

Given the range of reports by PLHIV and LGBT persons about being neglected at public hospitals and at police stations and of state officials failing to act, and failing to investigate complaints of violations, threats, intimidation and abuse, a decision by the courts in the Caribbean on this issue may be the quickest way to change behaviour of the public and of public servants.

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<sup>317</sup> [2006] EWCA Crim. 868, [2005] 1 QB 73

#### **CIVIL ASPECT:**

There is also the possibility for *civil action* to be taken via the *tort of misfeasance* in public office, which is distinct from the *criminal offence of misconduct* in public office. Questions as to whether such a tort exists in the Caribbean and can be used when a public officer conducts himself wrongly, was laid to rest by the Judicial Committee of the Privy Council in *Attorney General of Antigua and Barbuda and Others v Lake* (1988) 53 WLR 145. In this case, the action was against the then Prime Minister.

The recommendation is meant to ensure that these reform actions go well beyond the fate of cases that are being litigated. Even if the legal actions pursued do not result in a conviction or civil award, these strategic actions will: (a) help to promote a more modern and rights-based delivery of public goods and services; (b) they will help to break discriminatory patterns and structures that have permeated the State; (c) interrupt processes that have served to frustrate due process and the rule of law, and (d) serve to expose the mechanisms of impunity and obstacles to enjoyment of fundamental rights. The main challenges likely to be faced with implementing this recommendation are: (a) the need for a credible, willing complainant, who understands the reality of giving testimony before a court, who is willing to be on the frontline and who is prepared to have this matter become public record; (b) unreasonable delays and the slow process for case resolution, whether criminal or civil; (c) willingness of the prosecuting authorities to exercise their discretion and initiate prosecution or grant a fiat to outside Counsel to prosecute.

- (d) **Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information:** The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- (e) With a view to ensuring that Heads of government take action toward implementing the above recommendation, PANCAP and Civil Society Organizations should engage and have discussions with the current Minister of the Quasi Cabinet of CARICOM with responsibility for Justice and Governance, Hon. Dean Barrow of Belize and the Current Minister of the Quasi Cabinet of CARICOM, with responsibility for Human Resource Development, Health and HIV/AIDS, Hon. Timothy Harris of Saint Kitts/Nevis,
- (f) Engage the Legal Affairs Committee of CARICOM and lobby for a fixed agenda item regarding the legal, ethical and human rights issues as part of the meetings of the Council for Human and Social Development.

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

- (1) Structural issues such as: resource constraints; hours of operation; how public health facilities are organized and laid out - increase the likelihood of “information leaks” which fuels fear and distrust of the public health system.
- (2) A permissive legal and policy framework, which allows stigma and discrimination and abuse to thrive.
- (3) Professional misconduct and neglect of professional duties by public officers within public health institutions.
- (4) Professional misconduct by police officers who either through ignorance or a willful disregard, fail to uphold public order laws when PLHIV and LGBT persons face physical violence, abuse, intimidation and threats in public spaces which could result in a breach of the peace.

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

#### **(a) IMPROVING ACCESS TO ESSENTIAL SERVICES**

- a.1. **Implement Mandatory Continuous Professional Development Training in Human Rights and Unconscious Bias:** Provide technical and financial assistance to national authorities and their respective Medical Councils and Councils for professions allied to medicine and social work, to make training in human rights, diversity, conscious and unconscious bias, mandatory courses for continuing professional education and for re-licensure. The amendment to Regulations to make this a possibility may not require any Parliamentary approval. For example, in the case of Jamaica, Section 15(1) of the Medical Act empowers the Registrar with the approval of the Minister to make Regulations, which prescribe the requirements for continuing medical education.
- a.2. **Training for Auxiliary Staff at Health Facilities in Human Rights:** Provide technical and financial assistance to national authorities to train auxiliary staff at public health facilities in human rights and to build their capacity to traverse issues such as diversity, confidentiality, conscious and unconscious bias in relation to PLHIV and other vulnerable groups.
- a.3. **Training of Health Professionals in Sign Language:** Provide technical and financial assistance to national authorities to train persons at public health facilities in sign language to communicate with persons who are speech or hearing impaired.
- a.4. **Develop Policy Guidelines for Jails and Prisons for Transgender Persons:** Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails



to define a minimum package of services and service delivery protocols for incarcerated transgender persons.

