Report of the
Caribbean Regional Dialogue of the Global Commission on HIV and the Law

Port of Spain, Trinidad and Tobago, 12-13 April 2011
Regional Issue Briefs and video of the Caribbean Regional Dialogue are available on the Commission’s website at www.hivlawcommission.org.

The content, analysis, opinions and policy recommendations contained in this publication do not necessarily reflect the views of the United Nations Development Programme, the Joint United Nations Programme on HIV/AIDS or the Global Commission on HIV and the Law.

Copyright © United Nations Development Programme 2011

**UNDP Regional Centre LAC**
Latin America & Caribbean
HIV Team
UN HOUSE | Building 129, City of Knowledge | P.O. Box 0816-1914
Tel: +507 302-4717

**Global Commission on HIV and the Law - Secretariat**
UNDP, HIV/AIDS Practice
Bureau for Development Policy
304 East 45th Street, FF-1180, New York, NY 10017
Tel: (212) 906 6590 | Fax: (212) 906 5023

Design: Ian Mungall and Rodrigo Domingues.
Report of the Caribbean Regional Dialogue of the Global Commission on HIV and the Law

Port of Spain, Trinidad and Tobago, 12-13 April 2011
## Contents

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th>v</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbreviations</td>
<td>vi</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>1.1 The Caribbean</td>
<td>1</td>
</tr>
<tr>
<td>1.2 HIV in the Caribbean</td>
<td>1</td>
</tr>
<tr>
<td>1.3 The Regional Dialogue</td>
<td>3</td>
</tr>
<tr>
<td>2. Context: The legal environment, legislation &amp; law reform</td>
<td>5</td>
</tr>
<tr>
<td>2.1 Morality and the law</td>
<td>6</td>
</tr>
<tr>
<td>2.2 The role of parliamentarians</td>
<td>8</td>
</tr>
<tr>
<td>Calls from civil society</td>
<td>8</td>
</tr>
<tr>
<td>The parliamentarian response</td>
<td>10</td>
</tr>
<tr>
<td>2.3 How do we win the day – The debate on achieving law reform</td>
<td>11</td>
</tr>
<tr>
<td>Partnership and accountability</td>
<td>13</td>
</tr>
<tr>
<td>Lobbying and advocacy</td>
<td>14</td>
</tr>
<tr>
<td>Education</td>
<td>14</td>
</tr>
<tr>
<td>Challenging laws based on international legal norms</td>
<td>14</td>
</tr>
<tr>
<td>New Thinking – Engendering a culture Of rights</td>
<td>15</td>
</tr>
<tr>
<td>3. Affected, marginalised &amp; vulnerable populations</td>
<td>16</td>
</tr>
<tr>
<td>3.1 Experiences of persons living with HIV</td>
<td>16</td>
</tr>
<tr>
<td>3.2 Experiences of transgender persons</td>
<td>18</td>
</tr>
<tr>
<td>3.3 Experiences of MSM</td>
<td>20</td>
</tr>
<tr>
<td>3.4 Experiences of sex workers</td>
<td>23</td>
</tr>
<tr>
<td>3.5 Experiences of persons who use drugs</td>
<td>25</td>
</tr>
<tr>
<td>3.6 Experiences of women</td>
<td>25</td>
</tr>
<tr>
<td>3.7 Experiences of youth</td>
<td>27</td>
</tr>
<tr>
<td>3.8 Experiences of migrants</td>
<td>30</td>
</tr>
<tr>
<td>4. Access to treatment</td>
<td>31</td>
</tr>
<tr>
<td>5. Examples of good practices</td>
<td>32</td>
</tr>
<tr>
<td>5.1 Test case litigation</td>
<td>32</td>
</tr>
<tr>
<td>5.2 Education and direct engagement</td>
<td>32</td>
</tr>
<tr>
<td>5.3 Proposed legislation</td>
<td>33</td>
</tr>
<tr>
<td>6. Follow-up action for sustained change</td>
<td>35</td>
</tr>
<tr>
<td>Appendix A: Civil society participants</td>
<td>38</td>
</tr>
<tr>
<td>Appendix B: Government expert participants</td>
<td>40</td>
</tr>
<tr>
<td>Appendix C: Closing remarks &amp; observations of Commissioner Michael Kirby</td>
<td>41</td>
</tr>
</tbody>
</table>
Acknowledgements

This Report is dedicated to the memory of Robert Carr, intrepid and unwavering champion of justice and compassion.

The Global Commission on HIV and the Law expresses its deep appreciation to all those who made submissions to the Caribbean Regional Dialogue of the Commission, and those who supported the Regional Dialogue process. The Caribbean Regional Dialogue would not have been possible without the dedication and support of Robert Carr.

The Caribbean Regional Dialogue was hosted by UNDP Latin America and the Caribbean Regional Service Centre (LAC-RSC) HIV/AIDS Practice Area and the UNAIDS Regional Support Team (RST) for Latin America and the Caribbean; and was jointly organized by UNDP RSC-LAC, UNDP Trinidad and Tobago and the Secretariat of the Global Commission on HIV and the Law, hosted at the UNDP HIV Group in New York.

The Caribbean Regional Dialogue benefited from the skilful and engaged moderation of Martine Dennis. The Commission would like to acknowledge the support and commitment from Niki Fabianic, United Nations Deputy Regional Director for Latin America and the Caribbean and Edo Stork, Deputy Resident Representative of UNDP Trinidad & Tobago. The Regional Dialogue also benefited from the participation of the Caribbean’s regional mechanism on HIV, PANCAP (Pan Caribbean Partnership against HIV/AIDS).

Special thanks to Commissioners Michael Kirby, Stephen Lewis and JVR Prasada Rao for actively participating in the Dialogue.

In particular, the Global Commission on HIV and the Law would like to recognise the UNDP HIV/AIDS Group in New York for providing unwavering support and the staff members of the Secretariat of the Global Commission on HIV and the Law for their overall guidance, planning and support: Mandeep Dhaliwal, Vivek Divan and Emilie Pradichit. Maria Tallarico, David Ruiz, Adela Hive and Ernesto Kraus from the UNDP Latin America and the Caribbean Regional Centre and the Commission Secretariat were instrumental in organising the Regional Dialogue with support provided by Theira Guzman for organization and logistics of this event.

Many thanks to the following individuals who offered invaluable assistance and support: Natalie Amar, Dominic Bocci, Meagan Burrows, Megan Cribbs, Reeti Desai, Amy Edwards, Laura Goldsmith, Brianna Harrison, David Levy, Rumbidzai Maweni, Kathleen Meara, David Ragonetti, Rohan Sajnani, Aaron Scheinwald, Ji-Eun Seong, Dimitri Teresh, and Nadeah Vali.


This report was prepared by Veronica SP Cenac and Dr. Marcus Day with support from Leah Utyasheva and editing by Vivek Divan. Neither the authors nor the Global Commission on HIV and the Law, UNDP, or UNAIDS can vouch for the accuracy of submissions and statements made in relation to this Regional Dialogue. The content, analysis, opinions and recommendations in the document do not necessarily reflect the views of the Global Commission on HIV and the Law, UNDP or UNAIDS.

Thanks to Ian Mungall and Rodrigo Domingues for design of this publication.
<table>
<thead>
<tr>
<th>Abbreviations</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>ART/ARV</td>
<td>Antiretroviral treatment/ Antiretrovirals</td>
</tr>
<tr>
<td>CAISO</td>
<td>Coalition Advocating for the Inclusion of Sexual Orientation</td>
</tr>
<tr>
<td>CAJO</td>
<td>Caribbean Association of Judicial Officers</td>
</tr>
<tr>
<td>CARICOM</td>
<td>Caribbean Community</td>
</tr>
<tr>
<td>CDARI</td>
<td>Caribbean Drug and Alcohol Research Institute</td>
</tr>
<tr>
<td>CHAA</td>
<td>Caribbean HIV/AIDS Alliance</td>
</tr>
<tr>
<td>CSME</td>
<td>Caribbean Single Market and Economy</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>LGBT</td>
<td>Lesbian, Gay, Bisexual and Transgender persons</td>
</tr>
<tr>
<td>MSM</td>
<td>Men who have sex with men</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>OECS</td>
<td>Organisation of Eastern Caribbean States</td>
</tr>
<tr>
<td>PANCAP</td>
<td>Pan Caribbean Partnership Against HIV/AIDS</td>
</tr>
<tr>
<td>SASOD</td>
<td>Society Against Sexual Orientation Discrimination</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNAIDS</td>
<td>United Nations Joint Programme on HIV/AIDS</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNGASS</td>
<td>United Nations General Assembly Special Session on HIV</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollars</td>
</tr>
<tr>
<td>UWI</td>
<td>University of the West Indies</td>
</tr>
</tbody>
</table>
“Stigma and marginalisation, social judgment 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.”

1. Introduction

The Caribbean is as rich in its diversity as it is in natural beauty. The 29 nations and territories which make up the Caribbean are island states, archipelagic states, and mainland territories in South and Central America. Population size varies from smaller island states such as Anguilla with 8,000 and Cayman Islands with 35,000 to Haiti with eight million and Cuba with 11 million inhabitants. Its 39 million population is of African (predominant) European and Asian ancestry, as well as indigenous populations such as Carib, Arawak, Garifuna and Taino peoples. Caribbean populations speak English, French, Spanish, Dutch, Kreyol, Papiamentu and are from diverse religious backgrounds-Christian, Hindu, Muslim and others. The majority of the territories are independent sovereign states, however, the French, Dutch, English and the United States continue to exercise “colonial” power over their dependent or overseas territories. The wealth of the Caribbean is also not homogenously distributed with Bermuda having the highest GDP per capita of USD 36,000 and Haiti the lowest with USD 1600. Similarly wide gaps in implementation exist in many countries with opulence and poverty living in a close and uneasy co-existence.

The diversity also extends to the legal systems of the region. With the exception of Guyana and Saint Lucia which have mixed systems with influences of Roman Dutch law and French Civil Law respectively, the legal system of the English Speaking Commonwealth Caribbean is based on English Common law. Haiti’s legal system is based on Roman Civil law, the Dominican Republic on French Civil Law and Suriname on the Dutch legal system, which incorporates French legal theory. The application of international treaties and conventions have limited effect in countries based on the English Common law, in that the instrument must become law by passage through national legislature to be effective (dualist theory). Countries that follow Dutch and French Civil law may apply the convention or international legal instrument upon ratification (monist theory).

1.1 The Caribbean

Despite differences between countries, the spread of Human Immunodeficiency Virus (HIV) in the Caribbean

---

1 From the submission of the Coalition Advocating for the Inclusion of Sexual Orientation (CAISO), Trinidad & Tobago
2 The Bahamas
3 Guyana, Suriname
4 Belize
has taken place against a common background of poverty, gender inequalities and a high degree of HIV-related stigma.

The Caribbean continues to be the region with the second highest adult prevalence behind sub-Saharan Africa. It is estimated that in 2009 there were 260,000 persons living with HIV in the wider Caribbean and that approximately 70% live in Haiti and the Dominican Republic. Notwithstanding, the data on adult prevalence shows a different perspective. The Bahamas has the highest adult prevalence of 3%, followed by Suriname with 2.4% and Haiti with 2.2%.

Increased access to anti-retroviral treatment (ART) has led to a decrease in mortality of 40% since 2001. However, coverage is estimated to be approximately 52% across the region. Acquired Immune Deficiency Syndrome (AIDS) continues to be the leading cause of death among men and women aged 20 – 59. Despite a huge influx of external aid to counter HIV in the Caribbean between 2001 and 2009 there has been no significant decline in the number of new infections.

The number of females living with HIV is increasing. Women account for 50% of all people living with HIV. HIV prevalence is highest among men who have sex with men (MSM) and sex workers. 18,000 new HIV infections took place in 2009 (averaging 50 new infections per day) and 12,000 AIDS-related deaths were recorded that year (or 33 persons per day).

Source: UNAIDS Caribbean Regional Support Team – The Status of HIV in the Caribbean 2010

---

5 UNAIDS (2010), The Status of HIV in the Caribbean, UNAIDS Caribbean Regional Support Team.
6 26% in the Bahamas and 59% in Belize, Guyana and Trinidad and Tobago.
1.3 The Regional Dialogue

“HIV continues to have a great toll on the people in the Caribbean. Estimated 240,000 people live with HIV in the region. Each year 70,000 people are newly infected with HIV and 12000 die of AIDS related causes. HIV prevalence in the Caribbean is about 1%, which is higher than in other regions apart from Sub Saharan Africa. This is why responding to HIV is the core to the successful development of this region. Aside from Sub-Saharan Africa, the Caribbean is the only place in the world where women and girls make a higher proportion of people living with HIV, than men and boys. Across this region, as in many parts of the world, HIV thrives among those who are excluded, misunderstood and stigmatised. Public health, stigma, discrimination and violence are interlinked and we often see human rights violations against men who have sex with men, transgender people and people who use drugs. The law, including access to justice could be a powerful instrument to challenge stigma, protect people from violence. There is much to learn from this diverse region to lead the public health responses. This Dialogue is a unique opportunity to bring together civil society, to engage multiple constituencies, civil society organisations working in human rights issues and affected populations. I urge you to use it as an opportunity to identify constructive, practical solutions for countries, which will help to marshal the power of the law to be a positive force for scaling up effective HIV responses.”

- From the opening remarks of Rebecca Grynspan, Associate Administrator, UNDP

This report summarises the proceedings of the Caribbean Regional Dialogue of the Global Commission on HIV and the Law (the Commission) held on 12-13 April 2011 in Port of Spain. It also draws from the written submissions that were made to the Commission from civil society in the Caribbean.

The objectives of the Global Commission are to:

• analyse existing evidence and generate new evidence on rights and law in the context of HIV and
• foster public dialogue on the need for rights-based law and policy in the context of HIV;
• increase awareness amongst key constituencies on issues of rights and law in the context of HIV and engage with civil society and strengthen their ability to campaign, advocate and lobby; and
• identify clear and actionable recommendations with a concrete plan for follow-up

The Commission convened the Regional Dialogue to learn from individuals, communities, non-governmental organisations, policy-makers, legislators, judges and law enforcement officials from the region. The Regional Dialogue also provided an opportunity for people living with HIV and key populations affected by HIV to be heard. The experiences and knowledge shared at the Regional Dialogue will help to shape the Commission’s thinking and recommendations, and inform the Commission’s Final Report.


The focus of the Regional Dialogue was not just on laws, but on law enforcement practices and access to justice. This required considering the role of police, public security personnel, courts, magistrates, judiciary, ministries of law and justice, prisons, detention centres, national human rights institutions and civil society groups such as legal aid providers, advocacy organisations and human rights organisations. The Regional Dialogue considered actions that can be taken in advance of, or additional to, law reform including community mobilisation, legal education, legal aid services and other legal empowerment approaches.

In seeking to generate a region-specific policy dialogue on key legal and human rights issues in the context of HIV the Caribbean Regional Dialogue of the Global Commission on HIV and the Law was informed by written and video submissions received prior to the Dialogue. Civil society organisations and affected individuals were invited to make submissions to the Commission in relation to the following areas:

1. Laws and practices that effectively criminalise people living with HIV and vulnerable to HIV;
2. Laws and practices that mitigate or sustain violence and discrimination as lived by women;
3. Laws and practices that facilitate or impede HIV-related treatment access; and
4. **Issues of law and HIV pertaining to children.**

In addition to the four focus areas, issues relating to access to justice and discrimination were also raised in submissions. As a result, the agenda for the Regional Dialogue also included discussion of these issues. All submissions made to the Commission shall be available on its website, [www.hivlawcommission.org](http://www.hivlawcommission.org), with the launch of the Commission’s report.

The Regional Dialogue was preceded by a preparatory meeting on 12 April 2011. At the preparatory meeting, government experts and civil society participants met separately but concurrently with Commissioners, UNDP and UNAIDS officials and others to discuss and assess their expectations from the dialogue and issues of concern ranging from criminalisation of sex work, homosexuality and drug use, to vulnerability of women and girls, children, denial of human rights, stigma and discrimination and access to treatment. The first day was also spent to prepare participants to effectively interact with their counterparts in a constructive and meaningful way during the interactive proceedings on day two. The Regional Dialogue held on 13 April 2011 was conducted in the style of a moderated ‘town hall’ meeting. A list of the participants in the Regional Dialogue is provided at Appendices A and B.

The Caribbean Regional Dialogue saw very active participation by government ministers, parliamentarians, members of the judiciary including the Caribbean Court of Justice, police, lawyers, National AIDS Commission representatives, academics, non-governmental organisations (NGOs), community based organisations, faith-based organisations, trade unions, young people, people living with HIV, women’s groups, sex workers, MSM, transgender persons, and people who use drugs. Over the course of two days, the participants traversed a broad spectrum of legal issues critical to addressing HIV, health and development in the Caribbean. A unique element of the Regional Dialogue was the critical space it created for direct engagement between civil society and government experts, which fostered constructive and practical discussions about strategies and new partnerships needed to reform laws, challenge stigma and discrimination and improve access to justice at the country level in the region.

[This region has] dreadful policies in a number of countries - policies that eviscerate the lives of people involved - and this is despite the efforts of PANCAP and civil society.... You, civil society activists have been through this [arguments for better human rights protection, decriminalisation, evidence based HIV response] so many times, ad nauseam, ad infinitum, you do it all the time, make the same point, provide evidence.... No one wants this meeting to be one of many which lead to no follow up and no change.

