

Name	Organisation / Individual
1 Trinidad and Tobago	Red Initiatives

I have been working in HIV and AIDS prevention and advocacy with MARP for 8 years in Trinidad and Tobago. I have seen that laws that criminalise sex work and irregular migrants prevent access to HIV prevention, treatment, testing, health and social services. Restrictive laws also prevents organizations from receiving support from government funding as well as corporate donors as clients are seen as criminal and unworthy. In our society HIV is polarized where you are an innocent victim or someone who has gotten what they deserved due to immoral and risky behaviour.

Laws need to be reformed to allow access to services and programmes to all. The Law should look at the need for access to healthcare and should look at the issue of health, a human right for ALL.

The World AIDS Day Campaign launched its theme for 2010- Universal Access and Human Rights for All, inclusive of a person's age, gender, sex, race, ethnicity, educational level, sexual orientation and occupation. This should be catalysts for reforming legislation and creating policy for access of all people inclusive of MARP- Most At Risk populations and marginalized communities to have been able to make decisions, contribute and be instruments towards a world without HIV and AIDS.

However if laws were changed tomorrow the question would be-can you legislate behaviour change?

We need laws but we need action to reduce stigma and discrimination of marginalized people – sex workers, gay men, MSM, migrants, homeless and People who are living with HIV.

We need policy but we need most of all the will and the support of our politicians, pastors, priest and leaders.

We need campaigns that promote gender based behavior change, tolerance, self esteem and access and reduce stigma, peer pressure, domestic violence and substance use and abuse. These are the components that lead to the vulnerability to HIV and STI transmission.

We need to keep focused that it is about prevention and human rights towards the ACCESS to services- testing, treatment, Healthcare and psycho social support.

- Laws that enforce better policing and transparency of the legal system and offer redress.
- Laws that monitor and evaluate HIV and other Social programme to promote inclusion and effective results
- Laws which protect men, women and children from abuse.

In my country HIV and Human Rights for All are not a priority; it must be made a necessity.

2 Canada

University of Ontario Int. Technology

Driving Home Human Rights: Eradicating HIV/AIDS Stigmas & Discrimination

Abstract: In this brief, I contemplate current human rights & legal challenges for guaranteeing persons living with & without HIV/AIDS the right to testing, antiretroviral therapy care treatment and education as basic rights, which are a component of human rights. In civil societies, every individual is seen as equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination - in particular, without discrimination based on sexual orientation, race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. These entitlements are related to freedom, equality and dignity of all people, and they cannot or should not be ignored. I take the position that all civil societies should have a vested interest in public health as a human right accorded to all. For people to attain the highest standard of health including access to HIV/AIDS antiretroviral therapy, while reducing the spread of new cases, people must first be assisted with the tools necessary to become empowered to exercise healthy life choices.

HIV/AIDS, Intimacy & Gender

According to UNAIDS 2007, there are roughly 250,000 Caribbean people living with HIV. 15,000 are under the age of 14, twice as many young women as men ages 15-24 have the virus. In 2006, 27, 000 people became infected. AIDS is the biggest killer of Caribbean people ages 15- 44. Globally more than fifty percent of all HIV/AIDS persons are women and young girls. Patriarchal power and control over women's bodies, male risky sexual behaviour and women relative powerlessness in their sexual and daily lives compared to men, places women at greater risk. There is also the myth in the minds of both men and women that, skin to skin is in, or going bareback is the real deal. This prevailing myth makes what is perceived as romantic love and intimacy in some couples to not negotiate the use of condoms – because skin to skin is in and if you love me you do not have to worry. Further, domestic violence against men & women including abusive relationships, female sex workers, young women, women forced into incestuous (incest) relationships, women living in poverty and or women living in remote social isolation, may all have particular difficulties in insisting on condom use. This can affect both sexes because of the perceived sexual immorality, shame, stigma, discrimination and guilt. The relegation of some women to positions of social, political and economic subordination that are mediated by misogyny, religion, race, class, and culture subordination “inhibits or deters” their capacity to protect themselves, and others from HIV exposure. The role of gendered imbalances of power in heterosexual and (MSM) sexual relationships makes the argument clearly that gender role, along with failing to disclose your status in the Caribbean and elsewhere is a major contributor to the spread of HIV/AIDS.

Disclosure of a woman's HIV positive status to her male partner can also increase her susceptibility to sexual and physical violence. Disclosing her HIV status can give her abuser further control, and the draconian right to violate her body in that relationship. Male or female abusers can use this as a tool to threaten their partners by telling others in the community about their partner's status inappropriately, and most women & men will stay in these abusive relationships, because of decreased self-worth, shame, trauma and the belief that no one else will want to be with them. This threat is sometimes grounded in the assumption that the abusive partner will have more power and control over the weaker one. Further there is the assumption that the partner with HIV/AIDS will change their behaviour, which makes staying in the relationship addictive. Women also bear the risk that the virus will be passed on their children through childbirth or breast-feeding, if they do not have knowledge & access to antiretroviral therapy, treatment and care.

The pervasive sex and gender inequality that exists in heterosexual relationships and society at large weakens women's positions to negotiate safe condom use. Given the severity of the pandemic and its effect on women, governments and public education has to devise multiple methods of intervention and education, on the deepening and mainstreaming of the gender analysis in the education and policy information given to health care officials and the general public on HIV, women, hyper-masculinities, rights and freedoms. By giving support education and human rights training on marginalized populations, gender and sexuality, it allows for more effective interventions to address the gender imbalances and violence against women.

HIV/AIDS, Homophobia & Prejudice

Although AIDS has generated a plurality of discourses and responses, in the "mainstream" it is still too often reduced to a simple morality play in which "innocents" and "victims" are continuously threatened by moral reprobates and evil pleasure seekers [Thomas Shevory, 2004]. In the Caribbean this moral panic is all too evident with the religious right and conservatives calling for criminalization, burning, drowning and isolation of person living with HIV/AIDS, while denying them basic human rights.

Homosexuality is still illegal in most of the Caribbean, with the exception of the Bahamas. Caribbean Islands under their Buggery, Sexual Offences & Morality Acts makes sex between two people of the same sex if caught punishable by imprisonment. The accompanying fear and silence of daily homophobic attacks and the fear of been criminalized or beaten by the police if caught makes it hard on stigmatized populations. These activities include, but not limited to are torture, drowning, stoning, or burning by been placed in car tires (cases from of Jamaica – UNAIDS, Robert Carr), employment and other forms of discrimination. Homosexual persecution combined with a positive HIV status is a frightening reality for many in the Caribbean. These fearful feelings and hegemonic acts of hyper-masculine & hyper-feminine violence from society, coupled with state criminalization, forces people to be secretive about their status, sexual orientation and by extension contribute to the spread of the virus due to a lack of protection, fear and stigma. Likewise, it fuelled their ways of acquiring sex that could be seen and read as criminal, by not being tested or avoiding knowing one's status. The Buggery laws makes it harder for (MSM) and prisoners to seek out their status and in some cases when their status is known to seek out treatment options available to them. Male sex workers, gay men, and drug injector users, by virtue of their disfranchised or marginalized status, are thought to have lost themselves and their right to equal human rights and protection from the law. HIV stigma and societal homophobic persecution happens, people are so traumatized by these fears, and these attacks that they sometimes contemplate or even commit suicide, (UNAIDS) some become withdrawn from LGBTQ social activities, women's support groups, and continue a life in seclusion, some become introverted and some tend to seek asylum abroad. Asylum seekers also run the risk of not going back to their country of origin due to them exposing the Caribbean poor human rights track record on protecting persons living with HIV/AIDS or due to their sexual orientation.

Although there are no known cases of incarcerating, a person due their sexual orientation or living with HIV/AIDS, risky behaviours, including unprotected-sex happens in prisons between inmates. Inmates also have human rights, and the right to HIV/AIDS education. This can start with condom distribution in the prison population, not as promoting homosexuality, but with an acknowledgment that unprotected sex, gang violence, tattooing, gang rape and other high risk behaviours happen, increasing inmates chances of contracting and spreading the virus.

Politicians, policy makers, the religious right and conservatives, cannot ignore the vulnerability and lack of human rights on the prison population, given the high possibility for HIV transmission, high-risk sexual behaviour, drug use and tattooing in our penitentiaries. We may be simply shifting the problem from one

community to a more vulnerable and less visible population and where individuals have fewer resources and denial of some human rights for protection from HIV infection, human rights abuses, gang rape and trauma. It is dangerous to ignore the list of activities, risky sexual behaviours and prison activities that can serve as a conduit for further venomous transmission upon release.

HIV/AIDS Youth Social Media & Sex

It is difficult for us to accept as parents and as a country, children including our own are sexually active and exposed to sexual advances, and sexual imagery on a daily basis. This is further complicated by the media normalizing of sex crimes, the entertainment industry's selling of sex, social media networking sites exposure to sexually explicit images, the normalizing and encouraging of teen sexual promiscuity, teen sex peer pressure, sexual bare-backing networking sites encouraging unprotected sex, easy access to internet pornography, teen cellular telephone texting sexual images of self, date rape, incestuous rape and sun sex tourism. All of these social teen sexual pressures placed on our youth and teens make sex & HIV/AIDS education more pressing and difficult. If we do not act now, we would be confronted with the possibilities of a missing generation. We have had some success, but a better incorporation of structured sex education programmes for pre-teens, teens and young adults which result in well-informed choices speaking to and reaching not just the privileged but also the young people most at risk along with human rights education and access to treatment.

Driving Home Human Rights: Eradicating Stigmas & Discrimination

HIV/AIDS is going to negatively impact on the ability of leaders to achieve their national and regional goals and it is going to cost them financially. Fewer people will be able to work in their productive years, while millions of dollars will be going to health care, and hospice services. Persons living with HIV/AIDS, LGBTQ persons, sex workers, and disfranchised populations are too often treated like disposable objects, rather than as human beings. Having fair and equal access to health care services without fear and discrimination is important, to avoid the creation of an underground spread of the virus. Persons living with HIV/AIDS, when deterred from having rights and access to care and treatment, are driven underground, creating conditions for higher HIV/AIDS cases. If people do not know their HIV status this can have a negative impact on the future of any country's economy and workforce.

Given that antiretroviral therapy and hope exists for persons living with HIV/AIDS, to improve the quality of their lives, Public health, governments and members in society must act on the creation of a rights base jurisprudence, to make access free from discrimination and prejudice, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The need to know one's status is important for seeking treatment, to modify one's behaviour, their behaviour with others, to prevent mother-to-child transmission and for accessing fertility services. We have had some success, but a better incorporation of structured sex education programmes which result in well-informed choices speaking to and reaching not just the privileged but also the people most at risk is equally important along with human rights education and access to treatment.

Eliminating Buggery laws and ending the unbearable violence & silence on LGBTQ persons, will reduce homophobic violence, and demonstrate a commitment to equality before and under the law, where everyone has the right to the equal protection and equal benefit of the law without discrimination, in particular, without discrimination based on sexual orientation, race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. HIV/AIDS interventions are hampered by silence, violence and vituperative homophobia. It is time for governments to work towards the enforcement of freedom, equality and dignity of all people. Law & civility works best when those who are subject to it are cooperative, respected and embraced as citizens with full

rights in a civil society.

Let's Keep Lifting As We Climb

Citations

Thomas C. Shevory. Notorious H.I.V.: The Media Spectacle of Nushawn Williams (Minnesota: University of Minnesota Press). 2004

3 Guyana

Individual

Public-Human Rights and the Law

I am X, a Magistrate from the Commonwealth of Dominica. I have been operating in the Courts dealing with Family matters over 5 years. I got involved in HIV Advocacy from 2001 when I became a member of the HIV Advisory Committee. I have worked closely with the National HIV Response Unit, Support Groups of PLHIV and MSM, youth and various groups in the area of HIV Advocacy mainly on law and Human Rights. I also received a CCNAPC Community Based Leadership Award in November 2010 for my work in HIV Education.

My conviction that reduction in Stigma and Discrimination is the best complement to other interventions to reduce the incidence of HIV has been my motivation to continue this Advocacy work in the area of Law, Human Rights and Ethics. On account of my conviction I have used my talent as a writer and my Knowledge of Law to write a skit for a Behavioural Communication Change Project, Jingle for TV on HIV testing, and a Play highlighting issues of HIV. This Play, 'It Only Takes One', has been adapted to a movie which was launched locally in July 2010. My involvement with youth and Drama has given me a ready team of young person's to do the play, movie and the jingle. They have also been involved in presenting other creative works educating youth on HIV issues.