- a.5. **Establish flexible working hours at civil society testing facilities to reach key populations:** To reach key populations and prevent late diagnosis, provide financial assistance to increase the number of civil society-operated testing centers, in which the test is administered by trained non-medical professional providers, with flexible hours and appropriate locations.
- a.6. **Roll-out PrEP to key populations as an additional prevention intervention:** In keeping with WHO recommendations, provide financial and technical assistance to national authorities and civil society organizations to offer PrEP<sup>318</sup> to people at high risk of contracting HIV, as an additional intervention from the package of combination prevention interventions. Caveat: If implemented, this intervention would need to be accompanied by strict monitoring, to ensure that the use of PrEP does not lead to increase in risky behaviours, such as discontinuance of condom use. Resources will need to be made for scientific evaluations to determine if there is any impact (+/-) on transmission of resistant viruses. Training will be required to eliminate bias or moral judgments about the use of PrEP.
- a.7. **Roll-out self-administered HIV testing:** Given the high rate of stigma in accessing testing and treatment at public health facilities, consideration should be given to providing financial and technical support to national authorities to enable them to roll-out self-administered HIV testing which can be done at home. This could be rolled-out initially in any or all of the five territories with the highest HIV burden<sup>319</sup>. In the beginning, the testing kits should be available through promotional activities and giveaways to reduce any apprehension about having it one's possession. A mechanism to link users of self-test with the health services will need to be put in place. The self-test will go a far way in helping countries to achieve the first of the 90-90-90 targets<sup>320</sup> by reducing the opportunity for stigmatizing behaviors that drive persons away from testing. It is trite, that early diagnosis improves the quality of life of people with HIV and helps prevent new infections.
- a.8. **Implement the Barbados approach regarding privacy and confidentiality in employment contracts:** Provide technical assistance to national authorities to adopt a practice like that adopted in Barbados through the Draft HIV and Related Health Information Confidentiality Policy and Contract. The Barbados practice is highly recommended because it provides an objective basis for human resource managers to act when there is a specific complaint regarding breach of privacy and confidentiality. Importantly, Human Rights Defenders and Activists can make use of Access to Information / Freedom of Information Legislation to obtain copies of employment contracts and use the contracts of evidence of maladministration if there are breaches, but no action is taken against the employee.

## (b) ADDRESSING INEQUALITY, VIOLENCE AND HARASSMENT OF KEY POPULATIONS

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<sup>318</sup> WHO. [Guideline on when to start antiretroviral therapy and on pre-exposure prophylaxis for HIV](#). Geneva: WHO; 2015. [Accessed on August 28, 2018]

<sup>319</sup> UNAIDS 2017: Haiti (48%), Dominican Republic (22%), Jamaica (10%), Cuba (8%) and Trinidad and Tobago (4%).

<sup>320</sup> The Joint United Nations Programme on HIV/AIDS (UNAIDS) 90-90-90 goals are that by 2020, 90% of all people living with HIV will know their HIV status, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy (ART), and 90% of all people receiving ART will have viral suppression.

- b.1. Provide Support to undertake Criminal Prosecution for Harassment and Verbal Abuse in Public Spaces:** Provide financial assistance to civil society organizations to hire an attorney who is experienced in prosecuting cases to obtain a fiat<sup>321</sup> to prosecute from the Director of Public Prosecutions (DPP). The fiat to prosecute will empower the otherwise private attorney to institute criminal prosecutions on behalf of persons who are the victims of unprovoked violence, harassment and abuse in public places. Proceeding in this way is only for strategic purposes. It is meant to be a short-term endeavor to deter violence against LGBT and PLHIV through swift prosecution. The efficient prosecution of these cases may otherwise be hampered given the heavy caseload and competing priorities in the office of the DPP. The Attorney granted the fiat, would, for the duration of the fiat, report to the Office of the DPP. In the absence of legislative change, criminal prosecutions will act as both an immediate deterrent and a way to change behaviour at the community level.
- b.2. Support the development of a guidebook and training of police and human rights defenders about public order laws:** Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation. Provide training on the guidebook for police officers and human rights defenders.

