



Justice for All
Creating a Facilitating Environment to
Reduce HIV Related Stigma and
Discrimination in the Caribbean



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It is inconceivable that we as Parliamentarians would even contemplate criminalizing our brothers and sisters because they live with HIV. Our remit as representatives must be to provide rights, respect those rights, protect those rights and fulfill rights for all citizens. Today, we must demonstrate that we take this responsibility seriously. Let us guarantee the rights of all people and not be seen to be taking away rights of some citizens. This is our legal mandate and our moral responsibility and in refusing to criminalize HIV transmission we would explicitly demonstrate that Guyana's Parliament is committed to guaranteeing fundamental human rights forever, for everyone, no matter the circumstances, no matter how difficult it might appear. We stand by our sisters and brothers even if it is hard, because it is right.... Dr. Leslie Ramsammy, Parliament of Guyana (2011).

FOREWORD

The Justice for All Programme is an initiative of PANCAP, in collaboration with National Programmes, CARICOM Secretariat and with UNAIDS and the Office of the Special Envoy for HIV to the Caribbean. The draft Roadmap presented in this document is a Roadmap to address the issues of stigma and discrimination related to Persons Living with and vulnerable to HIV and AIDS in CARICOM countries.

PANCAP has strongly maintained that issues related to Women, Girls and Gender are deeply rooted in solutions to reduce and eliminate HIV and AIDS in the Caribbean. The Justice for All Roadmap, however, does not specifically identifies strategies to address issues related to women, girls and gender and the reduction and elimination of HIV and leaves this to other initiatives at Regional and National Levels.

The Justice for All Programme recognizes that while CARICOM countries have made significant progress in reducing the HIV Epidemic and the AIDS Epidemic, with almost a 50% reduction in new HIV infections and in AIDS death over the last decade, there is a dire need to reduce the third epidemic, the epidemic of stigma and discrimination. In this regard, the Justice for All Programme recognizes the deficit that exists in the human rights approach to HIV reduction and elimination.

The Justice for All Programme recognizes that unless CARICOM countries tackle more effectively the issues of stigma and discrimination related to HIV, the countdown to ZERO in accordance with the ZERO Indicators will not be achieved with the 2025 deadline.

The Justice for All Roadmap seeks to even out the response in the CARICOM countries so that progress towards the third ZERO, ZERO Stigma and Discrimination matches success in reaching Zero New Infections and Zero AIDS Deaths.

Clearly, the Caribbean, with the second highest prevalence rates in the World, can now realistically visualize the end AIDS by 2025. CARICOM countries can use 2025 as a milepost on the way to ending HIV. But the Justice for All Programme embraces the notion that ZERO Stigma and Discrimination is an imperative towards ending AIDS in CARICOM.

The Justice for All Programme is a component of the Post-2015 HIV and AIDS Agenda for CARICOM countries. We hope that there would be extensive participation in finalizing the Roadmap. It would be important that there is broad participation in finalizing the Roadmap.

It would be a significant step forward for the Roadmap to be endorsed by the Ministers of Health and COSHOD. Finally, the Roadmap would assume major regional significance should it be adopted by the Heads of Government as a formal Region Instrument.

We must treat the Roadmap the same way we treat UNGASS and the Political Commitment.

PANCAP

November 28, 2013

Justice for All

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

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

The Project is funded as part of PANCAP's Global Fund Grant – Justice for All -. UNAIDS is collaborating with PANCAP in implementing this Justice for All Project as part of its own commitment to promote the reduction of stigma and discrimination in the context of HIV around the world in keeping with UNAIDS seven (7) key programs to reduce stigma and discrimination and increase access to justice for all. The Justice for All Project is being led by UN Secretary General Special Envoy on HIV in the Caribbean, Dr. Edward Greene.

The Project is being implemented directly by PANCAP through its Secretariat, the PANCAP Coordinating Unit (PCU). UNAIDS Caribbean Regional Office and UNAIDS Country Offices are collaborators in the implementation of the project.

Caribbean countries have signed key international human rights treaties towards equality and dignity for all and have also undertaken a number of initiatives to galvanize support for advocacy efforts at national and regional levels towards legislative reform that would provide a facilitating environment to end stigma and discrimination in the context of HIV in CARIFORUM countries. PANCAP has played a major role in supporting and coordinating these efforts.

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

The Concept Note for PANCAP's Justice for All Programme and full TOR for developing a draft Pan CARIBBEAN DECLARATION and a Roadmap to Reduce HIV Stigma and Discrimination are attached as Appendix 1.

A summary of the Terms of Reference is presented below.

- An examination of National Strategic Plans (NSPs) to determine the extent to which they include specific targeted actions related to stigma and discrimination, law reform, increased access to justice for PLWHA and most at risk populations, capacity development for parliamentarians, members of the police and disciplined services and the judiciary etc.
- A desk review by PANCAP's Secretariat that will take into consideration several reports, including, but not limited to the following reports:
 - ***HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine (2013)***
 - ***PANCAP Perspective on Human Rights (2012)***
 - ***The Global Commission on HIV and Law Final Report (2012)***
 - ***UNAIDS Seven Priority Actions to Reduce and Eliminate Stigma and Discrimination***
 - ***Other Relevant Documents***
- A desk review to specifically identify the bottlenecks and major issues related to HIV-linked stigma and discrimination and identify opportunities to pursue actions within the context of UNAIDS seven (7) key programs to reduce stigma and discrimination and increase access to justice for all citizens in Caribbean countries.
- Based on the desk review, PANCAP will develop a Desk Review Report which will include a draft PAN CARIBBEAN DECLARATION and a Roadmap to **Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean**. It is hoped that this Desk Review Report will be completed by November 15th 2013.
- The Report with the draft Roadmap will serve as an entry point for four (4) National Consultations in Guyana, Jamaica, St. Kitts and Nevis and Trinidad and Tobago. The Roadmap will be for actions intended to be implemented regionally and in all CARICOM countries, but the three consultation will focus particularly on identifying short and medium term actions and seek to agree on these actions for the three countries. The three National Consultations are to be completed by January 15th 2014. Three stand-alone reports and a consolidated report will be prepared by the PANCAP Secretariat and would be available by January 20th 2014.
- These reports will serve as working documents for a Regional Working Group which PANCAP will convene in January 2014. The Working Group will develop a CARICOM Regional Roadmap with targets, outcomes and timelines by January 31st 2014.
- A Draft PAN CARIBBEAN DECLARATION and the CARICOM Roadmap for **Creating a Facilitating Environment to Reduce HIV-Related Stigma and Discrimination in the Caribbean** taking into consideration UNAIDS seven (7) key programs to reduce stigma and discrimination and to increase access to justice for persons living with and vulnerable to HIV and AIDS will be presented **for endorsement by the CARICOM Heads of Governments in July 2014.**

Task	Deliverable	Responsible Party	Timeline
Desk Review of Recent Reports, Studies and Assessments and NSPs	Desk Review Report and a Draft Roadmap towards Creating a Facilitating Environment to Fight HIV-Related Stigma and Discrimination	PANCAP's Secretariat	November 15 th , 2013
Four National Consultations in Guyana, St. Kitts and Nevis, Grenada, Suriname, Jamaica	Three National Reports from each of the consultations and a consolidated report	PANCAP's Secretariat/UNAIDS Regional Office and Country offices	December 2013 To January 15 th 2014
Finalization of a CARICOM Roadmap for Creating a Facilitating Environment to Fight HIV-Related Stigma and Discrimination	Final Draft of the CARICOM Roadmap Final Draft of PAN CARIBBEAN DECLARATION	PANCAP and Working Group	January 31 st 2014
Presentation of Roadmap and PAN CARIBBEAN DECLARATION for consideration and adoption by Heads of Governments	Consideration and adoption at Heads of Government Meeting	CARICOM	July 2014

The Context of the Justice for All Programme

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

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

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

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

- End stigmatizing practices in the HIV response
- Include anti-discriminatory clauses and provisions in national legal environment

(constitutions, laws) consistent with global agreements and particularly those involving employment and access to social services and education

- Improve legal and human rights literacy and capacity of people living with and vulnerable to HIV
- Empower persons living with and those vulnerable to HIV to access legal services to seek remedies when they experience or perceive stigma and discrimination through mechanisms such as legal aid programs and access to Human Rights Commissions where they exist nationally and or seeking redress at bodies such as the IAHR.
- Strengthen the Stigma Index and the Human Rights Count and the Human Rights Desks in CARIFORUM countries.
- Build capacity among health care workers that diminish stigma and discrimination in health care settings
- Create a more efficacious environment for enforcing sexual and domestic violence acts in the various countries
- Establish training programs in the police force and the judiciary to prevent abuse, stigma and discrimination against people living with HIV and those vulnerable to HIV such as MSMs, sex workers and drug addicts.

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

- Punitive laws related to issues affecting the full realization of human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) – buggery or sodomy laws
- Punitive laws related to sex work
- Punitive laws related to criminalization of HIV transmission
- Punitive laws related to freedom of movement (migration)
- Regulations applied to pre-screening provisions for employment and for entry into the police and disciplined services
- Invigorate the discussion surrounding the criminalization of persons who are dependent (addicted) on the use of illicit and illegal substances.

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

Chapter 1

Introduction

As men and women of conscience, we reject discrimination in general, and in particular discrimination on sexual orientation and gender identity....Where there is tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit discrimination on the basis of sexual orientation or gender identity, that encourage violence Secretary General of the UN, Mr. Ban Ki-moon, 2010

This statement from the UN Secretary General aptly summarizes the accumulated consensus emerging out of a long history of investigation and advocacy around the stigma and discrimination that were evident from the inception of the disease over thirty two years ago. Hence this chapter first of all tries to capture the historical evolution of these concerns and then focuses on the Caribbean-specific conditions.

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

Human rights have become a critical part of the HIV response around the world. There is consensus that the end of AIDS is possible, but only if we attain ZERO Stigma and Discrimination. But this plank of the response was not a priority area when the epidemic first emerged and was recognized in 1981. The Human Rights Plank of the HIV response has unfortunately evolved over time.

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

These issues are grave, and more than 32 years into the epidemic, they have not been resolved and remain as issues in far too many jurisdictions around the world. In some ways, the situation has become even more complicated, as old issues appear in new places or present themselves in new or different ways. For example, in certain settings, access to employment has continued to be routinely denied to people infected with HIV. Even in places where this situation has improved, HIV-infected individuals now run the risk of finding themselves excluded from workplace health insurance schemes, with considerable impact on their health and, therefore, on their capacity to work.

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

The 1980s were extremely important in defining some of the connections between HIV and AIDS and human rights. By the end of the decade, the call for human rights and for compassion and solidarity with people living with HIV AND AIDS had been explicitly embodied in the first WHO global response to AIDS.

This approach was motivated by moral outrage but also by the recognition that protection of human rights was a necessary element of a worldwide public-health response to the emerging epidemic.

While in the 1980s and most of the 1990s, the link between HIV and Human Rights was mostly restricted to PLWHA, the human rights approach evolved to the bigger goal of prevention of HIV and the rights of vulnerable populations, such as LGBTI. Women and Gender Equality goals as articulated at the Cairo ICPD (1994) increasingly became a part of the Human Rights HIV struggle. Increasingly, too, throughout the 1990s and since 2000, the call was for a wider human rights approach for public health generally and, in particular, as part of the HIV response.

The implications of this call were far-reaching. By framing this public health strategy in human rights terms, it became anchored in international law, thereby making governments and intergovernmental organizations publicly accountable for their actions toward people living with and vulnerable to HIV and AIDS. The groundbreaking contribution of this era lies in the recognition of the applicability of international law to HIV and AIDS and, therefore, to the ultimate responsibility and accountability of the state under international law for issues relating to health and well-being.

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

- 1. The WHO has led the evolution of human rights as part of the HIV response:** The World Health Organization (WHO) held an International Consultation on Health Legislation and Ethics in the Fields of HIV AND AIDS in April 1988 at Oslo. It advocated bringing down barriers between people who were infected and those who were not infected and placing actual barriers (e.g. condoms) between individuals and the virus. On May 13 1988, the World Health Assembly passed resolution WHA41.24 entitled “Avoidance of discrimination in relation to HIV-infected people and people with AIDS”, which underlined how vital respect for human rights was for the success of national AIDS prevention and control programs and urged member States to avoid discriminatory action in the prevention of HIV and AIDS in the health services, employment and travel. In July 1989, the first international consultation on AIDS and human rights was organized by the then United National Center for Human Rights, in cooperation with the WHO/GPA. The report of the consultation highlighted the human rights issues raised in the context of HIV AND AIDS and proposed the elaboration of guidelines. Resolution WHA 45.35 of May 14, 1992 recognized that there is no public health rationale for measures which arbitrarily limit individual rights, such as mandatory screening. In 1990, the WHO conducted regional workshops on the legal and ethical aspects of HIV AND AIDS at Seoul, Brazzaville and New Delhi. The first of these workshops developed guidelines to evaluate current, and elaborate future, legal measures for the control of HIV to be used as a check-list by countries considering legal policy issues. In November 1991, the WHO Regional Office for Europe and the International Association of Rights and Humanity held a Pan-European Consultation on HIV AND AIDS in the Context of Public Health and Human Rights in Prague, which considered the Rights and Humanity Declaration and Charter and developed a consensus statement (the Prague Statement). Three further consultations on HIV, law and law reform were convened during 1995 by the WHO Regional Office for Europe, for countries in Eastern Europe and Central Asia.

2. **The UNDP has played a pivotal role in linking HIV and law and ethics:** The UNDP held Inter-Country Consultations on Ethics, Law and HIV in Cebu (Philippines) in May 1993 and in Dakar, in June 1994. Both of these consultations produced consensus documents reaffirming a commitment to voluntarism, ethics and the human rights of those affected (the Cebu Statement of Belief and the Dakar Declaration). UNDP also held Regional Training Workshops on HIV Law and Law Reform in Asia and the Pacific at Colombo, Beijing and Nadi (Fiji) in 1995.
3. **Various countries embarked on law reform to prevent discrimination against persons living with HIV and AIDS:** Law reform programme focusing on human rights have been ongoing in countries such as Australia, Canada, the United States, South Africa and in the Latin American region, together with networks of legal advocates, practitioners and activists at governmental and community levels. One concrete achievement of such groups has been the successful lobbying for general anti-discrimination legislation at national and local levels which defines disability broadly and sensitively enough to explicitly include HIV AND AIDS. Such civil legislation exists in the United States, the United Kingdom, Australia, New Zealand and Hong Kong. In France, such a definition is contained in the Penal Code. Some countries have constitutional guarantees of human rights with practical enforcement mechanisms, such as the Canadian Charter of Rights.
4. **The UN General Assembly early efforts to link effective HIV responses to human rights:** The UN General Assembly, in its resolutions 45/187 of 21 December 1990 and 46/203 of 20 December 1991, emphasized the need to counter discrimination and to respect human rights and recognized that discriminatory measures drove HIV AND AIDS underground, making it more difficult to combat, rather than stopping its spread. The Special Rapporteur of the United National Sub-Commission on Prevention of Discrimination and Protection of Minorities on discrimination against PLHA presented a series of reports of the Sub-Commission between 1990 and 1993. The Special Rapporteur's reports highlighted the need for education programs to create a genuine climate of respect for human rights in order to eradicate discriminatory practices which are contrary to international law. The right to health can only be implemented by advising people of the means of prevention and the Special Rapporteur made specific reference to the vulnerable situation of women and children in the spread of HIV. Since 1989, the Sub-Commission, at its annual sessions, has adopted resolutions on discrimination against PLHA. But it was later in 2001, 2006 and 2011 that the UN General Assembly made the boldest declarations on HIV and human rights as are listed at #9.
5. **The UN Commission on Human Rights has not been silent:** The UN Commission on Human rights, at its annual sessions since 1990, has also adopted numerous resolutions on human rights and HIV which, inter alia, confirm that discrimination on the basis of HIV AND AIDS status, actual or presumed, is prohibited by existing international human rights standards and clarify that the term "or other status" used in the non-discrimination clauses of such texts "should be interpreted to include health status, such as HIV AND AIDS".
6. **Academic international studies link effective HIV responses to human rights approach:** There have also been prestigious academic international studies of HIV and human rights: these include the

work of the late Paul Sieghart for the British Medical Association Foundation for AIDS; the Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health; the International Federation of Red Cross and Red Crescent Societies; the National Advisory Committee on AIDS in Canada; the Pan American Health Organization (PAHO), the Swiss Institute of Comparative Law; by the Danish Center on Human Rights and by the Georgetown /John Hopkins University Program in Law and Public Health.

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

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

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

- Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, March 1995;
- New Delhi Declaration and Action Plan on HIV AND AIDS, Interdisciplinary International Conference: AIDS, Law and Humanity, December, 1995.

8. UNAIDS has played an indispensable role in promoting and coordinating a human rights approach

in HIV responses: The role of UNAIDS in the evolution of a human rights approach in global HIV responses is described in Chapter 4. One seminal contribution of UNAIDS in the human rights approach was the publication of The **International Guidelines on HIV AND AIDS and Human Rights (2006)**. This publication by UNAIDS and the UNHRC consolidates the recommendations that resulted from the second and third International Consultations on HIV and Human Rights held in 1996 and 2002 in Geneva. This publication provided help for States in designing, coordinating and implementing their national HIV policies and strategies, assisted in closing the gap between principles and practice and was instrumental in creating a rights-based and effective response to HIV.

9. UNGASS 2001 and High Level Meetings in 2006 and 2011 enshrined the link between effective HIV responses and a human rights approach:

The drive to address and eliminate discrimination in the context of HIV derives from the commitments governments and national and international stakeholders, including people living with and vulnerable to HIV made at the UN in 2001, 2006 and 2011. These commitments are enshrined in Declarations from the UN General Assembly. These declarations are:

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

10. Intensifying the need for a human rights approach in reaching ZERO New Infections, ZERO AIDS Deaths, ZERO Stigma and Discrimination:

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

- The Oslo Declaration – this is described later in the document – 2012
- The UNAIDS Zero Goals – 2011
- The UNAIDS seven (7) priority actions to reduce and eliminate stigma and discrimination – 2012
- The Montevideo Consensus on Population and Development – 2013
- Addressing the causes and disparities in health services access and utilization for LGBT persons. PAHO. Resolution CD52.R6 (2013)

The Situation in the Contemporary Caribbean

The Caribbean has made progress in its fight against HIV and AIDS. For instance, UNAIDS in 2013 reported that the most pronounced reduction globally in new HIV infections (49%) since 2001 occurred in the Caribbean¹. In addition, UNAIDS reported that the Caribbean has made significant reduction in new HIV infections among adolescents. Further, the UNAIDS 2013 Report points to a reduction in the number of AIDS deaths from 24,000 annually in 2001 to 11,000 annually in 2012. Encouragingly, from almost zero, most countries now provide virological testing for babies within two months of birth. Indeed, new infection among children in the Caribbean have dropped from about 3,500 in 2001 to <500 in 2012. Moreover, progress has been made in behavior areas such as sex workers utilizing condoms with their most recent client. These and other statistics tell a story of progress in reducing the epidemic of HIV and AIDS.

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

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

This reality is being confronted at a time when all stakeholders, including technical and other organizations and governments, accept that ZERO NEW INFECTIONS AND ZERO AIDS DEATHS are possible only if the issues of stigma and discrimination are fully addressed and overcome, thereby achieving the third goal of ZERO STIGMA AND DISCRIMINATION. It is recognized that only a human rights approach to HIV can ensure that countries achieve success in the fight against HIV. Consequently, Caribbean Governments and stakeholders have embarked on strengthening the human rights approach in the regional and national HIV responses AND THIS RECOGNITION IS EMBODIED IN THE JUSTICE FOR ALL PROGRAMME.