At the regional level, I conducted focus group discussions for Situational Analysis of Stigma and Discrimination of people infected and affected by HIV in four countries, namely Guyana, Jamaica, St Lucia, and St Vincent and the Grenadines. This study was commissioned by CRN+. This experience gave me a first-hand evidence/information on the types of human rights abuses suffered by the participants and other persons in their country. I had to document these reports and I also became aware of the effect on their lives and the shortcomings of the legal system. I witnessed the threat to the life of one of the participants in one of the territories when a reputed partner came to the focus group location looking for a participant. The participant had threats to her life prior to this meeting by this gentleman and was in fact in hiding a few weeks before this meeting. The organizers of the Forum had to hide the participant for her safety and to engage a strategy to have the potential attacker leave the compound.

At these focus group discussions I heard of persons, professionals, communities and institutions who were the agents of alleged discrimination. I felt the pain of the tag of stigma and discrimination and on some occasions my assistance was sought to find a way out. A particular confession was made to me where one was approached to be a hit man on an infected female due to allegations that she had infected another. Many deficiencies in the Legal and also treatment systems were highlighted.

On account of my involvement in Law reform initiatives, my legal background and my work as the consultant for our local assessment of Law, Ethics and Human Rights re HIV and attendance at various related workshops, I have been used to facilitate several sessions on Law and Human rights re HIV. I have been part of the PANCAP process re Harmonization of Anti-Discrimination laws for the CARICOM region.

My experience in organizing HIV101 for Legal practitioners in Dominica has shown me the need to continue to educate Legal practitioners throughout the region if any anti-discrimination laws are to be implemented with results. Efforts should be made to target practicing attorneys in the region at the level of the Global Commission- since it may seem more worthwhile to attend. Any such forum should be done in the afternoon and or evening to reduce the excuse of Court attendance for non attendance. Prosecutors could also benefit from such a forum.

My various experiences have cemented my conviction that we cannot stop the efforts to reduce stigma and discrimination through all means possible and using all persons on the planet. Good Law will only work with best practice systems.

There is need for legal support along with legal education on the issues at all levels. Appropriate policies should also be in place. Technical support may have to be given to some countries to increase the pace of the legislative changes necessary.

4 St. Lucia

ABWU, ABPSA, TUCA

This submission focuses on HIV-related discrimination in the Caribbean island state of Antigua and Barbuda, specifically on the crucial issue of stigma and discrimination in employment on the basis of real or perceived HIV status. It is made jointly by the Antigua & Barbuda Workers' Union (ABWU), the Antigua & Barbuda Public Service Association (ABPSA) and Trade Union Confederation of Americas (TUCA).

The International Trade Union Confederation (ITUC) is a civil society organization representing the interests of working people globally. It has 301 affiliated member organizations in 151 countries and territories, representing 176 million workers. In the Americas, inclusive of the Caribbean region, TUCA, the regional organization of ITUC, affiliates 59 national trade unions from 27 countries, representing 50 million workers. TUCA has been active in providing support to its members to prevent HIV-related stigma and discrimination in workplaces worldwide and in the region. The Antigua & Barbuda Workers' Union (ABWU) is a national level trade union organization in the country with a membership of 3000 workers. The Antigua & Barbuda Public Service Association (ABPSA), represents 1000 workers.

According to the UNGASS 2010 Country Progress Report for Antigua and Barbuda¹, the economically active population—those between 15 and 49 years of age—are those most affected by the HIV epidemic. The Report notes that the main challenges to achieving the UNGASS targets include: the lack of anti-discriminatory legislation for the protection of persons living with HIV, particularly with respect to housing and employment. The Report recommends that the Labour Code be revised to include policies on HIV and AIDS. The need to remove criminal legislation making prostitution and homosexual relations illegal (“buggery”) is also noted.

ITUC TUCA, Antigua & Barbuda Workers' Union (ABWU) and the Antigua & Barbuda Public Service Association (ABPSA) submit that it is essential to optimize the contribution of the world of work and fully involve world of work actors in the national HIV response to fulfill the Millennium Development Goals (MDG) and achieve universal access to prevention, treatment and care. As noted above, the HIV epidemic affects mostly

1. The text of the report can be found at the following link:

<http://www.unaids.org/fr/dataanalysis/monitoringcountryprogress/2010progressreportsubmittedbycountries/file,33611,fr..pdf>

women and men of productive age. The workplace—formal and informal—is therefore the best place to reach this segment of the population and facilitate their access to prevention, treatment, care and support services. The unique and important role of the workplace was first recognized in the 2001 United Nations Declaration of Commitment on HIV/AIDS² and most recently in the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).³ Moreover, it should not be forgotten that workplace discrimination is one of the most common forms of discrimination faced by persons living with or affected by HIV. Loss of dignity due to stigma and loss of jobs due to discrimination are devastating psychologically and emotionally. The damage caused is compounded by the concrete reality that job loss also affects the HIV-positive worker's ability to feed and provide for him or herself, family and dependents.

HIV-related stigma and discrimination in employment is a widespread problem in the Caribbean, as in many other regions of the world. Workplace discrimination on the basis of HIV-status made national headlines in Antigua and Barbuda in 2010 when a male worker employed as a driver for a company was sacked for being HIV-positive. The National AIDS Secretariat intervened in the case and it came to the attention of the national media, who published an article on 1 December 2010 (World AIDS Day). (See <http://www.antiguaobserver.com/?p=49275>).

HIV-related discrimination is fuelled by fear and lack of awareness regarding the modes of HIV transmission. In turn, however, fear of stigma, discrimination and job loss are strong deterrents that keep workers from seeking voluntary HIV testing and treatment, impeding HIV prevention efforts. Even where workers assert their right to be free from HIV-related stigma and discrimination in the workplace, the media attention drawn to their cases—as in this case—have far-reaching negative effects. In this case, although the intervention of the National AIDS Secretariat brought about positive results, the publicity was sufficiently disturbing to the fired worker that he declined the offer of reinstatement ultimately made.

ITUC TUCA, Antigua & Barbuda Workers' Union (ABWU) and the Antigua & Barbuda Public Service Association (ABPSA) advocate the development, adoption and implementation of anti-discrimination legislation protecting the rights of HIV-positive persons in both housing and employment. It is hoped that the Antigua and Barbuda Labour Code⁴ would be revised to provide effective protections. In addition, it is hoped that national criminal legislation could be amended to remove criminal law provisions categorizing prostitution and homosexual relations as criminal offences.⁵

ITUC TUCA, Antigua & Barbuda Workers' Union (ABWU) and the Antigua & Barbuda Public Service Association (ABPSA) also strongly advocate for the adoption, implementation and monitoring of a national workplace policy and programme on HIV and AIDS that will involve both employers' and workers' organizations as well as other relevant stakeholders, including organizations that represent persons living with HIV. A national workplace policy and programme can serve as a good practice model at the sectoral and enterprise levels, incorporating human rights principles established in the ILO's new labour standard, the HIV and AIDS Recommendation, 2010 (No. 200) and the ILO Code of Practice on HIV/AIDS and the world of work (2001). The policy and programme can in this manner raise awareness of and prevent workplace stigma and discrimination based on real or perceived HIV status, ensuring equality in hiring and terms and conditions of employment and protections against unjust dismissal. It should also facilitate access through the workplace for workers, their families and dependents to prevention, treatment, care and support services.

Antigua and Barbuda has recently agreed to revise its 2001 National HIV and AIDS Workplace Policy. It is hoped

2. See <http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html>

3. [HTTP://WWW.ILO.ORG/WCMSP5/GROUPS/PUBLIC/---ED_PROTECT/---PROTRAV/---ILO_AIDS/DOCUMENTS/NORMATIVEINSTRUMENT/WCMS_142706.PDF](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/normativeinstrument/wcms_142706.pdf)

4. Antigua and Barbuda Labour Code of 1975, as amended.

5. See the Sexual Offences Act (No. 9) of 1995.

that this revised Policy will incorporate the key rights established in Recommendation No. 200 and the ILO Code of practice. The Policy is expected to be developed in 2011.

In our role as trade unions representing millions of workers in the Caribbean region, we wish to highlight the importance of adopting and implementing principles of non-discrimination established in the ILO's new international labour standard: the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200). It covers all workers in any employment, occupation or economic sector (public and private and the formal and informal economies) and specifically covers including job-applicants and job-seekers, trainees, apprentices, volunteers, the armed forces and uniformed services.⁶ The Recommendation provides that real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment or the pursuit of equal opportunities consistent with the provisions of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The principle of non discrimination covers not only discrimination in hiring, terms and conditions of employment and termination, but also for protections against mandatory HIV testing and screening for employment purposes and forced disclosure of HIV status in the employment context. It also establishes that persons living with HIV or HIV-related illness should be able to continue to work as long as they are medically fit to do so, with reasonable accommodation if necessary.⁷

The Recommendation calls for the establishment of a legal framework that supports the HIV response by preventing HIV-related stigma and discrimination, providing that "when existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV and AIDS, [member States] should adapt these measures or put new ones in place, and provide for their effective and transparent implementation". (Recommendation, at paragraph 12)

The Antigua and Barbuda Workers' Union and the Antigua and Barbuda Public Service Association have already begun the work to promote a rights-based approach to HIV in the workplace by adopting a trade union policy on occupational safety and health which includes HIV component. The content of the policy is firmly based on the new ILO Recommendation No. 2010 and the Code of Practice on HIV/AIDS in the World of Work, 2001.

We wish to highlight the need to promote a rights-based approach to HIV in the workplace and ensure effective implementation of national legislation and relevant ILO standards to prevent HIV-related workplace discrimination and reduce the socio-economic impact of the epidemic, particularly given that economic and social inequalities, including gender inequality, and social marginalization increase vulnerability to HIV. It is our firm conviction that if the workplace dimension is not taken into account in analysing laws and practices that impede universal access to prevention, treatment care and support, a crucial component of the HIV response will be omitted. We hope that UNAIDS, UNDP, ILO, the social partners and civil society will work together to ensure the development, adoption and implementation of laws and policies that protect the rights of workers living with or affected by HIV.

We sincerely hope that our submission may be integrated into the final regional report and confirm our willingness to take part in the Regional Dialogue through participation of our local representatives. We look forward to working with you towards a positive and fruitful outcome for this Regional Dialogue.

5 St. Lucia

CDARI

6. The discussions during adoption of the Recommendation also made clear that the broad scope of application provided for in paragraph 2 is intended to cover groups not explicitly listed, including such key vulnerable groups as sex workers, mobile, migrant and seasonal workers.

7. Recommendation No. 200 at paragraphs 9 through 13, and paragraph 20.

I am the director of the Caribbean Drug and Alcohol Research Institute; I have been principal investigator on behavioural and sero-prevalence studies with MSM and drug users in the Caribbean. I am the technical advisor to CARICOM for drug use and HIV issues and also the advisor to the regional prison directors association on HIV and drug use. This is how I feel the major issue hampering evidenced based HIV programming in the Caribbean is the refusal of politicians, government administrators and project managers to acknowledge that the HIV epidemic is centred in the key populations of drug users, men who have sex with men and male and female sex workers. Research exist that show how these key populations are impacted by HIV and how they impact the HIV epidemic but because of stigma and of the laws criminalizing these behaviours they are not given the attention that should have.

There exists on the books laws that criminalise people vulnerable to HIV – No country has legal sex work or drug use. In 10 of the countries of the English speaking countries anal intercourse is illegal and in all countries homophobic attitudes block support for acknowledging the need to address the needs of this community.

These laws and practices impede HIV-related prevention, care and treatment access The main legislative challenge is the criminal code provisions regarding sex work, buggery and drug use that hinder the country’s ability to fully respond to the needs of individuals practicing these behaviours. By making it difficult for populations at relatively-high risk to access prevention education and services, these legal provisions increase risk of HIV transmission both within these groups and, through them, the wider population.

There is also a disconnect between the sexual age of consent of 16 and the age to access sexual and reproductive health services without a parent/guardian at age 18, thus this gap does not allow sexually active youths aged 16 – 17 the right to access sexual and reproductive health services.

6	St. Lucia	Individual
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Obstacles to an Anti-Discrimination Legislative Agenda for HIV in the Commonwealth Caribbean

After many years of dialogue, debate and inquiry, the Commonwealth Caribbean continues to pay lip service to a non-discrimination agenda for HIV that has legal support. Thus far, only the Bahamas has introduced legislative provisions against discrimination on the ground of HIV.¹ Yet, there has been less hesitation in enacting legislation against persons who transmit the virus deliberately, thereby making persons living with HIV potential criminals. This is not a desirable state of affairs.