## **(c) ADDRESSING DISCRIMINATION**

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- c.1. Support Strategic Litigation to address Savings Law Clauses:** Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of LGBT persons or any other group.
- c.2. Support national authorities to adopt anti-discrimination legislation:** Provide technical-legal assistance to national authorities to revise, draft and adopt general anti-discrimination legislation and legislation which defines and regulates protected health and other personal information. The protected grounds against discrimination should include age, health status, gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- c.3. Support the development of Protocols and Guidelines for Prisoners’ Health:** Provide technical assistance to national authorities to develop standard minimum rules for the treatment of prisoners, to include protocols for: health care assessment, Healthful food, Provision of necessities, Sexual abuse, Self-harm and suicide prevention, Protection of vulnerable prisoners, Health Care, Personal Dignity, Grievances and Access to Courts.
- c.4. Policy Guidelines for Jails and Prisons for Transgender Persons:** Provide technical and financial assistance to national authorities to develop Policy Guidelines for prisons and jails to

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<sup>321</sup> “Fiat” is used to mean the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

define a minimum package of services and service delivery protocols for incarcerated transgender persons.

**(d) ADDRESSING ISSUES AFFECTING MEMBERS OF  
KEY POPULATIONS**

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**d.1. WOMEN AND GIRLS**

**d.1.1.** Provide technical assistance to national authorities to elaborate a clear, appropriate re-entry policy and/or measure for pregnant schoolgirls that allows them to remain in formal education, sit exams and then return to school after giving birth, including through the use of approaches, such as separate classes, that are aimed at reducing vulnerability, breaking the cycles of poverty, teenage pregnancy and domestic violence.

**d.2. MSM, SEX WORKERS AND TRANSGENDER PERSONS**

d.2.1. Provide technical-legal and financial support to civil society organizations to undertake strategic litigation with a view to having judicial interpretation and/or “judicial amendment” of saving law clauses in national Constitutions, Sexual Offences Acts and Offences against the Person Acts, which obstruct the amendment of legislation that enhances the rights of LGBT persons or any other group.

d.2.2. Provide technical-legal assistance to national authorities to amend public order laws and sexual offences legislation to provide immunity against criminal prosecution for aiding, abetting or facilitating offences, to medical practitioners, guidance counsellors, outreach workers and social workers who provide information, advice and other services to sex workers at places where they may engage in activities contrary to public order laws and other laws, once it is shown that person in question is acting for the purpose of—protecting the sex worker from sexually transmitted infection or promoting the sex worker’s emotional well-being by the giving of advice.

d.2.3. Provide technical-legal assistance to national authorities to adopt general anti-discrimination legislation to give protection to sex workers against discrimination in health, housing and access to public goods and services.

d.2.4. Provide technical-legal and financial assistance to national authorities to work with prosecuting authorities to develop a guidebook for prosecutors and police officers on how to investigate and prosecute cases of verbal abuse, harassment and physical attacks against sex workers, lesbian, gay, bisexual and transgender persons under public order legislation.

d.2.5. Provide technical assistance to national ombudsmen and human rights entities to effectively investigate all cases of excessive use of force and other human rights abuses of sex workers by police officers and provide on a regular basis, mandatory human rights training for all law enforcement officials, with a view to preventing such violations.

**d.3. CHILDREN**

**d.3.1. Support measures to ensure access to services for disadvantaged children:** Provide technical-legal assistance to national authorities to effectively implement laws to ensure access to basic services and access to effective remedies in case of violation of the rights

of disadvantaged groups of children, including rural, Maroon and indigenous children and children with disabilities.