Yet thirty-two years into the HIV pandemic, the projection of Jonathan Mann² of three phases of the pandemic is being played out in the Caribbean and the world. The late Jonathan Mann had predicted three phases:

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

¹ UNAIDS Report on the Global AIDS Epidemic 2013

² Johnathan M. Mann et al: Health and Human Rights. London. Routledge (1999)

Clearly, the epidemic of stigma and discrimination looms perilously over us in the Caribbean and globally. Jonathan Mann's prediction are not only correct, but this third phase of the HIV pandemic threatens to derail the response and cause the Caribbean to lose the ground it has gained in reducing the epidemics of HIV and AIDs and in its pursuit of ZERO NEW INFECTIONS AND ZERO AIDS DEATHS.

The working definition of HIV-related stigma and discrimination was described very clearly at the 31st Meeting of UNAIDS³. The Background Notes for the 31st Meeting provided a comprehensive list of the forms and prevalence of discrimination experienced by people living with and vulnerable to HIV. This document also provides a listing of Policies and Programmatic Responses by Sector to address HIV-Related Discrimination.

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

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

At the Regional level, CARICOM countries in 2013 signed on to two significant declarations that must become part of the PANCAP Justice for ALL Agenda. The first of these important declarations was the Montevideo Consensus on Population and Development⁴ which resulted from the First Session of the Regional Conference on Population and Development in Latin America and the Caribbean held in Uruguay in August 2013. This Regional Conference agreed on the position that LAC will take to the UN ICPD Conference in 2014. The 2nd of these declarations is the Resolution CD52.R6⁵ at the 52nd Directing Council of the Pan American Health Organization in Washington DC in October 2013. This was the first time a UN organization addressed the equal access to health services for LGBTI populations. The countries of LAC adopted this resolution which was presented by the US delegation.

Within the Caribbean itself, there is a robust effort to implement a comprehensive human rights approach in HIV responses. A conference to examine HIV-related stigma and discrimination, ethics and the law in the Caribbean at the University of the West Indies in 2010 which led to the publication of a

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

⁴ The Montevideo Consensus on Population and Development (2013): Full integration of population dynamics into rights-based sustainable development with equality: key to Cairo Programme of Action 2014. The 1st Session of the Regional Conference on Population and Development in Latin America and the Caribbean

⁵ PAHO Directing Council Meeting (2013), Resolution CD52.R6: Equal Access to Health Services by LGBTI

book in 2013⁶, concluded that in pursuing zero discrimination relating to HIV, Caribbean countries must re-examine their constitutions, laws, policies and practices as they relate to human rights. The conference and the book constitute a roadmap of how to reduce HIV-related stigma and discrimination.

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

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

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

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

The Honorable Prime Minister Portia Simpson Miller of Jamaica⁷ has committed to bring a bill to the Parliament of Jamaica to address the issue of sodomy by the end of 2013 and that she will ask Parliamentarians to vote on conscience, rather than on party lines. It should be noted that as Prime Minister of Jamaica the Honorable Portia Simpson Miller is keeping a promise she made as part of her

⁶ ***HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean*** edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

⁷ Honorable Portia Simpson Miller promised to decriminalize LGBT. Jamaican Advocate. January 4, 2012

campaign in the 2011 elections in Jamaica. It should be further noted that the Prime Minister Simpson's promise was in the face of an unrelenting attack from the former Prime Minister of Jamaica, Mr. Bruce Golding who had insisted when he was Prime Minister that he would not make room in his cabinet for any person who is gay. Ms. Portia Simpson Miller was accused of taking campaign contribution from gay-rights groups. In the meantime, the LGBTI population in Jamaica, while expressing their disappointment with the sloth of bringing the legislation forward, still have high hopes that the Prime Minister will keep the promise she made in 2011 and 2012 to decriminalize same-sex relations⁸.

In Guyana, in 2011, Guyana's Parliament, led by the then Minister of Health, passed a motion in which the Parliament refused to criminalize HIV transmission (Appendix 6). Moreover, the Parliament of Guyana in 2012 passed a resolution and has established a Special Select Committee to make recommendation on how to bring the discriminatory laws relating to same sex relations in compliance with Human Rights provisions of the UN (Appendix 7). Also in Guyana, the Chief Justice ruled in a recent case that transgender behavior in regards to dress preferences in public is not unlawful.

In Belize, the court is presently adjudicating in a case challenging the legality of the constitution and laws making same sex relations illegal. Similar challenges before the court are presently in place in Jamaica and Trinidad and Tobago. These cases are described in Chapter three.

In a speech (November 2012) in London⁹, Sir Shridath Ramphal, the former Secretary-General of the Commonwealth of Nations, laid out his views opposing the criminalization of homosexuality, wherever it occurs. Sir Shridath quoted another stalwart of anti-discrimination, Archbishop Desmond Tutu, who has said that the violence and criminal sanctions suffered by LGBTI people across the world are intended to make them "doubt that they too are children of God," which he calls "nearly the ultimate blasphemy." Sir Shridath went further, equating opposition to the persecution of LGBTI people with the campaign to end slavery in the 19th century and the anti-apartheid struggle of the 20th century. "The abolitionists were pilloried, but they prevailed," he said. "The abomination was not their campaign, as the plantation owners complained, but the evil of slavery itself."

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

Ahead of the 2013 Commonwealth Heads of Government Meeting (CHOGM) in Sri Lanka, a report released by an international LGBTI rights group called on Commonwealth nations to take action against homophobia and transphobia and for homosexuality to be de-criminalized across all member countries.

The 'Speaking Out' Report¹⁰, produced by the UK's Kaleidoscope Trust, alongside activists from Australia's Kaleidoscope Human Rights Foundation and other countries, detailed a litany of human rights

⁸ Jamaican Gleaner, Editor's Forum, December 5, 2013: Gay community still believe their best hope is Prime Minister

⁹ Sir Shridat Ramphal. Opening remarks at Launching of Film "Call Me Kuchu". London, November 2012.

¹⁰ The Kaleidoscope Trust. Speaking Out – The Rights of LGBTI Citizens from Across the Commonwealth. A Report for the CHOGM, November 2013. Sri Lanka (2013)

abuses against LGBTI people where 41 out of the total 53 Commonwealth countries, almost 80%, continue to criminalize homosexuality compared to 25% of non-commonwealth countries.

Caribbean leaders should follow the promise made by President Joyce Banda of Malawi who had promised to suspend all the laws criminalizing same sex relationships¹¹. In May 2012, in her State of the Nation address, President Joyce Banda asserted that the provisions of the penal code that criminalize homosexual acts should be repealed. In November 2012, during a public debate, the Justice Minister announced the suspension of sodomy laws in Malawi. Advocacy movements should be in place in CARICOM to have Caribbean leaders follow this example.

The Kaleidoscope Report received the backing of former Secretary General of the Commonwealth, Sir Shridath Ramphal, and Dr Purna Sen, the former Head of Human Rights at the Commonwealth. Sir Shridath Ramphal wrote the foreword for the report while Sen contributed its introduction.

Sir Shridath Ramphal stated: “It is a reminder that for most of the countries of the Commonwealth, the desecration of our fellow citizens began in the law”. He concluded: “As with the abolition of slavery, the decriminalization of homosexuality in our time must be an act of law.”

The report also included first-hand accounts from citizens across the Commonwealth about the consequences of discrimination and hardships entailed because of bigotry against LGBTI people, including in wealthier nations.

The British Prime Minister also promised to raise the issue at the CHOGM in Sri Lanka¹². However, the CHOMG did not consider the report and once again the CHOGM failed to address a fundamental human rights issue. Indeed, the CHOMG Communique showed that although human rights and health issues were subjects at the CHOGM, the issue of HIV and LGBT did not get on the agenda. Caribbean leaders lost an opportunity to put the human rights approach in HIV responses on the agenda and they failed to do so.

This is in spite of the fact that the Secretary General, Kamallesh Sharma, had previously stated that “vilification and targeting of people on the grounds of sexual orientation are at odds with the values of the commonwealth”¹³.

Caribbean Ministers of Health, however, joined other countries of the Americas to approve Resolution CD52.R6: LGBT and their right to access health services at the 52nd Directing Council Meeting in Washington DC in October 2013¹⁴. It was the first time a UN body passed a resolution linking LGBT and access to health services.

Caribbean policy makers are also openly beginning to address the LGBT issues as there is more public outrage at some of the flagrant violations of rights for this segment of the population. In Jamaica, the

¹¹ Inter Press Service (IPS), November 17th, 2013

¹² Huffington Post, November 11, 2013: British PM told to raise LGBT issue at Commonwealth Heads of Government Meeting in Sri Lanka

¹³ The Pink Paper, July 15, 2011

¹⁴ Report of the 52nd Directing Council of PAHO, Washington DC, September 29 to October 4, 2013

Parliament is considering an anti-gang bill which contains a clause to criminalize the production and singing of songs which incite violence against homosexuals and other groups¹⁵.

Similarly, in Trinidad and Tobago, avaaaz.org which is the world's largest online campaigning community for human rights and change is calling for a complete ban of the song "Kick 'een' She Back Door" by the Antiguan group Burning Flames¹⁶. Aavaaz.org believes that the song promotes violence against women and rape. Earlier, Stabroek News had reported on August 7, 2013 that the Guyanese group, Red Thread petition against Burning Flames, Onyan and R. Kelly for their promotion of violence against women.

Caribbean leaders are pursuing the questions of equity, equality and justice for ALL CITIZENS at a time when on the global front, significant leaders, such as Pope Francis, have conceded that the Catholic Church must discuss and develop a better way to deal with the issue of homosexuality¹⁷. The Anglican Diocese has accepted homosexual candidates in the priesthood¹⁸.

Mrs. Hillary Clinton¹⁹, former Secretary of State for the USA, stated as follows: *"It is violation of human rights when people are beaten or killed because of their sexual orientation, or because they do not conform to cultural norms about how men and women should look or behave. It is a violation of human rights when governments declare it illegal to be gay, or allow those who harm gay people to go unpunished. It is a violation of human rights when lesbian or transgendered women are subjected to so-called corrective rape, or forcibly subjected to hormone treatments, or when people are murdered after public calls for violence toward gays, or when they are forced to flee their nations and seek asylum in other lands to save their lives. And it is a violation of human rights when life-saving care is withheld from people because they are gay, or equal access to justice is denied to people because they are gay, or public spaces are out of bounds to people because they are gay. No matter what we look like, where we come from, or who we are, we are all equally entitled to our human rights and dignity"*.

On June 17th 2011, the United National Human Rights Council adopted the first ever resolution on rights for homosexuals and transgendered individuals, calling for an end to sexual discrimination and recognizing it as a "priority issue" of the UN. This followed a call in 2010 by the Secretary General of the UN, Mr. Ban Ki-moon, for countries worldwide to abolish discriminatory laws against homosexuals. Earlier in 2009, the UN passed a Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity, which was sponsored and signed by the United States. The European Parliament on June 28th 2011 adopted a resolution calling for an end of discrimination towards LGBT.

¹⁵ Jamaican Gleaner – Proposal to criminalize production, singing of violence-inciting songs, November 28, 2013

¹⁶ Stabroek News – More trouble for Burning Flames song: Petition launched in Trinidad and Tobago, November 13, 2013. This is a reproduction from the Trinidad Guardian.

¹⁷ Advocate .com, July 29, 2013. Pope Francis says "who am I to judge?"

¹⁸ The Telegraph, January 4, 2013: The Anglican Church lifts ban on persons in same-sex civil relations becoming bishops

¹⁹ Mrs. Hillary Clinton, On the occasion of International Human Rights Day (December 6th 2011), at the Palais de Nation in Geneva

In Canada, the Supreme Court of Canada has ruled that restriction on sex work is unconstitutional²⁰ and has recommended that Canada's Legislature take a year to change laws so that sex work can be regulated to be safe.

But, the news on the global front is also disappointing. In India, the Indian Supreme Court reversed a 2009 ruling of India's High Court that deemed homosexuality as unconstitutional²¹. The Indian Supreme Court ruled that it is up to the legislature to correct the unconstitutional nature of India's homosexual laws and until then the court must apply the law as is. In Uganda, the legislature has finally passed a law that further criminalizes homosexuality with draconian punishment for not only LGBTI, but also for anyone the system deems as accommodating to LGBTI²².

After an accumulation of experiences in the last thirty (30) years and extensive research, national programs have come to the realization that as part of the response to HIV, a focus on the social and legal environment and on human rights is necessary. It has become evident that the social, legal and human rights environment on the one hand can disable National AIDS responses to a significant extent and on the other hand can play a positive role in the pursuit of elimination of HIV. This has become, for instance, a new focus for people living with HIV who have started a movement called "Policy, Health, Dignity and Prevention (PHDP)".

This focus on a human rights approach to HIV has come about after a long journey of observations and experience. It is based on an approach that identifies vulnerabilities and responds to them in terms of:

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

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

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

²⁰ Sunday Globe (Ottawa): Canada's Supreme Court Prostitution Ruling Forces Policy Issue on Harper. December 22, 2013

²¹ India's Supreme Court – See Chapter 4

²² Rodney Muhuza. Washington Post: Ugandan Anti-Gay Bill. December 20, 2013

The third element that needs shifting is in the partners. The Ministries of Health have led the fight. There is still need for their leadership and continued hard work. But there is need for more engagement of and by the Attorney Generals and Ministries of Legal Affairs, Home Affairs, and Women and Gender, for Parliaments and MPs, the Judiciary, Human Rights Commissions and Groups.

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

It was from this perspective that the **PANCAP Champions for Change Programme** was launched in 2004 in St. Kitts and Nevis to create an enabling environment to reduce stigma and discrimination. This is adequately captured in the Volume on Human Rights in the Caribbean edited by Volderine Hackett²³ which identified the intractable nature of the problem and recommended the need for behavioral research, the establishment of a Sigma and Discrimination Unit and the institutionalization of champions across the sectors to advocate for change. Almost 10 years later we lament a lost opportunity to accelerate this agenda.

The **Justice for All Programme** offers another opportunity to bridge the gap. It is based on six elements that are elaborated in a concept note (Appendix 1) produced by PANCAP to guide initial national consultations as follows:

- Enhancing the family spirit in the form of national and regional solidarity to support and care for those in need
- Increasing access to Treatment, including affordable medicines
- Reducing gender inequality, including violence against women, girls and children
- Promoting sexual and reproductive health and rights, in the context of self-worth
- Achieving legislative reforms for modifying and repealing discriminatory laws that infringe human rights
- Providing targets and indicators for tracking progress
- Agreeing on a Pan Caribbean Roadmap

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

²³ Volderine Hackett: PANCAP Perspective. Volume 1 (#3 Of 2012). HIV and Human Rights – Reshaping the PANCAP Agenda

Chapter 2

Hurdles to overcome

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

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

- From the first reported cases in Haiti in 1981, the Caribbean has been confronted with a growing HIV epidemic;
- The Caribbean is the most HIV-affected region of the Americas and the second most affected region in the world;
- The HIV epidemic is a mosaic, with a number of different epidemics within countries and across the region;
- AIDS is the leading cause of premature death among 25-44 year-olds with 38 deaths due to AIDS-related illness occurring every day;
- HIV is disproportionately affecting the most vulnerable population groups;
- HIV is gradually affecting men and women almost equally;
- Approximately 20,000 new HIV infections occur in the Caribbean annually representing close to 1% of the total new global HIV infections.

Thirty two years after the first HIV cases were diagnosed in the region, stigma and discrimination are still hurdles the Caribbean struggles against in the effort to reduce and eliminate HIV as a public health scourge. Stigma and discrimination are key catalytic elements in the persistence of high levels of HIV in the Caribbean countries of between 0.2 to 3.1% of the adult populations (Appendix 2).

Stigma and discrimination are seen in different settings. These have been discussed in many publications and presentations. The settings for discrimination have been comprehensively discussed in the Final Report of the Global Commission on HIV and the Law in 2012, in several publications from PANCAP and UNAIDS and featured prominently during the symposium on Human Rights and HIV at the UWI in 2010. In PCB 32, in Geneva in May 2013, the settings were emphasized: Health Care, Employment, Education, Justice and Community.

The Caribbean countries recognize the value of a human rights agenda to ensure a robust anti-HIV program and hence this *Justice for All Programme*. National HIV Programme recognize that there are many hurdles to overcome, particularly significant jurisprudential obstacles, as these countries confront a sensible way forward to ensure the rights of vulnerable populations are guaranteed. Whilst

recognizing these rights must be honored, Caribbean countries are saddled with a legal environment that harbors instead of dispels stigma and discrimination against vulnerable populations.

Among many challenges Caribbean countries confront in the HIV responses are high levels of stigma and discrimination related to HIV-status and related to sexual orientation, wide-spread gender-based violence and inequality, pervasive homophobia, **and punitive laws and law enforcement that negatively impact some key populations at risk for HIV.**

A mapping of the punitive laws which impede universal access to HIV prevention, Treatment, care and Support was done for Barbados and OECS countries in 2010²⁴. Similar assessments have been done by PANCAP in several countries as part of CIDA's Law, Ethics and Human Rights Project²⁵ in Guyana, Dominica, St. Vincent and the Grenadines, St. Lucia, and St. Kitts and Nevis.

These punitive laws exist in a context where the Caribbean has the second highest HIV prevalence rate after sub-Saharan Africa. UNAIDS and Ministries of Health in CARICOM have posited that anti-gay laws drive the pandemic by creating toxic homophobic environments which restrict LGBT from engaging in health-seeking behavior. Jamaican men who have sex with men (MSM) now have the world's highest HIV prevalence rate among this vulnerable population (32.9%). Unpublished research by Professor Peter Figueroa, head of Public Health at the University of the West Indies, Mona indicates that nearly 60% of these men also form relationships with women and many do so as a cover for their homosexuality. This provides the perilous opportunity for HIV to bridge between the heterosexual and homosexual populations.

Many at risk for HIV infection are people who engage in behaviors that are subject to moral condemnation or criminalized by the law: same sex relations, drug use and sex work. It is also evident that there are aspects of the law and the legal and judicial environment that negatively impact on the lives of persons living with HIV and also impede the efforts to prevent and control the HIV epidemic in the Caribbean and around the world. The situation in the Caribbean, reported in various sources²⁶, is particularly discouraging:

- 56% of Caribbean countries reported no legal protection against HIV-related discrimination
- Broad-based anti-discrimination laws (not constitutions) are mostly related to employment legislations, and only exist in some countries, but only the Bahamas specifically prohibits discrimination based on HIV status.
- 75% of countries report laws and regulations that present obstacles to HIV services for vulnerable population groups

²⁴ UNAIDS in Barbados and the OECS. November 2010. Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados

²⁵ Desk Review: PANCAP Regional Policy and Model Legislation to Address HIV and AIDS Stigma and Discrimination

²⁶ HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine (2013). Also see PANCAP Perspective on Human Rights (2012) and The Global Commission on HIV and Law Final Report (2012)

- 69% of countries criminalize same-sex activities among consenting adults. These countries include Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago
- 81% of countries criminalize some aspect of sex work
- 19% of countries have HIV-related travel restrictions
- 19% of countries have HIV-specific laws that criminalize HIV transmission
- Law enforcement relating to anti-discrimination laws and rules, sexual and domestic violence laws in Caribbean countries are weak
- Legal and Human Rights Literacy in the population, particularly persons living with and vulnerable to HIV is low.