The lack of a legal infrastructure for protecting against discrimination on the ground of HIV is part of a wider problem in the region, where discrimination as a whole, is slightly regarded in the eyes of the law. Few countries, for example, have general anti-discrimination legislation. In those countries where such laws exist, such as Guyana, St. Lucia and Trinidad and Tobago, the legislation is little known, not often understood and unsurprisingly, underutilized. Moreover, the various constitutions do not protect against discrimination adequately, nor broadly, and are further hampered by narrow interpretations of the provisions that exist. Consequently, the kind of transformational change in the psyche of the society that was anticipated has not occurred. Discriminatory attitudes remain ingrained in the society, often not even discussed. What is needed therefore is not only new law, but also an educational program, which will inform the public about these new legal norms and continued activism by the enlightened.

1. Saint Lucia’s Labour Code also encompasses such provisions, but the legislation, which was passed in 2006, has not yet been enacted.

Of particular concern is the attitude toward the issue of sexual orientation in the Commonwealth Caribbean. This has a direct bearing on the HIV question, since there is an acknowledged link between homosexuality and the most vulnerable populations with respect to HIV. The HIV rights lobbyists have tended to focus on gaining protection against discrimination on the grounds of HIV through an equality agenda under which homosexuality is decriminalised. However, this approach has not yielded satisfactory results due to the still stubborn resistance by Caribbean populations which define themselves as Christian and may be described as de facto homophobic. While there is evidence that there are high levels of homosexuality and bisexuality in the region,² therefore making this continued resistance surprising and somewhat hypocritical, it is unlikely that these attitudes would change quickly. A more pragmatic approach is therefore advocated, under which general anti-discrimination legislation, which emphasizes anti-discrimination on grounds of HIV as a general principle, rather than as part of the sexual orientation thrust, is pursued. Recent successes in Saint Lucia, where such legislation was passed, point to the soundness of this approach.

However, the need to continue to press for a more egalitarian and humane approach toward homosexuality must not be sidelined. Recent reports indicate that there is an increasing number of Caribbean nationals seeking political asylum in the UK and North America on the basis that they fear persecution on account of their sexual orientation. In some cases, the link between their sexual orientation and their HIV status, or perceived HIV status, has been direct. These are not trumped up asylum claims. Anecdotal evidence suggests that persons continue to be victims of violence because of their sexual orientation. The fact that at least two Caribbean governments, Trinidad and Tobago and Saint Lucia, refused to support a UN vote that would seek to prohibit violence to individuals because of their sexual orientation, suggests that there is much work to be done in this area to change attitudinal constructs and promote justice.

In this vein, the little known issue of governmental attitudes toward HIV and immigration policy is cause for concern. In several countries, HIV testing for migration or work permit purposes is not only compulsory, but can result in denial of entry. This is so even within the context of the much-lauded Caribbean Single Market and Economy (CSME) regime, which promotes the 'free movement' of skilled Caribbean nationals. In fact, such a policy is outside of the legitimate exceptions under the Revised Treaty of Chaguaramus, which informs the CSME, but which is imperfectly implemented. Such restrictive attitudes are often a result of economic concerns, with fears that the public purse will be overburdened if non-nationals have to be given medical benefits. However, they are just as likely to arise out of ignorance about HIV and discriminatory attitudes.³ These are issues which need to be directly confronted and adequately debated.

Indeed, the obstacles toward a satisfactory legislative agenda in relation to HIV in the Commonwealth Caribbean are many. The region now needs to translate the dialogue on anti-discrimination into concrete law and policy, so that policies and laws that are centered on fact as opposed to myth and informed by international human rights objectives are formulated.

2. For example, one study in Barbados put the figure at over 60%, according to then Chief Medical Officer, Carol Jacobs.

3. The writer was the consultant to the Caribbean Community (CARICOM) on the Legislative Amendments to Free Movement of Peoples Regime and unearthed many of these discriminatory laws and practices during research for the project.

How do we know that we are being addressed?

In the most common forms of modern day communication, it would be writing down or pronouncing names. Over the years we as societies have become increasingly aware of the fact that our communication efforts towards others should be effective and target reaching. This resulted in a number of codes and requirements for effective communication, which we are to apply both formally and informally. Clearness, intonation, volume, pronunciation, and especially choice of words are amongst these set of “communication rules”, just to name a few. Choice of words, among other requirements, has an enormous impact on whatever it is that we wish to state.

Even with this being common knowledge to at least the literate world, we have somehow developed a way of being implicit. Especially in cases one obtains the right to hold others accountable for things communicated, we have a tendency to become less concrete. We often hold our peace when it comes to terms, the situation/subject we are channeling our efforts on and in some cases even when it comes to the beneficiaries (right holders).

Yet the question remains: “How do we know that we are being addressed?”

Among all segments of society, National AIDS Programs have consensus about the Most At Risk Populations (MARPs). Sex workers, Youth and Men who have sex with other men (MSM) are the MARPs main composition. These groups are known to be subject to a number of risks, increasing the incident that they encounter non favorable health conditions such as an HIV infection.

We as society are to create conditions and mechanisms to not only prevent these incidents, but also unconditionally protect against violations of human rights due to perceived reasons and a perceived fate attached to the encountered condition. Antidiscrimination laws and the criminalization of stigmatization have proven to be a successful practice when dealing with the reduction and prevention of the incidents causing non favorable health conditions.

Therefore, laws that are put in place to develop a sense of respect for diversity and uniqueness, cannot afford to be non- specific. We ought to communicate clearly and have a proper choice of words when targeting complex and deep rooted phenomenons like marginalization and stigmatization. These phenomenons’s make it mandatory for us to be clear in the broadest sense of the word, because in our actions against discrimination there is no room for misinterpretations, miscommunications and misunderstanding.

“No one may be discriminated against on the grounds of birth, sex, race, language, religious origin, education, political beliefs, economic position or any other status.”¹ – is indeed a great phrase to start with! But ones fantasy cannot be perceived as capable to define “any other status”, nor can our limited personal knowledge. In broad discussion we should collectively explicate interpretations for such sentence particles.

Explicitly naming a particular segment of society in National, Regional and International antidiscrimination laws emphasizes the necessity of ceasing the act of discriminating against the group mentioned- or at the very least

1. Constitution of Suriname, 9th of December 1991, Sec. V: Basic Rights, Individual Rights and Freedoms, art. 8.2.

recognizes the existence and vulnerability of the respective population.

To date there is still – regardless of the actual amount of people stigmatizing and causing (further) marginalization- too much discrimination. If our interventions were to have any impact or touch; each one discriminating, is one too much!

8 Trinidad and Tobago

CAISO

HIV prevalence among men who have sex with men (MSM) in Trinidad & Tobago has been measured at 20%, four to eight times higher than estimated national rates of HIV. In the Caribbean, homophobia and structural barriers are widely assumed to be a key determining factor in such disparities (see, e.g., Trinidad & Tobago’s Five -Year National HIV/AIDS Strategic Plan (January 2004-December 2008), p. 6); and serve to limit access to HIV prevention and other services, as well as the self-efficacy of same-sex-desiring persons at self-protection, self-care and self-advocacy. Stories of stigma and discrimination in health and other care and service settings are also common.

Formal legal prohibitions, bolstered by religious stigma against same-sex intimacy and historical gender stereotypes, have been stubbornly enduring in Trinidad & Tobago. Only two Caribbean nations have harsher penalties (life in prison) for consensual anal sex committed in private, and postcolonial Parliaments have successively (as recently as 2000) increased the penalties for buggery from five to twenty-five years’ imprisonment, notwithstanding the availability of a rape statute that encompasses anal rape. Later the same year of the last increase, a new party in control of Government expanded legal protections from discrimination and access to redress, but legislatively prohibited sexual orientation from protection; a successful domestic appeal of the legislation was overturned by the Privy Council, the highest court of appeal. Almost 25 years after its independence, the country also criminalized all forms of same-sex intimacy as “serious indecency” for the first time. And the state is unique in the region in having on its books an immigration law that prohibits entry and provides for deportation of homosexuals. New family law on domestic violence, common-law relationships and inheritance enacted in the 1990s is also drafted to exclude same-sex relationships from recognition.

More recently, on matters of international recognition of human rights, the Ministry of Foreign Affairs explained its abstention twice in late 2010 on votes regarding the inclusion of a reference to sexual orientation in a United Nations resolution condemning extrajudicial, summary and arbitrary executions – indicating it had no clear policy position of the right to life for gay people. This reverses a recent pattern of the state supporting such international resolutions in international fora. And in mid-February, Government introduced a bill that would extend a death benefit for public workers to next of kin in historically stigmatized out-of-wedlock relationships, but expressly excluded unmarried partners of the same sex from eligibility. The Minister of Public Administration defended the exclusion on legal grounds.

As political discourse about sexual citizenship has flourished across the hemisphere, the Caribbean subregion has emerged as a key battleground in global culture wars over homosexual inclusion and a target for international antigay evangelism. Lawyers for Jesus, an affiliate of Advocates International (a global organization of 30,000 advocates and jurists in 156 nations, linked in six regional networks, bearing witness of Jesus Christ through the legal profession by promoting religious freedom, the rule of law and the sanctity of human life and the family), whose Caribbean network is facilitated by Trinidad & Tobago Appeals Court Justice Alice Yorke Soo Hon, organized a regional conference in Trinidad in 2007 attended by the Chief Justice, and collaborated in the October 2010 visit of a Caribbean-focused US-based Christian Right ex-gay ministry “to combat what seems to be a growing acceptance of homosexuality in Trinidad & Tobago”.

HIV response is constrained by legal conditions. An NGO attempting to register in 2008 faced heightened scrutiny by the Registrar General's Office simply at the name reservation stage by virtue of its use of the phrase "against sexual orientation discrimination" – Government raised the existence of the sodomy laws and the legislative exclusion of sexual orientation from discrimination prohibited under the Equal Opportunity Act. "Institutional strengthening" was the primary HIV prevention strategy for MSM in the last national HIV strategic plan (p. 24), but this activity was allocated a total of only \$75,000 of intended spending of US\$90.3 million over five years (p. 120). Recent estimates from the national HIV authority confirm such spending from 2002 to 2009 was "low and...limped along" at significantly less than 7% of the TT\$560 million spent, even as it exceeded budgeted figures. Global funding initiatives (including those for human rights advocacy) are increasingly using the country's income levels to exclude it from eligibility criteria. Domestic philanthropy, however, has not yet risen to the challenge of funding such legally questionable advocacy causes and populations as GLBT communities and their rights, so this policy punishes MSM in Trinidad & Tobago and similar high income countries that continue to criminalize same-sex intimacy, despite their income levels. Inequities between MSM and non-MSM HIV funding may be sharper than in low income countries.

Only 1% of the overall national HIV budget has been spent on advocacy and human rights measures, and this was subject to "significant reductions in expenditure" after 2008. The sole international HIV funding initiative specifically targeting MSM in the Caribbean has repeatedly declined to fund organizing and advocacy to change legal conditions in Trinidad & Tobago, with one reviewer noting recently that "an LGBT human rights project, in the context of rights...would be a good project...but as an HIV/AIDS project it doesn't really work".

The national AIDS authority promptly distanced itself from a 2009 media story which suggested that a comprehensive review of national legislation impacting HIV, which included national consultations, would lead to decriminalization of homosexuality, parsing a distinction between addressing stigma and discrimination based on homosexuality and stigma and discrimination based on HIV status. Neither the review nor its recommendations have been published, nor any action taken on them. The stakeholder consultations recommended:

- conduct between consenting adults in private which comes within the offences of buggery and serious indecency should be decriminalised
- the Equal Opportunity Act 2000 should be amended to include sexual orientation as a prohibited ground of discrimination
- in light of the deep socio-cultural prejudices towards MSM in the society, a programme of public education and advocacy regarding the need for legislative reforms to safeguard their human rights and to guide public health responses should also be implemented.

Despite Trinidad & Tobago's perception as tolerant and inclusive of same-sex desire, the impact of state-sanctioned homophobia on HIV-related self-efficacy is demonstrated by a series of incidents documented in 2007 and reported to the InterAmerican Commission on Human Rights in 2009. A number of men in MSM networks in Trinidad who sought sexual partners on an extremely popular internet site began to fall victim to a pattern of opportunistic crimes. In the worst instances they were kidnapped, tortured, robbed, anally gang-raped and threatened with blackmail if they reported the crimes. We documented a number of these assaults by interviewing victims, whose stories were very credible. Only two pursued police action. None of the rape victims interviewed pursued medical attention. The documented attacks took place in a number of residences in the eastern spur of the East-West Corridor, from San Juan to Arouca. Documentation of the attacks for two senior police officers and a Ministry of National Security official, on the advice of the Rape Crisis Society and the

YMCA, resulted in no productive action; and in the case of the police, there was no acknowledgment of the reports.