- d.3.2. Support initiatives to amend Age of Consent Legislation:** Provide technical-legal assistance to national authorities to amend age of consent legislation, so that the age at which a person can access non-invasive sexual and reproductive health information, advice and contraceptives is based on medical guidelines to be included in the amended legislation and which gives medical practitioners a discretion to assess a person's capacity to consent.
- d.3.3. Alternatively,** the Minister of Public Health may be empowered to make Regulations under the Public Health Act, without the need for Parliamentary approval. An example is the Jamaican Tobacco Control Regulations, made under Sections 14 and 15 of the Public Health Act. Using this approach, PANCAP should support national authorities and civil society organizations to undertake the relevant research and engage the respective Ministers of Public Health to enact Regulations similar to Regulation 9(4) of the Guyana Regulations under the Medical Practitioner's Act.
- d.3.4. Support initiatives to amend laws to provide good faith immunity to health practitioners and social workers:** Provide technical-legal assistance to national authorities to amend sexual offences legislation to provide good faith immunity against criminal prosecution for aiding, abetting or facilitating offences, to medical practitioners, guidance counsellors, outreach workers and social workers who provide information, advice and other services to at-risk, sexually active adolescents, when the person in question is acting for the purpose of—protecting the child from sexually transmitted infection, pregnancy, etc.

## **(e) IMPROVING ACCESS TO REDRESS**

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- e.1. Support civil society organizations and human rights defenders to make greater use of the Inter-American Human Rights System:** Provide technical and financial support to Civil Society Organizations to make use of the Inter-American Human Rights System's ability to issue Precautionary Measures and Provisional Measures.
- e.2. Provide technical and financial support to hire an Attorney to institute criminal prosecutions for misbehavior in public office against public sector employees and police officers who fail to carry out public duties:** Provide technical and financial assistance to civil society organizations to hire an attorney who will pursue criminal prosecutions using the common law offence of misbehavior in public office. The Attorney will need to apply to the Office of the DPP for a fiat to prosecute and issue indictments against public sector employees who neglect PLHIV and LGBT at health facilities and police officers who fail to investigate complaints of human rights violations, discrimination and abuse.
- e.3. Provide technical and financial support to hire an Attorney to file civil proceedings against public officers for Misfeasance in Public Office:** Provide technical assistance to civil society organizations to undertake strategic civil litigation against public sector employees and police officers for misfeasance in public office.

- e.4. **Provide technical assistance to national authorities to empower Ombudsmen to act as National Human Rights Institutions:** Provide technical assistance to national authorities to conduct the relevant assessments to determine the best way to use existing institutions such as offices of Ombudsmen and Public Defenders as national human rights institutions, by extending their mandate. The enabling legislation for these institutions should define discrimination to protect the rights set out in the Covenant on Economic, Social and Cultural Rights and, address health status, social status, sexual orientation, marital or domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability and age. The institution should have investigative powers, with broad competence in the field of human rights, including migration, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

## 8. DEFINING AND MONITORING HUMAN RIGHTS PROGRESS

### 8.1. CHALLENGES

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One of the principal challenges faced by the consultant in putting this work together is that HIV & AIDS service organizations do not record success in a way which captures changes at an outcome or impact level, and in a way which makes it easy to identify implementation successes, gaps and challenges. It appears that even today (2018), the primary focus of many HIV & AIDS interventions is output-based. That is to say, interventions tend to focus on those tangible things produced by the intervention: training and sensitization, reports and studies, workshops and “deliverables.” This is especially the case for human rights interventions. In this area, hardly any measures address the value or impact of the intervention. Most of the human rights-related activities that have been implemented at country level have focused on advocacy for law reform, policy reform and sensitizations.

Most of the advocacy has been directed at political leaders. However, when it comes to implementation, there tends to be a gap between the aspirational goals and the actual activities being implemented. In short, there is a lack of causal connection between activities and the results that everyone so genuinely seeks. The gap appears to be caused by a lack of technical, project management involvement in the design of the interventions so that the activities are not benefiting from the structures of results-based management. This however is not the same for the biomedical aspect of the HIV response. Data abounds on number of HIV & AIDS cases, number of persons in treatment programs and number of new infections. It is easy to see changes in the biomedical aspect of the response. Not so with the human rights component. The human rights activities tend not to have objective performance measures or targets associated with them to enable routine monitoring and evaluation. Without routine monitoring reports, it is difficult to say what impact these initiatives have had or what has changed because of the interventions. That this is so seems evident from a review of the 2017 and 2018 reports submitted by countries for the monitoring of progress towards the targets set out in the 2016 Political Declaration on HIV/AIDS.