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

The Justice for All Programme will develop a PAN CARIBBEAN DECLARATION addressing the issues raised in PANCAP's Justice for All Programme Concept Note and taking into consideration the seven priority areas identified by UNAIDS in its strategic programme to reduce stigma and discrimination in HIV. The Programme will develop a number of action areas to create a facilitating environment for actions to reduce HIV-discrimination. An HIV Human Rights Committee is proposed to oversee progress and an awareness and education programme is considered critical to creating a facilitating environment

What are the issues to be addressed?

While PANCAP has developed a concept note referred to in Chapter 1 (Appendix 1) which adequately captures the focus of the **Justice for All Programme**, this review is restricted to addressing a specific number of issues that are significant in the fight against stigma and discrimination in the context of HIV. They will contribute to the aspect of the **Justice for All Roadmap** that is designed to strengthen the protective legal environment for people living with and vulnerable to HIV and to eliminate the obstructive environment such as punitive laws in the HIV context. The issue of women and gender and HIV is not specifically addressed in this review and in the Justice for All Roadmap presented in this document.

1. Stigmatizing policies and practices in the HIV Response

The practices and legal and policy measures implemented in HIV responses in the CARICOM Region have contributed to the stigma and discrimination in the context of HIV. These measures were put in place with the understanding that they are necessary to protect the general population from the behavior of “high-risk” populations. This was a mistake from the very start since it enshrined stigmatization and established a basis for discrimination. Examples of stigmatizing and discriminatory measures in the HIV response in the Caribbean are as follows:

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

These measures, which were popular in the early responses to HIV, contributed significantly towards the stigmatization of HIV. What is patently clear is that these measures impeded the effectiveness of the HIV response in many countries.

In terms of constitutional and other legislative measures there have been some positive movements. For example, St. Kitts and Nevis, in 2008, removed the requirement for an HIV test for a work permit applications. However, the requirement is still in place with respect to applications for citizenship.

In 2006 St. Lucia passed a Health Practitioners Act No. 33 of 2006 which regulates the conduct of medical professionals and provides sanctions for refusing to treat a patient. There is also provision for the revocation of a doctor’s practicing certificate.

In Guyana, the Regulation for the Ministry of Health Act 2001 includes a Code of Conduct for Medical Practitioners, Nurses and Pharmacists which make specific provisions to prevent discrimination for PLWHA.

The Justice for All Programme will identify the countries where these measures are still prevalent and will promote a Roadmap to eliminate these practices. National Consultations in Guyana, Jamaica, St. Kitts and Nevis and Trinidad and Tobago will draft a Roadmap that will lead to the elimination of these harmful practices. The Roadmap will promote voluntary testing for all citizens, particularly for vulnerable populations, but will discourage compulsory testing.

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

Professor Rose-Marie Belle Antoine²⁷ argues that the law is a direct and effective instrument of social change and an efficient tool for addressing many of the problems associated with HIV – in particular, practices of discrimination, which not only violate the dignity and rights of persons living with HIV but also perpetuate the “under-ground” nature of HIV.

The Justice for All Programme recognizes that the constitutional and legislative environments are weak when it comes to protecting those living with HIV or vulnerable to HIV from stigma and discrimination. The legal and statutory environments of the Caribbean do not adequately, if at all, provide for the protection of persons living with and vulnerable to HIV. Specifically, antidiscrimination provisions in the context of HIV are lacking or weak in respect to:

- General anti-discrimination provisions relating to HIV
- Anti-discrimination provisions protecting persons in the Right to Work and in employment: Since the beginning of HIV, the workplace has been, and continues to be, rife with HIV-related discrimination. HIV-related discrimination in the workplace may involve laws, policies and/or practices that have the effect of impairing equality
- Anti-discrimination provisions for police and defense force
- Anti-discrimination provisions guaranteeing education
- Anti-discrimination provisions guaranteeing access to health services: HIV-related discrimination in the health care sector has long been identified as a major problem in the AIDS response. People living with HIV and other key populations face denial of services, judgmental or condemnatory attitudes, lack of confidentiality, segregation and rejection at the hands of health care workers. Health care workers who are living with HIV also face discrimination and dismissal.

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

Most of the constitutions in Caribbean countries lack references to non-discrimination on the basis of HIV-status or based on sexual orientation. Similarly ordinary laws do not cater for non-discrimination on the basis of sexual orientation or HIV-status. Sexual orientation is not only absent as a ground of non-discrimination in the bills of rights in the constitutions of the region generally, but ordinary legislations

²⁷ *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

most often are silent on this issue on the ground that sodomy is unlawful and that such unlawful and unjust laws are preserved through the constitutions of Caribbean countries by “Savings Law Clauses”.

The truth is, in Caribbean countries, human rights are located squarely within the written constitution. While these constitutions contain extensive human rights provisions, they are limited when it comes to HIV. Most constitutions in CARIFORUM countries do not provide for non-discrimination on the basis of sexual orientation and constitutions in general are silent on HIV-related rights. Legal luminaries have referred to these as major flaws in the legal fight against HIV-related stigma and discrimination.

While the need for non-discrimination aspects of the constitution and the laws of Caribbean countries have dominated the discussion relating to HIV-linked stigma and discrimination, other aspects, such as weak or non-existent provisions for prevention of gender-related discrimination are still relevant. Some constitutions and laws in Caribbean countries are still silent on the issue of gender-linked discrimination.

An important consideration is that where the constitutions or the laws are silent on non-discrimination on the basis of sexual orientation, HIV-status or sometimes on gender, some have argued that the intent was to exclude such provisions because they were not contemplated as a basis for non-discrimination or they would have been mentioned. This argument appears to be flawed and is in discord with the true intent of fundamental constitutional principles of equality and the rights to dignity, personhood and life.

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

This Justice for All Programme will establish a Roadmap designed to ensure a strengthened legal and facilitating environment to protect against stigma and discrimination in the context of HIV, particularly by promoting provisions in constitutions, laws (such as employment laws), policies, codes and practices where HIV-status and sexual orientation are grounds for anti-discrimination provisions.

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

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

The dependent territories of the Region have laws that are protective as they reflect the UK Human Rights Act 1988. ***Outside of the Dependent Territories, only Bahamas among CARICOM countries caters***

for HIV-non-discrimination in employment in its laws. The relatively progressive nature of the Bahamas provisions is diminished by the fact that the Act which prohibits employment pre-screening for HIV does not extend this protection to the disciplined forces. This is an area of concern in all CARICOM countries.

The Bahamas Employment Act (2001) prohibits discrimination on the grounds of race, creed, sex, marital status, political opinion, age, HIV or AIDS status or disability in public or private employment. It is the only Caribbean country, outside of the dependent territories that provides for non-discrimination on the basis of HIV or AIDS status.

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

It ought to be noted that in 2000, Guyana's constitution was extensively amended and the discrimination clause included protection for sexual orientation. But this amendment lapsed after the President of Guyana failed to provide assent to the amendment bill, largely based on representation by the faith-based organizations.

Guyana also has an Equality Rights Act (1990) and Prevention of Discrimination Act (1977). But there is no provision in the Constitution and in any of the laws to protect against discrimination on the grounds of HIV status or on the grounds of sexual orientation. It ought to be further noted that Guyana's constitution provides for the establishment of various Rights Commissions, including an overarching Human Rights Commission and the following Commissions – Ethnic Relations Commission, Women and Gender Equality Commission, Rights of the Child Commission and the Indigenous Peoples Commission. All of these commissions include provisions to protect people against discrimination on various grounds.

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

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

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

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

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

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

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

3. Health as a fundamental human right

Health is a Development issue and the Caribbean Leaders in the Nassau Declaration in 2001 adopted the Caribbean Cooperation in Health which states emphatically that Health is the Wealth of the Caribbean (Appendix 8). All Caribbean countries are Members of the World Health Organization (WHO); the Constitution of the WHO states that “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.

But few constitutions provide for health as a fundamental right. In constitutions such as that of Guyana and Suriname, health is regarded as a human right, but economic and social rights, such as health, where they exist, have been treated as non-justiciable. In Guyana, Article 25 of its constitution states: Every citizen has the right to free medical attention, and also to social care in the case of old age and disability. In Suriname, Article 36 states: Everyone has the right to health.

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

Article 12(1) of the International Covenant on Economics, Social and Cultural Rights provides that State Parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The covenant proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity. The Special Rapporteur on

Health observed “Criminal laws concerning same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right to health”.

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

The Justice for All Programme will develop a Roadmap for National Stakeholders to work Regionally and Nationally to advocate for Right to Health Provisions in the legal environment of countries, taking into consideration the Montevideo Consensus (2013) and PAHO Resolution CD52.R6 (2013)

4. Right to Privacy and Confidentiality

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

The Justice for All Programme will develop a Roadmap for National Stakeholders to work Regionally and Nationally for Parliamentary action to implement legislation that is based on the PANCAP Model Legislation

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

One major issue as the Caribbean pursues a human rights-based HIV response is how our countries relate to the rights of citizens to sexual and reproductive rights. One of the issues to be addressed is the issue of sexual orientation and persons having sex within same sex sexual relations. Within this context is a plethora of sub-issues related to Lesbians, Gays, Bisexuals, Trans and Intersex Genders (LGBTI). These issues and how they are treated in Constitutions and Laws of Caribbean countries are subjects of this ***Justice for All Project***.

In discussing this issue, the ***Justice for All Programme*** must consider that sexual orientation is not only absent as a ground of anti-discrimination in Bills of Rights, but is also excluded from ordinary legislation, specifically on grounds that sodomy is unlawful and that such unlawful and unjust laws are preserved by savings law clause in constitutions of Caribbean countries.

An in-depth description of this issue is found in a discussion by Professor Simeon C.R McIntosh.²⁸ He states that while human rights are prescribed in the constitutional elements, in practice they are neither upheld by the legal system nor in the application of human rights shaped by national convention and cultural mores. As a result dignity and respect for the individual can be ignored in the constitution and in the law. In the specific cases of PLWHA distortions and unfairness arise due to the fact that emphasis is placed on diversity rather than indivisibility of rights. He makes the argument that our laws prohibiting same sex sexual activities between consensual adults, which are largely holdovers from colonial masters, derive from our scriptural texts that describe homosexual sodomy to be a sin and an abomination in the face of God and from our social norms that the practice is unnatural, and morally and socially disgusting.

Further, this issue is extensively discussed in the Global Commission on HIV and the Law and in a review included in a Report of the UNCHR for Human Rights²⁹. This report was submitted to the 19th session of the Human Rights Council as a result of the Resolution 17/19, the first UN resolution to condemn discrimination against LGBT and which called for actions by national government to respect the rights of LGBTI as fundamental rights of all citizens.

For politicians and other stakeholders, these laws cannot be changed because the majority of persons in any one country may be in favor of retaining the laws that criminalize such activities. The argument is made that our countries are based on a democratic norm of majority rule. Since the majority of citizens in any Caribbean country favor the retention of these punitive laws, politicians believe they have no mandate to change the laws.

Religious leaders argue that our countries are strong in a faith-based culture and that our religions proscribe the moral lives that we live and that our laws must reflect this reality. Religious leaders believe that the punitive laws that relate to same sex sexual activities are consistent with the religio-moral principles that are part of people's lives in the Caribbean.

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

The conundrum of placing the views of the majority and within the context of the strong faith-based foundations of Caribbean countries is how to bring into compatibility these realities with the fact that the Caribbean countries have constitutions that are basically Instruments of Rights that have created a Community of Rights for ALL CITIZENS. Indeed, the paradox is that our faith-based norms are in conflict

²⁸ *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine*

²⁹ *Report entitled Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity – A Report of the UNHRC for Human Rights* (2012)

with our Rights-Based Democracies. Added to this conundrum is that public health principles and public health rules dictate that the laws prohibiting certain sexual orientation and sexual freedoms place large segments of populations in every country at risk of morbidity and mortality. In this instance public health needs must be given prominence.

Out of the 54 Commonwealth countries 42 British Commonwealth members still outlaw homosexuality, including 11 of the 12 Caribbean members. Legislators in London imposed the laws in the late 19th century, but in the UK the equivalent legislation was taken off the statute books in 1967. One example of the incongruity of these outdated laws is illustrated in the case of Jamaica where the law related to buggery (the Jamaican Offences against the Persons Act, Article 76 – unnatural offences) states that: “Whosoever shall be convicted of the abominable crime of buggery with mankind or with any animal, shall be liable to be imprisoned and kept to hard labor for a term not exceeding ten years”.

In a recent draft legal assessment for Jamaica done by the UNDP, they recommended that from a financial and health perspective, Jamaica should decriminalize same sex behavior among consenting adults, while retaining the laws in the case of sex involving minors and coercive sex as criminal offences. Prime Minister Portia Simpson Miller has promised to bring a bill to repeal the law which was put in place in 1864.

Other European imperial powers, such as France, Belgium and Portugal, did not share Victorian Britain’s obsession with supposedly aberrant sexual behavior. This explains why the non-British Members of CARICOM do not have the same problem.

Yet the situation is slowly changing. One Commonwealth country, India, has seen several challenges to the law criminalizing homosexuality. In 2009, the High Court of India ruled that laws prohibiting homosexuality are unconstitutional. This ruling was appealed in the Indian Supreme Court. While the Indian Supreme Court ruled in 2013 that the law is unconstitutional, the court also ruled that it is not up to the court to remedy the situation; the court ruled that it is the legislator that must remedy the wrong.

Such challenges have successfully been implemented in Fiji and South Africa. Already challenges against the law criminalizing homosexuality through the court have emerged in several Caribbean countries – Belize, Guyana, Jamaica and Trinidad and Tobago.

But homophobia remains deeply rooted in much of the Caribbean. In 2006, Time Magazine described Jamaica as the “capital of LGBT discrimination in the world”. Colin Robinson, of the Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS), based in Trinidad & Tobago, have presented a powerful case to show how deeply rooted homophobia is in the Caribbean.

In Jamaica homophobic attacks can be particularly brutal. Through the years, globally recognized performers of Jamaica’s dancehall style of reggae, such as Buju Banton, whose 1990s hit Boom Bye-Bye glorified murdering gays, have reveled in extreme homophobia. Dancehall lyrics have attracted international condemnation, including the banning of certain entertainers from performing in some countries.

It should be noted that in Jamaica, an anti-gang bill is presently being considered in a special select committee. There is controversy as one clause in the bill speaks to punishing musicians and performers who promote violence through music and performances. This would be an important move in also

addressing the glorification of violence against LGBT population in Jamaica and other countries by music and musicians³⁰.

In the meantime, a group called Stop Murder Music Canada has organized of boycott Jamaican music and performances for their promotion of violence-inciting songs, particularly directed against LGBT³¹.

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

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

In Belize, section 53 of the Criminal Code criminalizes unnatural crimes. The section does not specifically state that sodomy is a crime, but it is used to criminalize acts of sodomy. In practice, however, the section has only been invoked to bring charges against male adults who sexually assault boys or other men. The police indicate that they treat sexual intercourse between consenting adults, whether male or female, as a matter of privacy of such adults, preferring not to get involved.

It should be noted that a new bill would change Section 46 of the Criminal Code of Belize – putting male anal or oral rape on a par with female rape for the first time. This is vital to counter anti-gay churches who have argued scrapping Section 53 would leave no protection for boys and men who are raped. The new bill was passed on 8 October.

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

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

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

(a) twenty-five years, if committed by an adult on a minor;

³⁰ Jamaican Gleaner – Proposal to criminalize production, singing of violence-inciting songs causes split in parliament, November 28, 2013

³¹ Xtra,ca – May 21, 2008

(b) ten years, if committed by an adult on another adult; or

(c) five years, if committed by a minor.

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

(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for:

(a) Life if committed with force and without the consent of the other person;

(b) Ten years, in any other case.

(2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years.

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

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

146. Any person who

(a) commits buggery with any other person;

(b) commits buggery with an animal; or

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

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

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

In Guyana, it is an offence for a man to commit an act of "gross indecency" with another male person in public or private, including procuring or attempting to procure such an act. In accordance with section 351 of the Criminal Law Offences Act cap.8:01, the offence is punishable on indictment by imprisonment for up to two years. Section 353 of the Criminal Law Offences Act criminalizes buggery which is punishable on indictment by life imprisonment. Attempted buggery is punishable by imprisonment for a period of up to ten years.

As Caribbean countries tackle the issues of a rights-based approach to the LGBTI challenge, the courts in Belize, Guyana, Jamaica and Trinidad and Tobago are presently adjudicating challenges as to the constitutionality of these laws. In addition, the UNCHR have mandated several countries, such as Belize, Guyana and Jamaica to bring their laws in compliance with UN Charters and Conventions. As UPRs come due in the various CARICOM countries, the UNCHR will be making similar demands on these countries.

Governments, advocates and protagonists and other stakeholders, particularly LGBTI should note the judgments of cases in various jurisdictions. In Chapter 4, some of these cases are highlighted. The courts and legislatures have been busy in countries like Fiji, India, Nepal, South Africa and Uganda. Readers are asked to see Chapter 4 for more information on these cases.

The Justice for All Roadmap will seek to mobilize national and regional stakeholders to ensure conformity with the Human Rights Declarations which all CARICOM countries are signatories to and bring all national laws in compliance with the Human Rights Declaration in keeping with the work of the UNCHR and the IACHR

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

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

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

In law the term "sex work" is a misnomer or legal fiction. Instead, legislative provisions define sex workers as "prostitutes" and "night walkers" and regulate aspects of "prostitution" and "brothels". Less directly, those engaged in sex work might be deemed "vagrants", "disorderly", "rogues" and "vagabonds".

Sex workers face grave physical and sexual violence, threats to themselves and families, harassment, sexual violation and even murder at the hands of their clients and pimps, they report being raped and robbed by clients, police officers and strangers who see them working on the streets, many report narrow escapes from even more severe injury and murder.

They are also unlikely to seek sexual and reproductive health services for fear of the discrimination that may occur. In many countries sex workers are viewed as drivers of the epidemic and the provision of certain services to sex workers, including the provision of condoms seen as encouraging and facilitating this immoral and illegal activity.

In Chapter 4, we introduce how the courts are being asked to address the legal aspects of sex work³². In several jurisdictions, sex work is legally regulated as opposed to being criminalized. Further, in several jurisdictions, as shown in Chapter 4, the courts have been asked to adjudicate on the constitutionality of laws criminalizing and discriminating against sex work.

In Canada, the Supreme Court has ruled that restriction on sex work is unconstitutional³³, but that it is up to the legislature to take corrective action to regulate the safety of sex work.

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

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

Trinidad and Tobago is one of the Caribbean countries in which the law prohibits entry for homosexuals. One would recall in 2007 when Sir Elton John, an openly practicing GAY, had to be given a special waiver to enter Trinidad and Tobago for a concert in Tobago. But recently, at the PANCAP AGM meeting in Trinidad and Tobago from October 21st 2013, the book ***HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine*** was launched. The launch of the book was held on October 22nd. According to the US-based NGO, A AIDS-Free World, its Legal Advisor, Mr. Maurice Tomlinson, was invited to the launch of the book. But Mr. Tomlinson who is gay and who is an LGBT and HIV activist could not attend unless he had a waiver, similar to the waiver Sir Elton John obtained when he had a concert in Tobago earlier. Mr. Tomlinson refused to apply for a waiver, considering the need to apply for a waiver to enter Trinidad and Tobago as an assault on his fundamental human right.