I think the material we are gathering here should give us as the Commission, the opportunity to name names, to identify governments which violate rights and contribute to bad laws and policies. Homophobia and intolerance should be named and called to account... we have to stop speaking in generalities whatever it costs. I think we shall produce a report that will change the world in its candor, and may be then we will have a chance to change the law.... This report will not hide anything, may make people uncomfortable, call responsible to account, …

- Commissioner Stephen Lewis
The meeting opened with a discussion among regional experts about the legal context within which the HIV response in the Caribbean is currently located. Robert Carr urged participants to view the dialogue as an opportunity to create new partnerships between civil society and government, where the former advocates and lobby’s governments in the region to effect the necessary changes. Carr noted that despite anti-discrimination legislation existing in the region, it is not applied fully or at all, because there is fundamental resistance to respecting and recognising the humanity of people who are different. A weak understanding of government’s responsibility in protecting people’s rights suggests that there are people that matter and others who do not deserve protection as they have breached the norm. Such attitudes and prejudices are then built into how institutions function, and are reflected in the deliberations of parliaments and in legislation. In essence, Carr postulated that Caribbean society struggles over the issue of respecting minority rights, such as immigrant communities, linguistic minorities and sex workers, MSM and people who use drugs. He emphasised that applying a human rights framework to the HIV response meant fundamentally recognising the humanity of every citizen, which is the singular challenge for Caribbean policy and law makers and society at large.

Other regional experts underlined the link that is constantly made in the Caribbean between morality and the law, especially concerning key populations affected by HIV. The region is deeply religious, but religion is frequently used in a prejudicial, hypocritical and convenient manner. As participants at the Regional Dialogue pointed out, there is overwhelming evidence that stigma and criminalising repressive laws and policies in relation to key populations at higher risk play a significant role in the spread of HIV. Sex between consenting same sex adults is criminalised in several countries of the region, and is heavily stigmatised in all. Drug use and possession of miniscule amounts of drugs is criminalised, leading to one of the highest incarceration rates in the world. Since the risk of acquiring HIV in prison is higher than in the general population, with this sizable incarcerated population, the Caribbean region is in danger of developing significant prison HIV epidemics.

Stigma and discrimination were highlighted as key hurdles to an effective HIV response in the region. These phenomena manifest in denial of access to treatment and care, to breaches of confidentiality, children being denied access to schools, people being refused jobs and harassment and insults directed at persons who are

---

7 Ms. Veronica Cenac, Attorney, Saint Lucia.
8 The Caribbean countries have among the highest number of incarcerated population per 100,000 of population in the world: if the USA with the highest prison population rate in the world has 756 per 100,000 of the national population, St Kitts and Nevis is fourth on that list, with 588 incarcerated people, Cuba (c.531), U.S. Virgin Is. (512), British Virgin Islands (488), Palau (478), Bahamas (422), American Samoa (410), Grenada (408) and Anguilla (401). In the Caribbean the median rate is 324.5, whereas for South American countries it is 154, and considerably lower in Western Europe.
perceived to be HIV-positive. Stigma was a recurring theme of the dialogue, with participants describing how it perpetuates harmful attitudes and stereotypes and leads to social exclusion, poverty, unsafe sexual practices, depression and ultimately lack of recourse to the legal system.

The discussion was rich and occasionally polemical with civil society and government experts sharing concerns, challenging each other and attempting to bridge gaps in knowledge and approach. Suggestions were made by participants from varied perspectives on strategies to move the agenda of legal reform and human rights forward. Through the following description this report collates and distils the discussion into certain distinct themes.

2.1 Morality and the Law

“There is a level of “wilful ignorance” more in the mode of a desire not to know (the conditions or situation) of most at risk populations because these populations are so reviled that (people believe) they do not deserve a space at the table. They (the people) want to hear not a position of human rights but positions that can justify their (vulnerable populations) continued exclusion from the dialogue.”

- Maurice Tomlinson, AIDS Free World, Jamaica

Although the Caribbean is very diverse in culture, language, ethnicity and religion, in relation to issues of HIV and the law the landscape is very similar: 11 countries criminalise consensual sex between men, sex work is criminalised through a multitude of provisions in almost all the countries except the Dutch territories, transmission of HIV is a criminal offence in four countries, there are restrictions on travel in relation to persons living with HIV, sex workers and homosexuals in at least six countries of the region (with homosexuals in Trinidad and Tobago being liable to deportation and drug users are criminally prosecuted and routinely incarcerated).

Professor Rose-Marie Belle Antoine, University of the West Indies provided insight on the lack of a legal culture to protect against discrimination in general and in relation to HIV in particular:

“[I]t 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, underutilised. 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.”

Participants broadly acknowledged that law reform initiatives have proved to be hitherto ineffective in the Caribbean. Assessments of laws and policies related to HIV have been conducted in Barbados, Belize, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago, between 2004 and 2008. However, with the exception of Belize, which is about to embark on a law reform process and Saint Kitts and Nevis which is preparing to implement the recommendations of an Assessment Report, no legislative action has been taken.

Civil society participants stated that in many cases only lip service is paid to the cause of reform. National programmes and strategic plans acknowledge that certain groups – in particular MSM, sex workers and transgender persons – face serious vulnerability to violence and HIV. Yet, this acknowledgement fails to manifest in the allocation of funds or design of activities at the national level. Many persons still see these groups as outcasts who do not merit government resources being spent on them.

The Coalition Advocating for the Inclusion of Sexual Orientation (CAISO) in Trinidad and Tobago reported in their submission to the Commission that:

10 Rachel Charles, Caribbean Regional Network of People Living with HIV (CRN+), Grenada.
11 Prof. Christine Barrow, University of the West Indies, Barbados.
12 Submission of Colin Robinson, Coalition Advocating or Inclusion of Sexual Orientation (CAISO), Trinidad & Tobago.
“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.

Dr. Marcus Day of the Caribbean Drug and Alcohol Research Institute (CDARI) argued in his submission that:

“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, female and transgendered sex workers. Research exists13 that shows how these key populations are impacted by HIV and how they impact the HIV epidemic but because of stigma and of the laws criminalising these behaviours they are not given the attention that should have.”

Implying the lack of political will to deal with HIV in the Caribbean, Dr. John Waters from the Dominican Republic argued that:

“As a physician working with most at risk populations in the Dominican Republic, I would like to make the point that there is need to address, from a public health point of view, the situation with the epidemic front on. Civil society organisations have been primarily used to access key affected populations but have not been actively involved in designing the research and programmatic strategies that guide the appropriate response to the epidemic. This role has resided with medical political technocrats who have insisted in categorising the epidemic as generalised.

For them to accept that the epidemic is concentrated, is to fall into a political and legal rut that leaves little room for manoeuvrability. Although HIV affects everyone, there are certain populations that are disproportionately affected by HIV. In the resource limited settings we have to live in, it is essential that we adjust our response to HIV to reflect that imbalance.”

A government expert further acknowledged that the biggest problem is the inherent hypocrisy in the various societies: “At home people know all about sex workers; where they live, work, country of origin, traffickers in the trade etc. People supposedly know the MSM, yet nothing seems to be done about it at least from the legal standpoint.”

There was a shared view that talking about sex is taboo in the Caribbean, which contributes to the stigma attached to HIV. At the same time, it was acknowledged that although there is widespread ‘underground’ sex, difficult issues around sex are rarely discussed in an honest manner. Instead, the law is used to criminalise its consensual manifestations.

This issue was further illustrated in relation to Trinidad & Tobago in the submission from CAISO, which stated that:

“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 decriminalisation 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

13 Epidemiology for the Caribbean demonstrates that, for example in Jamaica and Trinidad and Tobago prevalence rates among MSM are 32% and 20% respectively while the national prevalence is 1.6% and 1.5% respectively.
and advocacy regarding the need for legislative reforms to safeguard their human rights and to guide public health responses should also be implemented."

One of the main reasons given for such dismissive attitudes by governments was the perceived interconnection between morality, religion and law and the use of religion as a divisive force to ostensibly maintain society’s moral ethics and safeguard it from perceived moral decay. Concerns were also expressed about conservative religious forces waging campaigns in the region to undermine efforts at guaranteeing rights of lesbian, gay, bisexual and transgender persons (LGBT), women and other marginalised groups.

The Regional Dialogue heard from Dr. Wesley Crichlow from the University of Toronto that:

“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 criminalisation, burning, drowning and isolation of person living with HIV/AIDS, while denying them basic human rights.”

The Commission heard from CAISO in its submission that:

“As political discourse about sexual citizenship has flourished across the hemisphere, the Caribbean sub-region 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 organisation 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, organised 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.”

The Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) also shared that during the recent review of the Charter of Rights, the organisation wrote to every parliamentarian and supplied them with data and studies on the impact of punitive laws and non-discrimination protections. However, when the matter came up for vote in Parliament, there was a unanimous vote to exclude sexual orientation as well as the right of women to terminate their pregnancies from the Charter of Rights. This Charter prohibits freedom of expression, and it maintains the law against buggery. Thus parliamentarians were not amenable to listen to evidence-based arguments that spoke to vital community concerns.

The Society Against Sexual Orientation Discrimination (SASOD) reported that in Guyana during a 2003 debate to revise Article 149 of the Constitution to include a ban on discrimination based on sexual orientation, SASOD and other civic organisations supported the move to prohibit such discrimination but some sections of the religious community vehemently opposed it and the bill was never voted on, as the Government presented but did not support it.

2.2 The role of parliamentarians

Calls from civil society

The Dialogue continued with the discussion of the role of parliamentarians and other elected politicians in the HIV response. The participating government experts raised concerns that many legal and political reforms necessary to address the HIV epidemic are seen as controversial, despite countries of the region having committed adherence to international human rights treaties and conventions. Civil society participants called on parliamentarians to accept the duty and responsibility to protect all citizens:

“It is the duty of Parliamentarians to address law reform that is amenable to HIV/AIDS as they alone can effect that change. Parliamentarians in the region must accept that as their responsibility and they must do the right thing. Every person in this region is a person with rights and these rights should not be trampled upon. It is the responsibility of Parliamentarians in the region to ensure the rights of all. Stop being secular in terms of how we
apply laws and policies. We must move beyond thinking of the next election and think in terms of the development of our people. The issue here is about accountability and human dignity.”

Referring to the need for parliamentarians to play a positive role in social development, the submission of the Antigua and Barbuda Workers’ Union stated: “It is hoped that the Antigua and Barbuda Labour Code 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.”

While acknowledging the influence of religion and cultural norms in thwarting the desired legal reform one parliamentarian urged for understanding from civil society participants:

“While I agree with the assertions made so far, there is need to point out there are certain points I do not agree with; example I do not think that politicians are just concerned with the next election and it is not fair to say so. Historically, changes which are seen as controversial are not being won easily.”

Other responses from civil society participants included:

“Changes in law are not controversial – they are about my right to life; I have had people over the years deny me employment – that is not controversial – it is my right to work.”

“I witnessed a colleague being humiliated at the airport here – that is not a controversial issue – that is a right to human dignity.”

Indeed, there was a sincere attempt throughout the Dialogue to foster a discussion and elicit an understanding of diverse experiences and constraints from government experts and civil society participants at the meeting:

“I am working with the Coalition Advocating for the Inclusion of Sexual Orientation (CAISO) in my country and we have made efforts to approach these issues within a framework of nation building. This forum provides an opportunity to hear from parliamentarians in order to fully understand some of the challenges and barriers they face. Because I think we often shout at each other across this divide. I do however want to respond to the notion of these issues being controversial. Saying that is stigmatising and that is the key barrier we need to surmount. We need to stop saying that and pay attention to and understand the broader human rights dimensions. We do not have a history of culture dealing with minorities in our Caribbean; post-colonial societies use stigma as a defence mechanism. But it is a symptom of cowardice for parliamentarians to hide behind the blanket of controversy. But I really want to leave the door open so that we can support politicians in overcoming that cowardice.”

- Intervention from Civil Society Participant, Trinidad & Tobago

“Not all of the legal reforms that are necessary to be addressed are controversial. It is simply a perception that they all are. There are some very important missing protections that have to be put in place, such as anti-discrimination legislation; these should have been in place years ago that we have done nothing about it.”

- Intervention from Civil Society Participant, Saint Lucia

Another civil society participant mentioned that the Caribbean region is characterised by a strong state when it concerns repressive measures, but when it concerns social good and services, the state is weak and slow.

To a view that politicians and elected representatives are products of their societies, and therefore informed by the same stereotypes, prejudices and stigmatising attitudes as the rest of the population, the counterpoint was made that leaders should be measured against higher standards and are expected to bolster themselves with greater insight, tolerance and vision than those they represent.

Civil Society representatives urged the view that parliamentarians need to reach out to vulnerable groups and champion their causes. It was recognised that there is an urgent need for a new partnership between government and civil society.

14 Submission of the Antigua & Barbuda Workers Union.
15 Father Eddy Eustache, Partners in Health, Haiti.
16 Prof. Christine Barrow, University of the West Indies, Barbados.
The parliamentarian response

A unanimous sense of agreement prevailed on the view expressed by Dr. Douglas Slater, minister from St Vincent and the Grenadines that the onus was on both sides to foster continued dialogue based on the impetus given by civil society to raise their concerns on human rights. He felt that without such impetus it was difficult for politicians to change the law. Civil society and affected populations need to organise themselves to be more effective in getting their messages across and adopt a strategic approach to working with the governments and politicians.\footnote{Hon. Dr. Douglas Slater, Minister of Foreign Affairs, Commerce and Trade, St Vincent and the Grenadines.} Ms. Volda Ann Lawrence, a parliamentarian from Guyana emphasised that as constituents civil society groups and activists should also play the role of educating legislators about the issues and express their pains and concerns so that parliamentarians are convinced by the case made to them.

“Our parliaments/politics are under threat in the Caribbean. Our Parliaments are under threat to its relevance, its accountability, its integrity. Most of our people, especially the young, think very little of our politics and that our parliaments do nothing. The question is how can civil society help to change the politics in the Caribbean – because that is fundamental to our law reform efforts and everything else. Combined with sexuality and relationships which are such deep, emotive, fundamental issues touching our culture, our religion etc.”

- Intervention from government expert, Grenada

“We need to continue to educate at all levels, including and especially at the political level. Parliamentarians are people just like you. They are not necessarily all legal experts although entrusted with the task of legislation. But legislation cannot be made if the legislators are not well prepared. I believe therefore, it is the responsibility of all the interest groups, (i.e. NGO, sports & cultural clubs, churches and the like) to properly prepare our Parliamentarians. There is need to buttress our Parliamentarians in order that they can work with you.”

- Intervention from Government Expert, St. Vincent and the Grenadines

A view was expressed that social mobilisation was critical to ensure that broader debate ensues about the aspirations of different sections of the polity and greater understanding on issues of sexuality, HIV, human rights, responsibilities and duties of the individual, the police and government is engendered. Yet, concerns were raised that in an atmosphere vitiated by a constant threat of violence and insecurity it was extremely challenging for people who are criminalised or outlawed to come forth and express their concerns and contribute to public discourse. Punitive legislation has a very dampening effect on how people lobby and protect their rights.\footnote{Robert Carr, Co-Chair of the Caribbean Vulnerable Communities Coalition.}

A lawmaker from the opposition in Guyana stated the following:

“In my jurisdiction there is a fear to speak out because we live under a dictatorship, where the media is monopolised by the government. Parliamentarians cannot represent you if you do not give them the necessary information.

In my country the easiest thing for the government to pass is legislation but there is a yawning gap between the legislation being passed and the persons who must use these legislations and those who must implement it. These laws are passed without the public being aware of what their rights are or what the legislation brings to them and that includes those who are expected to enforce these laws. What is needed is a situation in which members of civil society can dialogue with parliamentarians without fear of reprisal.”

A civil society participant from Guyana added:

“We have seen in our region and in the other Latin American regions, if we do not have good pieces of legislation and policies in place, our human rights work and efforts would rely on the good feelings of patronage of the leader of the day; and as we all know, human rights are not secure under such situations.”

Additionally, the following challenges were highlighted:

a. Sometimes the most important persons are not in the room:

“One of the challenges of the HIV question is that sometimes the most important person is not in the room.
Unfortunately, we do not have very many Parliamentarians in the room. This has been happening for quite some time i.e. we talk about groups when they are not present or well represented and that is a fundamental issue of proper HIV response. I dare say that the majority of Parliamentarians in this region at this time have not been exposed to comprehensive and effective HIV sensitisation and orientation on some of these issues.” - Intervention from government expert, Trinidad and Tobago

b. Access to Parliament and Parliamentarians:

“Another challenge is access to Parliament. Some persons have the message but have not been given the vehicle for the access to really treat Parliamentarians as a collective. In that way you remove the excuses of ignorance that are somewhat valid to this day. That is where I think agencies such as UNDP and UNAIDS need to play a much stronger role at this point.”

- Intervention from civil society participant

c. Frequent changes of Governments and Parliamentarians:

“There are changes in governments and Parliaments all the time and most of these have not yet have the benefit of even of a sampling of the discourse that is taking place here. One outcome of this forum could be to close that gap as soon as is possible.”