### 8.2. COMMITMENTS IN THE 2016 POLITICAL DECLARATION

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There are 10 commitments contained in the 2016 Political Declaration. All of the commitments have a target of 2020. The commitment, which is most directly relevant to this work, is **Commitment No. 4: Eliminate gender inequalities and end all forms of violence and discrimination against women and girls, people living with HIV and key populations by 2020.**

- The expected result is clear: “Elimination of...”
- The beneficiaries are clear: “... key populations...” and

**“The old saying, “*What gets measured gets done*” may be a cliché, but is still very true for the response to HIV...”**

**- UNAIDS**

- The date for achieving this result is also clear "... by 2020".

If this expected result is achieved, there will be a clear impact - a clear change; there will be elimination of the problem. The question is "how does one know if this result has been achieved?" What evidence must be present to show that there has been an elimination of "... discrimination against ... people living with HIV and Key populations?" What activities should States undertake? In project management, the device used to tell this story is called a "success indicator." These indicators may be qualitative (a measure of changes in feelings, changes in perceptions, changes in beliefs) or they may be quantitative (a measure of changes in numbers, proportions or percentages). For the Political Declaration, [the UNAIDS Guidance Note \(2017\)](#) sets out indicators for monitoring the 2016 Political Declaration.

### ***8.3. SUCCESS INDICATORS FOR COMMITMENT 4***

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For Commitment No. 4, the following are the core monitoring indicators in the 2017 Guidance Note:

**A. [Reduction in] Discriminatory attitudes towards people living with HIV: Percentage of women and men 15–49 years old who report discriminatory attitudes towards people living with HIV.**

**What it measures:** Reduction in discriminatory attitudes and support for discriminatory policies by members of the public. A gradual reduction in support for discriminatory practices and discriminatory attitudes will provide strong evidence that initiatives are on the right track. The converse is also true: An increase in discriminatory practices and attitudes means that the interventions are not having the desired effect and therefore progress toward meeting the impact result is at risk.

**B. [Reductions in] Avoidance of health care among key populations because of stigma and discrimination**

- Avoidance of health care because of stigma and discrimination to sex workers
- Avoidance of health care because of stigma and discrimination to men who have sex with men
- Avoidance of health care because of stigma and discrimination to people who inject drugs
- Avoidance of health care because of stigma and discrimination to transgender people

**What it measures:** Reductions in the percentage or proportion of persons in key populations who are avoiding HIV testing, HIV medical care and HIV treatment due to fear of stigma and discrimination and negative attitudes in the healthcare setting. This data provides strong evidence that the initiatives are achieving success. This indicator is important for understanding and addressing the barriers to achieving the 90–90–90 targets among members of key populations. Data from this indicator could provide further understanding and improve interventions in reducing HIV stigma and discrimination by (1) showing change over time in the percentage of people who fear experiencing stigma, (2) enabling comparisons between different jurisdictions and locations and (3) indicating priority areas for action.

**C. [Improved] Experience of HIV-related discrimination in health-care settings: Percentage of people living with HIV who report experiences of HIV-related discrimination in health-care settings**

**What it measures:** Reduction in HIV-related discrimination experienced by people living with HIV when seeking health-care services. This indicator could provide further understanding of HIV-related health outcomes and improve interventions to reduce and mitigate HIV-related stigma and discrimination experienced along the treatment and care cascade by (a) showing change over time in the percentage of people living with HIV who experience discrimination in health-care settings and (b) indicating priority areas for action. An activity here might include Review and reforming laws that reinforce stigma and discrimination, including on age of consent, HIV non-disclosure, travel restrictions and mandatory testing.