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

The Justice for All Programme Roadmap will seek to highlight the instances of restriction in the entry, stay and residence of persons based on his or her sexual orientation. The Project will advocate for the removal of these laws and regulations and design a Roadmap to accomplish this goal.

³² UN Compendium

³³ Sunday Globe (Ottawa): Canada's Supreme Court Prostitution Ruling Forces Policy Issue on Harper. December 22, 2013

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

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

Outside of human rights and public health concerns, two key scientific and medical developments call for reconsideration of application of criminal law in the context of HIV. First effective HIV treatment has significantly reduced AIDS-related deaths and extended the life expectancy of people living with HIV to near-normal lifespan. Second, effective treatment with anti-viral medicines has also been shown to significantly reduce the risk of HIV transmission from people living with HIV to their sexual partners.

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

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

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

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

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

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

Transmission of HIV:

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

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

The Sexual Offences and Domestic Violence Act of 1991 in Trinidad and Tobago states “ Any person who knows he is infected with a virus causing or known to cause AIDS and who has sexual inter-course with any other person, with the consent of that other person, but without disclosing that fact to the other person, is guilty of an offense, and is liable to be detained for a term of five years in such place and under such conditions as may be specified by the court before which he is convicted and whilst being detained he shall be deemed to be in legal custody. It is a defense if the other person already knew. “

This law was repealed in 2000. But in 2000, there was an effort to bring a specific law to criminalize HIV in Trinidad and Tobago. A legislation proposal³⁴ was brought to the Cabinet of the Government of the Republic of Trinidad and Tobago for the criminalization of persons who knowingly transmit HIV to an HIV-negative person. However, as the proposal was incomplete it was rejected and referred for further formulation.

In 2000, the Trinidad and Tobago Law Commission decided against introducing laws that would criminalize HIV exposure or transmission for the following reasons: creating a criminal offence might create a false sense of security “whereas individuals need to be responsible and protect themselves”; in countries where HIV-specific laws have been introduced “they have rarely been used and have often been harshly criticized”; legislation enacted “in reaction to a public demand for action, can be counterproductive because it diverts attention from underlying problems by creating the impression that decisive action is being taken while hindering the implementation of constructive solutions”; “proof and enforcement of this type of law can be difficult”; and prosecuting only people who know their status may discourage HIV testing.

³⁴ C. Taylor-Bassoo. Laws cannot prevent HIV. AIDS Window 1 (2000)

As In Guyana, this was a far-sighted approach. But currently this positive approach by the Trinidad and Tobago Law Commission is under grave threat. Following a case where a man was charged with murder of his wife, but was only convicted of manslaughter on the basis that his action was due to extreme provocation on finding out this wife was HIV positive, there were calls for criminalization of HIV transmission. Among those calling for criminalization of HIV transmission was a High Court Judge. The Attorney General of Trinidad and Tobago joined the call and promised to bring legislation to criminalize HIV transmission³⁵. This is a worrying trend, since the same promise was made by the Minister of Health of Grenada during her budget presentation in 2013.

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.

In Barbados, section 19 and 26 of the Barbados Offences against the Person act could be used to prosecute persons who in section 19 “endanger life and safety” and in section 26 “ assault another occasioning harm”.

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

In Grenada, Guyana, St Kitts and Nevis and Dominica, there is no specific legislation against willful transmission, and its introduction is not recommended.

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

9. Laws criminalizing persons using drugs

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

The Report refers to numerous studies which have demonstrated that coercive drug law enforcement measures and the frequent incarceration of people who use drugs hinder them from seeking HIV testing and treatment, and contribute to the interruption of HIV treatment once it has begun. The Report refers

³⁵ http://www.trinidadexpress.com/news/wilful_spread_of_HIV AG to bring bill to criminalize HIV

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

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

CHAPTER 3

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

In a recent speech, Sir George Alleyne³⁶ captured the hurdles CARICOM countries confront, as described in Chapter 2. In that speech, not only did he capture succinctly the hurdles and the issues to be addressed, he provided part of the roadmap that the Justice for All Programme must articulate.

He announced that the faculty of law of the UWI has formed the rights advocacy project and the main objective of that project is to promote human rights and social justice in the Caribbean, through pivotal public interest litigation and related activities of legal and social science research on the situation relating to human rights in the Caribbean and public education. Sir George stated as follows:

“As I understand it, two of their major efforts are in relation to the denial of human rights to a specific minority – the lesbian, gay, bisexual, and transgender community.....The teaching and the discourse around moral, philosophical and constitutional niceties do not relate to the daily infringements suffered by minorities in our societies”.

The former United Nations Secretary General’s Special Envoy for HIV AND AIDS in the Caribbean said the presence of laws that criminalize consensual homosexual sex in private was “a clear indication of the disjuncture between the criminal codes and the principles of respect for human dignity and essential freedoms that are enshrined and engraved in the Caribbean constitutions”.

In a strongly worded statement he said: “Of course parliaments, if so inclined, could amend or repeal these laws. However, given the difficulty of parliamentary action, the only recourse for change is through litigation.....Not only is such stigma and discrimination inimical to public health efforts to prevent and control HIV AND AIDS, but they affront the basic rights which are enshrined in the constitutions of our countries”.

Sir George reflected a growing and steadfast regional recognition of the significance of reducing and eliminating HIV-associated stigma and discrimination. The Caribbean, through its governments and through all stakeholders, recognizes that its robust fight against HIV has not achieved the full potential positive results in reducing HIV prevalence because its confrontation of stigma and discrimination related to the HIV and AIDS epidemic has been less than comprehensive.

The Caribbean has fought valiantly against HIV and AIDS. The Caribbean’s response against HIV and AIDS has scored many successes and the Caribbean stands out as a Region that has implemented a comprehensive program to reduce the impact of HIV and AIDS. The record shows a story of success in

³⁶ Sir George Alleyne in a speech to mark the 2013 graduation exercise at Cave Hill, University of the West Indies

achieving universal access to prevention, treatment and care services in most, if not all, of the countries of the Caribbean and this is reflected in the latest UNAIDS Global Report³⁷.

Indeed, every country has developed comprehensive prevention programs and high-quality treatment and care services. The result is that there has been a dent in new infections and a significant reduction in the numbers of people dying from AIDS at an early age. Mother to child transmission has been reduced in all countries and has attained elimination status in some countries.

But the Caribbean remains the second most affected Region in the world. There are still too many new infections and more than 250,000 persons are living with HIV in the Caribbean with about 12,000 new infections in 2012.

Most countries have punitive laws in the context of HIV and these countries also lack certain provisions in their laws that contribute towards HIV-related stigma and discrimination and in this regards efforts have been futile until now to address these shortcomings.

Yet there is a growing and intensified focus on addressing stigma and discrimination and the Caribbean can document an active program to combat HIV-related stigma and discrimination:

1. Some Regional Efforts

- Caribbean Regional Strategic Framework (CRSF) – Priority area 1 of the CRSF is “advocacy, policy development, and legislation”. This priority area in the First CRSF (2006-2008) was retained in the 2nd CRSF (2008-2012). The 3rd CRSF is being prepared and this priority area is being developed as a major plank of the new CRSF.
- PANCAP, in collaboration with CIDA, developed the HIV AND AIDS Law, Ethics and Human Rights (LEHR) Project
- Establishment of the PANCAP Regional Stigma and Discrimination Unit in Barbados
- Establishment of Human Rights Desks in six countries in 2005³⁸
- Report on the Initial Assessment of HIV and AIDS Stigma and Recourse Mechanisms in Six Countries of the Caribbean - A PANCAP Study in 2008
- Establishment of the Caribbean Rights Defenders Network
- Development of the PANCAP Model Anti-Discrimination Bill which was published in 2012
- Establishment of UWIHARP by the University of the West Indies at its three campuses – Cave Hill, Mona, St. Augustine – in 2001
- Establishment of the Caribbean HIV and AIDS Alliance (CHAA)
- Establishment of the Champion for Change Initiative in 2004
- Completion of study and publication of a report on Prostitution, Sex Work and Transactional Sex in the Caribbean (2009)

³⁷ UNAIDS Global Report on HIV and AIDS (2013)

³⁸ UNAIDS (March 2010). Assessment of Human Rights Desk in Selected OECS Countries

- Assessment of Human Rights Desk in Selected OECS countries – commissioned by UNAIDS, Barbados and the OECS
- Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados
- A regional initiative led by PANCAP and facilitated by the USAID-funded Health Policy Project (HPP) and the University of the West Indies (UWI) to apply a jointly agreed framework for effective stigma and discrimination reduction in health facilities.

2. Establishment of PANCAP

In looking at the Caribbean response, it would be remiss on the part of any stakeholder to omit the important step the Region took in 2001 to establish the Pan Caribbean Partnership to fight HIV. PANCAP came into being on February 14th 2001. The Caribbean Partnership Commitment (Appendix 10) which was the agreement to establish PANCAP recognized that “intolerance, homophobia and discrimination against people living with HIV or AIDS and those vulnerable to infection drive the epidemic underground and contribute to the further spread of the virus”. In establishing PANCAP, the Heads of Governments of the Caribbean countries and their partners mandated the organization to commit to efforts to reduce “stigma, discrimination and exclusion of people living with HIV or AIDS and protections of their human rights and dignity”.

The Pan Caribbean Partnership Against HIV AND AIDS (PANCAP) brings together over 70 partners to collaborate in the regional response against AIDS. PANCAP is a multi-sector, multilevel partnership which includes the governments of all countries and territories of the Caribbean region and regional and international organizations from the health, social development, education, economic, culture, tourism, and other sectors. Organizations of people living with and affected by HIV, multilateral and bilateral donors, the UN system, government and nongovernmental organizations, business organizations, communities of faith and many other types of organizations are members.

Human Rights in the context of HIV have been on the PANCAP agenda from the inception. In its first Caribbean Regional Strategic Framework (CRSF) 2002-2006, PANCAP identified Human Rights as a critical priority action in the HIV response and made this a priority action in the 2008-2012 CRSF.

3. The Law, Ethics and Human Rights (LEHR) Project

It was through PANCAP that an action plan was developed around law, ethics and human rights with funding from the Canadian Development Agency (CIDA), the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) and the World Bank. CIDA funded the PANCAP Law, Ethics and Human Rights (LEHR) Project. Under this project legislative assessments were done in six countries (Guyana, Dominica, St. Vincent and the Grenadines, St. Lucia and St. Kitts and Nevis). These assessments were used in a Regional consultation to find common policy areas for action. The present project builds on this initial effort.

PANCAP’s May 2010 Desk Review Report provided a comprehensive review of the legislative landscape in CARICOM countries.

The LEHR Project in collaboration with CRN+ supported a sensitization of two sub-regional groups of legal practitioners living with HIV around legal issues and advocacy. A similar meeting was held with HIV and Human Rights activists under the LEHR Project to develop a common platform for human rights-based action on HIV.

The LEHR Project led to the development of the PANCAP anti-discrimination model policy and legislation. It is hoped that this project will further advance the model policy into national anti-discrimination policy against HIV. The draft model anti-discrimination policy and legislation funded by the World Bank address discrimination in access to HIV prevention, treatment and care services and also in other spheres, including the workplace, education, insurance, and prisons, among others.

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

Through efforts coordinated by PANCAP, a CARICOM Regional Policy on HIV-Related Stigma and Discrimination was finalized in 2010. This Policy Statement document contained recommendations on how to confront the issue of stigma and discrimination in the various countries and contained actions for governments, PLWHA, vulnerable populations and other important stakeholders.

The final draft of the model bill was presented in October 2012. The first draft was prepared by PANCAP and presented in June 2010. The initial draft came about as a deliverable from the LEHR Project. The final draft of 2012 was prepared taking into consideration further views from the region and from legal experts. The policy document published in 2010 was taken into consideration in drafting the Model Bill.

PANCAP presently is working with National Programs to ensure action is taken to adapt the model legislation as part of the Human Rights Approach to HIV in CARICOM countries.

The model legislation addresses areas such as:

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

5. Behavior Change Communications Strategies – Champion of Change

Behavior Change Communications and Advocacy Strategies addressing human rights issues have been developed by CARICOM, PANCAP, CAREC, UNICEF and UNDP. This included the Champions of Change initiative, funded by DFID, which brought together a variety of stakeholders – parliamentarians, youth, civil society, private sector, faith leaders, cultural and sport icons, and media workers. The consultations in 2005 and 2006 targeting FBOs and media workers provided a useful illustration of how the idea of champions for advocacy had the potential to advance the movement toward the reduction of stigma

and discrimination. Lack of institutional support to sustain the activities of the champions for change programme has led to another lost opportunity in the efforts to reduce stigma and discrimination and in promoting an HIV-Human Rights agenda in the Caribbean.

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

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

The Caribbean Human Rights Platform

The Caribbean nations have a common thread that runs through their rich fabric and its rich tapestries – the countries share a history of political oppression, slavery and racism. Caribbean countries have a legacy of overcoming these major violations of human rights. Today, Caribbean nations stand tall with decent living standards. With this legacy of overcoming major violations of human rights, these countries, therefore, must embrace an agenda to remove any remnant of human rights violations that remain as part of governance and lifestyle in the Caribbean. The record, however, is clear that there are still too many violations of human rights which today also impact on our people’s health and welfare. HIV and AIDS have forced us to confront this reality.

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

Laws, Regulations and Policies	YES (Countries)	NO (Countries)	Comment
Against HIV Discrimination	5 (Bahamas, Dominica, Grenada, St. Lucia, and Suriname)	9 (Antigua and Barbuda, Barbados, Belize, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines, Trinidad and Tobago)	Where anti-discrimination laws specifically mention HIV, it is usually in regards employment
Protect Vulnerable Sub-Populations	4 (The Bahamas, Belize, St. Lucia, Trinidad and Tobago)	10 (Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname)	Protection is mainly for employment
That Present Obstacles to Access Prevention, Treatment and Care Services	11(The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Lucia, St. Kitts and Nevis, Suriname, Trinidad and Tobago)	3 (Antigua and Barbuda, Haiti and St. Vincent and the Grenadines)	
HIV-Specific Restriction on Entry, Stay or residence	2 (Belize and Trinidad and Tobago)	11 (Other than Belize and Trinidad), none of the CARICOM countries have laws restricting entry, stay and residence)	Trinidad’s restriction is based on homosexuality and not on HIV-status
That Criminalize HIV Transmission and Exposure	3 (The Bahamas, Barbados and Belize)	Outside of the Bahamas, Belize and Barbados, no country has laws criminalizing HIV	

		transmission or exposure	
That Criminalize same-Sex Sexual Activities	12 (All countries, except Haiti and Suriname)	2 (Haiti and Suriname)	Barbados and Guyana allows for life imprisonment for same-sex relations, although this law is not enforced. In most countries, penalties could be imprisonment for up to 10 years.
Deeming Sex Work as Illegal	13 (All countries except Belize)	1 (Belize)	
That Impose Compulsory Treatment for Drug Users	0 (No country makes provision for compulsory treatment of drug users)	15 (All countries provides for penalties for drug users)	

Additional information relating to human rights and HIV in the Caribbean can be obtained in the reports from the LEHR Project and from the Mapping of punitive laws in Barbados and the OECS³⁹.

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

The Caribbean constitutions are in fact constitutions of rights. These human rights instruments are the very basis for the programs that seek to remove punitive laws that affect our fight against HIV. All constitutions of Caribbean countries contain a human rights and fundamental rights section that guarantee liberty, autonomy and privacy.

As Professor Simeon C.R McIntosh⁴⁰ argues the right of due process, as guaranteed in our Constitutions, forbids injustice in the form of capricious legislative deprivation of life, liberty or property and the equal protection principle prohibits injustice in the form of capricious legislative classifications. It is our contention that the punitive laws in the context of HIV, such as those that criminalize consensual sex between same sex adults are capricious deprivation of justice, and of the guarantee for a life of liberty.

³⁹ UNAIDS Office for Barbados and the OECS (November 2010). Mapping of Punitive Laws which Impede Universal Access to HIV Prevention, Treatment, Care and Support in OECS and Barbados

⁴⁰ In *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine

The punitive laws that criminalize men and women for certain activities based on our present religious-moral barometers are directly in violation with the constitutional intent of providing for fundamental and human rights for ALL CITIZENS. Many stakeholders, and particularly politicians, argue that certain human rights deprivations, such as those related to same sex sexual relationships, are enshrined in our laws because the majority of people feel that such practices are wrong. Politicians argue that they cannot change these laws because the majority of people oppose such changes.

But the basic moral and human rights enshrined in our constitutions do not allow the majority to speak for ALL CITIZENS when it comes to rights guaranteed by the constitution. These rights apply to ALL CITIZENS. For example, the basic human rights of autonomy and liberty are rights which are held by ALL CITIZENS equally.

The Constitutions in Caribbean countries contain a set of human rights which define our brand of governance and democracy. Professor McIntosh puts it as follows: “For the very idea of a constitution entrenching a set of basic moral rights of the individual citizen, enforceable through the practice of constitutional judicial review of legislation, unmistakably puts the understanding of democratic governance beyond the mere implementation of the majority will – whether or not that will is directly expressed in a popular vote or through executive or legislative decrees”.

Until we are able to come up with a better system, majority rule will continue to be an essential part of our democracies. But the experts argue that in the practice of majority rule the rights of citizens, all citizens, including those that are in the minority, must be guaranteed.

As we address these challenges, we are faced with the reality that Caribbean countries are strongly faith-based. Those who would like a strict Rights-Based Solution to the problems Caribbean countries face cannot wish away the conundrum that a majority of Caribbean Citizens hold sacred the belief that homosexuality and transgender expression, are morally repugnant and unnatural and that such lifestyles are religiously sinful and unacceptable. These views are not trivial concerns, but are deeply held convictions that are part of the moral and ethical charter that guides the lives of the majority of citizens in the Caribbean.

But the real conundrum is how can we remove the practice of using a law to deprive a group of citizens human rights to which they are equally guaranteed by the Constitutions of the countries they belong to and by global human rights charters which apply to ALL CITIZENS wherever they live. These rights are inalienable rights and are part of being a human being.

Since Parliaments and Politicians have been reluctant to address the problem, some legal authorities, recognizing the difficulties, have proposed approaching the judiciary to remedy the jeopardy that exists between laws that restrict the enjoyment of basic human rights v constitutions that seek to protect those rights for ALL CITIZENS. But some have argued that the courts will be unable to provide remedy for this anomaly because of the existence in Caribbean Constitutions of a Savings Law Clause. The Savings Law Clause purports to protect certain laws in existence before the coming into force of the independence constitutions in the various Caribbean countries. Thus, the Savings Law Clause protects those laws that were inherited from colonial rule that criminalizes same sex sexual relations.

Professor McIntosh has provided reasoned arguments to end the conundrum. He argues that the constitutions of Caribbean countries are founded on a set of moral principles that correlate with the principles of the universal declarations to which all Caribbean countries are signatories. In this regard, he has put forward the position that the Parliaments and Members of Parliament of the Caribbean countries have the responsibility to ensure that the basic human rights apply to ALL CITIZENS EQUALLY and that they enact laws that enforce this principle, even in the face of overwhelming majoritarian preferences to the contrary.

It is a reasoned position that Parliaments should not be silent and inactive in the face that certain laws in the Caribbean, such as those that address sexual behaviors between consenting adults of the same sex, are violations of the constitutions and of the global commitments to guarantee human rights of all citizens. Such laws are violations of citizens' fundamental rights and are violations too of the very constitutions that these laws are suppose to empower.