The lack of self-efficacy that characterises this incidence of attacks and the victims' responses to them, their refusal to seek help, the limited community mobilization in response, and the lack of government accountability illuminate critical aspects of MSM sexual vulnerability at the core of HIV susceptibility. Achieving universal access requires engagement with profound structural issues underlying MSM's persistent social vulnerability. Deep-seated, socially and structurally mediated stigma and a vexing sense of shame and worthlessness are paralyzing MSM in Trinidad & Tobago from self-efficacy even when it comes to powerful matters of self-preservation and basic justice. In their reports, these men's narratives illustrate a sense that they have no confidence that health care providers, protective services, or even NGOs specialising in support for victims of sexual violence will not simply revictimise them. Men refused to accept offers of peer and professional counselling services, free medical examination, STI screening and PEP. The frailty of the criminal justice, human rights defence, victim advocacy and community mobilisation responses to the attacks also highlights the demonstrable weaknesses of structural responses to HIV stigma.

Stigma and marginalisation, social judgement and discrimination are well recognised as issues at the core of vulnerability in the HIV epidemic. They, however, are viewed in the dominant discourse as *effects* of HIV infection, but still poorly understood as *causes* of susceptibility to HIV infection.

9 Belize

United Belize Advocacy Movement

Creating an enabling environment in Health: A rights-base approach

United Belize Advocacy Movement

Introduction

The United Belize Advocacy Movement has worked to foster a rights base environment at home and in the Caribbean region through CARIFLAGS regional social networking group. The reintroduction and subsequent inclusion of sexual orientation by our individual Caribbean governments in the UN resolution on Extrajudicial killings that was approved in December 2010 is one concrete example of regional coordination. Our human rights work as LGBT activists extends itself to our Latin American counterparts, Global Rights and the International Gay and Lesbian Human Rights Commission which collectively lobbied as a coalition at the OAS general assembly since 2007. The resulting effort led to OAS resolution 2345, 2504 and 2600 that was adopted or approved in 2008, 2009 and 2010. The OAS resolutions in general called for investigations into abuses against LGBT persons and had governments condemn acts of violence and other human rights abuses. The follow-up was a regional Caribbean report to the Inter-American Human Rights Commission. This is pretty historical in a region seeking to strengthen its footing collectively. This is also very important, when we look at the impact of HIV on the MSM population in the region and how a lack of a political and legislative stance have serve to marginalize the health of sexual minority group in the Caribbean region. Nationally, not much has changed on progressive legislative positions in the political environment, until the constitutional challenge of sodomy law in late 2010 and the commissioning of our LGBT Legal Review.

Experience

An environmental assessment covering laws, the Universal Periodic Reports for Belize 2009, HIV policy documents, National Strategic Plans and practice have not translated much in reduced homophobia, or

improved health strategies for MSM health, care and support in the system. The Mexico declaration of 2008, section 1.1 affirms its commitment to the right to health and education and non-discrimination, but not much else has changed since this declaration, even though, stigma reduction is a guiding principle in the National HIV Policy. Discussion about stigma and discrimination goes as far back as 2000, when the Political Reform Commission stated the following in its report.

"The Commission received several suggestions to add "sexual orientation" to section 3. The main argument was that sexual orientation has been a basis for discrimination in Belize and that including section 3 would enhance the protection of fundamental rights and freedoms of person of Belize. Notwithstanding some reservations, the majority of the Commission agreed that it should be included...."

The political reform commission position is important when we consider that there is no formal agreement on the strategies to create an enabling environment to address concerns about stigma and discrimination and rights enforcement. Action, however, for the United Belize Advocacy Movement started in 2007, when the organization wrote a letter to then Prime Minister Said Musa about the report. The effort led to a letter received 15th, February, 2007 that stated:

As party and as government we remain committed to the fundamental principle and practice of non-discrimination. This is especially relevant in the implementation of the National HIV policy to ensure that no person irrespective of one's sexual orientation should experience stigma. Amending the constitution, as was suggested, will not in our view address what is a socio-cultural matter.

The position of the Belize Prime Minister that discrimination was socio-cultural issues was welcomed, but remained low on the national health agenda. The United Belize Advocacy Movement have sought from the beginning of its development, to cultivate an enabling environment that addressed rights violations through its efforts at the OAS; documenting acts of violence against LGBT person nationally; through its LGBT legal Review and constitutional challenge of the present sodomy law in 2010. Preparation, for the case, goes back to 2007 when a group called (URAP) University of the West Indies Rights Advocacy Project started dialogue about launching a case. URAP chose Belize for its more liberal constitution with support from Caribbean Vulnerable Communities. It took three years of dialogue, fundraising and back and forth communication to finally complete the legal document for filing on 24th, September, 2010. Simultaneously, the government was challenged to take a position when addressing section 53 in the Universal Periodic Review of 2009 while the National AIDS Commission sought in its legal review to finalize conformation that it would seek repeal of section 53 in 2010.

We have worked tirelessly to increase visibility of MSM health issues through two documentaries; creating MSM specific informational, educational materials; grassroots consultations; implementing legal and rights-base education through AUSAID; and advocated for the mainstreaming of prevention and treatment services specific to MSM needs. Using grassroots activism and social networking strategies, such as, the LGBT regional e-clearinghouse for CARIFLAG, and facebook groups in Belize we have been able to raise awareness with our regional partners and prepare our membership base on impacting issues that the community faces, inclusive of our legal case. The case in particular, inspired community consultations across three locations in 2010 with follow-up reports made through Belize's e-group on new developments. Critical to the work is understanding that we have a long-term campaign that has organically evolved that used internet-base communication, capacity-building activities and consultations to help build awareness around homophobia and about the case.

Addressing section 53 of the criminal code is important because this section have been used to harass, intimidate and erode the dignity of individuals in the MSM community. This section of the law, have traditionally, cultivated an environment that reporting experiences of discrimination would be treated as a joke.

Two documented cases, of harassment, one in the North and Central part of the country, plus present preliminary research from the United Belize Advocacy Movement field work corroborates this perception. The result of such perception, radiate through social clicks and networking sites, and help shaped the psychology of the MSM individual that health services would be no different in its expression of distain and hence, creates its own cumulative effect. The constitution, itself, may provide recourse for equal protection under the law, but structurally, resources to address discrimination is limited, which makes its use for legal redress out of reach.

In the 20 years of the epidemic, we are able to document two formal statements that were issued by our National AIDS Commission that have had an elements of support for the rights of MSM in the country in 2007 and again 2011. Strong rights-base enforcement remains limited in HIV, and in particular, when addressing HIV related discrimination; the sexual and reproductive rights of sex workers and addressing homophobia. The discussion on rights enforcement, in particular for sex workers, seeking to make decisions about their bodies experience badmouthing, scare tactics as well as health information isolation that lead to undermine their ability to make an inform choice. It can be argued that there have been ad hoc efforts to date, to address rights violations, but nothing that actually supported the legal and sexual and reproductive health rights of persons marginalize in this country. Patients, often restricted by resources, a voice and time, are easily frustrated by the slow response of the system to investigate complaints or provide support, simply leave.

Good Practices

Rights enforcement mechanism need to be linked to sexual and reproductive rights and services for women, sexual minority groups and other vulnerable groups as a whole when discussing HIV Prevention, Care, Treatment and Support in order to be effective, relevant and responsive to perceive discrimination. The issue of rights enforcement, sexual and reproductive health and HIV are not separate. Human rights needs, will only be met, if sexual minority groups are empowered, through leadership building, access to legal, financial and technical resources that is independent from the public system. CBO's or community-base organizations can create a repository of information to support increase community knowledge. However, scientific base methodology that do not seek to understand the non-medical aspects of sexual minority groups in particular and that builds the capacity of vulnerable groups as a whole will not serve to foster an enabling environment that truly reflect a rights-base approach.

Recommendations

Strengthening national and regional social networking efforts in the creation of an enabling environment is an important for step in building a communication strategy, especially for sexual minority groups. It can support education awareness building about policy, community organizing and access to health information. The region needs to define its vision of an empowerment plan that considers the sexual and reproductive rights needs of vulnerable groups as a whole and MSM population in particular. The region needs to develop a white paper that frames the creation of an enabling environment that address stigma and discrimination for sexual minority groups as a whole, gender and HIV-based for the health environment. The current discussion on legal change cannot happen without cultivating a socio-cultural shift in attitude; in fact, the effort must happen simultaneously and triggered by legal advocacy from the impacted population.

Section 13.1 of the 2004 revision of the Staff Orders for the Jamaican Public Service prohibits discrimination on the grounds of, *inter alia*, sexual orientation.¹ However, Jamaica's 1864 colonially-imposed buggery law still criminalizes any form of consensual adult male same-sex intimacy, whether private or public.² The HIV prevalence rate among Jamaican men who have sex with men (MSM) is 32% as against 1.6% in the general population.³ Alternatively, in Cuba, Suriname, the Bahamas and the Dominican Republic (Caribbean countries without such legislation) the HIV prevalence among MSM ranges from one to eight per cent. It would be oversimplification to argue that the presence of Jamaica's anti-buggery/gross-indecency legislation is the cause of the high HIV prevalence rate among MSM. However, the legislation certainly contributes to the island's legendary climate of homophobic violence, discrimination, and deep stigma associated with homosexuality that the Jamaican Ministry of Health has acknowledged are among the factors driving the national epidemic.⁴ For example, popular Jamaican dancehall artiste and 2010 Grammy winner, Buju Banton, sang about shooting and killing gays and when challenged about his homophobia he said it was justified under Jamaican law.⁵ The criminalization of male same-sex conduct not only breeds homophobic violence; it also systematically drives Jamaican lesbians, gays, bisexual, transgender and intersex individuals (LGBTI) underground, away from effective HIV prevention, treatment, care and support interventions.⁶

The major LGBTI organization on the island, Jamaica Forum for Lesbians All-Sexuals and Gays (J-FLAG), reports that homophobic attacks by state and non-state actors are common. AIDS-Free World is working with J-FLAG to effectively document these attacks. In February, 2011 there were two police raids of gay clubs in Kingston and Montego Bay and during the Montego Bay raid, heavily armed officers kicked in doors, aggressively accosted patrons, indiscriminately beat and pistol whipped them and chased everyone from the venue. Throughout the operation the police hurled homophobic slurs encouraging clientele of nearby clubs to join in the melee by throwing bottles, stones and other missiles as individuals fled for their lives. The club served to house many LGBTI who had been evicted from their homes because of their sexual identity, and the major AIDS NGO on the island, Jamaica AIDS Support for Life, regularly used it for HIV outreach. Even though Jamaica does not criminalize same-sex female intimacy, amongst the general population, the belief is that any form of homosexuality is outlawed. The result is that "corrective rapes" of lesbians to make them straight are not uncommon.⁷ There is no record that such rapes have ever been perpetrated with the use of condoms.⁸

The presence of the anti-buggery/gross-indecency law also precludes the distribution of condoms in Jamaican prisons with the result that the HIV prevalence rate among inmates is twice the national average. In 1997, the Commissioner of Corrections, on the advice of his prison doctor, proposed the distribution of condoms in the

1. http://www.moj.gov.jm/pdf/rev_staff_order.pdf page 80.
2. Offences Against the Person Act 1864 s 76 criminalizes anal intercourse; s 77 criminalizes any attempt by males to engage in anal intercourse; and s 79 criminalizes any act of "gross indecency" between men.
3. 2009 UNAIDS report
4. See, e.g., Jamaican Ministry of Health, Jamaica HIV/AIDS/STI National Strategic Plan 2002-2006, January 2002, p. 10; see also Zadie Neufville, "Fear Among Gay Men Said to Fuel HIV/AIDS Cases," Inter Press Service, March 5, 2002; Garwin Davis, "Homophobia Remains High. Gays Remain in Seclusion, Health Officials Worry," The Jamaica Gleaner, July 26, 2001.
5. <http://www.youtube.com/watch?v=GIRmQNM4xUk> accessed March 2, 2011. Other popular Jamaican dancehall artistes are also notorious for their performance of virulently homophobic songs, such as Elephant Man who justifies the corrective rape of lesbians, Capleton who invokes the burning of gays and the group T.O.K. which endorses the stomping and kicking of gays.
6. Human Rights Watch interview with Dr. Yitades Gebre, executive director, Ministry of Health Program Coordination Unit, Kingston, June 23, 2004 and Human Rights Watch interview with Dr. Peter Figueroa, chief, Ministry of Health Epidemiology Unit, Kingston, June 23, 2004 demonstrate that providing HIV education and prevention services to men who have sex with men is extremely difficult because they are forced to remain invisible due to prejudice and abuse.
7. See Makeda Silvera, "Man Royals and Sodomites: Some Thoughts on the Invisibility of Afro-Caribbean Lesbians," Feminist Studies, vol. 18, no. 3, Fall 1992, pp. 521-532 (reporting gang rape of women "suspected" of lesbianism in 1950s Jamaican towns).
8. In 2010, J-FLAG received reports of three (3) corrective rapes, two of which occurred within days of each other. In one instance, four men gang-raped a lesbian and used a knife to cut her so she can better "tek man." In the other instance, the lesbian was savagely raped at gun-point, and then dumped half-naked after her ordeal. Her rapist commented on how "tight" she was and promised that the next time he would use a condom.

island's prisons but was advised that he would be aiding and abetting a criminal offence, buggery. Condoms thus remain contraband in Jamaica's prisons although there are reports that prison warders do a thriving business trading in them. Prisoners who can't afford to pay resort to the use of plastic bags. Jamaica's supermarkets are now "going green" and will soon cease to distribute this major prophylaxis used by inmates. The result is that the HIV and AIDS prevalence among prisoners is expected to rise. Once they are released, their partners are also at risk, as the Ministry of Health has recorded high levels of unprotected sex and promiscuity among the Jamaican population.