- Intervention from civil society participant

2.3 How do we win the day – The debate on achieving law reform

Participants emphasised that there are good laws and bad laws, but the letter of the law is not the only problem that needs to be re-examined; sometimes it is the failure to implement the law which is a significant shortcoming in the region. Proper implementation of sound legislation must complement law reform. There is also an urgent need to educate the law enforcers.19 In relation to law enforcers, participants pointed out that there is also a failure in ensuring accountability of the police who have little understanding of their responsibility as protectors of security and human rights and often wantonly harass and arrest sex workers and MSM without any justification without being brought to book for their actions.

Justice Kenneth A Benjamin, from the High Court of St. Lucia pointed out that mere changes in law may not alter human rights situations dramatically. As an example, he mentioned that during his long career as a judge in several Caribbean territories, he was aware of only two cases related to prosecution of sodomy, which indicated that the actual threat of prosecution for this offence was low. Therefore it was not only law that perpetuated marginalisation and discrimination of MSM and other criminalised populations. Stereotypes and stigmatising attitudes of the general public were significant contributors and in order to counter such disenfranchisement a change in social attitudes was paramount.

Several judges present at the Dialogue pointed out that civil society groups should consider using the judicial system as an avenue of redress. Access to justice facilitated through legal aid, could well lead to better protection of human rights, bringing to account those guilty of violations. The judiciary is responsible for interpreting constitutions and international human rights treaties and conventions that have powerful human rights statements in manners that facilitate achievement of public health goals and a more effective HIV response. However, the judiciary is capable of advancing human rights only if there are cases and applicants. This means that access to justice becomes an extremely important issue. Innocent people may suffer and even be unfairly convicted if they do not have adequate representation. There is an urgent need to have more advocates and to involve sympathetic lawyers, on either a pro bono basis or through independent funding. There is no comprehensive system of legal aid anywhere in the Caribbean and the region needs to make access to justice real.

Justice Adrian Saunders of the Caribbean Court of Justice emphasised the urgent need to address stigma and discrimination, and promote a human rights-based approach. To do so, it was vital to identify harmful

19 Ms. Volda Ann Lawrence, parliamentarian, Guyana.
laws, and consider their consequences for people. Justice Benjamin noted that as a rule judges have little
time to thoroughly investigate the issues; civil society stakeholders need to sensitise and educate judges.

While recognising the benefits that could accrue through judicial recourse, Maurice Tomlinson of AIDS Free
World reminded the meeting that laws in the region are often saved from judicial review, and that there is
no way to challenge their constitutionality and validity domestically through the courts. This means that
parliamentarians are the only ones who can undertake law reform.20

With reference to attitudinal change and law reform, many experienced politicians emphasised that change
will not happen rapidly and that people invested in such change need to be patient and strategic. Dame Billie Antoinette Miller21 spoke of her experience successfully lobbying for the change in anti-abortion
laws in Barbados. She was one of the first and few women in Parliament then, but there was a favourable
environment for decriminalising medical termination of pregnancy in Barbados, as there was a sway of other
social justice legislation adopted around that time. Even then, the change was not immediate as it took
seven years of work. Ms. Miller advised the audience on the reform process, underlining that it is important
to be strategic, well prepared with arguments and evidence, find a civil society champion who is well-versed
on the subject, and able to respond to challenges; also find a champion in government, who will be able to
use persuasive skills from within the system; build a coalition of support across diverse sectors and work with
the office of the Attorney General, if legislation is required to be drafted.

A rich discussion on strategies for working with law makers continued with recognition that HIV-related
civil society needed to expand it support base in order to convince society at large and be change agents,
including resisting the temptation of preaching to the ‘converted’ and working with groups that traditionally
would be indifferent or opposed to the issues and work across nationalities.22

In relation to law reform, several positive examples of fighting stigma and discrimination in the region
were also mentioned at the meeting. PANCAP, with its specific mandate to advocate for HIV issues at the
highest governmental and inter-governmental levels, continues to build the capacity of governments to
reduce stigma and discrimination in the communities. It has developed a strategy for parliamentarians,
which provides them with information about the rights-based approach, non-discrimination, equality and
tolerance. As part of the Caribbean Regional Strategic Network 2008-1012, PANCAP worked on developing a
model anti-discrimination legislation for the Caribbean. This model law requires to be supported by training
and education of stakeholders, which will continue to be one of the important aspects of PANCAP’s work.

Dr. Gabriel Thimothe, the Director General of the Haitian Ministry of Health shared his country’s experience is
defining its HIV response. Haiti over the years has managed to reduce its HIV prevalence from 7.5% to 2.3%,
mainly because of private and public commitments and partnership between government and civil society,
which work closely together and share information and concerns. Haiti has elaborated legislation on HIV,
and stakeholders now await its presentation before the new parliament. The proposed new legislation has
two new components: 1) protection of rights of people living with HIV, including free access to education,

20 According to Maurice Tomlinson in his submission on behalf of AIDS-Free World, 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 law) is
therefore seemingly impossible in Jamaica.
21 Former Deputy Prime Minister of Barbados, doyenne of Caribbean women politicians.
22 There have been other, less successful examples of law reform. AIDS-Free World shared the organisation’s experience of
advocating for introducing equality legislation for LGBT communities in Jamaica. In order to convince parliamentarians to accept
sexual orientation and identity as a protected ground in the national Charter of Human Rights, the organisation had been lobbying,
arranged personal meetings with parliamentarians, sent letters and emails and taken significant initiative to convince law makers.
Yet, it witnessed almost willful ignorance, desire not to know, specifically because of the perception that key populations at higher
risk are vile and they do not deserve a space at the table. This experience reflected that politicians want to hear not the positive
information and evidence about these groups, not the human rights context, but only the negative - positions that can justify their
continued ignoring of the situation. As a result, there was a unanimous vote in the parliament to exclude sexual orientation as a
protected ground. On the other hand, Christian groups were very successful in their advocacy against it, because of the willingness of
parliamentarians to listen to others with whom they agree. The document that resulted is archaic, as it excludes the right to terminate
pregnancy, preserves buggery law and prohibits freedom of expression.
housing, protection from discrimination at the workplace, and 2) protection of the community, resulting in criminalising HIV transmission. According to Dr. Timothe the new bill provides a comprehensive vision for human rights of minorities and people living with HIV. But he identified two challenges - mandatory premarital testing, and mandatory testing for health insurance. All health insurance providers have a prerequisite of proof that the applicant is HIV-negative. The Ministry of Health has suggested eliminating this requirement.

**Partnership and accountability**

“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.”

- Submission from AIDS Free World, Jamaica

Civil society participants challenged Parliamentarians to appreciate that:

“While leaders are products of the society from which they come, we do expect them to be better than us. We expect them to have more knowledge, more tolerance, more understanding and more capacity to listen. This is not to say that it is not for other members of civil society to alert, educate, and inform them in terms of what the issues are and to explain them in much more detail.”

- Intervention from civil society participant

Parliamentarians exhorted civil society:

“...not to see Parliamentarians as the enemy, but as allies and to make the allies if we are to succeed...... I believe therefore, it is the responsibility of all the interest groups, (i.e. NGO, sports & cultural clubs, churches and the like) to properly prepare our Parliamentarians. There is need to buttress our Parliamentarians in order that they can work with you.”

- Intervention from government expert

The meeting was informed by Ms. Marcella Liburd, Minister of Health of St. Kitts and Nevis that the Prime Minister, the Hon. Denzil Douglas was prepared to consider the decriminalisation of buggery and replace it with a provision that criminalises any form of sexual act in public. She reported that the Government is presently engaging in preparation to give effect to many of the recommendations from its Assessment of Laws on HIV conducted in 2007. She added that it was the intention of the Prime Minister to push for a harmonised approach on HIV in the countries of the Organisation of Eastern Caribbean States (OECS).

Participants highlighted the need to create new partnerships and invite “society” to the dialogue.

“We have these meetings dominated by civil society forgetting that we need instead to invite society to these meetings. The persons directly involved with the particular issues are the ones we need to hear from. For example, if we need to address sex education in schools we need to have teachers here. Because, by ourselves we cannot begin to address the harm that is being done if we do not start dealing directly with those people. Other than that, we can sit at meetings like these and talk until the cows come home and nothing is going to happen – nothing is going to change. We have seen few changes, but these come at tremendous cost.”

“We need to be more inclusive and approach this response in a holistic way. For too long the same set of persons seem to be showing up at these meetings doing and saying the same things. We need to involve the entertainers, saloon owners, hotel owners etc. and all persons who are key stake holders in the sex work industry, in the discrimination against MSM, Transgender etc. We need to get the information from the ground before taking it to the politicians; only in this way they are going to listen regardless of how negative they feel or think. As long as we start from there we can move mountains.”

---

23 In fact criminalisation of HIV exposure and transmission is seen as impeding effective response to HIV and AIDS, as harming public health goals and unfairly discriminating against, stigmatising and prosecuting people living with HIV. This topic was not sufficiently discussed during the Caribbean Dialogue, but is analysed in the Regional Issue Brief on HIV and the Law in the Caribbean.


**Lobbying and advocacy**

Parliamentarians urged civil society to appreciate that what is needed in approaching and attracting lawmakers are messengers who are credible and speak form an evidence base.

“There is need for civil society to identify someone to champion their cause; one who is well briefed and versed in the area, organized and well prepared. There will then be need to find someone preferable within the Cabinet who will persuade the Cabinet that the time is right for this legislation to go forward.

*I believe that there are enough politicians who would listen even if behind closed doors, because if one is not able to make one’s case, then it will be very difficult for the Parliamentarian to change the laws.*

- Intervention from government expert, Barbados

**Education**

A sentiment was expressed repeatedly throughout the Dialogue that laws do not change attitudes. As one participant stated, “In Latin America there are laws purporting to protect transgender people, yet yearly, there are numerous transgender murders. That is because they did not change the people; they just changed the laws.”

“All of what we do, if we do not get a handle on stigma and discrimination, we are going to have a problem. Changing legislation will not cut it; there is need to change people’s mindset. Those affected should not be ashamed to declare their status (on T-shirts for example) while others should become knowledgeable about the disease and how it can be contracted. The former strategy was tried in Barbados with some success.”

- Intervention by government expert, Barbados

The relevance of targeted education was illustrated by two experiences at the Dialogue:

“A very prominent practitioner in the region recently disclosed to me that he was one of the biggest discriminators as well as one of the persons who was most hostile against persons of same sex orientation. It was only when he was exposed to credible evidence-based messaging that he was converted. So there is still hope.”

- Intervention by government expert

“It is said that we come to these meetings and nothing changes. But we can make a change by educating the various members of society since we seem to be the one who knows what is going on. I have had the experience a few months back while walking along with a male gay friend. While passing a small group of cadet officers one of them kept calling me but I did not respond. He walked up to me saying did you not hear me calling you? And went on being very disrespectful to me. At this stage my gay friend turned and asked, what was the problem? He was promptly slapped across the face by the police who said loudly I do not like gay people and continued verbally abusing him. The incident was reported to the officer in charge of cadet officers who invited us to have a meeting with cadet officers. Coming out of the meeting, I sensed that there was attitude change among the officers and the perspectives of some of them seem to have changed given the little background information they received. It shows the need for education and reorientation of law enforcement officers.”

- Intervention by civil society participant, Guyana

It was also noted that while education can effect change it will not be effective if not done continuously, especially with key sectors such as the police, the judiciary, and law makers who frequently change or get transferred.

**Challenging laws based on international legal norms**

Another issue highlighted with respect to achieving law reform was the reliance on international treaties to challenge ineffective national laws. Members of the judiciary recognised that challenges made to laws in courts to force a more expanded interpretation of constitutional rights and those emanating from international commitments could be a worthwhile legal strategy.

“Our countries are signatories to many treaties and declarations which we have not been adhering to and have not been enforcing. If we look at these agreements and treaties that our governments sign on to, this is a very good
place to start as we look at the reduction of stigma and discrimination the law and legislative reform. I strongly believe that these international treaties and agreements must be adhered too.”

- Intervention by civil society participant, Grenada

“A word of caution - the existing legal regime is inadequate to deal with some of the causes that are being advanced. The various treaties that countries sign are legal instruments that have legal consequences. It is important that we seek in whatever ways we can to explore the impact of these treaties on the population. It is true that there are objective difficulties for marginalised and indigent persons to get access to the courts, but civil society organisations, advocacy organisations need to put more pressure on the courts to interpret our constitutions and these treaties that our governments have signed on to in a way that would deal with some of the problems expressed here.”

- Intervention by Government Expert

**New thinking – engendering a culture of rights**

“We have a very proud history in the Caribbean. A history of fighting for our freedoms, history for fighting for the end of discrimination on the basis of race, and we need to stand behind that history. I am impatient of the divide and rule that has seen those who speak of civil and political rights being called criminal rights people and those who speak on behalf of people living with HIV being (given) all sorts of negative names. The forces (to promote) our position to rise (up) are strong and we need to unite and be strong together. The question of whom or what is a human being have been long settled. So while I accept that we may not have the legal backing within our Constitutions, our countries have signed the UN Declaration of Human Rights, we need to hold them to it. We need to hold them to what is in our constitution – flawed as it may be. We need to make those who stand for discrimination ashamed that they are choosing who is human – they are not allowed to do that. If all of us are human, all of us are entitled to the same rights. And we need to make those who step out of that stance proud. We need to surround them, support them with the research and the advocacy. We need to make sure that this work is not only done at the Parliament but is work at all levels of society. We are all Human Rights advocates, no matter our specific area of interest; let’s get together and make the change happen.”

- Intervention from Jamaicans for Justice, Jamaica

The participants agreed that the Caribbean was at a stage where many rights and protections (including on the basis of gender, race, religion etc.) have not fully developed and are sometimes not even articulated in the law. There was a need, therefore, to develop an inclusive human rights culture in the region, which promotes democratic values that protect all members of society and do not promote solely majoritarian interests:

“Rights are not at the behest of the majority. They are inalienable. They cannot be denied by the majority. In parts of the Caribbean we have state-sponsored and state-supported violence.” - Intervention from Caleb Orozco, United Belize Advocacy Movement (UNIBAM), Belize

“There is need for a new paradigm on social issues focusing on dignity and respect for each other. There is also need to articulate efforts from government, religious leaders, parliamentarians, activists, people living with HIV etc.” - Intervention from civil society participant, Haiti

“Ongoing and continuous education on human rights and governance must be integral to this approach. If we are going to enforce Human Rights, the creation of that culture must be broadened in ways that demonstrate a commitment to public education. Public Education has to be an integral part of that debate.” – Intervention from government expert
“In the context of HIV and vulnerable groups we do not fully recognise the destructive impact of stigma and discrimination and the extent to which these drive persons underground and ultimately denying them access to health, education etc. One can therefore see how stigma is a driver of HIV because it does drive people underground into social exclusion and therefore into poverty and in turn into unsafe sexual practices.”

- Professor Christine Barrow, University of West Indies

3.1 Experiences of persons living with HIV

“I would like to support the fact that HIV/AIDS is everybody’s business. Notwithstanding available treatment, the rate of deaths in the region persists because of the absence of social support systems. There is so much discrimination taking place in the labour market that these persons cannot find employment to feed themselves. The uncertainty of one’s employment status, especially if one’s health status is known, force people underground. There is also the negative reception meted out to patients by health workers, pharmacists etc.”

– Ainsley Reid, co-founder Jamaican Network of Seropositives, Jamaica

Notwithstanding some small progress made in regard to stigma and discrimination, as reflected in the formulation of National HIV/AIDS policies in some jurisdictions, for people living with HIV these continued to be the dominant challenge of their lives; participants described the manners in which stigma is manifest on a daily basis in various forms of discrimination:

- Denial of access to treatment and care.
- Breaches of confidentiality throughout health care systems, social support systems and other key agencies.
- Affected children as well as children of persons who are perceived to be HIV-positive being denied access to schools, harassed etc.
- Denial of employment to affected persons

It was noted that with the exception of the Bahamas and Bermuda, few countries have anti-discrimination laws, which extend to HIV or health status.

As per the submission of the Antigua & Barbuda Workers’ Union (ABWU), the Antigua & Barbuda Public Service Association (ABPSA) and Trade Union Confederation of Americas (TUCA) in the Caribbean, the economically active population between 15 and 49 years old is most affected by the HIV epidemic. This submission added that the 2010 UNGASS Report for Antigua and Barbuda cited the lack of anti-discrimination legislation...
particularly with respect to housing and employment as one of the main challenges to achieving the UNGASS targets, in particular universal access to treatment.

Another point mentioned in the submission, which was supported by participants spoke of workplace discrimination being one of the most common forms of discrimination faced by persons living with or affected by HIV. HIV-related stigma and discrimination in employment is a widespread problem in the region, and is fuelled by fear and lack of awareness regarding the modes of HIV transmission. In turn, 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 have far-reaching negative effects. The submission added that:

“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 themselves and their families … In 2010 a male worker was dismissed from a company for being HIV positive. The case was published in the national media but there was no recourse against this discrimination. 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.”

Antigua and Barbuda had recently agreed to revise its 2001 National HIV and AIDS Workplace Policy. The submission expressed hope that this revised policy would incorporate the key rights established in Recommendation No. 200 and the ILO Code of Practice. The submitters had begun to promote a rights-based approach to HIV in the workplace by adopting a trade union policy on occupational safety and health, which included an HIV component.

The submission suggests the development and implementation of anti-discrimination legislation protecting the rights of HIV-positive persons in both in housing and employment and the adoption, implementation and monitoring of a national workplace policy and programme on HIV, which involves both employers’ and workers’ organisations and other relevant stakeholders, including organisations of persons living with HIV.