Professor McIntosh also addressed the argument that these criminalizing laws for vulnerable populations, like LGBTI, and sex workers, are protected by the Savings Law Clause. He puts forward the argument that "the fact that the overwhelming majority of Caribbean citizens may believe that the laws criminalizing same sex relations among consenting adults in private should not be repealed is hardly the normative criterion for determining whether our parliaments are morally and constitutionally justified in repealing such legislation – particularly where these pre-existing laws stand in the way of parliament's adoption of compelling and justifiable policies designed to address the AIDS epidemic". The argument is made by legal experts that the Savings Law Clause cannot save a law that directly violates any provision in the constitution.

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

The roles of Parliaments and of Parliamentarians have been marginal and under-resourced in the Caribbean's response to HIV. Caribbean Parliaments and Parliamentarians have acted as if the Democratic Governance Model that is at the heart of the development programs of the various countries dictates that they are beholden to the notion that the majority rules at the expense of fundamental rights of all citizens.

It is in this context that the human rights agenda of relevance in the fight against HIV finds a reluctant parliament and reluctant and uncertain parliamentarians.

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

In 2001, Guyana's Parliament passed a bill to amend the Constitution and insert sexual orientation as an anti-discrimination basis in the fundamental rights section. The bill was unanimously passed by the House. The bill was prepared after a Special select Committee of the Parliament approved the recommendation that came from an Oversight Committee that was mandated to give effect to recommendations coming from the Constitution Commission of Guyana. However, when the bill was sent to the President of Guyana to give his assent, the religious community approached the President to withhold his assent. The Leader of the Opposition and Opposition MPs surprisingly gave support to the faith-based leaders. These same politicians had voted unanimously for the amendment bill to ensure that a person's sexual orientation was not a basis for discrimination in the fundamental right section of the constitution. As a consequence the President withheld his assent to the bill. Guyana lost an opportunity to do the right thing.

In 2010, an opposition motion was presented in Guyana's parliament to criminalize HIV transmission and exposure. The Parliament established a Special Select Committee to examine a way forward. The SSC after extensive public hearings decided that the criminalization of HIV transmission and exposure was a retrogressive step and instead proposed a number of ways of ensuring a human rights approach.

In Guyana, a Special Select Committee has been established in the present Parliament to recommend a way to address the violation of human rights in regards same-sex sexual relations. This action was precipitated by a request from the UNCHR for Guyana to bring its laws in compliance with the international human rights conventions that Guyana is a signatory to.

A similar situation exists in Jamaica which has recently been subjected to an assessment of its legal system as it relates to human rights and HIV. Both the IACHR and the UNCHR are engaged with Jamaica to bring its laws in compliance with UN conventions. Other Caribbean countries are or will be requested

by the UNCHR to also make adjustment to their laws to bring them in compliance with the International Human Rights Conventions to which all CARICOM countries are signatories.

While the issues of same sex relations and sodomy laws are presently active in the Parliament of Guyana, Parliaments in St. Kitts, Trinidad and Tobago, Belize and Jamaica are also expected to address the issue in a short time.

The Prime Ministers of Jamaica and St. Kitts have made promises referred to earlier in this document that they will bring legislation to address the human rights concerns of LGBT segments of the population.

In Jamaica also the Parliament is considering an anti-gang bill which has been sent to a special select committee. The importance of this bill is it contains a clause which seeks to punish those who promote violence through music and performances⁴¹. The controversial clause to criminalize the production and singing of songs which incite violence against homosexuals, police, informants and other groups, caused a split among committee members on the select committee considering the bill.

In Barbados, Parliamentarians came together across the political divide to bring attention to the cultural changes that are needed in order to continue to contain the spread of HIV virus and ensure the flourishing of life for all and in particular those especially affected by the virus. The Parliamentarians' Community Dialogues on HIV Prevention and Ending Stigma and Discrimination was launched recently at the Accra Beach Hotel and Resort in July 2011.

The project is supported by the United Nations System in Barbados with funding being provided through the UNAIDS Project Accelerated Funds facility. The Barbados National HIV AND AIDS Commission (**NHAC**) and the United Nations Entity for Gender Equality and the Empowerment of Women (**UN Women**) are supporting the Office of the Speaker in the project's implementation.

Previously, the Parliament of Barbados had approved "Barbados National HIV Policy: A Framework for Action 2008".

In Grenada, the Minister of Health Dr. Clarice Modeste-Curwen⁴² earlier in the year declared that Grenada will bring legislation to punish the willful transmission of HIV. This is an intention that needs to be monitored. The criminalization of HIV transmission is a weak platform on which to address the human rights violations related to HIV. It would be hoped that Grenada would take note of how Guyana was able to avoid the temptation to criminalize HIV transmission.

⁴¹ Jamaican Gleaner – Proposal to criminalize production, singing of violence-inciting songs causes split in parliament, November 28, 2013

⁴² Dr. Honorable Clarice Modeste-Curwen, Minister of Health of Grenada in her 2013 budget speech

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

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

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

The Justice for All Roadmap will reinforce the integration of HIV-Related Discrimination Reduction into National AIDS Responses. Many countries have already included strategies for reduction of discrimination and to pursue a human rights approach in the HIV response. But the project will endeavor to strengthen these strategic lines of action through the proposed Roadmap.

How do NSPs in CARICOM countries address the problem of discrimination and a human rights approach? We reviewed ten (10) NSPs and also the PANCAP and PAHO Regional HIV Regional Strategic Plan for HIV to determine if these plans have a human rights approach in responding to discrimination in the context of HIV.

Several NSPs for HIV now include priority strategic action plans to “develop policies, programs and legislation that promote human rights, including gender equality and reduce socio-cultural barriers in order to achieve universal access to prevention, treatment, care and support services”. This strategic action is specifically listed as a priority action in several countries. These countries include Antigua and Barbuda, Bahamas, Barbados, Belize, Guyana, Jamaica, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

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

real question is: what is the level of funding for actions which specifically target stigma and discrimination.

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

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

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

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

The NSPs of CARICOM countries must address human rights issues in a more focus manner and this must become a target for the Justice for All Roadmap. While the NSPs recognize the human rights approach and identify some laudable goals, progress in countries has not matched intentions.

Most countries have NSPs that are expiring in 2013 or that are already ended before 2013. Some are current, but will end by 2015. This provides an opportunity to ensure that all new and revised NSPs build a strong Human Rights Agenda.

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

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

The NSP of Barbados (2008-2013) includes three cross-cutting themes, one of which is Human Rights Policy and Legislation. The NSP of Barbados targets certain vulnerable populations, including sex workers and MSM and bisexual men. It is hoped that the new NSP to be developed will strengthen the human rights approach in Barbados HIV response.

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

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

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

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

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

St. Vincent and the Grenadines has a 2010-2014 NSP. Its guiding principle includes “equality before the law and freedom from discrimination”. Priority Area # 1 in the NSP of St. Vincent and the Grenadines

recognizes the need to develop legislative actions to reduce stigma and discrimination associated with HIV and vulnerable populations.

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

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

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

Cases in the Courts of Caribbean Countries

The Caribbean courts are increasingly being engaged as persons begin to challenge various aspects of Caribbean laws that discriminate against LGBTI. The following cases are instructive.

1. Mr. Maurice Tomlinson Challenges the Immigration Act of Trinidad and Tobago

Mr. Maurice Tomlinson of Jamaica is challenging the Immigration Act of Trinidad and Tobago in the Caribbean Court of Justice (CCJ). The Immigration Act of Trinidad and Tobago prohibits entry into that country based on sexual orientation.

Earlier mention was made of the recent incident in Trinidad and Tobago where Mr. Maurice Tomlinson, the legal advisor for A AIDS- Free World, was unable to enter Trinidad and Tobago because that country is one of the Caribbean countries in which the law prohibits entry for homosexuals. Mr. Tomlinson was invited to attend the launching of the book *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* edited by Sir George Alleyne and Professor Rose Marie Belle Antoine on October 22nd. But Mr. Tomlinson who is gay and who is an LGBT and HIV activist could not attend unless he had a waiver. Mr. Tomlinson refused to apply for a waiver, considering the need to apply for a waiver to enter Trinidad and Tobago as an assault on his fundamental human right.

This is the second time Mr. Tomlinson could not accept an invitation to participate in an event being held in Trinidad and Tobago. He had in 2012 been invited to attend a Regional Consultation on HIV and the Law, an event that was part of the Global Commission on the Law and HIV overall work and which culminated with its Report on the Law and HIV, a document which is part of the desk review for the Justice for All Project.

Mr. Tomlinson on May 24th 2013 initiated a challenge to the Trinidad and Tobago's Immigration Act at the Caribbean Court of Justice (CCJ).

2. The Chief Justice of Guyana rules in favor of Transgender dressing

In a recent ruling in the Guyana High Court (September 2013), the Chief Justice of Guyana ruled that the way a transgender person dresses in public is not against the law, once it is not done for improper purposes. The judge also ruled that the law only deals with attire and does not apply to shoes and other accessories, such as wigs, earrings etc. This is a partial victory for transgender persons. However, the ruling of the Chief Justice in this case underlines the challenge that advocates face when they approach the courts for remedy based on rights guaranteed by the constitution.

The ruling by the Chief Justice of Guyana came in response to a challenge by four men, Quincy MsEwan, Seon Clarke, Joseph Fraser and Seyon Persaud, who challenged the constitutionality of the law under which they were charged for cross-dressing. They were charged four years ago for improper behavior since they were dressed as women. Through their attorneys, they filed a constitutional motion asking the court to nullify the law. Section 153(1) (XLVII) of the Summary Jurisdiction (Offenses)

provision in Guyana makes a criminal offense of a man wearing female attire, publicly for any improper purpose.

The Chief Justice awarded the four men \$US200 each because he found that the police violated their rights in not informing them why they were arrested since cross-dressing in not an offense, only cross-dressing for improper purposes.

The Chief Justice declared “It is not criminally offensive for a person to wear the attire of the opposite sex as a matter of preference or to give expression to or reflect his or her sexual orientation. It is improper purpose for such conduct to which criminality is directed.”

While ruling that cross-dressing itself is not against the law, the Chief Justice also ruled that the law is immune from the constitutional challenge. As the 1893 law pre-dated Guyana’s independence, the Chief Justice ruled that “legislative rather than curial action is necessary to invalidate the provision”. This was an application of the saving law clause that is found in the various constitutions of the former British colonies.

Since the ruling, various organizations have signaled their intention to further challenge the law. For example, they would like to nullify the law because they question the intent of “improper purpose”.

In a joint statement the Society Against Sexual Orientation Discrimination (SASOD), Guyana Trans United (GTU), Caribbean Vulnerable Communities Coalition (CVC), Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS) and the Faculty of Law of the University of the West Indies’ Rights Advocacy Project (U-RAP) signal their intention of joining other interested groups in further challenges thorough constitutional motions in Guyana’s courts. They want to base their challenge on the fact that the laws on such matters as cross-dressing and same sex relations are at odds with the constitution of Guyana.

It should be noted that the constitution motion filed by the men also included a challenge to a judge who in court admonished the men, telling them they were confused and should give their lives to Jesus. The men asked that her statements be deemed discriminatory. The Chief Justice, however, ruled that the remarks by the Judge were not discriminatory.

3. The Belize Case – Article 53 being challenged in the Belizean Courts

Belize has become a hotbed for court challenges in the anti-discrimination related to HIV struggles in the Caribbean. Both its criminalization of same sex relations and its restriction on entry, stay and residence for people living with HIV are being challenged in court. Its criminalization of same sex relations is being challenged by Caleb Orozco and its restriction on entry, stay and residence for people living with HIV is being challenged by Maurice Tomlinson.

Supporting Mr. Orozco's case in court are three international human rights organizations: the Commonwealth Lawyers Association (CLA), the International Commission of Jurists (ICJ) and the Human Dignity Trust.

One of the most anticipated court decisions is pending in Belize and is expected anytime soon. The decision in a case brought by Caleb Orozco against Article 53 of the Belizean Criminal Code is likely to force the Belizean Government to change the laws criminalizing same sex relations in Belize, but would have ramifications throughout the CARICOM Region and in the Commonwealth,

Section 53 of Belize's Criminal Code mandates up to 10 years in jail for anyone convicted of "carnal intercourse against the order of nature with any person or animal." In addition, immigration laws in Belize bar gay foreigners from entering the country, based mainly on Article 53 of the Belizean Criminal Code. Although prosecutions under Article 53 are rare, the lesbian, gay, bisexual and transgender (LGBT) community continue to live in the shadows and live in fear of homophobic violence.

But now Section 53 faces an unprecedented court challenge over its constitutionality as an alleged human rights violation of LGBT Belizeans. After hearings in May, Belize's Supreme Court is expected to rule soon on the lawsuit brought by Caleb Orozco, who heads local gay rights group the United Belize Advocacy Movement (UNiBAM).

The International Commission of Jurists and the London-based Human Dignity Trust, which campaigns to decriminalize homosexuality around the world, are backing the suit. Former British Attorney General Lord Goldsmith is one of the lawyers arguing the groundbreaking case on a pro bono basis.

Anti-apartheid hero and Nobel Peace Prize winner Desmond Tutu, an Anglican archbishop, has also submitted a supporting statement comparing Section 53 to the racist system he once dedicated his life to overturning.

Whatever the court's ruling, the case is then likely to head to the Caribbean Court of Justice, based in Trinidad & Tobago, the region's highest judicial authority.

The government and the country's Anglican, Catholic and evangelical churches oppose scrapping the law. But the loudest voice defending Section 53 is Scott Stirm, an evangelical pastor originally from Texas who heads conservative Christian group Belize Action. He's calling for a referendum on the issue.

Jonathan Cooper, of the Human Dignity Trust, added: "If you are in a jurisdiction that criminalizes your sexuality then you are an un-convicted felon and with that goes vulnerability and stigma. People will not have you as their tenant or give you a job, or you are bullied at school."

The legal discrimination does not just affect locals. Section Five of the Immigration Act of Belize bars entry to "any prostitute or homosexual or person who may be living on or receiving or may have been living on or receiving the proceeds of prostitution or homosexual behavior."

In a separate case before the Caribbean Court of Justice, Jamaican activist Maurice Tomlinson is now challenging that ban.

4. The Jamaican Courts asked to overturn punitive laws relating to anti-discrimination and HIV

AIDS-Free World has been working in the Caribbean to eliminate laws and policies that inhibit a more effective HIV response. In 2011 AIDS-Free World filed a petition at the Inter-American Commission on Human Rights to challenge the Jamaican anti-sodomy law (A.B., S.H. v Jamaica P-1249-11). But AIDS-

Free World has also initiated several domestic court challenges to laws that adversely affect LGBT persons.

AIDS-Free World launched the first-ever constitutional claim for LGBT rights under the 2011 Jamaican Charter of Fundamental Rights and Freedoms (*Tomlinson v TVJ, CVM and Another* 2012 HCV 05676). This case was heard from May 27-30, 2013 and a decision is expected before the end of 2013.

The facts of the constitutional claim are relatively simple: AIDS-Free World produced an ad in which Maurice Tomlinson appeared that called for respect of the rights of gay Jamaicans. The island's two (2) private TV stations which operate under government license refused to air the paid ad citing, among other things, their right to freedom of expression in the form of editorial discretion. The national broadcaster, Public Broadcasting Corporation of Jamaica, made a similar argument.

Sections 13 (2) (c) and (d) of Jamaica's new Charter guarantees the right to freedom of expression as well as a novel right to seek receive and disseminate information through any media. The Charter also contains a provision that requires private citizens to guarantee the rights and freedoms of others. For the purpose of the Charter, TV stations are private citizens.

This case will be the first opportunity for Jamaica's Constitutional Court to define the test for how the competing rights of citizens should be balanced. It is therefore a landmark case for several reasons.

AIDS-Free World has also launched a domestic challenge to Jamaica's anti-sodomy law (*Javed Jaghai v Attorney General of Jamaica* 2013 HCV 00650), as well as an action before the Caribbean Court of Justice to have the anti-homosexual sections in the Immigration Acts of Trinidad and Tobago and Belize struck down (*Maurice Tomlinson v Belize AND Maurice Tomlinson v the State of Trinidad and Tobago* CCJ Application Nos. OA1 & OA2 of 2013). AIDS-Free World also supported the first-ever domestic challenge to the Belizean anti-sodomy law. A case against the Guyanese cross-dressing law was also heard in early June and this case was pronounced on (see above).

5. Other Cases

In Trinidad and Tobago, the savings law clause was the subject of an appeal in 2008. In this case, the Sanatan Dharma Maha Sabha of Trinidad and Tobago and others challenged the constitutionality of Trinidad and Tobago giving as its highest national award the TRINITY CROSS. Since the Trinity Cross was a Christian symbol, the Hindu and Muslim communities in Trinidad and Tobago believed that the national award was discriminatory.

THE TRINITY Cross — the nation's highest award — is strictly a Christian symbol, and as a result, it discriminates in a multi-religious society that is Trinidad and Tobago, according to the judgment by Justice Peter Jamadar.

However, the Order of the Trinity, is the law of the land, and the mere finding of it being discriminatory does not mean that the court can strike it down. It is a matter for the Parliament to change. This was the gist of Justice Jamadar's judgment in the matter brought by the Sanatan Dharma Maha Sabha of Trinidad and Tobago, against the Attorney General.

The court found that the Trinity Cross as the national award was made in accordance with the Letters of Patent Law that was in the law before the 1962 independence of Trinidad and Tobago and, therefore, was subjected to the savings law clause.

The applicants in the case had challenged the constitutionality of the Trinity Cross on the grounds that its continued existence and award were in breach of the applicants' fundamental rights as guaranteed by certain Sections of the Constitution.

They felt that the State's highest national honorary award was discriminatory and unfair, in that Muslims and Hindus by virtue of their religious beliefs and experiences were unfairly and discriminately encumbered in their capacity to nominate persons for, be nominated for, or accept the honor, because of its Christian symbolism.

In 2008, in a ruling by the Privy Council, it was found that even though the award came into being in 1969 through the Letters of Patent, a law pre-dating Trinidad and Tobago's 1962 independence, the establishment in 1969 should have been in compliance with the constitution and so declared that the savings law clause did not apply.

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

The Caribbean countries are all members of the Organization of American States (OAS) and also of the UN system. They have human rights obligations under the various declarations and resolutions of these organizations.

Under the OAS, the Inter-American Commission of Human Rights (IACHR) obligates the countries and monitors them the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man. All the states that belong to the OAS are bound by these declarations, even though only 24 countries have ratified them, six being from the Caribbean.

Lawyers and Human Rights activists could approach the Commission under these instruments to advocate for adherence to the commitments countries have made towards guaranteeing the human rights of all citizens. Clearly under the American Declaration on Human Rights, countries with punitive laws in the context of HIV are non-compliant.

In this regards, it is pertinent to consider how the IACHR can be utilized as one mechanism to catalyze action towards removing punitive laws in the context of HIV:

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

In mid-March 2013, the UNHRC issued its concluding observations on Belize. The Committee, which is charged with reviewing states' compliance with the International Covenant on Civil and Political Rights (ICCPR), issued its concluding observations on Belize. Belize acceded to the binding human rights treaty in 1996. Two years earlier, the Committee had ruled that discrimination on the ground of sexual orientation violated the treaty's anti-discrimination provisions.

The Committee concluded that Belize's patent discrimination against gays (as found in the country's anti-sodomy law, as well as the Immigration Act, which bans the entry of homosexuals) is irreconcilable with the country's treaty obligations. AIDS-Free World is supporting a domestic challenge to the anti-sodomy law, and has also launched a case before the highest regional court, the Caribbean Court of Justice, seeking a repeal of the homophobic provisions in the Immigration Act.