Section 26 (b) of the Jamaican Constitution "'saves" the country's 1864 anti-buggery law from judicial review, along with all pre-independence laws. Although the Constitution is being reviewed in order to provide for an expanded Charter of Fundamental Rights and Freedoms, a savings law clause is being re-inserted with regard to sexual offences. The result is that Jamaican courts will still be precluded from reviewing these laws in line with evolving societal standards and norms. A domestic legal challenge (as happened in India to repeal that country's anti-sodomy law⁹) is therefore seemingly impossible in Jamaica.

Jamaica's homophobic laws have been justified by relativist arguments based on Judeo-Christian theology. Notwithstanding the fact that section 21 of the Constitution guarantees the freedom of religion,¹⁰ the very idea that homosexual identity or practice is somehow "non-Christian" demonstrates the unfortunate role that religious leaders have played in perpetuating harmful stereotypes. Cultural arguments are also often used as justification for retaining Jamaica's homophobic laws. However, as the UN Secretary General reminded the world on World Human Rights Day December 10, 2010, while cultural sensitivities may make it difficult to recognize the human rights of LGBTI, culture must never be used as justification for the denial of fundamental human rights. Finally, some of Jamaica's elected officials have claimed that they are unable to change Jamaica's buggery/gross indecency law until "society changes first." While reasonable people may disagree as to the relationship between laws and attitudes, it is clear that the job of legislators is to ensure that all laws are fair, non-discriminatory, and comport with basic principles of civil and human rights. Jamaica's legislators have failed to address the fundamentally discriminatory nature of the buggery/gross indecency law by allowing it to stand.

CONCLUSIONS

Jamaica's anti-buggery/gross-indecency law contributes to violence and abuse by police and private citizens of LGBTI citizens. The laws also marginalize LGTI and inhibit them from seeking treatment for HIV and other sexually transmitted diseases that increase the risk of HIV transmission. The prevailing association of HIV and AIDS with homosexuality compounds the marginalization of many people living with HIV and AIDS, who face additional stigmatization through the presumption that they have engaged in illegal sex. It also keeps those at highest risk of the disease—including people who do not engage in homosexual sex—from seeking HIV-related information and health services.

RECOMMENDATIONS TO THE COMMISSION

- Denounce and condemn Jamaica's anti-buggery/gross-indecency laws;
- Demand that Jamaica ensure that all allegations of excessive use of force and other human rights violations

9. In *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001 the High Court of Delhi struck down much of S. 377 of the Indian Penal Code as being unconstitutional. The Court held that to the extent S. 377 criminalised consensual non-vaginal sexual acts between adults, it violated an individual's fundamental rights to equality before the law, freedom from discrimination and to life and personal liberty under Articles 14, 15 and 21 of the Constitution of India. Jamaica's Constitution guarantees similar rights in Article 13.

10. In September 2010, the Jamaican Prime Minister said at an interview at the United Nations in New York that homosexual acts remain illegal in Jamaica because the country is a Christian country.

by law enforcement officials based on real or perceived sexual orientation and gender identity or expression are investigated promptly and thoroughly;

- Demand that Jamaica train all law enforcement and criminal justice officials on international human rights standards and nondiscrimination;
- Demand that Jamaica conduct awareness raising programs, especially through the education system, to address social stigma and exclusion of individuals and communities on grounds of their sexual orientation and gender identity and expression; and
- Demand that Jamaica facilitate access to social services, and especially health services, regardless of the individual's sexual orientation, gender identity and expression, and/or HIV status.

11 Suriname

Foundation HE+HIV

Stigma and Discrimination in Suriname

Homosexuality is not a criminal offence in Suriname, however there is a great taboo surrounding homosexuality, bisexuality and being transgender. After more than two decades, the taboo around HIV/AIDS is also still present in our small community. This is why most of the Men who have Sex with Men and who are HIV positive (MSM+) are not receiving adequate support and counseling to fit their specific needs.

The MSM+ population faces stigmatization by family members, friends and neighbors often, so there is a lot of fear to speak openly about their sexuality. Because clients often fear stigmatization; sexuality often isn't a topic during counseling sessions. When sexuality is brought up by a counselor the clients often don't feel safe enough to speak openly about it. For instance: How can a eighteen year old boy living with H.I.V. ask a female counselor if he also has to use a condom while orally satisfying his partner, when he thinks that the counselor will not approve of homosexuals?

There is a dire need for an organization who gives care, support, empowerment and education surrounding H.I.V, AIDS and sexuality. At this moment we are the only organizations in Suriname who has MSM+ as their target population. This is because their needs differ from the needs of other PLWHA. The MSM+ population needs an organization that helps them cope with the daily problems they encounter during their life, and who stands up for their rights and actively tries to decrease the stigmatization and discrimination by the society. He + HIV want to be the organization to provide the services needed to the MSM+ target population.

That is why it is important to have special laws and human rights in place for this target group.

In 1998, the first survey was done after the MSM target group in Suriname. This survey showed that 18% of the researched MSM target group is seropositive. The same survey showed that 30% of the researched group MSM also have relationship with women. Furthermore, it turned out that the Surinamese society in general responds negatively to MSM. More than half of the researched target group (66%) indicated that they experienced stigmatization and discrimination to some extent. And 9% indicated that they even experienced mental or physical abuse. This survey also showed that 38% of the research group was having unsafe anal sex with men. More than half of the men thought that they did not run the risk of getting infected with the HIV virus.

Some of the main problems which they want to be attended are:

- **Burial fund:** At our organisation we know that these men are often being cast out by family and they do not have the opportunity to have a burial insurance.
- **HIV test when applying for work:** Although it is illegal for organisations to ask people to have an HIV test as part of the selection procedure, we are often faced with people who are excluded from the process because they refuse to do the test. If they do the test and it turns out they are HIV positive, they are automatically rejected.
- **Confidentiality during HIV testing:** There is little confidentiality when a person is tested and comes back for their results. We have had numerous complaints and it makes it even more difficult to get people to test. Also the testing is done in a special apart of the lab so everybody who goes to that part is automatically seen as a person who has HIV.
- **Confidentiality at the clinics:** Even though health care workers pledge an oath, we often hear about people being mistreated and ridiculed.
- **Social Affairs:** People have to register here for the governmental health care cards. Because these form state they need a card because they are HIV positive, everybody knows their status and this information is not handled as confidential.

We think because we live in small communities and there still is a great taboo on MSM, HIV and the surrounding problems, a good campaign against stigma & discrimination is needed.

Also people should be better informed about how to handle HIV positive people and should be made aware of the fact that in “normal” live they are not infectious!

The things we as an MSM+ organisation have to provide are:

- Meeting point for seropositive gays
- Information program on the radio or tv
- Activities for seropositive gays
- Shelter for outcasts
- Support group for gays
- Work
- Workshop and training

12	Guyana	SASOD
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Laws and practices that effectively criminalise people vulnerable to HIV

In Guyana, sex workers suffer violence and discrimination on a constant basis. This is supported by the UNAIDS report - *“Whoring,’ ‘Boopsing,’ and Other Business: A Situational Analysis of Sex Work and the Sex Industry in the CARICOM”* which categorises the physical violence and harassment that sex workers experience, because of the type of work they do, into two main groups of perpetrators: police and .¹ Guyana’s laws criminalize cross-dressing, consensual sex between men and aspects of sex work, thereby making vulnerable, these groups, transgenders, gay, bisexual and other men who have sex with men and sex workers, to discrimination which causes disempowerment, barriers to effective prevention, treatment, care and support services, thereby exacerbating their vulnerability to HIV.

1. ‘Whoring,’ ‘boopsing,’ and other business: A SITUATIONAL ANALYSIS OF SEX WORK AND THE SEX INDUSTRY IN THE CARICOM – Final Report: page 88. Report by Kamala Kempadoo with assistance from Oonya Kempadoo, Althea Perkins and Andy Taitt.

Under Section 166 of the Summary Jurisdiction (Offences) Act 1894, of the Laws of Guyana, every person who:

- a) being a male person, knowingly lives wholly or in part on the earnings of prostitution; or
- b) being a male person, in any public place persistently solicits or importunes for immoral purposes; or
- c) loiters about, or importunes any person in, any street or other public place for the purpose of prostitution.

Transgender persons are criminalised for expressing their identity by 'cross-dressing' under section 153 of the Summary Jurisdiction (Offences) Act, Laws of Guyana, which establishes as an offence:

"being a man, in any public way or public place, for any improper purpose, appears in female attire or being a woman, in any public way or public place, for any improper purpose, appears in male attire..."²

This denial violates the right to freedom of expression, the right to privacy and personal dignity and gives tacit approval to the frequent attacks cross-dressers face in the streets, especially at nights.

Police Assault and Abuse:

In Guyana, police have been accused by cross-dressers of harassment and physical violence. Transgender sex workers reported to SASOD that police often extort sexual favours from them, and even rape and brutalize them. Most of the cases are not reported to the police, due to the lack of confidence in their response. *"Petronella,"* (alias) a cross-dressing sex worker, that some police further participate in the harassment of gay men on the streets, adding that there is no recourse to complain since the existing laws criminalize consensual sex between men and cross-dressing.

In February, 2009, seven persons were charged for cross-dressing. The charges were not dropped and the seven were each fined for the offence. The detainees reported to SASOD, that police refused to allow them to make a phone call or to contact a lawyer. They were photographed by police and then told to take off all of their "woman clothes" in front of several police officers. One defendant stated that *"after stripping [us] the police told us to bend down and they search us as if to make fun of us and our sexuality."*

The cross-dressers also reported that they were ordered to put on "man clothes." Police kept five of the seven in solitary confinement until the day of the trial, contending that it was for their safety. In court, when handing down the sentences, the then acting Chief Magistrate Robertson told the detainees they were not women but men, and exhorted them to "go to church and give their lives to Christ."³

Some police have reportedly used the existence of the laws for extortion. Males who are found in compromising positions are made to pay bribes rather than face charges and the possibility of prosecution. Although consensual same-sex activity between adult men is difficult to prove, the damage is really in the accusation itself because of the stigma attached to homosexuality.

Abuses by Non-Sate Actors

Sex workers in Guyana, and other parts of the world, face disproportionate levels of violence which is often unreported. The assault, battery, rape and even murder of sex workers, which is all too common in the industry, goes unnoticed because of the existing legal framework around the profession which prevents sex workers from reporting violence. The stigma and discrimination perpetuated by sex-work related offences has made violence

2. Laws of Guyana, Chapter 8:02, Summary Jurisdiction (Offences) Act; Section 153, (1)(xlvi), In: http://www.gina.gov.gy/gina_pub/laws/Laws/cap802.pdf

3. www.kaieteurnews.com/2009/03/07/halt-abuse-of-transgenders-%E2%80%94-human-rights-group/

against sex workers acceptable.

SASOD is a founding partner in the Guyana Sex Work Coalition and recalls the violence faced by a female sex worker at the hands of a male client:

“Soon as the sex was over, this man started slapping and cuffing me up and he empty my purse and take away all my money, not just what he pay me,” recounted a female sex worker based in New Amsterdam, who had been assaulted and robbed by a client, to an advocate at United Bricklayers, a local AIDS-prevention, community-based organization. *“Now how could I go to the police and make a report when sex work is not really legal,”* she added.