In its submission Partners in Health, Haiti spoke of the disempowerment of persons living with HIV, particularly where they are poor and unable to afford legal services:

“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 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.”

Reflecting the complex and multi-layered vulnerability and marginalisation that individuals affected by HIV often face, a participant at the Dialogue spoke eloquently of his experiences as an HIV-positive sex worker who was incarcerated in a Guyanese prison and provided a withering account of the failure of the state

25 Submission from Antigua & Barbuda Workers Union, Antigua & Barbuda Public Service Association and Trade Union Confederation of Americas in the Caribbean.
26 Ibid.
27 Submission of Father Eddy Eustache, Partners in Health, Haiti.
machinery to fulfill its responsibility in providing basic human conditions for prisoners:

“For nine years I was incarcerated at the Camp Street Prison. Upon my reception at the prison I was located at a special holding area for MSM. 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 members of a so-called ‘A’ team, a gang in the prison. This matter was never properly investigated internally or externally. MSM are victims of stigma and discrimination by the guards and the inmates of these institutions... Violence is perpetrated against them because guards and inmates see this population as outcast, and some MSM may be deemed cohorts (spies for the guards). MSM experience attacks in some cases for no reason, or for sexual endowment. I was violently assaulted one time by an inmate who was seeking to solicit sex from me. 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. [E]ach day the guards assault inmates for little or no reason. Many cases of abuse directed to MSM [because]... they are the easiest persons to target.

MSM are not allowed to work because the Laws of Guyana, Prison Act Chapter 11:01 stipulates that this population be isolated. If two males are caught in a sexual act they are charged internally or externally (through the court to answer Charges of Buggery) or the guards would beat them with their fist or club. To be incarcerated as an MSM is the worse ordeal a member of this population can face, much less if that individual is HIV-positive or has some other sexual infections (because of the over-crowdedness of the prisons, persons who are infected are placed in a special area). This causes persons to shun prison [HIV] treatment because they fear stigma and discrimination that is attached. The medical staff talks about inmates’ status... When you are HIV-positive the National AIDS Program Secretariat provides fruits, water, vitamins and once a month they supply each positive inmate with a food hamper, these are ways of allowing other inmates to know that a person is HIV-positive. Once a month there are clinics held and all the HIV-positive persons have to attend and this embarrasses some people – two 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.

For the nine years that I was imprisoned I have never seen a Junior or Senior guard 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.”

People living with HIV participating at the Regional Dialogue urged the following key points for the legal system to take into account in addressing their issues:

• The key systemic change that would make a significant difference to the daily lives of people living with HIV would be the promotion of a human rights-minded society.

• Legal literacy/education of people living with HIV on their constitutional right to equality and equal opportunity as the rest of the population.

• Recourse mechanisms that would give the aggrieved an opportunity to seek redress without fear of repercussions.

In terms of populations who are socially and legally marginalised and therefore at increased vulnerability to HIV, participants shared several experiences that defined their circumstances and contexts in the Caribbean generally (subject to some country-specific variances that may exist).

3.2 Experiences of transgender persons

Civil society participants pointed out that there is nothing in legislation or policies in the region to deal with transgender issues. In the HIV response both globally too, transgender people are usually addressed together with MSM, which disregards important differences between the two. For transgender people it is difficult to not stand out or be visible by the very nature of their physiognomies, whereas MSM can and do still blend in. The consequences of such visibility are evident in every sphere of life – while seeking employment
education or health care services. Transgender participants at the Dialogue pointed out that unless one is from a wealthy family, whose relatives are willing to find one a job, transgender people have difficulties in accessing employment and frequently turn to sex work. When they are transitioning they also have to leave jobs, and experience discrimination in every sphere of life. People are frequently ostracised and ridiculed by the general public and government officials and find no protection and no recourse in the law.

A representative of the Society Against Sexual Orientation Discrimination (SASOD) suggested that law reform could be initiated by re-examining laws that are archaic, which have no relation with current knowledge, are rarely enforced and encourage abuse and misuse by the police. In Guyana, law discriminates against people who cross-dress thereby prohibiting men from appearing in public in alternative gender attires. Cross-dressers are being attacked by people that share stereotypes, which the law seeks to perpetuate. As a result transgender people suffer, and police and politicians are not in a hurry to address this issue. There are many reports of physical violence against cross-dressers, including rape and severe brutality, and people do not report it, as the police are the very people who perpetuate the violence.

“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.”

The following were identified as urgent priorities to address the HIV epidemic among the transgender community:

- Develop procedures for document changes to conform with changes in gender identity of individuals
- Establish prohibition of discrimination on the basis of gender identity in the law.
- Development of sensitisation programmes for government officers and the general population; particularly including sensitisation of the police, immigration personnel, and health personnel.
- Facilitate access to health care services for the transgender community, including access to HIV-related prevention, treatment and care.

Caribbean Trans in Action, Belize reported that:

“There is nothing in place in the medical field to address the transgender community; we are always put among the gay and lesbian community in that way. The special issues of the transgender community are never addressed. Firstly the laws need to be changed to accommodate transgender persons. There is a need for sensitisation of the police, immigration officers and for Parliamentarians as it relates to transgender persons and the law. For those contravening the rights of such persons there should be sanctions in place to address that.”

The meeting then heard the experience of one of Mia Quetzal from Belize who was detained at the airport upon her arrival into Port of Spain to attend the Regional Dialogue. She reported that although her picture

---

29 Ashley Dior, Trinidad and Tobago.
30 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…” from the submission of Anton Rocke, Society Against Sexual Orientation Discrimination (SASOD), Guyana.
31 In February 2009 in Guyana, 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.” 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. From the submission of Anton Rocke, SASOD, Guyana.
32 Ibid.
33 Ibid.
34 Mia Quetzal, Caribbean Trans in Action, Belize
in her passport has been changed the designation “sex” was not. When the Immigration Officer inquired she indicated her status truthfully, knowing that she could have been dishonest and said that it was an error. She was then directed to a holding area and airport staff appeared, staring, gawking and whispering. Only after almost two hours and verification from UNDP over phone, was she released and permitted to enter the country.

3.3 Experiences of MSM

“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 mobilisation 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 paralysing MSM in Trinidad and 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. 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.”

– Submission of CAISO, Trinidad and Tobago

Homosexuality is illegal in many of the Caribbean countries correlating with extremely high rates of HIV among MSM.35 In Guyana, for example, the Criminal Law Offences Act criminalises consensual sexual activity between men (section 351) and ‘buggery’ (sections 352 and 353). The latest surveillance study found an HIV prevalence of 19.4% among MSM, which is ten times the national average according to UNAIDS estimates.36 In Jamaica, despite a revision of the Staff Orders for the Jamaican Public Service, which prohibits discrimination on the grounds of sexual orientation, the country’s colonially imposed buggery law of 1864 still criminalises consensual adult male same-sex intimacy. The HIV prevalence rate among Jamaican MSM is 32% as against 1.6% in the general population. In Trinidad and Tobago, HIV prevalence among MSM is estimated to be 20%, which is four to eight times higher than among the general population. However, this country cannot claim an outdated colonial legislation - in 2000 the country criminalised all forms of same-sex intimacy as “serious indecency” for the first time.37 These Caribbean nations have harsh penalties for consensual sex between consenting men committed in private, ranging from five to twenty-five years’ to life imprisonment.38 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.39

A unique aspect of the Jamaican legal framework was pointed out as a potential hurdle to law reform in this sphere. AIDS Free World, Jamaica noted that:

35 Buggery or sodomy is still illegal in most of the Caribbean, including Antigua and Barbuda, Jamaica, Belize, Saint Lucia, Trinidad and Tobago, Grenada, St. Vincent and the Grenadines, Barbados, St. Kitts and Nevis, Dominica, Guyana. It is not an offence in The Dutch territories, UK Overseas Territories, The Bahamas, Cuba, Dominican Republic and Suriname. More information on criminalisation of same sex relationships between consenting adults and HIV prevalence among MSM is available in the Caribbean Regional Issue Brief.
36 Anton Rocke, SASOD, Guyana.
37 Trinidad and Tobago consistently denies protection based on sexual orientation and gender identity. In 2000 the 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. Trinidad and Tobago is also 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 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. In 2011, the 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. Colin Robinson, CAISO, Trinidad and Tobago.
38 Colin Robinson, CAISO, Trinidad and Tobago.
39 Maurice Tomlinson, AIDS-Free World.
“Section 26 (b) of the Jamaican Constitution "saves" the country’s 1864 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 law) is therefore seemingly impossible in Jamaica.”

Another participant expressed the following view:

“I strongly believe that HIV is a byproduct of the social circle of inequality. We have a raging epidemic in the gay and bisexual community. These are the people who feel that their identity is criminal and that therefore they have no recourse, for example when someone attacks them, or somebody fires them just because of their perceived sexual orientation. Everything has to be hidden, has to be secret, everything has to be fought for.

Many MSM and bisexual men the Caribbean and Jamaica do not want anybody talking with them about the way they have sex with other men, because it is extremely private. It means that a lot of response to try to prevent HIV, or provide treatment in relation to HIV has to be undercover. It makes [prevention work] very difficult. We are not going to be able to address this crisis when [people] are under siege. This is just the reality about how human beings function, they have to have defences to protect themselves - and very often these defences are to stay away from government provided services and messages.... If you do not believe that the population has a right to exist, it does not matter if people live or die, because they have no business existing in the first place. In the context of HIV it's not just psychological damage, psychological warfare, it is public health warfare. [People think that] your illness is a punishment of God on you, it’s what you deserve. But we are part of the fabric of society, we may believe that we have nothing to do with men who have sex with men, sex workers, drug users, but in reality what happens in one part of the society affects the other.”

The existence of sodomy and buggery laws marginalises people and reduces their access to HIV-related treatment, care and prevention services, inhibits them from seeking out testing for HIV and other sexually transmitted infections that increase the risk of HIV transmission. It facilitates discrimination within the health care and social services sectors. AIDS Free World also reported that the criminalisation of male same-sex conduct systematically drives Jamaican LGBT underground, away from effective HIV prevention, treatment, care and support interventions.

As described in submissions received by the Commission, there are “daily homophobic attacks and the fear of being beaten by the police if caught”, there are incidents of “torture, drowning, stoning, or burning by being placed in car tires, employment and other forms of [violence and] discrimination”. Police violence is frequent. Additionally, the existing climate is not conducive to peoples’ access to justice and rights

---

40 In Naz Foundation (India) Trust v. Government of NCT of Delhi and Others WP(C) No.7455/2001 the High Court of Delhi struck down much of section 377 of the Indian Penal Code as being unconstitutional. The Court held that to the extent section 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.

41 Dr. Wesley Crichlow, University of Ontario Institute of Technology.

42 Anton Rocke, SASOD, Guyana.

43 Human Rights Watch interview with Dr. Yitades Gebre, Executive Director, Ministry of Health Program Coordination Unit, Kingston, Jamaica, 23 June 2004 and Human Rights Watch interview with Dr. Peter Figueroa, Chief, Ministry of Health Epidemiology Unit, Kingston, 23 June 2004 demonstrate that providing HIV education and prevention services to MSM is extremely difficult because they are forced to remain invisible due to prejudice and abuse.

44 Dr. Wesley Crichlow, University of Ontario Int. Technology, Canada.

45 According to the AIDS-Free World, in February, 2011 there were two police raids of gay clubs in Kingston and Montego Bay. 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 LGBT 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. From the submission of Maurice Tomlinson, AIDS-Free World, USA.
protection, which means that many affected in these attacks de facto do not have legal recourse.  

This punitive environment contributes to the general climate of intolerance and homophobia in the region. In Jamaica, popular dancehall artist and 2010 Grammy winner, Buju Banton, sang about shooting and killing gays and when challenged about his homophobia, said it was justified under Jamaican law. Some of Jamaica’s elected officials have claimed that they are unable to change Jamaica’s buggery/gross indecency law until “society changes first.” The presence of the anti-buggery/gross-indecency law also precludes the distribution of condoms in prisons with the result that the HIV prevalence rate among inmates is higher than the national average.

Additionally, the existence of punitive laws relating to same sex relationships, force men into additional risky behaviour such as phoney marriages that place women at heightened risk (see more discussion on this below in section on women).

Even in countries where homosexuality is not a criminal offence (i.e. Suriname), there are taboos surrounding homosexuality, bisexuality and being transgender. In Suriname too, this is the reason why most HIV-positive MSM do not receive adequate support and counselling to fit their specific needs. HIV-positive MSM face stigmatisation by family members, friends and neighbours, resulting in a lot of fear to speak openly about their sexuality. Because of fear of stigmatisation, sexuality often is not a topic during counselling sessions; and even when brought up by a counsellor, clients often do not feel safe to openly discuss it.

Another example of how the HIV response was constrained by legal conditions in Trinidad and Tobago was shared in the discussions: an NGO attempting to register in 2008 faced heightened scrutiny by the Registrar General’s Office simply by virtue of its use of the phrase “against sexual orientation discrimination” in its application. The government raised the existence of the sodomy law and the legislative exclusion of sexual orientation from discrimination prohibited under the Equal Opportunity Act as a reason to doubt the legality of organisation’s mandate.

Several accounts of severe abuse and violence experienced by MSM and other LGBT people were shared at the Regional Dialogue and have been documented in reports.

A participant from Jamaica described the wide latitude given to police to use against MSM there, but also ended on a positive note:

“The Vagrancy Act gave the police the power to arrest persons soliciting, begging, prostituting etc. It became an embarrassment and was consequently repealed. There is now an Offence against Person’s Act which provides for among other things, the police to arrest and bring before a tribunal any persons found to have caused injury to another. The Act also criminalises buggery once the persons are caught in the act, be it in private or public and that they were subject to be arrested. Such Acts calls for the police to use their judgment although this is not a provision of the law. Notwithstanding abuse by policemen there is evidence that with education they can become more amenable.”

Among the positive developments, UNIBAM mentioned its success in working to foster a rights-based
environment in Belize and in the Caribbean region through the Caribbean Forum for Liberation of Genders and Sexualities (CARIFLAGS) networking. The group contributed to the support by the individual Caribbean governments of the inclusion of sexual orientation in the UN resolution on extrajudicial killings that was approved in December 2010. The group documents acts of violence against LGBT persons nationally, through its LGBT Legal Review, and in 2010 submitted a constitutional challenge of the present sodomy law. The preparation of the case began in 2007 together with the University of the West Indies Rights Advocacy Project. The petition was filed on 24 September 2010. Simultaneously, the Belize government was challenged to take a position when addressing section 53 of the Belize Criminal Code (sodomy law) in the Universal Periodic Review of 2009.  

Submissions received by the Commission suggested the necessity to eliminate buggery laws, address and eliminate homophobic violence, and provide for de facto equality before the law for MSM and other LGBT people, where everyone has the right to the equal protection and equal benefit of the law without discrimination. HIV prevention, treatment and care efforts need to specifically focus on MSM, as one of the most seriously affected groups. Health care providers, police officers and other government officials need to be educated about LGBT issues and sensitised to work with people from LGBT communities in a respectful and tolerant manner.

Along with the repeal of buggery and sodomy laws, the following were recommended in order to improve the human rights situation and universal access to HIV prevention, treatment, care and support for MSM.

- Governments in the region should ensure that all allegations of excessive use of force and other human rights violations by police officials based on real or perceived sexual orientation and gender identity or expression are investigated promptly and thoroughly;
- Governments in the region should train all police and criminal justice officials on human rights standards and principles of non-discrimination;
- Governments should conduct awareness raising programmes, 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
- Governments should facilitate access to social services, especially health services, regardless of the individual’s sexual orientation, gender identity and expression, and/or HIV status.

3.4 Experiences of sex workers

Although epidemiology related to sex workers in the Caribbean is relatively submitted, it has been established that they face alarmingly high rates of infection compared to the general population. For instance HIV prevalence among sex workers is 4% in the Dominican Republic, 9% in Jamaica and 27% in Guyana. Indeed, there is a large population of migrant sex workers who work in brothels, bars and on the street and who are male, female and transgendered throughout the Caribbean region.

The Caribbean HIV/AIDS Alliance (CHAA) in its submission reported that:

“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 gender-based violence.”

52 Caleb Orozco, UNIBAM, Belize.
53 Drawn in part from the submission of AIDS-Free World.
SASOD submitted that:

“Sex workers in Guyana... 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 against sex workers acceptable.”

SASOD is a partner in the Guyana Sex Work Coalition and recalled 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 organisation. ‘Now how could I go to the police and make a report when sex work is not really legal?’”

The oppression cast by punitive policies and practices was articulated by Ms. Miriam Edwards of the Guyana Sex Work Coalition:

“In my jurisdiction, sex workers still face the full impact of the law. The anti-prostitution pledge of the US President’s Emergency Plan for AIDS (PEPFAR) only serves to exacerbate the situation in light of the fact that the organisation is expected to assist other organisations involved in working with sex workers with funding. The feeling is that if one wants to receive benefits from these organisations one has to stop being a sex worker. Lobbying and advocating for rights is difficult because of the anti-prostitution law. There are concerns too about the treatment meted out to sex workers by the very organisations which are supposed to assist them. This sector does not see any signs of an improved atmosphere.”

The submission of the Guyana Sex Work Coalition highlighted that:

“To date the Law Enforcement Officials have been the leader in Stigmatising, Discriminating and Violence directed to our people. In many ways which contravene the Human Rights Declaration that all are equal. Equality is a major issue for us here because our Constitution doesn’t recognise 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 endeavour our best to achieve empowerment for these population.”