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

13. The Committee takes note that certain individuals in the State party have instituted proceedings challenging the constitutionality of section 53 of the Criminal Code, which prohibits same sex relations, and of section 5(1)(e) of the Immigrations Act, which includes homosexuals on the list of prohibited persons for purposes of immigration. The Committee further notes that as such these matters are subjudice [being considered by a court]. However, it is concerned that the State party lacks any constitutional or statutory provision expressly prohibiting discrimination on grounds of sexual orientation or gender identity. The Committee is further concerned at reports of violence against LGBT persons (arts. 2, 12 and 26).

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

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

CHAPTER 4

The Global Action Platform – a Human Rights Approach

Countries, through National Human Rights Instruments such as their constitutions and through Global and Regional Human Rights Commitments have established a Human Rights Platform as one indispensable pillar on which to confront the HIV AND AIDS epidemic. The platform to promote and facilitate programs, interventions and services that will enable the exercise of human rights such as personal liberty, privacy, work and sexual and reproductive rights, which are not only essential to human well-being and social and economic development, but critical in the fight against HIV have been established over many decades in the Caribbean and around the world.

Over the years, Governments, the UN system and civil society have embraced the link between HIV, human rights, and effective responses. The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 12 of the ***Universal Declaration of Human Rights***, which states that “all human beings are free and equal in dignity and rights”. All people, including lesbians, gay, bisexual and transgender persons are entitled to enjoy the protections provided for by international human rights law, including in respect of right to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

Non-discrimination is a core human rights principle embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the human rights treaties. Non-discrimination clauses in international instruments typically require that the rights set forth be made available to everyone without discrimination, and, states ensure that their laws, policies and programs are not discriminatory in impact.

The Global and Regional Commitments that constitute the platform to establish a firm human rights approach to improving lives and to fight against stigma and discrimination are seen in examples such as:

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

The 2001 UNGASS and the political declarations of 2006 and 2011

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

Thus began the UN's formalization of the Human Rights Platform for responding to HIV. The HIV Human Rights Platform was reaffirmed and strengthened through the political declarations at High Level Meetings of the UN General Assembly in 2006 and 2011.

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

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

The 2011 political declaration advanced the human rights platform for the HIV response by identifying three key populations at risk for HIV infection: sex workers, people who use drugs and men who have sex with men. This was the first time that an internationally agreed document that these three vulnerable populations were identified for specific attention in terms of human rights actions to strengthen the HIV response.

The UNAIDS Zero Agenda

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

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

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

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

UNAIDS Seven Priority Programs to Fight Stigma and Discrimination

All governments now recognize that stigma, discrimination and violations of other human rights are major barriers to effective national responses to HIV. UNAIDS has advanced the position that protecting human rights of people living with HIV, as well as rights of women, children, and members of vulnerable populations in the context of HIV and empowering them to access justice are efforts essential to achieve universal access to prevention, treatment, care and support and to halt and reverse the epidemic as stipulated in MDG6.

In this regards, UNAIDS has recognized advancing human rights and gender equality as one of three strategic pillars in the response to HIV. The present project between PANCAP and UNAIDS and with the endorsement of the UN Envoy for HIV to the Caribbean, Dr. Edward Greene ideally fits the mandate to address the Human Rights conundrum that exist and that impedes accelerated progress in the fight against HIV in the Caribbean. The present project will develop a Roadmap towards implementing some of the listed actions.

PANCAP and UNAIDS have undertaken their roles to be facilitators as Governments of the Region continue their efforts to advance the human rights approach to eliminate HIV as a public health scourge.

UNAIDS has advanced seven key programs to advance human rights and gender equality for HIV responses (Appendix 4) and has recommended that these key programs become part of National Strategic Plans. These seven key programs are consistent with the International Guidelines on HIV and AIDS and Human Rights 2006 Consolidated Version (Appendix15) which builds on the Second and Third International Consultation on HIV and AIDS and Human Rights held in September 1996 and July 2002 and jointly organized by the Office of the United Nations Human Rights Commissioner and UNAIDS.

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

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

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

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

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

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

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

In early 2012, the Commission issued its Final Report with findings and recommendations concerning how the law can better support human rights and public health in the context of HIV. This report is accessible on the Commission's website at <http://www.HIVlawcommission.org>. The Global Commission made a number of recommendations. These were made under six headings: Discrimination, Criminalization of Transmission, Exposure and Non-Disclosure, Key Populations, Women, Children and Youth and Intellectual Property Law and the Global Fight for Treatment (Appendix 16).

The Global Law Commission believes that the legal environment – laws, enforcement and justice systems – has immense potential to better the lives of persons living with HIV and to help turn the crisis around. The Commission is of the view that international laws and treaties that protect equality of access to health care and prohibit discrimination – including that based on health and legal status – underpin the salutary power of national laws.

In this regard, the Commission believes that many countries have “squandered the potential of the legal system” to contribute to reversing HIV and instead have “fueled the epidemic”.

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

- 123 countries have legislation to outlaw discrimination based on HIV and 112 countries legally protect some populations based on vulnerability to HIV. But these laws are often ignored, laxly enforced or aggressively flouted
- In over 60 countries it is a crime to expose another person to HIV or to transmit it, especially through sex. Women and girls account for half of the population living with HIV. Laws and customs like genital mutilation and denial of property rights produce profound gender inequality, domestic violence and also robs women and girls of personal power.
- Where sex education, harm reduction and comprehensive reproductive and HIV services are accessible to youth, young people's rates of HIV and other sexually transmitted infections (STIs) drop. But these interventions are rare.

- In many countries the law dehumanizes many of those at risk for HIV: sex workers, transgender people, MSM, people who use drugs, prisoners and migrants. For example same-sex activity is a crime in 78 countries.

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

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

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

- Outlaw all forms of discrimination and violence directed against those who are vulnerable to or living with HIV or are perceived to be HIV-positive. Ensure that existing human rights commitments and constitutional guarantees are enforced.
- Repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them. Enact no laws that explicitly criminalize HIV transmission, exposure or non-disclosure of HIV status.
- Work with guardians of customary and religious law to promote traditions and religious practice that promote rights and acceptance of diversity and that protect privacy.
- Decriminalize private and consensual adult sexual behaviors, including same-sex sexual acts and voluntary sex work.
- Prosecute the perpetrators of sexual violence, including marital rape and rape related to conflict, whether perpetrated against female, male or transgender people.
- Abolish all mandatory HIV-registration, testing, and forced treatment regimens. Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilization of HIV-positive women and girls.
- Reform approaches towards drug use. Rather than punish persons who use drugs but do no harm to others, governments should offer them access to effective HIV and health services, including harm reduction programs and voluntary, evidence-based treatment for drug dependence.
- Enforced all laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.

- Ensure that enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty, or coercion to procure people into commercial sex or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.
- In matters relating to HIV, offer the same standard of protection to migrants, visitors and residents who are not citizens as is extended to citizens. Restrictions that prohibit people living with and affected by HIV and AIDS from entering a country and/or regulations that mandate HIV tests for foreigners within a country should be repealed.
- Enforce a legal framework that ensures social protection to children living with and affected by HIV. Laws must protect guardianship, property and inheritance rights and access to age-appropriate, comprehensive sex education, health and reproductive services.
- Develop an effective IP regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.

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

The OSLO Declaration

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

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

It is a direct response to the increasing numbers of people living with HIV who are being arrested, prosecuted and convicted and the rapid rise in the number of countries enforcing, enacting or proposing HIV-specific legislation to enable these prosecutions. This, despite a growing body of evidence suggesting that the criminalization of HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.

The civil society meeting took place on the eve of the global High Level Policy Consultation on the Science and Law of the Criminalization of HIV Non-disclosure, Exposure and Transmission, convened by the Government of Norway and the Joint United Nations Program on HIV AND AIDS (UNAIDS). The objective of the High Level Policy Consultation was to provide a global forum in which policymakers and other concerned stakeholders could consider their current laws and policies regarding the criminalization of HIV non-disclosure, exposure or transmission in light of the most recent and relevant scientific, medical, public health and legal data.

Although the Oslo Declaration is not an official High Level Policy Consultation document, it supports the objective of the meeting, and encourages policymakers to review their own laws and policies, and to take any and all steps necessary to achieve the best possible outcomes in terms of justice and protection of public health in order to support effective national responses to HIV and uphold international human rights obligations.

The Declaration's creation is led by, and includes, people living with HIV, including survivors of HIV criminalization, and supported by committed HIV advocates from all over the world. Their expertise covers medical, social, ethical, political, human rights and judicial issues relating to HIV and the criminal law.

The Oslo Declaration consists of the following 10 points:

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

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

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

6. HIV epidemics are driven by undiagnosed HIV infections, not by people who know their HIV-positive status. Unprotected sex includes risking many possible eventualities - positive and negative - including the risk of acquiring sexually transmitted infections such as HIV. Due to the high number of undiagnosed infections, relying on disclosure to protect oneself - and prosecuting people for non-disclosure - can and does lead to a false sense of security.
7. HIV is just one of many sexually transmitted or communicable diseases that can cause long-term harm. Singling out HIV with specific laws or prosecutions further stigmatizes people living with and affected by HIV. HIV-related stigma is the greatest barrier to testing, treatment uptake, disclosure and a country's success in "getting to zero new infections, AIDS-related deaths and zero discrimination".
8. Criminal laws do not change behavior rooted in complex social issues, especially behavior that is based on desire and impacted by HIV-related stigma. Such behavior is changed by counseling and support for people living with HIV that aims to achieve health, dignity and empowerment.

9. Neither the criminal justice system nor the media are currently well-equipped to deal with HIV-related criminal cases. Relevant authorities should ensure adequate HIV-related training for police, prosecutors, defense lawyers, judges, juries and the media.

10. Once a person's HIV status has been involuntarily disclosed in the media, it will always be available through an internet search. People accused of HIV-related 'crimes' for which they are not (or should not be found) guilty have a right to privacy. There is no public health benefit in identifying such individuals in the media; if previous partners need to be informed for public health purposes, ethical and confidential partner notification protocols should be followed.

The Montevideo Consensus on Population and Development (2013)

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

The broad support for the consensus statement makes it difficult for anyone to claim that Caribbean countries are not committed to women’s rights and sexual and reproductive health and rights, or find these matters “too controversial.”

The 38 countries not only reaffirmed their commitment to the 1994 Cairo Programme and the 1999 Cairo+5 Further Key Actions, they went well beyond. They reaffirmed their view “that a secular State is one of the elements fundamental to the full exercise of human rights, the deepening of democracy and the elimination of all forms of discrimination,” and asserted the crucial importance of “sexual rights and reproductive rights for the achievement of social justice and the national, regional and global commitments to the three pillars of sustainable development: social, economic and environmental”—pillars which will form the basis of the post 2015 development agenda and pillars of importance in the PANCAP Justice for All Roadmap.

Among the issues addressed in the consensus statement were:

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

Sexual Rights, Sexual Orientation and Gender Identity

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

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

places persons of diverse sexuality in a vulnerable position, preventing their access to equality and to the full exercise of citizenship.”

Violence

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

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

Looking Forward

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

United Nations Development Program (UNDP)

Compendium of Judgments

Sir George Alleyne in a speech at Cave Hill to mark the 2013 graduation class pointed to the fact that if Parliaments will not act to change discriminatory laws, then litigation is a viable option. This argument finds favor by an examination of the experiences of groups around the world addressing the issues of human rights and HIV.

This section provides a glimpse of the litigation experiences in several developing countries. Stakeholders are urged to study the UNDP Compendium of Judgments.

Judgments in cases in Trinidad, Guyana, Jamaica and Belize will add to this compendium. Some of these cases were referenced in Chapter 3. The Justice for All Programme envisages that there will be a mounting folder of cases in national courts, the Caribbean Court of Justice and at the IACHR and the UNCHR.

The UNDP held a Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific in June 2013. The purpose of the dialogue was to produce a compendium of judgments that could be of use to lawyers, judges and magistrates in dealing with discrimination in the context of HIV.

The compendium list judgments relating to the following: (1) non-discrimination including employment discrimination, discrimination in health care settings, and discrimination in other settings; (2) access to medicines; (3) same-sex relations; (4) rights of transgender persons; (5) rights of sex workers; and (6) rights of people who use drugs.

The Report also dealt with four other areas: (1) rights of prisoners and detainees; (2) criminalization of HIV-transmission, exposure and non-disclosure; (3) discrimination on the basis of sexual orientation and; (4) non-consensual testing, confidentiality and privacy.

The compendium of judgments selected for each area represents a progression of jurisprudence, moving towards an effective judicial response to HIV that is consistent with global human rights obligations.

The Compendium selected cases from the Commonwealth, other English-Speaking jurisdiction, and Regional bodies, including the European Court of Human Rights and the IACHR. A small number of cases also were included from domestic courts in Latin America. There is a focus on appellate level of judgments. As a result, these judgments are not only reflective of progressive jurisprudence, but they constitute binding law in the jurisdiction in which they were rendered.

Judgments relating to same sex relations – landmark cases as examples for the Caribbean

Why is it that, as a culture, we are more comfortable seeing two men holding guns than holding hands.....Pulitzer Prize Winning Author, Ernest Gaines

Even as the case on same sex relations is being determined in Belize, stakeholders in CARICOM might want to familiarize themselves with several landmark cases, particularly the following cases in India, Fiji, South Africa and Nepal. In this section we will present three cases from India, Fiji and Nepal that Caribbean stakeholders may be interested in familiarizing themselves as part of the case they build against the continuance of same sex relation criminalization in the Caribbean.

Before we discuss the three cases, Caribbean stakeholders may want to note the decision by the Constitutional Court of South Africa in 1998⁴³. The court held that statutes criminalizing sodomy was unconstitutional and violate the constitutional right to protection from discrimination on the ground of sexual orientation, and the rights to human dignity and privacy.

The court stated that discrimination on the ground of sexual orientation was unfair and unjustified. It declared that, even if unenforced, the existence of a statute criminalizing consensual sexual behavior between males “reinforces the misapprehension and general prejudice of the public” against male homosexuality. The court further held that such statutes violate the right to dignity as they put gay men at risk of arrest and conviction “simply because they seek to engage in sexual conduct which is part of their experience of being human”.

The following three cases and others in many jurisdictions build on the above progression of jurisprudence on the issue of same sex relations.

NAZ Foundation v. Government of NCT of Delhi: The first case was in 2009 in the High court of Delhi in India. The decision resulted from a public interest litigation brought by an NGO challenging Section 377 of the Indian Penal Code which criminalizes “unnatural offenses”, including certain consensual sex acts between adults in private. Section 377 was introduced in British India in 1861. Britain repealed its laws punishing same sex relations in 1967, but the law remained in force in India after independence, same as they do in British Commonwealth CARICOM countries.

The High Court in 2007 had dismissed the petition as an academic challenge to the constitutionality of the legislation. The Supreme Court overruled the dismissal and stated that Section 377 was unconstitutional. But the ruling was challenged by a group of religious leaders.

The challenge was based on several articles of the constitution. Article 21 protects the right to “personal liberty” and has been judicially interpreted to include a variety of related rights. Articles 14 and 15 guarantee the right to equality and non-discrimination. The preamble of the constitution protects the “dignity of the individual” and forms part of India’s “constitutional culture”. In addition, a right to

⁴³ National Coalition of Gay and Lesbian Equality v. Minister of Justice (1998). See pg 65 of Compendium of Judgments Background Material, UNDP (2013)

privacy has been found by the courts to arise from other constitutional protections, including the right to life, freedom of speech and expression, and the right to freedom of movement.

The court referred extensively to foreign and international law in reaching its conclusion that Section 377 infringed on the constitutional rights to privacy and liberty. The court rejected the arguments of the Ministry of Home Affairs that the provision was supported by a legitimate government interest in public health or popular morality. Instead it accepted the arguments of the National AIDS Control Organization (NACO) and the Ministry of Health and Family Welfare. Both entities asserted that the criminalization of consensual sex between men inhibits and impedes interventions to prevent HIV in India.

The court further held that the term “sex” in Article 15 of the Constitution, which prohibits discrimination based on sex, includes sexual orientation.

The judgment of the court was appealed in the Supreme Court of India and the decision of the court in the appeal was handed down on December 10th 2013.

The Supreme Court heard the challenge and pronounced on it on December 10th 2013. The challenge was whether Section 377 of the Indian penal Code infringes fundamental rights to life, liberty and privacy guaranteed under the constitution of India. The challenge further questioned the correctness of the Supreme Court when it ruled in 2009 that Section 377 was unconstitutional.

The Appeal to the Supreme Court of India against the decision of 2009 resulted in a retrogressive step back. The Supreme Court ruled that while the law may be in contravention of the constitution, it is incumbent on the court to implement it and it is incumbent on the legislator to change the law. Until the legislator changes the law, Section 377 is in effect.

This means that same-sex relations and the lawfulness of same have been on a roller coaster since 2007 in India.

The Court in 2009 ruled that Section 377 infringes fundamental rights to life, liberty and privacy and to the extent that the statute outlaws consensual sex acts between consenting adults in private, it violates constitutional guarantees of liberty, equality, privacy and dignity. On December 10th 2013, the Supreme Court of India pronounced on an appeal against the 2009 decision and stated that only the legislator can change the law.

Nadan and McCoskar v. State: This case was in Fiji and took place in 2005 in the High Court of Fiji. Mr. McCoskar was an Australian visiting Fiji on holiday. While in Fiji he engaged in “consensual, intimate, private conduct” with Mr. Nadan. Nadan was arrested by police on other charges and admitted having sexual relations with McCoskar. Both were convicted under Fijian laws that outlawed carnal knowledge “against the order of nature” and acts of “gross indecency”. They were both sentenced to two years imprisonment.

Fiji Criminal Penal Code Section 175 stated that a person who (a) has carnal knowledge of any person against the order of nature; or.... (c) permits a male person to have carnal knowledge of him or her against the order of nature is guilty of felony and can be imprisoned for up to 14 years. Section 177 provides that any male who publicly or privately committed “any act of gross indecency” was guilty of a felony and could be imprisoned for up to 5 years.

The two appellants asked the court if Sections 175 and 177 of the Fiji Penal Code violated their constitutional rights of privacy, equality and freedom from degrading treatment.

The court agreed that the penal code of Fiji violated their constitutional rights of privacy, equality and freedom from degrading treatment.

The court held sections 175 and 177 of the Penal Code of Fiji invalid as applied to private consensual sex between adults. The court held that section 177, which applied only to male persons, on its face violated the right to equality before the law. Section 175, which was gender and sexual orientation-neutral violated the Fiji Constitution as applied to consensual sexual acts between adult males. In this regard, the court noted that the provision had never been used to prosecute couples who engaged in heterosexual sex.

Section 37 of the Constitution of Fiji guarantees the right of personal privacy. In interpreting the scope of the right to privacy, the court cited international law, which the Constitution declares shall be an aid in interpreting constitutional provisions. The court held that the right to privacy “extends beyond the negative conception of privacy as freedom from unwarranted State intrusion into one’s private life to include the positive right to establish and nurture human relationships free of criminal or indeed community sanction”. The court thus held that section 175 violated the Appellants’ constitutional right to privacy. The court further held that the Government failed to show that criminalizing sexual intimacy between consenting adult males was a “proportionate and necessary limitation to their right to privacy.