The Terborg (2006) report, which details interviews with female, gay male and cross-dressing sex workers, concluded that the majority felt rejected by society.⁴ An interviewee stated:

“Society doesn’t try in any way to understand the position of gays. I have experienced stigma and discrimination when looking for a job. When I went to a store for a job and the proprietor told me to find my own work, then, chased me’!

Some people want to appear to be non-judgmental and still want to find out why you are like that.”

Social stigma and discrimination based on gender identity is common in many parts of the Caribbean, including Guyana, and in some cases resulting in violent attacks, some of them fatal, against people perceived to be lesbian, gay, bisexual or transgender.⁵ In 2003, during a debate to revise Article 149 of the Constitution to include a ban on discrimination based on sexual orientation, SASOD and other civic organizations supported the move to prohibit such discrimination but some sections of the religious community and the bill was never voted on, as the government presented but did not support it.

Men who have Sex with Men (MSM)

In Guyana, the Criminal Law Offences Act (8:01) under section 351 criminalizes consensual sexual activity between men while Sections 352 and 353 criminalizes 'buggery'. The laws do not distinguish consensual and non-consensual acts.

The existence of these laws reduces access to treatment, care and prevention services by men who have sex with men. These so-called ‘sodomy laws’ facilitate discrimination within the health and social services sectors. Moreover, these laws therefore place an added burden on the health sector and this is an additional reason to repeal them.

According to Amnesty International, *“discrimination against people based on their sexual orientation or gender identity, including men who have sex with men, manifests itself in a number of ways including the criminalization of same-sex relationships. Men who have sex with men often face additional stigma because of the incidence of HIV/AIDS in gay men and the history of the pandemic that was initially associated mainly with gay men in the global North.”*⁶

4. Terborg, J. Report on HIV Prevention and Care among FSW and MSM in Georgetown, Guyana, 2006, pg. 75.

5. Human Rights Watch, Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic. New York 2004. Available at: <http://hrw.org/reports/2004/jamaica1104>

6. Amnesty International, Report on HIV/AIDS in Guyana and the Dominican Republic. AI Index: AMR 01/002/2006

The latest surveillance study finds a HIV prevalence of 19.4% among MSM,⁷ which is ten times the national average, according to UNAIDS estimates. The Government of Guyana has also acknowledged that MSM are also a vulnerable group. The problem is that there is an inconsistent response to sexual and gender minorities who are in need of healthcare and related social services since there is an accepted norm of discrimination. There are some healthcare professionals who would exercise their own discretion in terms of how they treat sexual and gender minorities. Persons who are discriminated against do not have recourse to any remedies within the health system.

13 Trinidad and Tobago

Caribbean HIV/AIDS Alliance

Advocacy in Antigua to address gender-based violence against sex workers

Background

In Antigua, as in some other countries in the Organisation of Eastern Caribbean States, there is a large population of migrant sex workers who work in brothels, bars, and on the street. These sex workers often originate from poor communities in other countries in the region, including the Dominican Republic, Jamaica and Guyana. High HIV infection levels have been found among female sex workers in the region: 4% in the Dominican Republic, 9% in Jamaica and 27% in Guyana. (UNAIDS Caribbean factsheet 2010)

Discrimination towards sex workers from the host community and poor treatment from authorities including the Police and Immigration, such as arrests and confiscation of passports, stigma and discrimination and coercion for sexual favours, is common. Most are reluctant to report incidences of violence to the authorities due to fear that discovery of their work as sex workers will result in deportation. Sex workers often enter the country on visas as domestic workers or entertainers and the clubs and brothels facilitate their access to work permits. Domestic laws such as the Sexual Offences Act, the newly enacted Trafficking Act, and the Immigration policies in Antigua continue to create barriers to migrant sex workers reporting GBV.

The Caribbean HIV&AIDS Alliance (CHAA), with funding from the US Government through USAID, implemented the Eastern Caribbean Community Action Programme in four Eastern Caribbean countries including Antigua and Barbuda. The EC-CAP is based on the belief and understanding that access to HIV services for Most at Risk Populations (MARPs), can be achieved through evidence-based programming, community and civil society involvement, stronger engagement with national programmes and evidenced based behaviour change interventions. This package of interventions includes information on risk and vulnerability, the promotion and provision of condoms and counselling and testing referrals, peer-delivered at 'hot-spots'.

Methods

Integral to the EC-CAP is community based outreach work using peer educators, called Community Animators, who are drawn from the communities with which we seek to make change. The information gathered from this outreach is used to shape interventions in the community to mitigate the impact of HIV. Sex workers, particularly migrant sex workers, are at a higher risk of HIV due to their marginalised status and inability to access HIV information and health services.

7. Ministry of Health, Guyana Behavioural Surveillance Survey 2008/2009 Report, page 60.

In 2010 programme representatives of CHAA conducted an intervention with the Assistant Commissioner of Police in Antigua to discuss violence against sex workers and to establish a relationship with the police, in order to provide better access to services for sex workers. The intervention was organised in response to anecdotal reports about sex workers who had been violently raped, but had failed to access emergency post exposure prophylaxis (PEP) or healthcare due to fear and stigma. In the case of Spanish speaking sex workers there was also a perceived and real language barrier that limited their access to services. CHAA made reference to the international human rights framework to argue for the rights of sex workers as vulnerable women, while also outlining how anti-sex work laws and immigration policies are a deterrent to reporting GBV.

Using evidence from the CHAA Animators' work with sex workers, CHAA made the following recommendations to the Police:

- Police designate one trained person who sex workers can go to in the instance that they are mistreated, or experience violence at the hands of clients, without fear or rebuke and without questioning them around their immigration status.
- Provide translation to enable Spanish speaking sex workers to also benefit from police protection.
- Sensitise police generally on working with marginalised groups through CHAA implemented projects with the Gender Affairs Department.
- Create regular dialogue between CHAA and a police point person.

During the discussions, the Assistant Commissioner of Police (ACP) indicated that he would explore bringing a Spanish speaking investigator to the Rape Unit, to make the service more responsive to Spanish speaking women who experience GBV. The ACP suggested that the police could provide a briefing for the Community Animators team and NGO contacts, on the police process for responding to rape and clients' rights. These recommendations were well received and provided an opportunity to open a dialogue with the police on these issues.

The Police have also been very supportive of the Antigua Gender Affairs project, also implemented by CHAA, which is sensitising the police on gender and gender-based violence issues. This joint partnership and facilitation of dialogue between the two agencies also provides an important platform for continued advocacy on these issues.

Results

- As a result of the intervention with the police, a Spanish speaking police officer has been transferred to the Rape Unit at a Police Station in Antigua. This is a newly laid out station which has a more welcoming access than other stations in Antigua and helps encourage GBV victims to feel more comfortable in coming forward to report abuses.
- The deployment of the Spanish speaker is viewed as critical to ensuring that Spanish speakers can access the services provided by the Rape Unit, and not be constrained by a language barrier or a lack of sensitivity to cultural issues.
- CHAA through its Animators continues to ensure that members of the Spanish community are aware of this service and how to access it, and hope it will increase reporting among migrant Spanish speaking sex

workers of any violations.

- In addition the Antigua Gender Affairs Department, in collaboration with CHAA, through its onward granting programme has developed a series of Public Service announcements (PSA's) on GBV that air on local TV, letting people know that it is in order and safe to report incidences of GBV.
- The Gender Affairs Department has completed training of 100 police officers on issues related to GBV and HIV and the role of police officers as first responders. This training has been positively received within the police service as well as by the wider community
- Members of the police service now have a better understanding of gender based violence and the related risk of HIV, their role in addressing the survivors and perpetrators of violence and improved capacity to systematically address these issues through common guidelines.
- The above initiatives are now supported by an approved protocol on Sexual Assault and Domestic Violence, including <72 hour response for HIV treatment. Gender Affairs has reported anecdotally that community members seem to have renewed confidence in the safe and successful handling of GBV, as shown by the increased number of cases being reported to the department.

Conclusion

CHAA is deeply concerned with the human rights breaches and abuses that are often the lot of sex workers as well as other groups most-at-risk for HIV including members of the gay, bisexual and transgender community who, because of stigma, discrimination and violence are often abused. Abuse may take the form of physical attacks; employment discrimination; verbal assault or harassment; eviction from home or community; property damage; lack of freedom of association; economic violations; and abuse in school.

The dialogue with the Antigua Police and the facilitation of initiatives by Gender Affairs show that important changes can be initiated by evidence informed advocacy. The evidence gathered within the community was vital to influencing the dialogue with the police and the subsequent changes they made to improve their service. Staff in both the Gender Unit and Police, both government services, acknowledged the need to be sensitive to the human rights and public health issues around sex work, which demonstrates that despite harmful laws, there are ways to collaborate with these services to improve the lives of sex workers and vulnerable women.

CHAA conducts multi-level advocacy aimed at promoting change in the policy environment by encouraging a policy dialogue and discourse among decision-makers. At grass-roots level we work at empowering marginalised groups to advocate for change by sensitizing persons to their rights and building their capacity and skills to engage in advocacy. We undertake a number of interrelated actions to address the HIV/AIDS pandemic including: explicitly addressing the gender inequalities that may predispose to sex work as well as fuel the HIV epidemic; empowering girls and young women to control their own lives, and, in particular, their sexual relations; and, providing comprehensive sexual and reproductive health information, education and services to young people, both in and out of school, before and after they become sexually active CHAA endorses and supports a number of international human rights instruments and international benchmarks that protect basic, fundamental human rights to life, privacy, respect and dignity as well as the reproductive and sexual health rights of all persons regardless of whether or not they are involved in sex work. These include: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child. Also important are the Vienna Declaration on Human Rights and the Platform of Action of the

International Conference on Population and Development.

14 **Guyana**

Guyana Sex Work Coalition

The Caribbean has the highest HIV prevalence rates in the world outside Africa. At the same time, growing economic disparities have pushed many women and men with few marketable skills into sex work, where patterns of violence and inequality pose barriers to safer sex, including condom usage. In Guyana, a steep increase in HIV Seroprevalence was observed among female sex workers (SWs) during the last decade; from no evidence of HIV infection in 1988, to 25% in 1993, and 46% in 1997.^{1–3}

The dynamics of transmission as well as the distribution and determinants of high risk sex among them are poorly understood. High rates of HIV have been found amongst individuals who sell sex in many different and diverse areas in the country. Even where HIV prevalence is low amongst this group, it is usually higher than the rate found amongst the general adult population. Sex workers usually have a high number of sexual partners. This means that if they do become infected with HIV, they can potentially pass it on to multiple clients. Preventing HIV infections amongst those involved in the sex trade has been proven to be an instrumental part of many countries' fight against AIDS.

The dilemma of Sex Workers in Guyana has been an arduous and difficult one. Stigma and Discrimination is rampant and it seems at times that sex workers have nowhere to seek assistance in times of need. In Guyana, Sex Workers are targeted by various entities such as the Police, some health care providers and brothel owners. As the Executive Director of the Guyana Sex Work Coalition.

Over the years I have been assiduous in achieving many positive grounds for Sex Workers on the basis of human rights Locally, Regionally and Internationally. My task has been arduous and far-fetched with much of my attention channeled on dealing with the effects of Stigma and Discrimination on the population I serve. My focus is on dealing with Sex Workers, Youth Empowerment, Substance Abuse, Gender Based Violence, Delinquency and Cross Dressing. For too long our Laws in Guyana has been the bearer of all kinds of impediments experienced by these special population, our laws allow civil society to contribute more to the plights of the most at risk. As a sitting member on many Boards Locally and Overseas I am informed about choices and changes of these Donor Agencies. Our hopes and aspirations in the Coalition is to eradicate violence, stigma and discrimination that our people are experiencing. Up-to-date the Law Enforcement Officials have been the leader in Stigmatizing, Discriminating and Violence directed to our people. In many ways which contravenes the Human Rights Declaration that all are equal. Equality is a major issue for us here because our Constitution doesn't recognize our population, their choice of work (Sex Work), freedom of expression, freedom of choice, orientation or equal opportunity. Nevertheless the Coalition is cognizant of the fact that Sex Work is work, that Sex Workers rights are Human Rights so we endeavor our best to achieve empowerment for these population. Over an extended period of time the Coalition has held sensitization workshops with Junior and Senior Law Enforcement Officials on creating a Network where the communicative skills of Law Enforcers and the most at risk populations would be improved, most of these workshops were successful for our population but we continue to experience the blunt of the Law. Civil Society is aware of this fact and capitalizes on it with the blatant bashing of members of these populations.