**8.4. COUNTRY REPORTING<sup>322</sup>**

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Some countries have structured their reports according to the headings outlined in the UNAIDS 2017 Guidance Note. However, the reporting in relation to Commitment No. 4, suggests that the activities being implemented, are not being implemented using the success indicators as a guide. Rather, from the reports, it appears that there is a focus on education, sensitization, meetings and training, but the strategic interventions required to achieve the higher-level impact are missing. For example, in this writer's experience, a key activity for the second indicator (level of avoidance of healthcare among key populations) - would have been a baseline assessment, to determine the situation and then implement measures aimed specifically at ensuring that there is an improvement in the situation shown in the baseline. However, the [Jamaica Global AIDS Monitoring 2018 Report](#) for example, does not (in this writer's opinion), include any activity for this indicator, which could logically lead to a reduction in avoidance. The [2018 Report for The Bahamas](#) confirms that the activities being implemented are sensitivity training and human right training, although it appears that a baseline assessment was done in 2014. The report for [Antigua and Barbuda](#) and the report for [Saint Kitts/Nevis](#), although structured along to reflect the Commitments in the 2016 Declaration, contain no information regarding activities tied to the indicators for Commitment No. 4.

**8.5. RECOMMENDATIONS TO IMPROVE HUMAN RIGHTS MONITORING AND PROGRESS REPORTING**

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To ensure that activities are contributing to a change at the impact or outcome level, it is recommended that technical assistance be provided to national authorities to develop results and performance frameworks to guide the implementation of future human rights related interventions. The technical assistance should focus on assisting national authorities to design results-based work plans with accompanying performance measurement frameworks and training a cadre of individuals in country to

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<sup>322</sup> All Country Reports are available here: <http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2018countries/>



build their capacity to design, implement, monitor and report using a results-based approach for human rights interventions.

The primary tool - the results framework - will set out the expected results, activities that could logically lead to the expected results and the success indicators that will be used to track monitor and report on progress toward meeting the expected results. A sample results framework is provided below.

By adopting a results-based approach to the implementation of human rights advocacy and law reform, national authorities will have the tools and data which are necessary to assist them to move away from activity-based or output-based implementation and reporting and toward impact-level implementation and reporting. Activity / Output-based report focus only on the immediate tangibles that result from an intervention. These typically include, for example, the number of sensitization sessions held as opposed to impact/outcome-based implementation, which focuses on changing the existing state of affairs, behaviors and practices. Output-based reporting (for example, # of condoms distributed) is not an effective way of tracking impact or ensuring change. *A fortiori*, output-based implementation and reporting does not give the type of data necessary to determine effectiveness of an intervention.

Evaluating HIV & AIDS prevention and care programmes is a never-ending challenge, but recognizing its importance in improving current interventions may help to enhance the success of future initiatives. It is the consultant's considered view that each intervention should have built within it, resources for monitoring and evaluation at the quantitative and qualitative levels and for resources to be dedicated at the outset to undertake the technical design of the intervention to ensure that activities and financial resources are be dedicated not to outputs but to a higher-level impact.

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### SAMPLE FRAMEWORK FOR RESULTS-BASED MANAGEMENT

ULTIMATE OUTCOME:  Change in the existing state of affairs - Social, Cultural, Political	Reduction of Stigma and Discrimination in Healthcare Setting			Success Indicator	Target	Baseline	Data Collection and Monitoring		
							Sources	Collection Frequency	Responsibility
				% of KPs M/F (MSM, SW, TG, Youth) no longer avoiding health care because of S&D	65% by 2020	45% (2018)	National GF Reports	Quarterly	
<b>INTERMEDIATE OUTCOME</b> (Change in behaviour, <b>change in performance</b> , changes in practice and attitudes)	Improved compliance by health professionals with human rights standards			% of countries with that include compliance with human rights in terms and conditions of employment contracts and employee performance evaluations	50% by 2018 75% by 2019 90% by 2020	15% (2016)			
<b>IMMEDIATE OUTCOMES:</b>  (changes in skills and abilities, changes in access to goods and services, changes in capacity)	1. Improved capacity of regulatory bodies to enforce compliance with human rights standards	2. Improved skills and abilities of health professionals	3. Improved understanding of the issues by decision-makers	1. % national authorities with mandatory requirements for human rights training as part of CME	50% by 2018 75% by 2019 90% by 2020	2% (2016)			
				2. % of M/F health professionals whose perceptions change					
				3. # of decision-makers making commitments to amend codes / regulations					
<b>Outputs and Activities</b>	1. Technical assistance to amend regulations and codes	2. Training of male and female health care professionals	3. Advocacy and meetings with decision-makers	# of codes, regs. dev. / amended	6 by 2018				
				# of M/F professionals trained	10 by 2019				
				% of decision-makers actively participating in reform council / attending briefings etc.					
<b>Statement of the Problem (2018): High incidence of stigma and discrimination in health care setting in Caribbean countries</b>									