Additionally, SASOD in its submission to the Commission stated that:

“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 brutalise 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, stated 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 criminalise consensual sex between men and cross-dressing.”

“In my jurisdiction we face a lot of violence and abuse at the hands of the police and in some cases it is not only because of the criminalisation laws by also because of ignorance and cultural biases on the part of the police”

– Intervention from a participating sex worker, Guyana

It was pointed out that many sensitisation workshops have been undertaken with junior and senior officials in the police force, but the police revert to their customary methods of illegal and unwarranted violence against sex workers.55

The Commission also heard of the inherent hypocrisy in society as was described reported by sex workers who disclosed that in many cases police officials are themselves the clients of sex workers.

As evidenced by the contributions made by participants throughout the Regional Dialogue, police abuse and discrimination perpetuated against transgendered persons, MSM, sex workers and prisoners was a recurring

55 Ms. Miriam Edwards, Guyana Sex Work Coalition
and serious problem, which constituted a major shortcoming of governments in their fundamental duty to protect all persons. Such abusive conduct by those who are meant to uphold the rule of law demonstrably harmed the lives of already marginalised individuals and exacerbated their vulnerability to HIV. Discussion on the issue of police violence was given particular attention during the Caribbean Regional Dialogue.

3.5 Experiences of persons who use drugs

“In the Caribbean the virus is predominantly sexually transmitted and injecting drug use remains rare in much of the region. Despite the lack of evidence of injecting behaviours researchers in the Caribbean have found a link between non-injecting drug use and sexual HIV transmission in several Caribbean countries, with HIV prevalence estimates among crack cocaine smoking populations reaching those found among injecting populations elsewhere. Crack cocaine is widely available on most islands, due to drug transhipment routes, and its use is reported to be extensive.”

- Intervention from Dr. Marcus Day, CDARI

In the brief discussion that took place on issues of drug use it was pointed out that the harm reduction response remains very limited in the region. The predominant response is characterised by abstinence-based, high threshold services for people who use drugs. The use of illicit drugs is highly criminalised in the region with tough sentencing, resulting in high numbers of people who use drugs in Caribbean prisons. Despite the evidence that drug use is playing a role in HIV epidemics in the Caribbean, national drug and HIV policies remain largely unlinked. However, there have been indications that the need for a harm reduction approach to drugs may be becoming increasingly recognised in some Caribbean islands and the PANCAP 9th Round Global Fund Project contains a small sum to pilot harm reduction programmes for crack smokers.

3.6 Experiences of women

As became evident in discussions at the Regional Dialogue, women bear a disproportionate burden of the HIV epidemic in the Caribbean. Particularly young women between 15 and 24 years old are approximately 2.5 to 4 times more likely to contract HIV in comparison to young men of similar age. The number of women living with HIV has increased dramatically - if in the 1980s there were six HIV-positive men to one HIV-positive woman, currently there are two HIV-positive women to one man.56

This shift in the burden of the epidemic was ascribed to a combination of persistent social and cultural factors. For example in relation to cultural norms one participant highlighted that in some jurisdictions women still need to obtain consent of their spouse in order to get a tubal ligation.

According to the participants, transactional and intergenerational sex plays a big role in young women’s vulnerability to HIV, as young girls and women have sex with older men who promise to provide material benefits.57 Additionally, it was stated that incest affects girls. Within sexual relationships, the risk of violence discourages women from negotiating safer sex, even when they know there is a serious risk of infection. Criminalisation and stigmatisation of same sex behaviour between men leads to men also having sexual relationships with women. The statistics are alarming - the majority of MSM in the region (up to 78%) report having sex with women. As several participants at the meeting emphasised, this presents additional risk to women.

“One can deduce that the existence of punitive laws (sodomy, buggery laws) force men into risky behaviour. We see instances in which men who may have the tendency to go with men try to cover it up by getting married to women. Then a whole lot of issues emanate out of that which increases the chances of infection among women.”

- Intervention from civil society participant

56 Daniel Townsend, civil society participant from Jamaica.
57 Colin Robinson, CAISO, Trinidad and Tobago.
<table>
<thead>
<tr>
<th>Region</th>
<th>Prevalence heterosexual sex among MSM, ever</th>
<th>Median (Range)</th>
<th>Prevalence heterosexual sex among MSM, last year</th>
<th>Median (Range)</th>
<th>Prevalence of marriage among MSM</th>
<th>Median (Range)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa (not North)</td>
<td>64% (41-86%)</td>
<td></td>
<td>60% (50-69%)</td>
<td></td>
<td>12% (8-15%)</td>
<td></td>
</tr>
<tr>
<td>Asia</td>
<td>49% (25-73%)</td>
<td></td>
<td>54% (11-98%)</td>
<td></td>
<td>23% (3-42%)</td>
<td></td>
</tr>
<tr>
<td>Caribbean</td>
<td>78%</td>
<td>ND</td>
<td></td>
<td></td>
<td>41%</td>
<td></td>
</tr>
<tr>
<td>Eastern Europe and Central Asia</td>
<td>49% (44-53%)</td>
<td>ND</td>
<td></td>
<td></td>
<td>7%</td>
<td></td>
</tr>
<tr>
<td>Latin America</td>
<td>45% (25-64%)</td>
<td>19% (8-30%)</td>
<td></td>
<td></td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Middle East and North Africa</td>
<td>ND</td>
<td>ND</td>
<td></td>
<td></td>
<td>16%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>55% (25-86%)</td>
<td>53% (8-98%)</td>
<td></td>
<td></td>
<td>23% (3-42%)</td>
<td></td>
</tr>
</tbody>
</table>


“We have heard that women are more vulnerable if their partners are in multiple relationships; if they are also having relationships with sex workers; inconsistent use of condoms etc. In a recent UNAIDS fact sheet, it was reported that a majority of MSM in the Dominican Republic (76%) report having sex with women and 25% of MSM in Trinidad were married. This illustrates the additional vulnerability of heterosexual females.”

- Intervention from Ms. Merle Mendonca, Guyana Human Rights Association, Guyana

**The intersection of violence and HIV**

A key issue highlighted by participants was gender-based violence experienced by women, which contributes to their vulnerability to HIV.

“In the Caribbean we have a very machismo kind of culture which is very harmful for us in that there is a perception that men always have to be in control and that there is a faith-based perspective that men are the heads of the households and that they should control their women and be in charge. The perception that domestic violence should be dealt with in the home as well as the fact that violence against women is not sufficiently frowned upon exacerbates the situation. There are many examples where women who have been victims of violence are told by the church to be a good wife and “he is not going to beat you again”. Notwithstanding that across the region police have been trained in addressing domestic violence cases, we have seen police officers as the perpetrators.”

– Intervention by Flavia Cherry, Caribbean Association for Feminist Research and Action (CAFRA), Saint Lucia

The Director General, Ministry of Health, Haiti, admitted that the problem with violence against women in Haiti is significant, specifically in tent cities in the after-quake zone. The number of pregnancies after rape has risen, and young women have suffered disproportionately. There is no data on the incidence of HIV in the after-quake areas, nor on the impact of sexual abuse on the incidence of HIV, but the Ministry of Health is planning to investigate. The Ministry has organised educational campaigns in the tent cities and distributed condoms for young people. There is evidence that people are responding to the campaigns, so the Ministry will continue its efforts.

Domestic violence and other forms of gender-based violence including sexual violence have a strong correlation with HIV. Social disparity and inequality pressurise women to accept violence from their partners. In courts, the notion of keeping families together trumps the right of a woman to be free from violence. Legislative, policy and law enforcement reforms are urgently needed to address this issue. For women living with HIV, violence is accompanied by stigma and discrimination, which elevates the risk that they

58 Dr. Gabriel Thimothe, Director General, Ministry of Health, Haiti.
59 Ibid.
face, including increased violence and re-infection. Similarly, sexual violence increases women’s risk of HIV infection and elevates the risk of further violence.60

“Violence is not only a cause but also a consequence of HIV. Being HIV-positive contributes to increasing violence against women.”

Participants also highlighted that social, educational and economic disparities sometimes allow women to accept violence from their partners because at many levels they believe that moving out of the relationship may just expose them to another which is worse.

Also that sometimes there is no legal support to address issues of discrimination or gender based violence. Notwithstanding, some participants were of the view that there has been some movement in that regard.

Indeed, violence is often experienced by women in sex work at their places of employment when they try to insist on the use of condoms for their protection. HIV-positive sex workers sometimes give in to men’s wishes to have unprotected sex because they are too afraid to resist such demands on account of fear of violence.

Positive developments and the way forward

“Although there has been a culture of violence against women, there prevails presently a change and violence is not tolerated to the extent it was before. Cases are coming before the courts and victims have some recourse. This is not to say that when some of these cases get to the courts, the notion of keeping families and marriages intact sometimes traps social justice for women.”

- Intervention from Professor Rose-Marie Belle Antoine, University of West Indies

The Chairman of the National AIDS Council from Barbados spoke of the need to urgently develop and implement interventions specifically designed for young women.61 Other participants acknowledged that women-sensitive interventions are important, but there are also opportunities to reform legislation; all Caribbean countries have signed international human rights treaties and are obliged to comply with the commitments made therein. The highest standard of health, the right to life, the right to be free from violence, freedom from cruel inhumane treatment, and non-discrimination are all principles to which governments must adhere to based on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) Declaration of Commitment on HIV/AIDS.62

Participants noted that it is necessary to adopt a comprehensive approach to women’s health and wellbeing; there is also a need to work on elimination of gender-based stereotypes and de facto discrimination. In order to do so, it is necessary to address all stages of women’s lives and to design gender-specific interventions to empower and facilitate access to health care, including HIV prevention, treatment, care and support. There is a need to discuss abuse of elderly women, and tackle the elevated risk of female partners of MSM. It was also mentioned that indigenous people, specifically indigenous women, are not factored into national programmes despite being at significantly high risk of exposure to HIV.

While discussing issues of access to sexual and reproductive health the Jamaican Network of Seropositives mentioned that sometimes there is no legal support to protect reproductive and sexual rights of HIV-positive women. Due to the ignorance of health care providers, women living with HIV are made to think that they are selfish if they desire to become pregnant.63

3.7 Experiences of youth

“Young people are one of the key affected populations and we are seeing an increasing rate (of HIV) among that group. The demography of the Caribbean indicates that the youth are the dominant group, consequently all our

---

60 Daniel Townsend, Jamaica.
61 Dr. Henrick Ellis, Chairman of the National AIDS Council, Barbados.
62 Daniel Townsend, Jamaica.
63 Ms. Olive Edwards, Jamaican Network of Seropositives (JN+), Jamaica.
interventions must of necessity include programmes for young persons and address young persons at all times.”

- Intervention from CDARI, Saint Lucia

A large percentage of the population in the Caribbean is young, and young people are one of the key affected populations, as rates of HIV infection among them are quickly rising. There are many hurdles in young people’s ability to access HIV prevention and other health services.

According to a civil society participant representing youth in the Caribbean, young people living with HIV face stigma and discrimination when accessing social and other services. Many youths have become orphans, their families have neglected them; some have become vagrants, drug users, sex workers and have been incarcerated.

Participants discussed issues of age of consent and the definitions of “child” or “minor” in laws in the region being contradictory. Although a person below 17 years of age is considered “juvenile”, the age of consent to sexual relations is 16, the age when one is permitted to legally buy liquor is 21. In fact, the reality is that many people do not wait until 16, and initiate themselves into sexual activity at as young as ten or 11 years old. This disparity in definition of a “minor”/“child” leads to confusion over when young people are entitled to sexual health and HIV-related services without their parents’ or guardian’s consent. Age limitations thereby hamper young people’s access to health services thus negatively affecting public health goals.

A particularly worrisome situation was described in Jamaica where the Child Care and Protection Act specifies that health care providers need to report to authorities if a minor (under 16 years old) is sexually active. It is a classic example of a well-intentioned law having negative consequences. Participants felt that the provision is based on outdated moral and religious perceptions, which are not in harmony with the reality of Caribbean society, and could lead to many harmful consequences, by pushing sexually active minors away from sexual education and consultations. It also prevents them from obtaining condoms in government facilities. It had been emphasised that children are in need of care and protection, but not to the detriment of their health and rights, as they need to be given an opportunity to fulfil their potential and to access services, which are tailored to them.

“We are still in that age in which we think that young people are to be seen and not heard. There is a problem of cultural nuances and practices wherein young persons are pressured into sexual initiation. One is pressured by one’s mother, father, peers etc. which leaves one to wonder what to do, where to go and who does one go to for counselling and advice. However, within the Jamaican context there is the Child Care and Protection Act. Among other things, this Act seeks to guide how a minor accesses contraception, and regulates the method of reporting on a minor being sexually active. However, cultural nuances and beliefs, sometimes even with the case of health workers, takes precedence over the desired intention. There are inhibitions among the general population to seek to obtain contraceptive for fear of what the provider will say or think of them.”

- Intervention from civil society participant, Jamaica

Additionally, it was emphasised that even where the aforementioned Jamaican law was not in play, in other countries of the region health care providers may unwittingly contribute to the high infection rates among young people. They may deny young persons access to contraception, or simply discourage it due to their beliefs, which leads to similar results. Health care providers can be judgmental towards young people and ask why they are having sex, which pushes young people away from services. Furthermore, children’s access to antiretrovirals (ARV), especially if there is no guardian, may be restricted. The situation is serious and it makes law reform more important, especially in a time of reduced funding for HIV.

Throughout the Dialogue, participants emphasised that one of the reasons for high HIV infection rates in the region was the absence of comprehensive sexual and reproductive health education. In the Caribbean region attitudes towards sexual and reproductive health in schools is negative. As became apparent during the discussion, there have been several attempts of introducing comprehensive sexual education in schools in the region, which have largely failed. In many instances both educators and parents have resisted it. There are peer counselling groups that provide sex education on a voluntary basis in schools, which has succeeded

---

64 Ms. Tishauna Le-Wanda Edwards, One Love Organisation, Guyana.
in informing adolescents to a certain extent. Government experts, including judges participating at the Dialogue strongly felt that the need to address the sexual and reproductive rights of young people and especially those living with HIV was overdue, and that there was an urgent need to introduce comprehensive age-appropriate sex education in secondary schools.

“Attempts at initiating Family Life Education in schools within my jurisdiction encountered many challenges stemming from students, teachers and parents alike; all of these groups frustrated the effort. But there is an urgent need for it in schools especially as it seems that children now are attaining puberty at much earlier ages. We are going to undermine everything else that we are doing in Public Health Education and in Secular Education if we do not take very seriously this whole business of Family Life Education.”

– Intervention from former government expert, Barbados

Participants emphasised that politicians and society in general need to be informed that the agenda and desire to introduce sex education in schools was not with the design to promote or permit sex, but a pragmatic and mature approach, which accepted that young people engage in sex and that it was necessary to give them relevant information to protect them. The region needed to develop a framework to provide support to them and their choices, especially in the area where criminalisation of HIV transmission and exposure is prevalent. A representative from PANCAP emphasised that the organisation is working on youth involvement in HIV-related work, and that it is also developing interventions for education related to health and family life programmes.

School teachers, health care providers and parents have the responsibility to educate children about sex and to speak with them about use of condoms and contraception. They should educate children and young people about stigma and discrimination, including children who appear to be LGBT need to be protected.

As stigma takes root at young age, it needs to be eliminated starting from a young age. Young people are socialised by their environment, popular culture, media etc., and when they grow up they become employers, government officials and parliamentarians. If musical culture promotes sex, intolerance, artists need to be reached and educated in order to influence young people.

One participant spoke of how young women are often ignored when policy and legal reform is discussed in relation to health and HIV:

“In many instances when we speak of most at risk populations, we tend to leave out young women. Statistics suggest that we need to increasingly begin talking about young women as an important target for our interventions. We must not lose sight of the way we can also use policy and not only legislation to effect change. Why therefore have we made so little progress in mainstreaming, supporting and expanding Family Life Education in our schools in the Caribbean? Why is it that the notion of the right to sexual education is not considered as a right within the realms of CARICOM?”

The plight of young people was best expressed by youth participants at the Regional Dialogue:

“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 HIV-related cases. Youths are ostracised like many other populations because of their age, colour, 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 youth 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

65 Marcus Day, CDARI, St. Lucia.
66 Justice Adrian Saunders, Caribbean Court of Justice, Trinidad and Tobago.
68 Ashily Dior, Trinidad and Tobago
are confronted about their age, why, how, what, who contributed to their situation, these are some of the many questions."