Sunil Babu Pant and Ors. V. Nepal Government and Ors.: This case was in Nepal in 2008. The Sunil Babu Pant case was the first time a judicial body recognized a “third gender”. The decision given below was handed down in a case filed by Mr. Sunil Babu Panta of the Blue Diamond Society and others on behalf of lesbian, gay, bisexual, transsexual and intersex (LGBTI) people where the petitioners prayed for the issuance of an order of mandamus in order to provide the gender identity on the basis of their gender feelings and to recognize their cohabitation as accordance with their own sexual orientation.

The Supreme Court acknowledged the growing ascendance of the notion that homosexuals and third gender people are not mentally ill or sexually perverts. Therefore, their rights should be protected and they should not be discriminated in the enjoyment of rights guaranteed by the constitution and human rights instruments.

The Court holds that it is an appropriate time to think about decriminalizing and de-stigmatizing the same sex marriage as according to it. The Court takes the view that that no one has the right to question how do two adults perform sexual intercourse and whether this intercourse is natural or unnatural and

that ...the way the right to privacy is secured to two heterosexual individuals in sexual intercourse, it is equally secured to the people of third gender who have different gender identity and sexual orientation.

The court further holds that gender identity and sexual orientation of the third gender and homosexuals cannot be ignored by treating the sexual intercourse among them as unnatural. The court takes the view that selection of sexual partner or fixing of marital relation is a matter falling entirely within the ambit of the right to self-determination of such an individual.

It also seems to be in favor of gradual internalization international practices in regard to the enjoyment of the right of an individual in the context of changing global society and practices of respecting the rights of minority. It calls upon the state to create appropriate environment and make legal provisions to enable the LGBTI people enjoy fundamental rights and insert provisions in the New constitution to be made by the Constituent Assembly, guaranteeing non-discrimination on the ground of 'gender identity' and the 'sexual orientation' besides 'sex' in line with the Bill of Rights of the Constitution of South Africa. It issues a directive order to the Government of Nepal to form a Committee in order to undertake the study on over all issues in this regard and make the legal provisions after considering recommendation made by the said Committee.

Judgments relating to employment discrimination on the basis of HIV positive status

There are many cases around the world where the courts have been strong in condemning employment discrimination on the basis of HIV status. We present two examples in this section.

Hoffman v South African Airways in South Africa: An example of the employment discrimination judgment is the Hoffman v South African Airways (SAA) case in 2000 in South Africa. This court was asked to make a judgment on whether SAA's policy of refusing employment of PLWHA as cabin attendants was in violation of the South African Bill of Rights. The court ruled that SAA violated the South African Bill of Rights and acted unconstitutionally when it denied Hoffman employment as a cabin attendant.

Mx of Bombay Indian Inhabitant v MS: In a landmark case in India in 1997 in the Court of Bombay, the court was asked to pronounce on whether a petitioner could conceal his name during court proceeding, whether a respondent interpretation of medical fitness for the purpose of employment was valid and whether a rule denying employment solely on the basis of HIV status was valid. The court ruled as follows:

1. The court ruled that a person living with HIV may be subject to great embarrassment and undue publicity and thus could suppress his identity if he could show that it was in the interest of justice and that revealing his name would make it difficult for him to participate in legal proceedings.
2. The court held that in the context of employment, medical fitness must be related to the requirements of the job. In considering medical fitness, the court relied on two judgments from the United States: Florida v Gene H. Arline (1987) 94 L. Ed. 2nd 307, and Vincent L. Chalk v. United States

District Court Central District California (1987) 840 F 2nd 701. The court further held that an “individualized inquiry” should be undertaken based on “reasonable medical judgments given the state of medical knowledge”. The court held that the inquiry should consider:

- (a) The nature of the risk (e.g. how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk what is the potential harm to the third party) and (d) the probabilities that the disease will be transmitted and it will cause varying degrees of harm.
3. The court held that “continued ill health” must have a bearing on the normal discharge of duties”. The court further held that ill health would be relevant only if it interfered with the usual functions that were attached with the post.

The court held that a rule denying employment to individuals based solely on the ground that they tested positive for HIV was arbitrary, unfair and unreasonable and violated the right to equality in article 14 of the constitution. The court relied on the policies and guidelines of the WHO, the ILO and the National AIDS Control Organization (NACO) of India in making its determination. The court ruled that persons living with HIV could perform “normal job functions” while living with the disease and that the probability of transmission of the virus was low at the workplace.

The court further held that the right to livelihood was included within the right to life in article 21 of the constitution. It held that the right to life for a workman includes the right to be in employment that is not at the mercy of the employer. The court relied on the right to socio-economic justice as envisaged in the directive principle of the Constitution to conclude that the right to work was necessary to the enjoyment of fundamental rights. The court held that a rule arbitrarily denying the right to livelihood violated the right to life.

Judgments on Discrimination relating to HIV-testing without Informed Consent

There are several cases around the world where judicial reviews have ruled that HIV-testing without informed consent is unlawful. We present an example from Nigeria in this section.

Georgina Ahameful v Imperial Medical Center: This case was adjudicated in the High Court of Lagos State, Nigeria. This case is interesting because its ruling is cross cutting. It addresses discrimination in different settings. Ms. Ahameful was a nurse at the Imperial Medical Center. While employed at the Imperial Medical Center, Ms. Ahameful became pregnant. She sought medical attention at the same medical center where she was employed. The doctor did a set of tests, including HIV and referred her and her husband to a hospital for further tests. There it was disclosed that she was HIV positive and her husband was HIV negative.

Ms. Ahameful asked why she was tested for HIV without her consent. In response she was asked to pick up a letter from the doctor’s secretary. The letter informed her that her service was terminated. She and her lawyers approached the High Court and asked (a) if her termination on the basis of her HIV status was discriminatory, (b) whether testing her for HIV without her consent constituted unlawful battery, (c) whether the defendants should have provided her with pre- and post-test counseling and (d) did the

refusal to provide medical care on the grounds that she was HIV positive a violation of her right to health?

The court found that when an employer provides a reason for termination, the employer must justify the reason. It was the ruling of the court that the employer had to prove that Ms. Ahameful posed a danger to the medical center's staff, as well as the public at large. The court found that the employer failed to show that Ms. Ahameful posed a danger to anyone given her responsibilities as an auxiliary nurse. The ruling was that the employer's termination of Ms. Ahameful's employment was "based on malice, done in bad faith and wrongful".

Without explanation, the court also ruled that testing without informed consent constituted "an unlawful battery on her".

In regards the failure of the medical center to provide pre and post-testing counseling, the court ruled that the action constituted unlawful negligence of professional duty".

In terms of access to health care, the court ruled that in denying Ms. Ahameful medical care on the basis of her HIV positive status, the medical center was guilty of a "flagrant violation of here right to health".

Judgments on HIV positive status as a disqualification for entry into the police force

There are several cases that address the issue of HIV-positive status and the disciplinary forces. We present two examples from India and Colombia in this section.

Mr. X v. State Level Police Recruitment Board (India): This case was in the High Court of Andhra Pradesh. Mr. X was an armed reserved police constable and had applied for the post of stipendiary cadet trainee sub-inspector of police. He passed the physical exam and the written test, on the basis of which he was provisionally selected for the post. During his medical examination, however, he tested positive for HIV. On this basis, the Police recruitment Board withdrew the provisional approval for his entry into the cadet program. They relied on Order 70(3) of the Andhra Pradesh Revised Police Manual to contend that persons who were HIV-positive were ineligible for recruitment.

Mr.X challenged this ruling through a constitutional motion. The court struck down Order 70(3) as unconstitutional. It directed the respondents to verify whether Mr. X qualified for recruitment in his present state and to appoint him if he was deemed fit within three months of the judgment. The court ruled that simply because a person tested positive for HIV did not mean that he was terminally ill or would be soon. After a lengthy analysis of the medical information on HIV and its progression, the court held that there was no certainty as to when a person living with HIV might develop AIDS. The court held that with effective ART a person could live an extended life.

The court also held that the decision by the Police Recruitment Board was discriminatory in the matter of public employment and infringed on the matter of equality of opportunity.

The court ruled further opined that because of the prejudice faced by people living with HIV, they constituted one of the most vulnerable groups in society. The court noted that the systemic discrimination against people living with HIV prevented them from seeking medical care. The court also noted that people living with HIV, as in this case, were often discriminated against in matters of employment even though their ability to perform their duties was not diminished as a result of their HIV status. Finally the court declared that “any discrimination against people living with HIV can be interpreted as a fresh instance of stigmatization and an assault on their dignity”.

XX v. Ministerio de Defensa Nacional (Colombia): This case was in the Constitutional Court of Colombia. MXX filed a constitutional motion against the Ministry of defense School of Cadets for expelling him after discovering he was HIV positive during a blood donation. Mr. XX claimed violation of the constitutional rights to life, equality, work, privacy, and health, and, the liberty to choose one’s own profession.

The court granted Mr. XX’s request for legal protection of his right to equality, right to education, right to choose his profession, right to integrity and right to health. The court ruled that the decision to expel Mr. XX amounted to unconstitutional discrimination against a person living with HIV.

Judgments on Discrimination in Health Settings on the Basis of HIV Positive Status

There are many examples of discrimination on the basis of HIV positive status in health settings. One example is provided in this section.

LM, MI and NH v. Namibia: This Case was filed in 2012; the petitioners were three women living with HIV. The women alleged that that they were sterilized without consent by a Doctor who was employed by the Ministry of Health and Social Services.

According to the claimants, the sterilization was done as a practice of discrimination against women living with HIV- an act which was a violation of their basic human right.

However, the Government of Namibia (the Defendant) argued that the doctors had possessed written consent from each woman, after the procedure was explained in full. The court ruled that the consent forms were signed under duress and that the court considered that the women were unlawfully sterilized without their consent.

The Court found no credible or convincing evidence, however, that the sterilization was done because of the HIV positive status of the women and found no evidence that the sterilization was done as part of a discriminatory policy against women who were HIV positive.

Judgments related to Discrimination in Insurance Settings on the Basis of HIV Positive Status

Insurance settings have been an important example of discriminatory practices on the basis of HIV positive status. The following two cases are examples.

V.,W.J.v.Obra Social de Empleados de Comercio y Actividades Civiles (Argentina): The petitioner brought a Law Suit against Obra Social de Empleados de Comercio y Actividades Civiles (Osecac), in 2004, claiming discrimination and violations of his right to life and health.

The petitioner who had received health insurance coverage from Osecac for the past seven years, through his employer, was refused a request to continue coverage with Osecac following the termination of his job when it was discovered he was HIV positive.

The court ruled that Osecac must incorporate the petitioner into the requested health plan, on the basis that Osecac failed to provide evidence that justified its refusal.

Sri Rao Saheb Mahadev Gayakwad v Life Insurance Corporation of India: The case was in the High Court of Karnataka in India in 2004. In this case, the brother, wife and children of a deceased man who had died of AIDS were refused benefits from the deceased life insurance policy. The Insurance Company's refusal was based on the fact that the man "withheld material information regarding his health at the time of seeking insurance". The Company sought to prove that the deceased man had known of his HIV positive status two months prior to obtaining life insurance.

The family asked the court to rule whether the company acted in a "bona fide" manner when it repudiated the deceased's insurance contract when he failed to disclose, and in fact was aware, that he was living with HIV at the time the contract was completed.

The court found that the Insurance Company repudiated the contract even before it discovered that the deceased man had visited the national AIDS Research Institute. The court ruled that the visit to the National AIDS Research Institute did not prove he knew he was living with HIV. The court held that the Company had to prove that the deceased had committed fraud and indulged in material suppression. The court found that the company could only show that the man died of AIDS, but did not prove that he was aware that he was living with HIV.

Judgments relating to sex workers

We highlight a judgment by the Supreme Court of India in 2011. The case is Karmaskar v. State of West Bengal. In 199, Budhadev Karmaskar was convicted of murdering a sex worker in Calcutta. In 2011, while dismissing the appeal and affirming the conviction, the Supreme Court *suo moto* converted the appeal into a public interest litigation to address the rehabilitation of sex workers. It subsequently issued a number of orders addressing sex workers. The litigation is ongoing as of this time.

The court found that sex workers "are entitled to a life of dignity" under article 21 of the Indian Constitution. It declared that women entered sex work because of "abject poverty" and that they would pursue a different livelihood if they received technical or vocational training. In addition, the court ruled

that sex workers face increased risk of exposure to sexually transmitted diseases. The court thus ordered that the central and the state governments, through social welfare boards, “should prepare schemes for rehabilitation of sex workers. The court proceeded to make a number of orders for remedy.

Discrimination on the basis of HIV positive status in other settings

We provide examples of court judgments in other settings, such as education and divorce settings.

Payel Sarkar v Central Board of Secondary Education: This case was tried in the High Court of Calcutta in 2010. Payel Sarkar was prohibited by the Board to write the All India School Certificate Exams because of frequent absences from school. The student argued that his poor attendance was due to “special learning disability”.

The student approached the court to rule on whether students suffering from serious diseases, including students living with HIV and those with special learning disabilities, are exempt from the strict enforcement of school attendance policies. This question was put to the court because the school by-laws allowed for exemptions of attendance requirement for blind, physically handicapped and dyslexic students.

The court ruled that the grouping of students who qualified for exemptions from school attendance policies was not inclusive enough. The court ruled that the rigidity of attendance should be relaxed for “students with special learning disabilities and others in exceptional circumstances created on medical grounds, such as candidates suffering from serious diseases, like cancer, AIDS, TB or similar diseases requiring long hospitalization”.

Midwa v Midwa: This case was tried in the High Court of Kenya in Nairobi in 2004. The applicant was a wife who was HIV positive. Based on her positive HIV status, the lower court granted her husband a divorce. The husband attempted to put her out of the house to live in an outhouse. The wife petitioned the High Court for a stay of execution for her to be expelled from the home. She argued that the matrimonial home had a mortgage and her salary was being deducted to pay the mortgage.

The High Court found that the lower court ignored the medical condition of the woman and the tender age of her children and “made certain order which plainly cried for justice”. It concluded that the lower court’s ruling “smacks of insensitivity and total inconsideration of the facts” and that it was traumatizing and dehumanizing to order the wife to live in the servants’ quarter of her own house.

The court ruled that the woman had a 50% stake in her home. It held that it was morally wrong for the husband to desert his wife under such circumstances. In addition, the court ruled that the lower court had not properly considered the welfare of the children and that there was no exceptional circumstance shown to deprive the mother of her natural right to have her children with her.

CHAPTER 5

Monitoring the Human Rights Approach to HIV

The monitoring of implementation or non-implementation of the global commitments to create a more effective human rights approach in the HIV response is expanding and is today a relatively robust system. The monitoring is multi-dimensional and involves global, regional and national programs, and civil society efforts.

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

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

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

- International Lesbian, Gay, Bisexual, Trans and Intersex Association: State-sponsored homophobia: A World Survey of Laws Prohibiting Same-Sex Activities between Consenting Adults (2010). See http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf
- International Lesbian, Gay, Bisexual, Trans and Intersex Association “Homophobia Report (March 2008”. See at <http://ilga.org/ilga/en//article/1165>
- See also #3 below

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

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

GNP+ also conducts a **Global Criminalization Scan** (GCS) which monitors the countries that criminalize people living with HIV by prosecuting them for HIV non-disclosure, exposure and transmission.

- Global Network of People Living with HIV (GNP+): Global Criminalization Scan (GCS). See <http://www.gnpplus.net/criminalisation>

4. **HIV Travel Restrictions Database**: This database is housed at the International AIDS Society. It lists countries that restrict entry, stay and residence based on positive HIV status. Such travel restrictions are considered discriminatory and without any public health benefit.

- UNAIDS: Mapping of Restrictions on Entry, Stay and Residence of people Living with HIV (first published in 2009 and revised in 2010). See http://www.unaids.org/en/media/unaids/.../pub/.../jc1727_mapping_en.pdf

- UNAIDS Report: “Report of the International Task Team on HIV-Related Travel Restriction (December 2008) at http://www.unaids.org/en//media/unaids/contentassets/dataimport/pub/report/2009/jc1715_report_inter_task_team_HIV_en.pdf
- United States Department of State, Bureau of Democracy: 2009 Country Reports on Human Rights Practices.

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

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

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

Punitive Laws as part of the Legal Environment that contributes to Stigma and Discrimination

Clearly monitoring stigma and discrimination is important and clearly the world is doing better globally, regionally and nationally to document stigma and discrimination and to document the social and legal environment which restricts human rights for people living with HIV and for people who are vulnerable to HIV.

There has been a remarkable upsurge of interest to see how significant the human rights of vulnerable populations has been in the progression of the HIV pandemic and in impeding efforts to eliminate HIV. The Human Rights Platform has been established and while strengthening this platform should never be out of the ambit of the public health advocacy and action plan, we must focus more deliberately and more conscientiously towards implementing the platform.

PANCAP and UNAIDS are truly encouraged by the focus on improving the legal framework in those countries and regions where the legal framework contributes to stigma and discrimination of persons living with and vulnerable to HIV.

In particular, it is widely accepted by all stakeholders that as part of the legal environment that contributes to stigma and discrimination and, therefore, contributes to impeding the fight against HIV is the presence of punitive laws.

UNAIDS defines the legal environment as comprising three components – law, law enforcement and access to justice. A full discussion on this subject must be a required reading for all those who are interested in Justice for All. UNAIDS has published a full discussion of the law, law enforcement and access to Justice⁴⁴

UNAIDS and now the global community promote protective laws that protect people living with HIV, protect their confidentiality, and informed consent, provide for access to HIV prevention, treatment, care and support, protect women from violence and sexual abuse and gender inequality that increase vulnerability to infection and impact, and provide children (orphaned or affected by HIV) and their caregivers with social and legal protection.

But this Justice for All project is focusing on another of UNAIDS and the global community new focal area for attention: punitive laws that can act as obstacles to universal access to prevention, treatment, care and support for people vulnerable to and living with HIV. These laws include:

- Overly broad laws that criminalize HIV non-disclosure, exposure and transmission
- Laws that criminalize sex work, homosexuality, and drug use
- Laws that restrict entry, stay and residence in a country

⁴⁴ “Thematic Segment: HIV and Enabling Legal Environment, UNAIDS/PCB (29)/11.27” (December 2011). Please see this report at <http://unaidspcbngo.org/?p=16090&article2pdf=1>

- Laws that restrict the use of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

Even though 71% of all countries claim they have enacted laws to protect people living with HIV against stigma and discrimination, the evidence is that these laws are poorly enforced. Laws are only as good as its enforcement.

CHAPTER 6

The Roadmap

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

The *Justice for All Project* includes a Roadmap to create a facilitating environment to reduce and eliminate HIV-related stigma and discrimination in CARICOM countries. The Roadmap will include actions and programs to be implemented nationally and regionally. The Roadmap will be consistent with the seven priority actions identified by UNAIDS as necessary actions in attaining the Zero Goal for Stigma and discrimination. It is expected that once agreed on, NSPs of each country will be revised to take into consideration the PAN CARIBBEAN DECLARATION and the Justice for All Roadmap.

The Roadmap will include actions under three categories. The three categories of activities are not meant to be implemented sequentially, but are intended to be implemented concurrently:

- Create a Facilitating environment
- Foster a protective environment
- Removal of punitive laws and practices

This working paper is developed through a desk review of a number of documents previously identified and restated here for ease of reference.

- *HIV and Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean edited by Sir George Alleyne and Professor Rose Marie Belle Antoine (2013)*
- *PANCAP Perspective on Human Rights (2012)*
- *The Global Commission on HIV and Law Final Report (2012)*
- *UNAIDS Seven Priority Actions to Reduce and Eliminate Stigma and Discrimination*
- *Other Relevant Documents*

The actions identified as a likely inventory of activities have been referred to and discussed in the various documents and these actions have been recommended at various meetings and fora. The list is not intended to be exhaustive nor is it intended to be final. It is merely presented as a draft roadmap for discussion and finalization. The draft PAN CARIBBEAN DECLARATION will be drafted during the various consultation and will be part of the final report after all the consultations.