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## 11. STAKEHOLDERS INTERVIEWED

<b>ANTIGUA AND BARBUDA</b>	
<i>Hon. Molwyn Joseph, Minister of Health, Environment and Wellness</i>	<i>June 18, 2018</i>
<i>Mrs. Joan Carrott, Permanent Secretary, Minister of Health, Environment and Wellness</i>	<i>June 18, 2018</i>
<i>Dr. Rhonda Sealey-Thomas, Chief Medical Officer.</i>	<i>June 18, 2018</i>
<i>Ms. Delcora Williams, Director, National AIDS Program Secretariat</i>	<i>June 18, 2018</i>
<i>Ms. T'Mira Looby, Resident Counsellor, Directorate of Gender Affairs</i>	<i>June 18, 2018</i>
<i>Mr. Jamie Saunders, Program Officer, Directorate of Gender Affairs</i>	<i>June 18, 2018</i>
<i>Raisa Charles, Communications Officer, Directorate of Gender Affairs</i>	<i>June 18, 2018</i>
<i>Mrs. Lyndale Weaver Greenaway, Director, Antigua and Barbuda Planned Parenthood Association</i>	<i>June 19, 2018</i>
<i>Ms. Vanessa Moe, Senior Crown Counsel, Ministry of Justice and Legal Affairs</i>	<i>June 19, 2018</i>
<i>Ms. Andrea Airall, Education Officer, Guidance Counselling &amp; Family Life Services, Ministry of Education</i>	<i>July 17, 2018</i>
<i>Dr. Patricia George-Benfield, Ministry of Education</i>	<i>June 19, 2018</i>
<i>Peter*, 3H Network James*, Intervention Foundation Malcolm*, 3H Network Joseph*, MEN, Chris*, MEN Robert*, MEN *Pseudonym</i>	<i>June 19, 2018</i>
<i>Mr. Alvin Henry, Mr. Norman Jeffrey, Ms. Caroline Brown, Mr. Steven Samuels, Ms. Tamara Jacobs, Mr. Marvin Paul, Ms. Caroline Brown, Ministry of Social Transformation, Welfare Division</i>	<i>June 19, 2018</i>
<i>Mrs. Eltonia Anthony-Rojas, Labour Commissioner</i>	<i>June 20, 2018</i>
<i>Ms. Paulette Ambrose, Labour Officer / communications Officer, Labour Department</i>	<i>June 20, 2018</i>
<b>BARBADOS</b>	
<i>Ms. Jacqueline Wiltshire-Gay Director National HIV/AIDS Commission Barbados</i>	<i>July 2, 2018</i>
<i>Dr. Anton Best Chief Medical Officer of Health</i>	<i>July 3, 2018</i>
<i>Mr. Robert Best, PLHIV Representative, Barbados</i>	<i>July 3, 2018</i>
<i>[Officer in Charge*] on behalf of Superintendent, Barbados Prison Service</i>	<i>July 3, 2018</i>
<i>[Medical Officer*] on behalf of Superintendent, Barbados Prison Service</i>	<i>July 3, 2018</i>
<i>Dr. Dale Babb, Medical Officer of Health, LadyMeade Reference Unit</i>	<i>July 4, 2018</i>
<i>Ms. Rhonda Farley, Coordinator, Ministry of Labour</i>	<i>July 4, 2018</i>
<i>Ms. Shamelle Rice, Director, Jabez House</i>	<i>July 5, 2018</i>