- Submission from Ms. Tishauna Le-Wanda Edwards, One Love Organisation, Guyana

3.8. Experiences of migrants

According to Professor Rose-Marie Belle Antoine from the University of West Indies, governmental approaches toward HIV vis-à-vis immigration policy are a cause for concern in the Caribbean. 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 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 Chaguaramas, 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. These issues need to be directly confronted and adequately debated.
According to several civil society participants, access to HIV-related treatment is fairly good in the region, as the ARVs are free. However, there are many other issues that need to be addressed in this context. For instance, in Barbados there has been a lot of progress in terms of treatment including the virtual elimination of mother-to-child transmission of HIV. Law also provides that foreigners in need of ARVs are entitled to the same. Yet, the prevailing stigma which remains largely unaddressed pushes people away from accessing ARVs since they want to avoid being identified as HIV-positive. This also leads to some people living with HIV developing resistance due to irregular adherence further endangering public health.69

In countries, such as Suriname, there are other difficulties. Participants mentioned that hospitals dispensing ARVs are only in major cities and people have to travel a long distance to get treatment.70

Several participants mentioned that people who are on treatment are still dying because of the absence of social support systems or due to the unavailability of social services. People living with HIV are getting treatment, but have nothing to eat, live in inadequate housing and generally live in poverty. There are issues surrounding men’s health – because of socialisation men are afraid to be seen as weak and do not seek testing and treatment, which jeopardises their health.71 The region needs to urgently improve the social and economic situation, which puts people at risk of HIV, and particularly improve the social and economic situation of people living with HIV.72

In relation to HIV testing experiences were shared of the lack of confidentiality during and after HIV testing. Foundation HE+HIV from Suriname had documented numerous complaints on violations of confidentiality, which created a hostile environment within which to encourage people to test. There are reports that health care workers mistreat and ridicule HIV-positive patients. For example in Suriname, people need to register and get governmental health care cards in order to receive service. Unfortunately, HIV status is explicitly indicated on such cards.73

69 Maryam Karga-Hinds, Director, Barbados Drug Service.
70 Marten Colom, Foundation HE+HIV, Suriname.
71 Ainsley Reid, GIPA Coordinator, National HIV/STI Programme, Jamaica
72 Ibid.
73 Marten Colom, Foundation HE+HIV, Suriname.
5. Examples of good practices

Despite a degree of despondency that informed the meeting, some instance of good practices evidencing the commitment of both governments and civil society to achieve social justice in the Caribbean in relation to HIV were also discussed and cited as examples to learn from.

5.1 Test case litigation

As mentioned earlier, UNIBAM spoke of the constitutional challenge to colonial era sodomy laws it had filed in the Belize Supreme Court. Preparation for the case, goes back to 2007 when the University of the West Indies Rights Advocacy Project started dialogue about launching a case. This group worked with support from the Caribbean Vulnerable Communities Coalition. It took three years of dialogue, fundraising and communication to finally complete the legal case papers for filing in September 2010. As Caleb Orozco from UNIBAM stated:

“This issue is not about sex, it is about the right to work, access to health care, the right to association etc. Our experience suggests that we cannot treat every country the same way. Based on an assessment of laws and members of the legal fraternity, Belize has one of the most liberal constitutions. But still test cases are important to show parliamentarians and the system on the whole how people should respond to the needs of human beings.”

On similar lines, SASOD shared that a challenge had been filed in Guyana against the anti-cross-dressing laws contained in section 153 of the Summary Jurisdiction (Offences) Act, Laws of Guyana.

5.2 Education and direct engagement

The Guyana Sex Work Coalition reported on a successful initiative with the police in an effort to address high levels of police abuse against sex workers. In an effort to ameliorate the situation a meeting was requested and scheduled with the police and groups of MSM, transgender people and sex workers. An outcome of the meeting was a gradual attitudinal change among the police who became more amenable to the plight of these groups. Sex workers were even able to stage their first march through the streets with police protection.

In another instance the Office of the Speaker of the House in Barbados is partnering with the National HIV Commission and the United Nations to design a campaign aimed at advancing parliamentary leadership and strategies addressing HIV prevention, and the elimination of stigma and discrimination. The specific objectives of this campaign are to support the leadership of parliamentarians in raising prevention awareness of HIV and speaking out about stigma and discrimination and to strengthen partnerships between parliamentarians, communities, civil society organisations and the media in support of the implementation of the Barbados National HIV Policy.

PANCAP shared information about a toolkit it had developed on HIV Anti-Stigma and Discrimination geared
towards the education, tourism and private sectors, health workers, people living with HIV, and faith-based organisations. The toolkit comprises modules and a book for facilitators. It is hoped that other topics will be included later. PANCAP has also made the toolkit available online.

5.3 Proposed legislation

During the Dialogue there were many important suggestions from government experts in the region. Both these participants and those from non-governmental organisations agreed that there was a vital need to adopt a comprehensive harmonised regional approach to addressing HIV, including repealing punitive laws and policies affecting marginalised & vulnerable populations and people living with HIV. The Minister of Health from St. Kitts and Nevis urged participants that this meeting should generate thinking on specific strategies, plans and initiatives to move the debate forward in relation to law reform.

The minister expressed a wish that the Global Commission’s report and guidance on the law, policy and human rights related to HIV should become an important reference document for law reform in the Caribbean. She pointed out that any guidance from the Commission would be helpful in the deliberations of the CARICOM countries representatives. She also added that the Prime Minister of St. Kitts & Nevis, who at the time of the Dialogue was the CARICOM Chair, was prepared to take the lead in repealing some of the harmful legislation domestically, and working on introducing protective laws and policies related to people living with HIV and affected and marginalized populations, in particular aimed at ending stigma and discrimination domestically and regionally. The Minister mentioned that her ministry is working on general law reform – it introduced a package of legislation relating to health care, including dealing with issues of confidentiality. In order to ensure successful implementation of the proposed legislation, the Ministry of Health is planning to have parallel strategies of educating society. It is intent on involving faith-based organisations, people belonging to the Caribbean diasporas abroad, youth and other stakeholders in this work. The minister pointed out that changing the culture is the main way forward: the media and pop culture have to play important roles in promoting tolerance, equality and human rights. The advocates for change need to find a right message to present at talk shows, popular cultural and youth events, social networking zones etc. to help give impetus to the human rights and tolerance agenda. The minister reiterated the commitment of her Prime Minister in pursuing rights-based law reform in the HIV context and is prepared to take the lead in the region.

Senator Joan Purcell from Grenada expressed her commitments to work with minorities and representatives from civil society groups in order to develop better legislation and policy in response to HIV in her country. As president of the Senate, she committed to trying to educate her colleagues about the issue, to share the message, and to further the agenda of law reform. Several countries in the region, including Grenada, are in the process of constitutional reform. She invited civil society groups to get on board, to fully participate in the discussion, in the dissemination of information, in explaining the purpose, meaning and consequences of laws and policies to the people. She called participants to unite for human rights in order to make a real impact.

In the context of aforementioned interventions on law reform by law makers, a youth leader from civil society suggested that on their return home, all politicians present at the Regional Dialogue should speak to their respective Prime Ministers and fellow politicians to make them aware of the importance of the issue of HIV, the challenges that the region faces in it, and the necessity and wisdom in repealing punitive legislation and adopting enabling legal measures for affected, marginalised & vulnerable populations.

As a caveat, civil society groups requested participating legislators to note that the Caribbean region is unique in that negative developments in one country will affect people and situations in neighbouring countries. Therefore there is a responsibility on knowledgeable parliamentarians to educate their brethren, to promote

74 Ms. Marcella Liburd, Minister of Health, Social Services, Community Development, Culture and Gender Affairs, St Kitts and Nevis.
75 Ibid.
76 Ms. Joan Purcell, Senator, Grenada.
77 Ibid.
78 Orain Edwards, Jamaica Youth Network.
tolerance and understanding of these issues among them, and to speak out at the fora like CARICOM. A representative of the Caribbean Regional Network of people living with HIV from Grenada reminded the gathering that the Caribbean region had a proud history of fighting for equality. Now the region needed to unite against bigoted forces and to hold governments accountable for human rights protection, tolerance and good governance.79

Dr. Douglas Slater, Minister of Foreign Affairs, Commerce and Trade of Saint Vincent and the Grenadines shared his views about law reform. He pointed out that the region had made some progress. He called on the civil society groups to not see government and elected representatives as enemies – if any reform had to take place, parliamentarians, politicians, civil society and affected groups needed to work as allies. He also pointed out the necessity of education for politicians – as the politicians are regular people, who may have gaps in understanding and lack background knowledge; as a result bad laws can be made if there are no legislators who are adequately informed and prepared. The minister pledged to speak with his country’s Prime Minister, and offered his support to the cause of law and policy reform and the repeal of bad and punitive laws.

Returning to themes discussed at an earlier period of the Regional Dialogue, participants also noted that people in the region need to address the vacuum in human rights themselves, and need to stop being complacent, or slavishly follow misinformed religious ministers or others, who bring the message of hatred and intolerance, not love.80 Dr. Gabriel Thimothe, the Director General of the Haitian Ministry of Health emphasised that the region as a whole needs a new paradigm focusing on dignity, respect for each other and human rights. As mentioned earlier, he described Haiti’s proposed legislation to address the protection of the rights of people living with HIV, including non-discriminatory access to education, housing, and protection in the workplace.

79 Rachel Charles, Caribbean Regional Network of PLHIV (CRN+), Grenada.
80 Marcus Day, CDARI, St. Lucia.
“We have to be clear as to what it is we can and want to achieve. Less than 200 years ago when this debate first took place, it was not about gays, it was not about women; it was about us as a people and our ability to survive and be treated as human beings. That we who have been discriminated against should know better than to perpetuate discrimination… the root of discrimination is our inclination to generalise, whether it be against minority populations or against politicians; it is the same cancer that leads to the same results. There is therefore no doubt that we have a problem.

Politics is not about simply winning elections, it is about leadership and leadership is about settling in our minds what kind of children we want to raise. Equally, civil society needs to remember that it is not only the political class that needs to be democratised but themselves as well. And the democratisation of the message – getting the message down to ordinary members of the society – not because you are trying to lobby but because you are trying to build values that reflect a better society. There has to be the recognition that simply coming to a meeting will not suffice. The genesis of our efforts must be the community.

The most powerful human emotion is to put someone in the place of the other person. It is the golden rule from the Bible – ‘do unto others as you would have them do unto you’. While laws do not change culture, they are necessary to preclude and prevent arbitrary action on the part of some. That is the minimum standard from which we start. We need the laws so that those who believe that it is their license to discriminate will understand that the society will not accept it. But we have at the same time to have a democratisation of education and sensitisation programme that some of you from civil society are presently conducting which needs to get to the people in the villages, towns, country, workplace etc. and it must not come from politicians only.

At the same time politicians need to recognise that building a nation is not simply about winning the next election or appealing simply to those whom the polls say we should appeal to, but it is about doing the right thing for the right reason based on the visions that we have for our countries notwithstanding the constraints of the system of government and governance that we have.

I believe the discussion in the region has been too narrow. The problem is not only about marginalisation and discrimination against women, the problem is not only about discrimination against gays, the problem is that we have yet to address what kind of societies we want to build and what kind of children we want to raise.”

- Hon. Mia Mottley, Leader of the Opposition, Barbados Parliament

Participants put forth several ideas for a Caribbean ‘action plan’ to expedite and facilitate initiatives for law reform and the use of law to assist those most affected by HIV in the region including:

- Increased use and interpretation of existing Constitutional protections to address breaches of human rights against those most at risk. In relation to this, it was also acknowledged that access to justice inhibited by high costs and exposure of petitioner’s/ plaintiff’s status without assurances of confidentiality, must also be addressed or they will continue to be hindrances to full utilisation of legal protections.
• The application of international legal principles in judicial consideration of HIV-related issues before the courts.

• An understanding that stigma and prejudice exist outside the context of legal enforcement. It is therefore essential that these be tackled and the sources of such attitudes be addressed, if we are to rid the human mind and society of such unwelcome manifestations of prejudicial emotions.

• An urgent need to find ‘legislative champions’ to take up the case of such reforms.

• Law reform combined with concerted efforts at educating general society with accurate information need to go hand-in-hand with other avenues used by the HIV response in the region. For example there is a need to introduce laws that prohibit hate speech (e.g. in the form of popular music lyrics) that preach revulsion and promote stigma against people living with HIV, women and other vulnerable groups, most notably members of the LGBT community. Simultaneously, using the vibrant Caribbean culture of artists, entertainers and youth to reinforce positive notions of acceptance of diversity, compassion and equality of all should be strengthened. Similarly laws which are sensitive to young people and their needs need to be introduced along with efforts to sensitise and involve parents, mentors, school authorities on the enabling basis of such legal frameworks that strengthen a young person’s ability to understand and deal with HIV.

• Law reform needs to include the removal of prohibitive laws that make the lives of sexual minorities such as transgendered persons and MSM more difficult and vulnerable. However, repealing laws is not enough – it is essential to examine and counter the roots of prejudice and stigma and the stereotypical attitudes of people at all levels of society, including within courts and parliaments.

• Law reform requires the training and sensitisation of legal draftsmen to express the law reform proposals in appropriate legislative language informed by a nuanced understanding of the issues being legislated. For instance, legal frameworks need to distinguish voluntary, adult sex work from human trafficking.

• Training and sensitisation on legal issues that are of consequence to the HIV response in the region needs to take place with members of the judiciary, parliamentarians, healthcare workers, bureaucrats and the media sector. In this regard, there is a need to engage and involve parliamentarians and judges who have done work in the field of HIV/ human rights, to talk and share their experiences with their brethren who have not yet been exposed. Such training includes for judges to better prepare them when they are confronted with cases involving human rights and HIV. There is also a need to have the support of sympathetic lawyers who are prepared to go to court and litigate constitutional issues that arise from Human Rights and HIV to ensure not only justice but also access to justice.

• Legislative and policy reform should ensure harmonisation between government policies and practice. A concerted effort should be made to harmonise laws between countries in the region. Indeed, setting up a regional law reform commission to harmonise the drafting of laws is a way forward. By so doing economies of scale can be addressed at a time when the region has budgetary and other resource limitations.

• Increased efforts to undertake research and generate data on the intersectionality between HIV, law and human rights and the impact of harmful laws on HIV, public health and the achievement of Millennium Development Goals. For instance, data has been published by UNAIDS in the region that show lower prevalence rates among MSM in countries that do not criminalise buggery or sodomy as opposed to countries that do.

• A secular approach to laws in the region, free from religious interests currently being promoted by conservative religious forces in the region.

• Accountability at all levels of law reform, including engagement of civil society in the process of reform, and who will lead action after the outcomes of the Regional Dialogue requires to be determined.81

---

81 One immediate outcome of the Regional Dialogue was the setting up of a Caribbean Coalition for Social Justice, which would take forward the dialogues and discussions that took place at the Regional Dialogue between civil society participants and government experts and the recommendations emerging in 2012 from Global Commission on HIV and the Law.
Additionally, it is imperative that dialogue between government and civil society should occur frequently and regularly. When different constituencies return to their respective jurisdictions serious attempts should be made to build on the impetus provided by the Regional Dialogue. Each participant should endeavour to do something personal to change their attitude at it relates to the response to the pandemic.

The representative from PANCAP expressed hope that the discussion at the Regional Dialogue went beyond the participants in the room. It was noted that much of what had been proposed and commitments that were made complemented the work of PANCAP. Nevertheless, if various country coalitions and advocacy groups did not spur into action, very little progress would be made. Participants were implored to push the agenda forward in their respective fields of endeavour – within civil society and legislatures; it is only through a multi-sectoral approach that a difference in attitudes, passing new laws and rejecting outdated ones could be made, which ultimately leads to reduction in HIV in the Caribbean. Civil society participants spoke in a similar vein:

“We must understand the responsibility that comes with walking the walk. We will all have to go back to our countries and continue with more vigour our advocacy and continue to do the work that will set the background for what we want to happen… The education has to start at the very basic level employing both a bottom up and top down approach.”

- Veronica Cenac, Advocate, Saint Lucia

“The answer clearly is a greater mobilisation at the grass roots level and a more potent battle waged by civil society. There is need to provide an environment within which agency and autonomy can bear fruit. Within the context of agency and autonomy, one can move towards building social movements for change. All we have done in terms of the HIV and AIDS response programmes is to place it within institutions rather than within the wider society. There is need to shift from an institutional frame to social movements within which people living with HIV and other vulnerable populations can find the space in order to do advocacy in different ways and therefore to make a change.”

- Professor Christine Barrow, University of West Indies

By the end of the Regional Dialogue, some concrete next steps had been identified including strategic actions in a number of countries where there is an opportunity to influence law makers, and the judiciary. For instance, in September 2011, in Guyana, law reform process on inappropriate criminalisation of HIV was informed by the Commission Secretariat and UNDP country office. Guyana Minister of Health, Dr. Leslie Ramsammy said, “These positive developments indicate that parliamentarians, prosecutors, judges, health experts, people living with HIV and other key stakeholders across the world are increasingly aware of, and concerned about, the negative public health and human rights impact of the overly broad criminalization of HIV transmission and exposure.” Furthermore, in October 2011, as a follow up to the Regional Dialogue, the Global Commission supported by UNDP, organised a panel discussion on ‘Judicial Sensitisation on HIV and the Law’ preceded by an Opening Address by Commissioner Michael Kirby at the 2nd Conference of the Caribbean Association of Judicial Officers (CAJO) in Nassau, Bahamas. More than a hundred members of the Caribbean judiciary, including the magistracy, Supreme Court and Appeals Court judges and the Caribbean Court of Justice were in attendance. The panel discussion was the first of its kind in the region, chaired and moderated by Justice Adrian Saunders, CAJO Chairperson and judge of the Caribbean Court of Justice. Panelists included civil society representatives and academics from the Caribbean and UNDP experts. They traversed issues of epidemiology, and the spectrum of legal issues critical to HIV health and development in the region, including strategies for challenging stigma and discrimination and improving access to justice. In his final remarks Justice Saunders acknowledged the importance of HIV and the law in the Caribbean context and the need for the judiciary to closely examine the issues raised in keeping with the CAJO conference theme of ‘bringing law closer to the people.’ Many judges in attendance expressed great interest and support for further judicial sensitization on HIV in their respective countries, which is currently being further discussed by UNDP and the Commission Secretariat.