15 **Jamaica**

Individual

Introduction

Legislatively the Caribbean can be described as a region with little measures addressing the HIV/AIDS epidemic. In one sense this can be viewed as a good thing considering the negative ways in which the law is presently being used as a negative criminal measure to respond issues in the epidemic, including unfair criminalization persons living with HIV. However there many other ways in which legislation plays an important part in the response to the HIV/AIDS epidemic by safeguarding the rights of those who are infected and affected by the virus. For women in particular, while the region has some legislation addressing gender equality, the absence of specific laws to respond to entrenched gender discrimination reflects an unfortunate opportunity for the perpetuation the negative social determinants of health, which contributes to the spread HIV/AIDS epidemic. It is important to note that legal reform is not the only solution to these issues however it is an important measure to counter to the challenges that women are with by the HIV epidemic and should be a part of a comprehensive strategy on HIV/AIDS, which is a universal good practice to any response. This short paper seeks to identify the parameters for developing a legislative agenda in response to the multi-layered issue of violence against women and its relation to the HIV/AIDS epidemic.

Violence against Women, HIV and Caribbean

Violence against women can be defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life¹. It is a gross violation of human rights. In the Caribbean, women bear a disproportionate burden of the HIV epidemic, young women are approximately 2.5 times more likely to be infected with HIV than young men.² More alarmingly, younger women between the ages of 15-24 years are in some cases up to 4 times more likely to contract HIV in comparison to young men of similar age. This unequal burden is due to a combination of factors, which contributes to the vulnerability to HIV the most persistent of which are social and cultural factors. For many women these issues are multi-faceted and are reinforced by negative gender norms and attitudes are present in other parts of our daily lives in the Caribbean. More specifically for this issue, HIV stigma and discrimination elevates the risk for women to violence and physical abuses, similarly women who are victims of violence often face sexual violence, which increases their risk of HIV infection and elevates the risk for further violence.³ This is an important area where legal measures are needed to address the vulnerability that women face in relation to violence. Across the region, violence against women is a multi-dimensional issue and there are many cases where women legislative reforms are urgently needed to the address this issue. For example, under the criminal codes in some Caribbean countries, a husband cannot be found guilty of the offence of rape against his wife including other forms of non-consensual sexual activity. Unless these connections between violence and HIV are understood and addressed, the epidemic will disproportionately affect women. As well, coercive environments such as trafficking of women and forced prostitution continue to negatively affect women contributing to their vulnerability and are key policy areas for which legal measures are needed to address these issues.

In setting the legislative agenda to respond to the issue of sexual violence, it is important that key considerations are given existing obligations under international law, which includes but not limited to ⁴

1. U.N. Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences (R. Coomarasamy): Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and the Methods of Work of the Commission, 1997, Fifty-Third Session, U.N. Doc. E/CN/4/1997/47.
2. UNAIDS/UNFPA/UNIFEM (2004) 'Women and HIV/AIDS: Confronting the crisis'.
3. U.N. Commission on Human Rights, "Elimination of Violence Against Women," Resolution 2004/46, Fifty-Sixth Meeting (20 April 2004)
4. U.N. General Assembly, "Intensification of Efforts to Eliminate All Forms of Violence Against Women," Resolution 63/155, 30 January 2009.

- The right to the highest attainable standard of health;
- The right to life;
- The right to freedom from cruel, inhuman or degrading treatment or punishment;
- The right to be free from all forms slavery and servitude, including trafficking of women and girls,
- The right to liberty and security of the person;
- The right to non-discrimination and equal protection of the law;
- The right to be protected from violence.

Analogously commitments under the United Nations General Assembly Special Session on HIV/AIDS, and the United Nations General Assembly Resolution on the Political Declaration on HIV/AIDS are central components to consider as they set out key components for legislating for the rights of all women.

State Responsibility

The constitutions of the Caribbean are not comprehensive documents as it relates to human rights. Many constitutions lack clarity in terms of human rights and cannot be used to liberally link human right violations and abuses.⁵ As such the challenges related to sexual and reproductive rights are limited to the extent that they poorly protect and often have restrictive interpretations in case law and jurisprudence. However through international human rights law, Caribbean states have ratified treaties and are subject to international rulings, customs and resolutions which have provided a framework for setting the obligation that states have to address the challenges faced by women and the HIV epidemic. Particularly as it relates to safeguarding their civil rights including being free from violence and gendered discrimination that negatively impacts their attainment of the highest achievable standard of health.⁶ For example international jurisprudence vis-à-vis the Inter-American Commission on Human Rights explicitly applied the due diligence doctrine to the issue of domestic violence, concluding that Brazil had failed to exercise due diligence to prevent and respond to domestic violence.⁷⁸ As well more explicit reference can be drawn from the Committee for the Elimination of Discrimination Against Women (CEDAW) 2005 decision under the optional protocol ruled in the case, *A.T v. Hungary 2005* that a state party had failed in the its obligations to prevent violence and protect the complaint against its consequences. As it is well established that sexual violence is a factor contributing to the vulnerability of women, the implication of failing to protect women from violence is directly linked to their vulnerability to HIV/AIDS⁹. Sadly only two countries in the Caribbean, Antigua and Barbuda and St. Kitts and Nevis, have ratified the optional protocol nonetheless this is still important setting the regional legislative context particularly for the Organization of Eastern Caribbean States (OECS).

Enacting Legislation

While legal measures cannot guarantee the elimination of sexual violence, coercion and the gender inequities that contribute to the worsening situation for Caribbean women and the HIV epidemic. Legislative reforms are an essential step in advancing women rights within the Caribbean, and are an essential component of a comprehensive strategy to responding to the challenges of the HIV/AIDS epidemic.

5. Barnett, L, 'Caribbean Judicial Approach to Constitutional and Conventions Human Rights Provisions', seminar on Human Rights and the Machinery of Justice, 1993, Inter-American Institute of Human Rights.

6. Canadian HIV/AIDS Legal Network, "Respect, Protect and Fulfill" Legislating for Women Rights in the Context of HIV/AIDS' Vol. 1 Sexual and Domestic Violence 2009.

7. Ibid.

8. Inter-American Commission on Human Rights, Report No. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil), 16 April 2001.

9. U.N. Human Rights Commission, Report of the Special Rapporteur on Violence, Its Causes and Consequences (Y. Ertürk): Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women — The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, 2006, U.N. Doc. E/CN.4/2006/21, Sixty-Second Session.

Urgent reforms are needed to address sexual and domestic violence including enacting new laws that are persistent progressive advancements in international law. As well, this must accompany a strong social response that addresses negative suppositions on the role of women and which perpetuate gender inequality.

16	Guyana	One Love Organization Guyana
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Being employed as the youth enforcement officer of the One Love Organization Guyana I had been challenged over the last two (2) years with many impediments during that period. The incidence of Youth H.I.V. infection rates has risen tremendously. As the youth representative I am constantly reminded by them of the stigma and Discrimination they are faced with when accessing social and other services they may hope to acquire. This population has received the blatant and barbaric mistreatment by civil society, public health officials, family members, friends and Law Enforcement Officials. The cries of this youthful population has gone unaddressed by our government, the many programs they have rendered to this population has not being fruitful in curbing the rise in H.I.V. related cases. Youths are ostracized like many other populations because of their age, color, class, creed or economic status. Many youths have become orphans, their families have neglected them, some have become vagrants, drug addicts, sex workers, carriers of drugs for dealers, prisoners and sometimes they are killed because of drug related issues. The health services have come under pressure because of the way in which they have mishandled juvenile matters. Our Law Enforcement Officials (most of them) have added tremendously to our youthful population's plight for justice. Youths are constantly harassed by this body on the basis of their age and many other underlining factors. Youths are more vulnerable in our society because of many reason(s) but more so they are confronted about their age, why, how, what, who contributed to their situation, these are some of the many questions That is frequently asked. Our job at the One Love Organization is enlightening, educating and empowering youths whose challenges are perplexing to be cognizant Of their importance and the role the will have to play as young adults. Working with this population has also placed me in the spotlight of Stigma and Discrimination; nevertheless I am committed and empowered to continue to work for and with this population to address in any way possible the reduction of H.I.V., violence and other Impediment that this population may experience. I know that I am a voice for them and with them.

17	Haiti	Partners in Health
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THE STORY OF MY JOURNEY IN PIH-HAITI

To Whom It May Concern:

My name is X. I am a Roman Catholic Priest. Over the past 30 years, I have been involved in social justice work around human rights and the Gospel in the context of Liberation Theology. My favorite book is Paolo Freire's "Pedagogy of the Oppressed".

I strongly believe in the social battle for the promotion of the marginalized and the poor, whose names are multiple: homeless, illiterate, jobless, sick people and the right-less. In my late twenties, as a chaplain of a middle class private school run by a congregation of Nuns, I devoted myself to sensitizing the students about social issues and people affected by poverty.

My professional orientation changed drastically when I arrived at Partners In Health/ Zanmi Lasante (PIH/ZL) as

the organization's first psychologist, serving TB and HIV affected people in the rural, Central Department of Haiti. It did not take me long to understand that these people are incredibly vulnerable at multiple levels. This vulnerability does not exist only in their lacking of basic material necessities, perhaps due to their incapacity to find and keep a job, but also in the financial consequences that this creates. It can also be related to the psychological burden HIV imposes on them, threatening to decrease their life expectancy. Because of these vulnerabilities and the lack of acceptance in the society in which they live, many HIV positive people often find themselves unable to protect their rights against stigma and discrimination. Here in Haiti we have experienced this weakness many times in the face of a corrupt system sustained by inefficient judicial, law enforcement and protection systems.

HIV-POSITIVE PEOPLE AND LAW ENFORCEMENT IN HAITI

In any society, citizens are apt to trespass against the law. Particularly for the most vulnerable, who more often than not are unable to afford legal fees, a government should protect a person's right to free legal support.

During my career at PIH/ZL, I have had to manage several cases in which our HIV patients have been in trouble with the law and subsequently imprisoned. I am reminded of a case of a woman (in her mid-fifties, but who looked much older due to her poor health and poverty) who had bought stolen alcohol from a street vendor. This act is considered a felony in Haiti and subject to imprisonment. She was consequently arrested and jailed for more than a week without seeing a judge.

In the particular context of the Haitian judicial system, this woman was not only jailed but exposed to arbitrary physical abuse from police officers while she was in custody. Her health was endangered by the conditions in the prison, and even worse by the fact that she was denied her right to receive her regular daily anti-retroviral therapy for her medical condition.

Thanks to one of my former students at the State Law School who was freshly appointed as assistant deputy for the District of Hinche, I was able to visit that woman and call for her release. Within two days she was released from prison and able to return home. Without this intervention she would have been forced to stay in jail for a much longer time. Her health would have most certainly have suffered greatly and she would have become one of many people wrongfully forced to remain in jail due to the current prolonged detention policy in Haiti, grievously harmed by the practice.

HIV-AFFECTED PEOPLE AND ANTI-STIGMA LEGISLATION

When we talk about the psychological burden on HIV patients' shoulders, we mean the stress they are facing in the face of those in their community whose bias in their perceptions is sustained by ignorance and fear. If stigma is associated with perception, discrimination is linked more to behaviors derived from stigma. This stigma, based in discrimination, may be present in a number of forms, starting from simple avoidance to rejection up through violent banning from society. Where is the law in all of this? What are the practices at PIH/ZL and in Haitian society in general?

At an organizational directors' meeting in Lesotho in February, 2011, those of us who represent PIH leadership across the countries where we work were trying to define the concept of "quality of care". One of the best definitions which struck me was this: "quality means doing what you say or preaching by example." Across PIH sites we have decreed that discrimination based on one's illness cannot be a barrier to social reinsertion. Any HIV positive patient has the right to a job and cannot be prevented from having a job because of his or her illness. Thus, job creation for HIV positive people is encouraged for a variety of reasons. On the one hand, this policy of job creation works on promoting social reinsertion of patients while also working on poverty

alleviation and increased productivity for this person.

In the Haitian legal system, I believe that there are provisions to fight this kind of behavior, but they are not applied. We should be working on advocacy campaigns to place constant pressure on local and national authorities to not only have the political will to make positive changes in this regard, but more importantly to take appropriate actions.

LAW AND HUMAN RIGHTS PROMOTION IN HAITI

The culture of advocating for a human rights-based framework in Haiti is commonly perceived as a Western matter not applicable to poor countries like Haiti. It is not uncommon, to this day, to see human rights activists showing much more interest in matters related to civil and political rights and showing very little concern for social and economic rights in individuals and their communities. That is why when most people hear about human rights they tend to think immediately that we are referring to civil and political rights and express a low level of commitment to promoting these non-political rights.