<b>GUYANA</b>	
<i>Mr. Martin Odiit, UNAIDS Country Director for Guyana and Suriname.</i>	<i>July 31, 2018</i>
<i>Dr. Rhonda Moore, Program Manager, National HIV/AIDS Program</i>	<i>August 7, 2018</i>
<i>Ms. Nicole Cole, Commissioner, Women &amp; Gender Equality, Rights of the Child Commission</i>	<i>August 17, 2018</i>
<i>Mr. Jason Shepherd, Senior Program Officer, Caribbean Regional Network of People Living with HIV and AIDS (CRN+)</i>	<i>August 27, 2018</i>
<i>Mr. Winfield Tannis Abbott, Chairman, Caribbean Regional Network of People Living with HIV and AIDS (CRN+) for St. Vincent and the Grenadines</i>	<i>August 27, 2018</i>
<i>Ms. Janelle Sweatnam, HIV Focal Point, Ministry of Education</i>	<i>August 22, 2018</i>
<i>Mr. Adel Lilly, Senior Gender Specialist, Ministry of Social Protection</i>	<i>August 20, 2018</i>
<b>JAMAICA</b>	
<i>Ms. Lovette Byfield, Executive Director, National Family Planning Board</i>	<i>August 23, 2018</i>
<i>Mr. Devon Garbourel, Director, National Family Planning Board,</i>	<i>July 2, 2018</i>
<i>Dr. Donna Royer-Powe, Director Medical Services, Department of Correctional Services</i>	<i>June 26, 2018</i>
<i>Mr. Hugh Faulkner, Executive Director of the Legal Aid Council</i>	<i>June 26, 2018</i>
<i>Ms. Joi Chambers - Adolescent Health Coordinator - Ministry of Health</i>	<i>August 22, 2018</i>
<i>Mrs. Nordia McIntosh-Vassell, Education Officer, Health Promotion, Guidance and Counselling Unit, Ministry of Education</i>	<i>August 20, 2018</i>
<i>Mrs. Sannia Sutherland, Programme Coordinator, Caribbean Vulnerable Communities Coalition</i>	<i>August 28, 2018</i>
<i>Ms. Khadrea Folkes, Senior Legal Officer, Ministry of Labour and Social Security</i>	<i>August 20, 2018</i>
<i>Ms. Novia Condell, Children and HIV/AIDS Specialist, UNICEF, Jamaica</i>	<i>August 30, 2018</i>
<i>Mr. Ricky Pascoe, President Jamaican Network of Seropositives</i>	<i>August 23, 2018</i>
<i>Ms. Nadine Lawrence, Redress Officer, Jamaican Network of Seropositives</i>	<i>August 24, 2018</i>
<i>Ms. Kristal Tucker-Clarke, Director Community Liaison, Bureau of Gender Affairs.</i>	
<b>SURINAME</b>	
<i>Mr. Martin Odiit, UNAIDS Country Director for Guyana and Suriname.</i>	<i>July 31, 2018</i>
<i>Mr. Kenneth van Emden, Director, Suriname Men United</i>	<i>August 6, 2018</i>
<i>Ms. Mylene Pocorni, Manager Country Coordinating Mechanism (CCM) Suriname</i>	<i>August 7, 2018</i>
<b>TRINIDAD AND TOBAGO</b>	

<i>Dr. Aileen Clarke, HIV Coordinator for the Ministry of Social Development and Family services</i>	<i>July 16, 2018</i>
<i>Dr. Ayanna Sebro, Director of the HIV/AIDS Coordinating Unit of the Ministry of Health</i>	
<i>Ms Ward</i>	
<i>Ms Lequita Foster</i>	
<i>Ms. Rhema Lewis, HIV/AIDS Coordinator - Prevention, Ministry of Health</i>	<i>July 19, 2018</i>
<i>Ms. Joan Furlonge, Senior Legal Officer, Equal Opportunity Commission</i>	<i>July 19, 2018</i>
<i>Mr. Mr. Haran Ramakaransingh, Legal Officer, Equal Opportunity Commission</i>	<i>July 19, 2018</i>

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