Commissioner Michael Kirby concluded the proceedings by summarising his observations and remarks from the Regional Dialogue, the full text of which are annexed as Appendix C to this report.
## Appendix A: Civil society participants

<table>
<thead>
<tr>
<th>NAME</th>
<th>ORGANISATION</th>
<th>COUNTRY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sir Cardinal Leroy Trotman</td>
<td>Barbados Workers’ Union</td>
<td>Barbados</td>
</tr>
<tr>
<td>Prof. Christine Barrow</td>
<td>University of the West Indies</td>
<td>Barbados</td>
</tr>
<tr>
<td>Mia Quetzal</td>
<td>Caribbean Trans in Action (UNIBAN)</td>
<td>Belize</td>
</tr>
<tr>
<td>Caleb Orozco</td>
<td>United Belize Advocacy Movement</td>
<td>Belize</td>
</tr>
<tr>
<td>Akim Ade Larcher</td>
<td>The Larcher Group</td>
<td>Canada</td>
</tr>
<tr>
<td><strong>Attended DAY 1 only</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dr. Wesley Crichlow</td>
<td>University of Ontario Int. Technology</td>
<td>Canada</td>
</tr>
<tr>
<td>John Waters</td>
<td>Centro de Orientacion E Investigacion Integral (COIN)</td>
<td>Dominican Republic</td>
</tr>
<tr>
<td>Rachel Charles</td>
<td>Caribbean Regional Network of PLHIV (CRN+)</td>
<td>Grenada</td>
</tr>
<tr>
<td>Jasmine Redhead</td>
<td>Individual</td>
<td>Grenada</td>
</tr>
<tr>
<td>Anton Rocke</td>
<td>Society Against Sexual Orientation Discrimination (SASOD)</td>
<td>Guyana</td>
</tr>
<tr>
<td>Miriam Laetitia Edwards</td>
<td>Guyana Sex Work Coalition</td>
<td>Guyana</td>
</tr>
<tr>
<td>Tishauna Le-Wanda Edwards</td>
<td>One Love Organization Guyana</td>
<td>Guyana</td>
</tr>
<tr>
<td>Merle Mendonca</td>
<td>Guyana Human Rights Association (GHRA)</td>
<td>Guyana</td>
</tr>
<tr>
<td>Cracey Fernandes</td>
<td>Individual</td>
<td>Guyana</td>
</tr>
<tr>
<td>Nemesis Development Association</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Altagrace Michele Maignan</td>
<td>Foundation Esther Boucicault-Stanislas (FEBS)</td>
<td>Haiti</td>
</tr>
<tr>
<td>Fr Eddy Eustache</td>
<td>Partners in Health</td>
<td>Haiti</td>
</tr>
<tr>
<td>Carolyn Gomez</td>
<td>Jamaicans for Justice</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Dane Lewis</td>
<td>The Jamaica Forum of Lesbians, All-Sexuals and Gays (JFLAG)</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Ivan Cruickshank</td>
<td>Caribbean Vulnerable Communities (CVC)</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Kandasi Levermore</td>
<td>Jamaica AIDS support for Life (JAS)</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Ainsley Reid</td>
<td>Individual, GIPA Coordinator, National HIV/STI Programme</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Olive Edwards</td>
<td>Jamaican Network of Seropositives (JN+)</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Orain Edwards</td>
<td>Jamaica Youth Network</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Joan Didier</td>
<td>AIDS Action Foundation</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Flavia Cherry</td>
<td>The Caribbean Association for Feminist Research and Action (CAFRA)</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Prof. Rose-Marie Belle Antoine</td>
<td>Attorney at law &amp; Professor, University of the West Indies</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Marcus Day</td>
<td>Caribbean Drug &amp; Alcohol Research Institute (CDARI)</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Veronica Cenac</td>
<td>Individual, Attorney at law</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Samantha Robertson</td>
<td>The Saint Vincent &amp; the Grenadines Human Rights Association (SVGHRA)</td>
<td>St. Vincent and the Grenadines</td>
</tr>
</tbody>
</table>
Lucien Govaard
Martien Colom
Angelique Sanches
Ethel Pengel
O’Leo Lokai
Ashily Dior
Colin Robinson

Dr. Robert Moultrie
Attended DAY 1 only
Diana Mahabir
Attended DAY 1 only
Dylis McDonald
Gaietry Pargass
David Soomalie
Oyeleye Adeniyi

Maurice Tomlinson
Shonali Shome
Patricia Lynch-Epps

Suriname Men United
Foundation HE+HIV
Stichting Rachab Suriname
Double Positive
Red Initiatives
Individual
Coalition Advocating for Inclusion of Sexual Orientation (CAISO)

Men Against Violence Against Women (MAVAW)
Coalition against Domestic Violence
Caribbean HIV/AIDS
Associates for International Development
CARE Trinidad
Regional Field Manager for Population Services International Caribbean (PSI)
AIDS-Free World
AIDS-Free World
Individual, retired US Navy Lawyer

Suriname
Suriname
Suriname
Suriname
Suriname
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
Trinidad & Tobago
### Appendix A: Government expert participants

<table>
<thead>
<tr>
<th>NAME</th>
<th>ORGANISATION</th>
<th>COUNTRY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Malaka Parker</td>
<td>Senator</td>
<td>Antigua and Barbuda</td>
</tr>
<tr>
<td>Ms. Bernadeth John</td>
<td>Director, Community Legal Services Commission</td>
<td>Barbados</td>
</tr>
<tr>
<td>Ms. Cynthia Y. Forde</td>
<td>Member of the parliament-St. Thomas, Barbados Labour Opposition Party</td>
<td>Barbados</td>
</tr>
<tr>
<td>Hon. Miss Mia A. Mottley</td>
<td>Parliamentarian</td>
<td>Barbados</td>
</tr>
<tr>
<td>Mr. Michael Carrington</td>
<td>Parliamentarian, Speaker of the House</td>
<td>Barbados</td>
</tr>
<tr>
<td>Mr. Hamilton Lashley</td>
<td>Parliamentarian</td>
<td>Barbados</td>
</tr>
<tr>
<td>Ms. Maryam Karga-Hinds</td>
<td>Director, Barbados Drug Service</td>
<td>Barbados</td>
</tr>
<tr>
<td>Dame Billie Antoinette Miller</td>
<td>Barbadian politician, Doyenne of Caribbean Women Politicians</td>
<td>Barbados</td>
</tr>
<tr>
<td>Dr. Henrick Ellis</td>
<td>Chairman of the National AIDS Council</td>
<td>Barbados</td>
</tr>
<tr>
<td>Ms. Sarah Adomakoh</td>
<td>Team Leader, PANCAP Regional Stigma and Discrimination Unit</td>
<td>Barbados</td>
</tr>
<tr>
<td>Ms. Martine Chase</td>
<td>Technical Member, PANCAP Regional Stigma and Discrimination Unit</td>
<td>Barbados</td>
</tr>
<tr>
<td>The Hon. Joan Purcell</td>
<td>Senator</td>
<td>Grenada</td>
</tr>
<tr>
<td>Ms. Gloria Septra Augustus</td>
<td>Magistrate Court of Dominica / Legal Division, CARICOM Secretariat</td>
<td>Guyana</td>
</tr>
<tr>
<td>Ms. Volda Ann Lawrence</td>
<td>Parliamentarian</td>
<td>Guyana</td>
</tr>
<tr>
<td>Mr. Gabriel Thimothe</td>
<td>Director General, Ministry of Health</td>
<td>Haiti</td>
</tr>
<tr>
<td>Mr. Andrew Hill</td>
<td>Detective Inspector/ Police The Anti Corruption Branch</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Major Richard Reese</td>
<td>Police, Former PS national Security former head of Corrections</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Dr. Nicola Skyers</td>
<td>Ministry of Health</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Ms. Marcella Liburd</td>
<td>Minister of Health, Social Services, Community Development, Culture and Gender Affairs</td>
<td>St Kitts and Nevis</td>
</tr>
<tr>
<td>Hon. Mr Justice Kenneth A Benjamin</td>
<td>High Court, St Lucia</td>
<td>St Lucia</td>
</tr>
<tr>
<td>Hon. Dr. Douglas Slater</td>
<td>Minister of Foreign Affairs, Commerce and Trade</td>
<td>St. Vincent and the Grenadines</td>
</tr>
<tr>
<td>Dr. Abdoel Wahid Firoz</td>
<td>Technical Unit, National Aids Programme, Ministry of Health</td>
<td>Suriname</td>
</tr>
<tr>
<td>Mr. Amery Browne</td>
<td>Parliamentarian</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td>The Honourable Mr. Justice Adrian Saunders</td>
<td>Judge, Caribbean Court of Justice</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td>Mr. Ian Rampersad</td>
<td>Senior Legal Executive, International Law and Human Rights Unit, Ministry of the Attorney General</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td><strong>Attended DAY 1 only</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix C: Closing remarks & observations of Commissioner Michael Kirby

United Nations Development Programme
Global Commission on HIV and the Law
Caribbean Regional Dialogue
12-13 April 2011, Port of Spain, Trinidad

UNDP Law Commission: Caribbean Dialogue: Summing Up

The Hon. Michael Kirby AC CMG*

A critical moment

The Economist of 2 April 2011 reminds us all that the week of this regional dialogue in the Caribbean coincides with the sesqui-centenary of the beginning of the Civil War in the United States of America:

“This month marks the 150th anniversary of the American civil war's beginning. The first shots were fired at Fort Sumter, in South Carolina, on April 12, 1861. Passions can sometimes still flare – as William Faulkner, the South’s great novelist wrote. ‘The past is never dead. It is not even past”. (Ibid, p.41)/

Yet from those shots that rang out 150 years ago, a message went around the world. It was that all people have human dignity. That poverty and slavery are intolerable to human beings. And that nobody should be disadvantaged, least of all in the law, because of indelible features of their person.

The American Civil War was fought over gross racial discrimination. As The Economist points out, it took more than a century to rid the United States and its laws of the imposition of second class status upon people on the grounds of race. The struggle against racial discrimination continued in Southern Africa and in many other places, including my own country Australia. Some of the struggles have been led by lawyers and judges, and eventually by politicians and civil society. The struggle is not yet fully won. But great victories have been achieved.

The efforts to end slavery and other forms of human bondage continue to the present day. The attempts to rid human society and many of its laws of stigma and discrimination against people on the grounds of indelible features of their personalities other than race remain to be won. Those features include gender, age, ethnicity, aboriginality, disability and sexuality. We in this Caribbean dialogue can take strength from this reflection on human history. The Caribbean itself produced great leaders in the struggle for racial equality and for an end to discrimination on that ground. Now the call goes out for a continuance of the struggle, not only on that ground but on others. The shots fired at Fort Sumter remain in our collective memories. The central challenge of this dialogue has been, in the words of Miss Mia Mottley QC MP, spoken in this meeting, to end the “cancer of discrimination” and to answer affirmatively the popular song: “Do You Still Care?”. I believe that the outcome of our discussions in Port of Spain is a response to that question in a ringing affirmative. We do care. And we will act on our care.

This Caribbean dialogue has been part of a systematic process of consultation which has been initiated by the United Nations Development Programme (UNDP). The Administrator of the Programme, the Rt. Hon. Helen Clark, former Prime Minister of New Zealand, knew from her experience in politics in her own country the need for leadership, courage and example in changing laws to end discrimination and inequality. Such changes are not only important in themselves for true equality of citizenship. They are also as events transpire, vital initiatives to assure an effective and powerful response to the global HIV/AIDS epidemic that has confronted the world these past 30 years.
The meeting in Port of Spain opened with a video message of welcome from the UNDP Associate Administrator, Rebeca Grynspan. Her public life began not so far from here. She reminded us of the bright hopes of UNDP that its Global Commission on HIV and the Law (“the Global Commission”) would contribute to a successful strategy for the world community, designed to promote prevention of the spread of HIV; access for all in need to the anti-retroviral and other therapies, care and attention; and a concerted effort to turn the corner and to promote human health not only as part of the Millennium Development Goals, but beyond.

The Global Commission

The Global Commission has been created to help unblock an impasse that has arisen in many countries whereby the law, far from assisting and supporting an effective response to the HIV/AIDS epidemic, has all too often become an impediment and an obstacle to effective policies. How do we break the logjam of human inaction, even in the face of the terrible suffering which the unexpected pandemic of HIV has brought to humanity? That is the challenge which the Global Commission has accepted. In its response, it is led by Fernando Henrique Cardoso, former President of Brazil. The example of Brazil has constantly been before us in this dialogue. It has been one of courage, self-confidence, strength and determination to protect its citizens and to advance their welfare. That is the banner we should all accept. The Global Commission is seeking to promote that end.

Three Commissioners have attended the Caribbean dialogue: Mr. Stephen Lewis of Canada (Commissioner), Mr. Prasada Rao of India (Member Secretary) and myself. In these remarks, I do not speak for them or for the Commission. I simply offer a few closing reflections on the exchanges that we have observed during the dialogue. A formal report will be distributed in due course. It will be shared with our colleagues in the Commission and with the wider international community. It will contribute to the deliberations of the Commission as it moves towards its conclusions, to be reached by the end of 2011 or early in 2012.

On behalf of the Commission, I thank all who have taken part in these conversations. I also thank the magnificent team from UNDP, both at Headquarters and in the region, who have assisted in our debates. Most expressly, I mention the many contributions of Dr. Mandeep Dhaliwal, Cluster Leader of the UNDP Commission’s Secretariat, and Mr. Vivek Divan. They have respected our independence and integrity. But they have added to our deliberations from the wealth of their knowledge and experience. I also thank the representatives of UNAIDS and of other United Nations agencies who have come to be with us on this journey.

Commissioner Stephen Lewis began the dialogue with a strong call for action. He suggested that the time for prevarication over the need for legal reform was past. And that bold action – even extending to ‘naming and shaming’ national and regional leaders who have failed to adopt the measures of law reform that are urgently needed, must be considered. This was the right note of challenge on which to instil in us a sense of the urgency that is demanded by the suffering, pain and deaths of so many people, including in the Caribbean region. In fact, after sub-Saharan Africa, the Caribbean has experienced the most intense manifestations of the HIV/AIDS epidemic in the whole world. Amongst the data which the dialogue received was:

- The HIV prevalence among adults in the Caribbean is about 1.0%, which is higher than in all other regions outside sub-Saharan Africa;
- In the Caribbean, every day there are 50 new infections, and 33 people die because of AIDS;
- HIV rates vary throughout the Caribbean region. The exceptionally low HIV rate in Cuba (0.1%) contrasts with a high HIV prevalence in the Bahamas (3.1%);
- The Caribbean remains the only region besides sub-Saharan Africa, where women and girls outnumber men and boys among people living with HIV;
- Thirteen countries in the Caribbean region criminalise some aspects of sex work;
- Eleven countries in the Caribbean region criminalise same-sex relations; and
• Up to four countries in the Caribbean region impose travel restrictions on people living with HIV.

In the context of a global epidemic which has led to the deaths of almost 40 million human beings and which has resulted in more than 30 million people living with HIV, this is the challenge that UNDP and its Global Commission is seeking to answer. The answer must be given in the context that, 30 years into the epidemic, the world still has no safe and effective vaccine against HIV. We still have no therapy that will rid the human body of the virus. Every year, between 2.6-2.7 million people become infected with HIV. The therapies we have may not remain effective over the long term. New and even more expensive therapies will be required, involving a great challenge to the justice of the world’s intellectual property laws. And all of this occurs in a context where the global community is struggling with a great financial crisis that impacts on the capacity and willingness of developed countries to contribute to the funding of therapeutic responses for poorer countries, including many in the Caribbean.

So this is the world of HIV. It is the challenge which we have addressed. And I believe we have made some headway.

The Richter scale of response

At the outside of this closing summation, it is appropriate to note some of the contributions which drew the warmest response from participants in this dialogue, as it infolded:

• The comment I made, at a point during my own remarks, that within the Caribbean there must be gay members of parliament, perhaps even presidents and prime ministers, who could, if they were totally honest, give leadership on reform of the laws against same-sex relations, drew a warm and knowing applause. I would judge that this was equivalent to a six on the Richter scale;

• When Commissioner Stephen Lewis declared that the time had come to ‘name and shame’ political leaders who were part of the problem, rather than of the solution, this too drew a strong response. I would say that that was a seven on the Richter scale of response;

• When another speaker urged the dialogue to integrate the notion of religion and true morality; of effective responses to prejudice and hypocrisy in the Caribbean, there was a huge response. It measured eight on the scale;

• When another speaker, calling on her background as a sex worker, declared her sense of outrage at police condemnation because “the same police officers are our clients”, the knowing response measured nine on this Richter scale. So did the repeated calls of many participants, and not only from civil society, that demanded the urgent repeal of the criminal laws prohibiting same-sex relations. Every time this idea was expressed, it drew a response at the level of nine; but

• The strongest applause of all was for the wise assessment of Miss Mia Mottley QC MP. Nearing the end of this dialogue, she grappled directly with both the limitations and the potential of law reform. “Laws don’t change culture”, she declared. “But changing the laws is necessary to stop arbitrary actions and as a precondition to improvement in society”. This strong affirmation drew the strongest approbation of our meeting. It measured a full ten on our Richter scale. It has set in train tremors which, we may predict, will be felt years from now and far away.