At PIH/ZL we prioritize solidarity and social justice work over charity. All of our actions are supposed to reflect the respect we have pledged to show for our patients and their right to health care. We need to work to expand the fight for these rights not only in public, but within our own medical and non-medical staff here in Haiti. In countries where the State is too weak to appropriately protect its citizens' rights, this advocacy is particularly important. Our multi-disciplinary approach to treating illness is supported by our belief in a rights-based framework. How can a patient respond positively to TB or HIV treatment when he or she can't afford food to eat? What should be the best housing policy for HIV patients who can't afford rent for an apartment? What legal protection is available for a women infected by HIV after being raped?

Today there exists a very wide gap between theory and practice. The battle will be long and require a lot of resources, competence and energy. Political will coupled with awareness around issues of social justice will certainly be fruitful. I will always appreciate the great opportunity I have to be a part of this incredible challenge to build, through PIH's efforts, a new society where human rights are promoted and guaranteed, especially for those with HIV. If I have a wish it is to see that one day the great anthropological teachings of Dr. Paul Farmer being delivered in our medical and nursing schools in order to promote human rights and raise social awareness among the next generation of decision-makers for Haiti.

18	Guyana	NIL
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As a former prisoner and a Male Sex Worker my experiences are psychologically disturbing. For nine (9) yrs of my life I was incarcerated at the Camp Street Prison. Upon my reception at the prison immediately after being processed I was located at a special holding area for M.S.M's. I was not allowed to any free movements without the guards escorting me. During my first year at that institution I was sexually assaulted by three (3) members of a so-called 'A' team, a gang in the prison. This matter caused mayhem for a while but was never properly investigated internally or externally. M.S.M's are victims of stigma and discrimination by the guards and the inmates of these institutions. For this reason my population is ostracized from this microcosm of society. Violence is perpetrated against my population because the guards and inmates see the population as outcast, some M.S.M.'s may be deemed cohorts (spies for the guards). I have experienced attacks on my population in some cases for no reason/s or for sexual endowment. I was violently assaulted one time by an inmate because he was seeking to solicit sex from me but I refused. Many cases of abuse directed to M.S.M's are connected to

illegal activities within the penal walls, this is so because the guards peddle the drugs in and people may see, sometimes it's not an M.S.M but we are the easiest persons to target for revenge. M.S.M. are not allowed to work because the Laws of Guyana, Prison Act Chapter 11:01 says so, this chapter stipulates that this population be isolated. If two males are caught in a sexual act they are many times charged internally or externally (through the court to answer Charges of Buggery) or the guards would beat them with their fist or club them. To be incarcerated as an M.S.M is the worse ordeal a member of this Population can face, much less if that individual is H.I.V + or has some other sexual infection/s, because of the over-crowdedness of the Prison/s here persons who are infected would be placed in a special area. This many times causes persons to shun the Prison's treatment because they fear the stigma and discrimination that is attached, the medical staff talks about inmates status, as well as the inmates who are privileged to this information. When you are H.I.V. positive the National A.I.D.S. Program Secretariat provides fruits, water, vitamins and Once a month they supply each positive inmate with a food hamper, these are ways of allowing the other inmates to know that a person is infected without any document. Once a month also there is clinics that comes in and all the positive person have to attend and this embarrasses some people, two (2) of my peers died of denial while there, they were serving a few years each and were afraid to accept treatment because of the stigma attached to it. Most of the guards are school drop-outs and they lack the ability to function in the Prison environs, each day the guards assault inmates for little or no reason at all. I was beaten once by a senior guard because I was named as an accomplice in a drug ring although I had maintained my innocence I was beaten severely without any medical attention. Many times inmates would be beaten and they cannot complain to their families because of fear, another thing the phone wires are tapped so the guards could listen to an inmate's conversation, this caused so much problems in the institution that the inmates started procuring cell phones, the amount of cell phones in there is surprising.

For the nine (9) yrs that I was imprisoned I have never seen a guard Junior or Senior use the Prison Act to execute their functions, at first there was a copy in the Prison library but it was removed after inmates started using it to seek justice internally. Most of the guards take home the Dietary supplements provided for inmates leaving us with little or nothing sometimes and they would say that their salaries are not enough. After years of arduous struggle to liberate myself in Prison I finally got that opportunity. I was involved in many programs that has empowered me, there and then I had found my way of escaping the internal traumas I was faced with as a Gay man in prison. I was confronted with stigma more because I was now allowed to socialize with the other inmates. The many workshops held that I participated in has empowered me, today I think my imprisonment has been my gift of improvement, I attended H.I.V. workshops, Music, emotional intelligence, skills for success, anger management, training for trainers and theology these programs has helped me although my experiences were traumatizing. Because of the struggles that I have been through for the basic human rights of my population in prison the Laws haven't changed but the legacy that I left remains because M.S.M.'s are now working assiduously in the prisons in all areas to support their reintegration into society and to help the inmates along with Officers to better the institutions countrywide. Today I am a volunteer with an N.G.O. advocating for human rights for the vulnerable populace.

Most recently I was attending a mash camp meeting in a ghetto area along with two females and an M.S.M. when we reached the area a young man who was drinking, smoking marijuana and popping ecstasy with three of his work mates (they are in training at the Ulric Pilgrim Cadet School Of Training, hoping to become members of the Disciplined Forces.) started troubling the young lady with us, she didn't take him on so after a few attempts he walked behind her in the yard where we were headed, she still didn't pay him any attention so he turned around quarrelling and made eye contact with me, he asked me what the F... you looking at and started walking to me so I said I can't look at you and he slapped me violently to the left side jaw, I thought of all kinds of things and prison came to mind but the reality is I suffered enough so I maintained my composure and he said that he would but his F...ing gun in my mouth, one of the persons drinking with him got in and said that the guy

should have killed me because people like me have nowhere in society we are out-cast. Many times we cannot access certain services without fear of stigma; the services are Police, health services, barbershops, transportation, hotels, motels, and restaurants. The police continue to be the biggest impediment towards growth in the vulnerable population. Our repressive laws and the administrators of the laws are causing trauma for our population.

Many cases of abuse reported by Sex Workers are acts of the police who with no regards for the laws of Guyana harass this population. As an advocate for Human Rights to be enshrined for all, we have been marginalized by the so called protectors of the law when civil society sees this they add more pain to the lives of my people. Many sensitization workshops have been done with Junior and Senior Officials of the Law Enforcement Agencies but when everything is said and done the police continues to violate The Human Rights Declaration. For too long we have suffered psychologically now more than ever the lyrics of some anti-gay artiste have become a culture on our airwaves and in our clubs, there's no peace in being a gay person or a Sex Worker.

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The Larcher Group

The Larcher Group is a boutique consulting firm specializing in a variety of strategic planning, capacity building and policy development services. We provide a range of professional consultancy services to International Organizations, Governments, and Non-Governmental Organizations. We operate from a broad rights-based approach, but also pay close attention to the power imbalances and manifestations of discrimination within the context of sexuality, class, sex, gender, and race. We have worked on a variety of transnational and regional projects in Canada and the Caribbean in the areas of sexual identity, HIV/AIDS, international human rights law and international development & aid.

INTRODUCTION – HIV, Law, & Disaster Response

The Caribbean has, after sub-Saharan Africa, the second highest HIV prevalence rates in the world. The overall adult HIV prevalence in the Caribbean was estimated at 1% in 2007 but this regional average encompasses considerable variations in national infection rates, ranging from nearly 0 to 3.8%. In many countries of the region the shift from low prevalence to a generalized epidemic had already occurred. It is currently estimated that 230,000 people are living with HIV in the region. Haiti and Dominican Republic together account for 75% of all HIV cases in the Caribbean¹.

Laws in the Caribbean, which violate human rights privacy and nondiscrimination, undermine HIV/AIDS outreach to vulnerable populations². State failure to protect vulnerable populations from violence and abuse by the police and private citizens marginalizes them and inhibits them from seeking treatment for HIV and other sexually transmitted diseases that increase the risk of HIV transmission. Across the Caribbean, punitive laws (sodomy laws/buggery laws, solicitation laws, drug use laws) further marginalize already vulnerable populations making them more susceptible to HIV. Deep-rooted stigma and discrimination associated to persons who are sex workers, homosexuals, transgendered, prisoners, drug users or migrants are pervasive in the region. Many face threats ranging from verbal abuse to assault, sexual assault and even death. Victims are reluctant to appeal to the police for protection, as police have in the past failed to investigate complaints of homophobic and transphobic violence, and many victims face ridicule at the police station.

1. Caribbean Regional Strategic Framework on HIV and AIDS 2008-2012, PANCAP

2. Caribbean Vulnerable Communities (CVC) notes that these groups include men who have sex with men, sex workers, people who use drugs, orphans and other children made vulnerable by HIV, migrant populations, ex-prisoners, and youth in especially difficult circumstances.

Compounding the issue of HIV and punitive laws, the region is susceptible to the catastrophic impacts of natural disasters. These may be economic, social and environmental. Damage to infrastructure can severely impede economic activity; social impacts can include loss of life, injury, ill health, homelessness and disruption of communities.

HIV vulnerability among vulnerable populations during a natural disaster can be understood in terms of the social determinants of health, that is, the social and economic conditions that shape the health of individuals, communities and jurisdictions as a whole. Limited access to safe, affordable housing; unemployment and underemployment; gendered norms that prescribe male domination over women; a reluctance to talk about sex, sexuality and health; pervasive homophobia; and barriers to accessing HIV supports and services, other social services, legal and educational opportunities — all contour the experiences of those living with or affected by HIV during a disaster³. At the core of this issue is the intersection between HIV, the law, and humanitarian response, as a result people living with HIV and other key populations at higher risk of exposure to HIV may require specific measures to protect themselves against neglect, discrimination and violence during a disaster. As it stands, many Caribbean countries do not have protective laws and measures to ensure that all people benefit from HIV programmes and have access to justice, regardless of health status, gender, sexual orientation, drug use or sex work, esp. during an emergency or humanitarian effort.

THE ISSUE

HIV/AIDS is a crosscutting issue and the existing punitive laws, policies and regulations in the region sufficiently hamper National AIDS Programmes' ability to work with vulnerable populations in the preparation for and response to emergencies and natural disasters. Natural disasters, when combined with food security and poverty, can lead to humanitarian emergencies that have a potential of increasing vulnerability to HIV infection among affected populations and disrupt vital AIDS services.

During emergencies, vulnerability to HIV infection may be increased due to the loss of livelihoods and the disruption of family and social networks and institutions, forcing women and girls into transactional sex for money, food or protection. Drug use patterns may also change. Conflict also tends to increase gender-based violence against women and girls. Unless protective measures are taken, HIV transmission may well increase during post-emergency, recovery and reconstruction periods.

Existing punitive laws in the Caribbean make it difficult to ensure condom availability, strong programs to address gender-based violence and provide support for networks of people living with HIV and sexual minorities during a disaster. As a result, it becomes imperative that countries that continue to criminalize certain behaviours and peoples in the Caribbean embark on legal reforms and implement laws, policies and regulations that protect people in times of peace and during moments of emergency or natural disasters.

In 2001, at the United Nations Special Session on HIV/AIDS, all Caribbean countries signed on the Declaration of Commitment on HIV/AIDS which provided that Articles 75, 76, 77, 78 provided that States would:

“...incorporate HIV/AIDS awareness, prevention, care and treatment elements into programmes or actions that respond to emergency situations, recognizing that populations destabilized by armed conflict, humanitarian emergencies and natural disasters, including refugees, internally displaced persons and in

3. A Symington, Larcher, Akim Adé. “Criminals and Victims? Impact of the Criminalization of HIV Non-Disclosure on African, Caribbean, and Black Communities in Ontario”, *African and Caribbean Council on HIV/AIDS in Ontario*, Toronto, 2010.

particular, women and children, are at increased risk of exposure to HIV infection; and, where appropriate, factor HIV/AIDS components into international assistance programmes”⁴.

Almost 10 years after the express intent to incorporate HIV in disaster response, the Caribbean Regional Strategic Framework on HIV and AIDS 2008-2012 remains silent on the issue. Many Caribbean National Action plans also remain silent and punitive laws make it even more likely that vulnerable populations will not be part of any preparation, post-emergency, recovery and reconstruction plans.

NEXT STEPS

- Establish close links between national / regional disaster management authorities and networks of vulnerable populations;
- Develop a regional analysis on the inclusion of HIV/AIDS and humanitarian responses goals within National AIDS Programmes;
- Develop an inter-regional & multi-sectoral guideline to addressing HIV in humanitarian responses, paying particular attention to vulnerable populations.

4. http://www.caricom.org/jsp/community/regional_issues/declaration_commitment.jsp