Creating a facilitating environment: The cross cutting activities are intended to create a facilitating environment and are mainly focused on behavior change, communication and awareness, mobilization of partners etc. Some of these activities are intended to strengthen activities that are on-going. These activities set the stage for the other two categories of actions that would be implemented.

There are several activities that must be implemented as part of an overarching strategy in the Roadmap to reduce and eliminate HIV-related stigma and discrimination in the Caribbean. These include:

- **Establish a human rights committee in PANCAP:** The committee will work to coordinate the human rights approach in HIV responses in the region. The committee will consist of the PANCAP coordinating unit, PLWHA, the legal community, universities in the region, and the IACHR.
- **Develop a PAN CARIBBEAN DECLARATION:** The project will develop a PAN CARIBBEAN DECLARATION committing countries to reduce stigma and discrimination related to HIV by taking various actions, including removal of discriminatory laws. The declaration will cover the six areas identified in the PNACAP Justice for All Concept Note.
- **A bold regional advocacy and communication campaign to support inclusion efforts:** The example of the Caribbean Broadcast Media Partnership on HIV (CBMP) LIVE-UP Campaign is a well-recognized best practice. PANCAP must lead a mobilization of partners, such as UNAIDS, UNDP, UNICEF, UNFPA, GF and PEPFAR to support a regional communication campaign to support inclusion efforts, highlighting the links between HIV and human rights
- **The adaptation of the PANCAP Model HIV Anti-Discrimination Legislation:** PANCAP and the individual National AIDS Programs must mobilize partners to advocate for the implementation of this model legislation in each country.
- **Human Rights driven National Plans for the Prevention and Control of HIV:** A review should be done for all National Plans to ensure they are driven by a Human Rights Approach
- **Mobilize networks of people living with HIV and other vulnerable populations, such as LGBTI for advocacy:** These networks must be empowered to promote legal literacy among their members and in the relevant populations.
- **Dissemination of international human rights norms, standards and mechanisms that relate to people living with HIV, LGBTI and vulnerable populations:** PANCAP, NAPS and Networks of Vulnerable populations must work together with partners such as UNAIDS and the UN family to disseminate documents such as the “International Guidelines for Human Rights and HIV”.
- **Disseminate compendium of court judgments relating to HIV, Human Rights and the Law:** PANCAP, NAPS, Ministries of Health and other partners should prepare regular reports and disseminate these reports on court judgments and on-going cases in court that relate to discrimination and unfair treatment.
- **Regional conference for the legal fraternity on HIV, Ethics, Human Rights and the Law:** This conference should be organized for MPs and members of the legal fraternity and should include speakers such as Judge Kirby, professor Rose Marie Belle Antoine, Justice Saunders.
- **Curricula inclusion for HIV, Human Rights, Ethics and the Law:** Advocacy for various curricula including law schools, medical and dental schools, nursing, medical technology and pharmacy schools, disciplined services training schools.
- **Promotion of a Regional Anti-Discrimination Charter for HIV and Employment:** Mobilize a partnership between Business Coalitions and Trade Unions to advocate for a Regional Charter for Anti-Discrimination and HIV and Employment.

- **Champions of Change speaking out against HIV-related Stigma and Discrimination:** Mobilize prominent persons, such as leading politicians, sports personalities, church leaders, musicians etc. to speak out against HIV-related stigma and discrimination

Fostering a Protective Environment: This group of actions contemplates the enactment of legislations, development of policies and other actions that foster a protective environment which protect people living with HIV from discrimination, protect their confidentiality and informed consent, provide for access to prevention and treatment and care, protect women from violence and gender inequality that increase vulnerability to infection and impact, and provide children (orphaned or affected by HIV) as well as their caregivers with social and legal protection. Actions to foster a protective environment were extensively recommended and discussed in the publication *“HIV and Human Rights: Legal and Policy Perspective on HIV and Human Rights in the Caribbean, edited by Sir George Alleyne and Professor Rose Marie Antonie (2013)*. These actions are included also in the UNAIDS list of actions under its Seven Key Programs and Recommendations for Reducing and Elimination Stigma and Discrimination Related to HIV, specifically Priority Programs # 1 and 3-7. The Justice for All Roadmap for Fostering a Protective Environment to end HIV-Linked Stigma and Discrimination includes:

- Inclusion of anti-discriminatory clauses and provisions in national legal environment (constitutions, laws) consistent with global agreements and particularly those involving employment and access to social services and education
- Improving legal literacy and capacity of people living with and vulnerable to HIV regarding their human rights
- Empowering persons living with and those vulnerable to HIV to access legal services to seek remedies when they experience or perceive stigma and discrimination through mechanisms such as legal aid programs and access to Human Rights Commissions where they exist nationally and or seeking redress at bodies such as the Inter-American Human Rights Commission/Court.
- Strengthening the Stigma Index and the Human Rights Count and strengthening the Human Rights Desks in CARIFORUM countries.
- Building capacity among health care workers that diminish stigma and discrimination in health care settings
- Creating a more efficacious environment for enforcing sexual and domestic violence acts in the various countries
- Training programs in the police force and the judiciary to prevent abuse, stigma and discrimination against people living with HIV and those vulnerable to HIV such as MSMs, sex workers and drug addicts.

Removal of Punitive Laws and Practices: The second group of actions target existing laws and practices that act as obstacles in the fight against HIV. These actions were extensively discussed in the publications named above. In addition, these were extensively identified in Priority Programs #3 and 6 of the UNAIDS Seven Priority Programs. The actions contemplated include the removal of punitive laws that contribute to the persistence of HIV-associated stigma and discrimination. In particular, this

Project seeks to develop a roadmap to remove punitive laws and practices that contributes to HIV-associated stigma and discrimination in the following areas:

- Punitive laws related to issues affecting the full realization of human rights of persons who are lesbians, gays, bisexuals, transgender and intersex (LGBTI)
- Punitive laws related to sex work
- Punitive laws related to criminalization of HIV transmission
- Punitive laws related to freedom of movement (migration)
- Eliminating pre-screening provisions for employment and for entry into the police and disciplined services

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

Cross-Cutting Activities for a Facilitating Environment			
#	Priority Action	Activities	Indicator
1	Establish a HR Committee as part of PANCAP	<ul style="list-style-type: none"> • The committee will comprise PANCAP, PLWHA, Universities, Legal Community, IACHR 	An annual report on progress in the HR approach in the HIV responses in CARICOM countries
2	Develop a PAN CARIBBEAN DECLARATION	<ul style="list-style-type: none"> • The Declaration will commit countries to a human rights approach and will identify specific areas for actions, including the six elements identified in the Justice for All Concept Note 	The Declaration is adopted by Heads of Government
3	A bold regional advocacy and communication campaign to support inclusion efforts	<ul style="list-style-type: none"> • Bold messages on TV, Radio and Printed Media, in the tradition of the LIVE-UP Campaign 	The presence of an aggressive media campaign
4	Adaptation of PANCAP's Model Anti-Discrimination Legislation by countries	<ul style="list-style-type: none"> • NAPS must work to ensure that the model legislation is adapted for legislation in each country 	At least 2 countries adapting the legislation by end of 2015
5	Ensure National HIV Plans are Human Rights driven	<ul style="list-style-type: none"> • PANCAP and UNAIDS work with each country to adapt each NSP for HIV includes a Human Rights approach. Guyana is an example 	All NSPs are adapted by 2015 and are compatible with a Human Rights approach
6	Mobilize networks of people living with HIV and vulnerable populations	<ul style="list-style-type: none"> • Networks of PLWHA and LGBTI groups working together to promote legal literacy and advocating for empowering laws and removal of punitive laws 	At least one network in each country and at least three networks regionally working together to promote a human rights agenda for HIV
7	Dissemination of international human rights	<ul style="list-style-type: none"> • UNAIDS to work with NAPS and national and regional networks to 	Documents are available on websites in each

	norms, standards, and mechanisms that relate to people living with HIV and vulnerable populations such as LGBTI	disseminate relevant documents, including the “International Guidelines for Human Rights and HIV	country and publications are available for hard copy distribution in each country
8	Disseminate compendium of court judgments and cases relating to HIV, Ethics, Human Rights and the Law	<ul style="list-style-type: none"> • Prepare simple version of compendium for easy reading • Make accessible decisions and court rulings in selected cases 	Ensure latest compendium are on websites and simple versions are accessible in print for use by PLWHA and other vulnerable populations
9	Regional conference for the legal fraternity on HIV, Ethics, Human Rights and the Law	<ul style="list-style-type: none"> • Promote greater awareness among parliamentarians and the legal fraternity on HIV, Ethics, Human Rights and the Law 	A joint conference with parliamentarians and the legal fraternity to consider HIV, Ethics, Human Rights and the Law
10	Include HIV, Ethics, Human Rights and the Law in Curricula for medical school, other health curricula, law school and in disciplined services training programs	<ul style="list-style-type: none"> • Develop a model standardized curricula for NAPS to promote in various training institutions, including medical, nursing, medical technology, pharmacy schools, and disciplined services training programs and in law schools 	At least ten institutions in the Region have incorporated the model curricula in within their educational and training programs
11	Develop a Regional Anti-Discrimination Charter for HIV and Employment	<ul style="list-style-type: none"> • With the help of the ILO, Business Coalitions and Trade Unions, develop a model Anti-discrimination charter, for example like the one in Barbados, 	At least half of the CARICOM countries having Anti-Discrimination Charters for Employers and Employees
11	Champion for Change speaking out against stigma and discrimination in HIV	<ul style="list-style-type: none"> • Mobilize leading politicians, church leaders, sports personalities, and popular artistes to speak out against stigma and discrimination in HIV 	At least twenty personalities are regularly speaking out prominently against HIV stigma and discrimination by 2015

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

#	Priority Action	Activities	Indicators
1	Remove stigmatizing practices in the HIV response	<ul style="list-style-type: none"> • Advocate for the removal of compulsory screening and testing of military and police applicants and staff and prisoners • End compulsory notification of HIV cases • End compulsory screening of pregnant women and substitute with a voluntary program within the context of PMTCT 	At least half countries of CARICOM have measureable indication that all or some of these stigmatizing practices have been changed

		<ul style="list-style-type: none"> • End screening of persons applying for visas and citizenship • End mandatory testing of persons applying for work permits • End re-employment testing • Advocate against the introduction of criminal laws to punish willful transmission of HIV 	
1	Inclusion of anti-discriminatory clauses and provisions in national legal environment (constitutions, laws) consistent with global agreements and particularly those involving employment and access to social services and education	<ul style="list-style-type: none"> • Mobilize national and regional groups for Advocacy and lobbying for law reform in CARICOM countries • Advocacy at national and regional levels for national implementation of the Model HIV Anti-Discrimination Legislation in CARICOM countries • PANCAP to coordinate the engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labor, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade • PANCAP, working with ILO, UNDP, UNAIDS and National and Regional groups, to coordinate mobilization of Parliamentarians to outline a legislative policy and agenda, outlawing discriminatory practices and creating a legal framework that is empowering through obligations and entitlements which are necessary to protect any society against the harms of HIV. • Mobilize Business Coalitions and Trade Unions to advocate for anti-discrimination laws related to HIV • Mobilize Business Coalition to prepare an Anti-discrimination charter for HIV and employment 	At least half of the countries have included anti-discrimination clauses in their constitutions or in their laws and regulations
2	Improving legal literacy and capacity of people living with	<ul style="list-style-type: none"> • PANCAP, working with NAPS in each country and with other 	More people are aware of their human rights and

	and vulnerable to HIV regarding their human rights	<p>relevant groups, to prepare Legal Information and Referrals Booklet</p> <ul style="list-style-type: none"> Working with various organizations representing vulnerable populations to conduct education and awareness programs for legal literacy 	are prepared to advocate for these rights
3	Empowering persons living with and those vulnerable to HIV to access legal services to seek remedies when they experience or perceive stigma and discrimination through mechanisms such as legal aid programs and access to Human Rights Commissions where they exist nationally and or seeking redress at bodies such as the Inter-American Human Rights Commission/Court.	<ul style="list-style-type: none"> National AIDS Programs to assist in establishing a Legal Group to provide legal advice and representation for persons who might feel they were discriminated against. In some countries, work through Legal AID Organizations, where these exist Working through national alternative or community forms of dispute resolution. For example, the National Dispute Resolution Programs Engaging religious or community leaders with a view to resolving dispute and changing harmful traditional norms Where Human Rights Commission exist, take cases of discrimination to such bodies Internationalize discrimination practices by petitioning IACHR and UNCHR 	<p>At least half of the countries have mechanisms through the public sector, or through NGOs, to provide access to legal services for PLWHA and from vulnerable populations</p> <p>A measurable increase in the number of motions filed to the relevant bodies asking for HR remedies</p>
4	Strengthening the Stigma Index and the Human Rights Count and strengthening the Human Rights Desks in CARIFORUM countries.	<ul style="list-style-type: none"> Develop a strategy to establish or strengthen Human Rights Desk in CARICOM Countries Build capacity of the Human Rights Desk to implement the Stigma Index and the Human Rights Count 	<p>All CARICOM countries have a HR Desk for HIV and for LGBTI</p> <p>At least 75% of countries have functioning Stigma Index and Human Rights Count</p>
5	Building capacity among health care workers that diminish stigma and discrimination in health care settings	<ul style="list-style-type: none"> Prepare booklet of stigma and discrimination practices and behavior in health settings Conduct frequent seminars to sensitize health care providers on stigma and discrimination 	<p>Every health care provider have access to booklets in the form of hard copies or e-copies</p> <p>At least 10% of health</p>

		<p>practices in health settings</p> <ul style="list-style-type: none"> • Include HIV-Related Stigma and Discrimination and Human Rights in health care providers' curricula (medical and dental Schools, Nursing Schools, Pharmacy Schools etc.) • Develop and Implement National Health Clients (patients) Rights Charters and ensure these charters specifically provide for the rights of all citizens to health services without discrimination • Review health legislations to ensure there is no provision that limit access to health 	<p>care providers have attended a seminar on HIV, Ethics, Human Rights and the Law by end of 2015</p> <p>HIV, Ethics, Human Rights and the Law is part of the curricula in at least 10 institutions in the Region</p>
6	Creating a more efficacious environment for enforcing sexual and domestic violence acts in the various countries	<ul style="list-style-type: none"> • Develop a Caribbean Network of Female Parliamentarians to advocate and to bring to national attention the special vulnerabilities of women girls and boys. • Working with and supporting police forces to enforce laws against gender-based and domestic violence • Establish a Gender-Based and Domestic Violence Index Data Base through organizations such as National Parliaments or Gender and Women Equality Commission where they exist 	A functioning sexual and Domestic Violence Index Data Base is functioning in at least three countries
7	Training programs in the police force and the judiciary to prevent abuse, stigma and discrimination against people living with HIV and those vulnerable to HIV such as MSMs, sex workers and drug addicts.	<ul style="list-style-type: none"> • Prepare booklet of stigma and discrimination practices and behavior in the disciplinary and prison services and in the judiciary • Conduct frequent seminars for the disciplined forces and judiciary personnel on stigma and discrimination practices in health settings • Prepare a compendium of discrimination cases for magistrates and judges to bring greater awareness about these 	<p>At least five countries training programs for disciplined services include HIV, Ethics, Human Rights and the Law in their training programs</p> <p>At least 10% of all members of the disciplined services have attended a seminar on HIV, Ethics, Human Rights and the Law by end of</p>

		cases	2015
Elimination of Punitive Laws Linked to HIV-Related Stigma and Discrimination			
#	Priority Action	Activities	Possible Implementers
1	Punitive laws related to issues affecting the full realization of human rights of persons who are lesbians, gays, bisexuals, transgender and intersex (LGBTI)	<ul style="list-style-type: none"> • Advocacy and lobbying for law reform • Engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labor, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade • Parliaments to outline a legislative policy and agenda, outlawing discriminatory practices and creating a legal framework that is empowering through obligations and entitlements which are necessary to protect any society against the harms of HIV. • Review of Laws and Law Enforcement Practices to see whether they impact the response to HIV positively or negatively • Examination of Anti-discriminatory Laws related to HIV from outside the Caribbean and using the non-Caribbean experience to improve the HIV-Non-Discrimination Provisions in Employment Legislations of Caribbean countries • Parliaments to act to repeal offending laws • In the face of Parliaments failure to act, the courts, particularly the Caribbean Court of Justice, should be asked to provide a remedy for the conundrum. This can be done through a legal challenge. • Encourage groups that might file constitutional motions in national courts and the CCJ to 	The UNAIDS Strategy proposes the removal of punitive laws that affect sex workers, people who use drugs and men who have sex with men in half of the countries that have them by 2015.

		approach the IACHR and the UNCHR	
2	Punitive laws related to sex work	<ul style="list-style-type: none"> • Advocacy and lobbying for law reform as they relate to sex workers • Engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labor, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade to reach out to sex workers to promote safe sex 	At least three countries have removed punitive laws for sex workers
3	Punitive laws related to criminalization of HIV transmission	<ul style="list-style-type: none"> • Advocacy and lobbying for law reform • Engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labor, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade 	Reduce by 50% the number of CARICOM countries with laws criminalizing HIV
4	Punitive laws related to freedom of movement (migration)	<ul style="list-style-type: none"> • Advocacy and lobbying for law reform • Engagement of Parliamentarians and Ministers of Justice, Home Affairs, Corrections, Finance, Industry, Labor, Women’s Affairs, Children and Youth, Education and Housing, Immigration, Health and Trade 	UNAIDS proposes that there is a reduction by half of the countries that have laws that restrict entry, stay and residence by 2015 and zero tolerance for gender-based violence, including sexual violence.
5	Eliminating pre-screening provisions for employment and for entry into the police and disciplined services	<ul style="list-style-type: none"> • Working with national authorities to remove pre-screening requirements for employment and for entry into the disciplined forces 	Reduce by 50% the number of countries where these requirements exist

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

APPENDICES

1. (a) PANCAP Concept Note for Justice for All
(b) Terms of Reference for Justice for All Consultations
2. UNAIDS – 2013 Global Report – September 2013
3. UNAIDS Getting to Zero
4. Guidance Notes (2012): UNAIDS Key Programs to Reduce Stigma and Discrimination and Increase Access to Justice in national HIV Responses
5. Honorable Dr. Denzil Douglas, Prime Minister of St. Kitts and Nevis – Statement in the Parliament of Catalonia, April 29, 2013
6. Motion adopted by the Parliament of Guyana (2011), September 8, 2011
7. Motion # 50 establishing a Special Select Committee on Guyana’s Commitment with Regard to the Decriminalization of Consensual Adult same-Sex Relations and Discrimination Against LGBT Persons (2012)
8. Nassau Declaration, CARICOM (2001)
9. Guidance Notes Publication of UNAIDS: Ending overtly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations (2013)
10. Caribbean Partnership Commitment establishing PANCAP (2001)
11. USAID Health Policy Project in Dominica and Grenada (2012)
12. Declaration of Commitment on HIV AND AIDS, UN General Assembly (2001)
13. Political Declaration on HIV AND AIDS, UN General Assembly (2006)
14. Political Declaration on HIV AND AIDS: Intensifying our efforts to eliminate HIV AND AIDS (UN Resolution 65/277) (2011)