The general approach that is needed

Non-starters in reform

During the dialogue, many suggestions were made for change. Some of them will almost certainly not come to pass:

• One participant urged that UNDP should, even now, appoint a Caribbean commissioner to the Global Commission so that the distinctive features of this region of the world will be expressed at the table
of the Commission. I have to tell you, that this will not occur. The Commission is now in the home straight. It must prepare and complete its report, effectively by the end of 2011. The appointment of new commissioners will not occur. But this dialogue has been a practical opportunity for those participating from this region to speak directly to three of the Commissioners. And through them, to all members of the Commission to whom we will report; and

- Then, another participant asked that the judges present should give advice about the cases that should be brought to court and the challenges that would succeed to improve the law and thereby strengthen the Caribbean response to the HIV epidemic. This too will not happen. Judges, by their offices, cannot give such advice. Their duty is to decide cases that are brought to them in the independent courts. This is a distinct limitation on their powers. They must always preserve their manifest impartiality and independence. They have a creative role. But it is limited to being exercised in test cases that are brought to their courts by individuals. This means that they are never free agents, simply to rove across the face of the law and to achieve reform in the law that personally they may favour. It is for others to bring cases to them. And the value of doing so in the Caribbean, where the legislative reforms seem so slow in coming, has been emphasised in this dialogue, including by the judges who have been present.

**General strategies and approach**

Other points of general advice on the way forward have been made and deserve consideration:

- At one point, a participant, himself a member of a Caribbean legislature, urged that “good science wins support amongst legislators”. This is true. It constitutes a universal lesson that I learned early in the HIV epidemic. Indeed, it was taught to me in the first global commission, established by the World Health Organisation (WHO): the Global Commission on AIDS. Before that Commission, Professor June Osborn declared that all strategies in response to the epidemic must be based on good science. Not on mythology. Not on religion. Not on intuition or fear. This is the approach that was embraced by the WHO and later by all the agencies of the United Nations and by its joint programme on HIV, UNAIDS;

- HIV being a global challenge, the use of international legal principles to assist judicial consideration of the validity of domestic laws was mentioned by several participants. There should be more appeals to the wisdom of the international legal community. The 2009 decision of the Delhi High Court in *Naz Foundation v Union of India* is a case in point. That decision invoked universal principles of human rights as well as the provisions of the independence constitution of India, which finds reflections in the constitutions of several countries of the Caribbean;

- One judge urged the need to sensitise judicial officers of the Caribbean about developments that have been happening elsewhere in the common law world. Speaking the same language and heirs to the same legal tradition and methodology, our judges share their wisdom with colleagues in other countries. On the legal response to HIV and AIDS, there is much wisdom in the courts of other lands and different regions. Judges need to be informed of these resources so that, in the countries of the Caribbean, they can have access to them when like problems arise for their consideration;

- A participant from Suriname reminded the participants from Commonwealth countries of the differences in the law that exist within the region. One of those differences is the absence in the law of Suriname of criminal prohibitions against MSM activities. Because Napoleon's codifiers removed those laws from the French Penal Code, they disappeared, in turn, from the laws of the Netherlands, Belgium, Germany, Spain, Scandinavia, Russia and the empires of those countries. There is still stigma. But it is not reinforced by law, least of all criminal law. There are lessons for other Caribbean countries to learn from this. And a question as to why it has taken so long for the reforms to be accepted elsewhere in the Caribbean. Indeed, the differences suggest that prejudice against MSM is not, in fact, a deep attribute of regional cultural values. It is simply an unloved relic of colonial rule which has long since been discarded in the law of Britain, from whence it was exported to the British colonies in this part of the world;

- Because stigma and prejudice exist outside a context of legal reinforcement, it is essential that this be tackled and that the sources of such attitudes be addressed, if we are to rid the human mind and society of such unwelcome emotions. This would have been important on its own account. However,
it has become extremely urgent with the advent of HIV. As many of the participants in the dialogue explained, it is essential quickly to break the cycle of lethargy, hostility and inactivity. Tackling the source for prejudiced responses towards minorities and their lives is the link to achieving action;

- So is discovering legislative champions who will take up the cause of securing reform. Dame Billie Miller, DBE, was such a parliamentary champion in Barbados for the cause of law reform in the laws concerning women’s reproductive health. She described the loneliness of her early years in parliament where, for a long time, she was the sole woman legislator. She described the way she would talk with everyone, and especially her colleagues, to try to convince them to embrace her ideas, as eventually they did. It was she who secured the support of the Prime Minister and eventually of a majority in parliament. But it took leadership, persistence and determination in the face of the opposition. Also, a willingness to reach out, to try to understand the causes for opposition and to explain her divergent point of view. As an instruction, by analogy, on strategies that will be necessary to carry forward the law reform programme of UNDP, it was a brilliant exposition from a distinctively practical Caribbean perspective;

- Several participants described the current disillusionment in parliaments and politics, especially amongst the young, that may be found today in most countries, at least in the Caribbean region. Senator the Hon. Joan Purcell of Grenada urged the participants, especially the young, to take part in the work of civil society. She reminded us that politics is generally a reflection of ourselves. If we wish to change politics, we ourselves need to be part of the process of change;

- One speaker cautioned against judgmental attitudes directed at Caribbean politicians. Because of the hard-won struggle for independence and autonomy, the people of this region can sometimes be suspicious, or at least cautious, when calls for change are made from outside. Those who propose reforms must respect the national dignity of the Caribbean countries. They must realise the deep-felt need for independence and for finding solutions within their own countries and peoples. Whilst this is true, all of us in the global community today can learn from each other. Nowhere more is this necessary than in the world of HIV because no country is now immune from the urgent perils and dangers that HIV present; and

- Several participants emphasised the need, in the Caribbean and elsewhere, to address the feelings of fatigue that afflict many countries in the face of more than a quarter of century, struggling against this unexpected challenge to global health. We must refresh the messages of AIDS care and prevention. This is one of the reasons why UNDP has established the Global Commission. It is why the Global Commission has reached out to Caribbean countries, to listen to their stories and to learn from their suggestions on the ways ahead.

A Caribbean action plan

Immediate action

Several ideas were presented for consideration by the UNDP Commission. Some of them involve simple and direct proposals which, it was considered, might facilitate and expedite the initiatives for law reform in this part of the world:

- In the Caribbean, some aspects of the musical culture, especially rap music, has been an angry source of stigma and violence targeted on people living with HIV and AIDS (PLWHA) and especially at sexual minorities. Music calling for the killing of “Battyman” (homosexuals) represents a disquieting feature of this region. Such music can reinforce feelings of hatred and stimulate actions of violence. There are many similarities between the death in Jamaica of the gay activist, Brian Williamson (in January 2004) and the death in January 2011 in Uganda of David Kato. Some participants called for the introduction of laws to prohibit violent discourse of this kind that preaches hatred and stigma. While all countries must be careful to avoid the seductive embrace of prohibitions on opinions and language, some words cause death and injury. They may need legal response to uphold the human rights of the vulnerable and of minorities;
• Turning the amazing vibrancy of Caribbean artists, entertainers and youth, to positive effect, several of the younger participants in this dialogue proposed the utilisation of Caribbean artists and music to reinforce the messages that must be used in successful strategies against HIV. The use of modern media to communicate ideas in this way is at least as important as any learned report of lawyers or even of the Global Commission itself;

• Upfront strategies were suggested by participants, including the embrace of T-shirts declaring that the wearer is “HIV+”. When the Nazi occupiers insisted that Jewish citizens should wear the yellow star to mark them off for oppression, the King of Denmark himself began to do the same, in order to show wartime empathy and engagement. We need similar gestures of solidarity. But we also need to go beyond gestures into practical action. Including the removal of laws that make the lives of PLWHA more difficult and vulnerable;

• As we repeatedly heard, transsexuals are often at the end of the societal action chain. Many of us have little or no insight into their lives. During the dialogue, participants heard of the stigma which one of our participants said she suffered when she sought admission at the airport to Trinidad. The disrespect allegedly shown to her should be drawn to notice by UNDP so that it can be investigated and rectified by this country. One should never accept such disrespect. Every human being is entitled to dignity. Several participants also describe the stern laws against cross-dressing (transvestites) in Guyana. Yet such laws are targeted at transsexuals and not at the increasing cohort of women who today wear pants, without the slightest disturbance from the law or from society; and

• A number of participants emphasised the need for education of police officers, immigration officers, judges and other public officials. In Australia, this task has been undertaken with the aid of gay liaison officers. But, once again, until the laws that criminalise such people are changed, the possibility of establishing such internal experts, is difficult to secure. This is yet another reason for the urgency of law reform, without which the prospects of securing real change in society are unlikely to be fulfilled.

**Longer-term strategies**

Other participants made suggestions for longer-term strategies that should be considered for the Caribbean region, both by the Global Commission and by UNDP, as well as by governments and officials in the region itself:

• Law reform does not emerge fully made. It needs painstaking work and careful preparation. One of the endemic difficulties faced by countries in the Caribbean, and elsewhere, involves securing trained legal drafters who can express the law reforms proposed in appropriate legislative language. Without support of this kind, it is often difficult to secure the passage of proposals through busy legislatures. Consideration should therefore be given to practical subjects such as this;

• Because, at least in the laws affecting men who have sex with men (MSM), and possibly also sex workers, the laws in many Caribbean countries are the same or even identical. One suggestion that is certainly worthy of consideration is the drafting of laws to amend the common language of the criminal codes that stand in the way of effective reform. When the British colonisers provided criminal codes for their Empire, they drew upon three models: those of Macauley, Fitzjames Stephen and Australia’s own draft, in the form of the Griffith criminal code. There are not a great number of verbal variations in different Commonwealth countries. A common form of legislative amendment could be considered, to remove discrimination against sexual minorities, to provide gender-neutral provisions; to protect children and minors; and to introduce anti-discrimination provisions. Dame Billie Miller explained how, in the reform of abortion laws, she had secured support to pay a trained drafter to express in proper form the legislation that was necessary. It would be appropriate for UNDP to support a similar gesture so that, if the will for reform of intrusive laws can be found in the Caribbean, the way can be made simpler by the provision of a suitable template of statutory language;

• Many participants stressed that, in responding to the HIV epidemic, it was not the law alone that needed to be reformed. Reforms were also needed in governmental policy and official practice. Indeed, the process of reform will often extend to education and social interaction. In this respect, several participants
proposed the need for changes in school education to confront the tragic circumstances that lead to suicide amongst stigmatised students at school. The utilisation of media can be important to achieving social change. In Australia, more improvements in popular attitudes were probably won as a result of television soap opera No.96 than as a consequence of formal law reform. Education, media and legal change go hand in hand if lasting reform is to be secured. In the contemporary age of social media, it is essential to consider the reforms that can be promoted by these means, particularly amongst young members of society. Reaching out to special audiences and to the public generally is a challenge for any strategy to remove legally enforced impediments and to remove barriers to a successful response to HIV and AIDS;

• Other means to obtain movement were described by several participants. Those who promote the idea of legal reform in the Caribbean need to become more skilled in strategic lobbying. They need to reach out to opposition politicians who may, in a comparatively short time, be elected to government. But they also need champions in the legislature and, at the present time, the landscape in that respect looks comparatively bleak;

• A number of participants urged civil society organisations, proposing reform, to reach out to churches and other faith-based organisations. Dame Billie Miller described how she had done this in Barbados. Minister Douglas Slater from St. Vincent urged a similar approach in respect of HIV/AIDS. After all, most religious bodies are illuminated by scriptural injunctions towards love and reconciliation. Many take an active part in treating the sick and helping their families. Those who seek reform need more effectively to tap the possibility of enlisting aid and support, at least from enlightened members of religious organisations;

• The issue of drug use was described by several speakers. In the Caribbean, reportedly, the incidence of injecting drug use (which can be such a direct way of passing the virus from the infected to others) is not a major challenge. But the use of other, presently illegal, drugs is connected with the epidemic because such use can inhibit self-protection which is essential to the consistent protection of self and of others. The need for a harm reduction strategy in relation to drugs and for a review of the prohibition of drug laws in force in the Caribbean was emphasised by many participants;

• Several speakers described the features of domestic and social violence that exist in the Caribbean, as a special attribute of the disempowerment of women. Such disempowerment can render ineffective the initiatives of self-protection that are essential to preventing the spread of HIV. One reason for reform of the laws against MSM, emphasised by several speakers, is the empirical evidence that many MSM in the Caribbean do not identify exclusively (or at all) as homosexuals. They are frequently married. Because of their sexual experiences, they may become infected and pass the virus to their female sexual partners, including wives. This is a common challenge in the Caribbean and yet another reason for removing stigma against MSM which inhibits the spread of the messages and the empowerment of those to whom the messages are addressed;

• The special dangers and vulnerability of prisoners in the Caribbean was mentioned by several participants. The need for access to self-protection and to respect for the essential dignity for prisoners was a frequent theme. Yet, in one Caribbean country, when a senior corrections official provided access in prisons to condoms, in order to improve their condition of safety from HIV whilst incarcerated, he suffered a negative public and official response. Eventually, he was sidelined. Still, his strategies were entirely consistent those that are urged by the United Nations. Instead of being removed from his office, he should have been promoted. We can learn from such cases and the need to instil in the Caribbean community and its leadership, a feeling of empathy and respect for those who are at risk to HIV. Unless we do this, such people will become a means for spreading the virus in a way not only dangerous to themselves, but to the entire population of which they are members;

• The special needs of sex workers were expressed and explained by a number of participants, some of whom were themselves participants in transactional and inter-generational sexual activity. They stressed the need to distinguish voluntary, adult sex work from unlawful human trafficking. Whilst condemning the involuntary exploitation of some unwilling sex workers and the engagement of minors,
such participants emphasised the need to respect the rights of sex workers and to protect them, in that work, from violence, intimidation and legal oppression. Such responses merely drive such workers underground. They commonly place them beyond the pale of effective communications on the needs for, and means of, safer sexual activity. Yet such protection is essential, not only for the sex workers, but for their clients and their families. Countless submissions called for greater realism in the law’s response to voluntary adult involvement in commercial sex work;

• Several participants described the problems that can arise in the Caribbean in providing access to antiretroviral therapies (ARVs). It was acknowledged that, in respect of ARVs, the position had improved in recent years in the Caribbean, thanks to the initiatives of UNAIDS, WHO, UNDP and of national governments. Nevertheless, several vivid descriptions were given of the special problems faced by PLWHA. Burdened with stigma, such persons could often not secure remunerative employment. In too many cases, they were thereby condemned to a life without wages in societies that provided no effective social security. In many such cases, unable to purchase food, they could secure the ARVs but could not metabolise them successfully, because of malnutrition. The resulting devastation of their lives and the extreme poverty of their existence was a vivid image that will remain with many participants long after the conclusion of this dialogue; and

• Fortunately, the dialogue witnessed amongst the participants one from the Caribbean who could explain the special problems which were now arising in the field of intellectual property law, particularly in relation to patents. Such legal monopolies enhance the prices of the therapies that are necessary to diminish the effect of HIV on PLWHA. The growing evidence of new ‘side effects’ and the need for ‘second line’ and ‘third line’ therapies will oblige Caribbean countries, in the near future, to address the operation of new drugs essential to preserve and sustain the lives of infected citizens. Armed with this information, several participants urged the UNDP Commission to pay close attention to access to essential health care. Such access should not be determined simply because of the place on earth where an infected person was born or lives. Access to essential health care is a fundamental and universal human right. The need to preserve the TRIPS exception to international patent obligations, that permit developing countries to take special measures in circumstance of national health crises, was mentioned by several participants. As Dr. Mandeep Dhaliwal explained, it is one of the key subjects under consideration by the UNDP Global Commission.

Departing from the Caribbean

Many visitors to the Caribbean come and then depart with only happy memories of sun, and sand, of shopping and touring and a friendly welcome. Those who took part in the UNDP dialogue had a somewhat different Caribbean encounter. It was serious, focused, practical and strategic. There were differences, of course. But also a common realisation of the urgency of the state of the Caribbean epidemic and of the intensely personal character of the suffering which it involves for ordinary human beings, having all the strengths and weaknesses that our species is heir to.

The dialogue revealed, once again, the eloquence and passion of political and social discourse in the Caribbean. The pride of all members of the Caribbean community in their culture, history and the earlier struggle for independence from colonial rule. However, it also disclosed a continuing timidity or disinclination to tackle a really serious regional challenge which manifests itself in too many infections and too many deaths.

Somehow, the fundamental urgency that emerged from the dialogue was to alter the seeming indifference of many leaders to the strategies that have worked elsewhere in the world to remove the pacivity that presently impedes the achievement of law reform in what are otherwise vibrant and functioning democracies, with legislatures that have shown themselves capable, in other fields, of protecting their people and defending their fundamental rights. If this dialogue showed nothing else, it demonstrated the urgency of translating fine words into action and following up the practical proposals made in the encounter, so that this would not just be another high-sounding international debate that ultimately translates into no practical action or reform.
How does one secure change in sensitive areas of law and public policy where there are noisy opponents, political timidity and sometimes religious and other opposition? Answers to these questions were offered by some of the participants. It ultimately depends on persuasion and on whether the leaders in the Caribbean still care for their fellow citizens who continue to be infected, and to die, from AIDS. In part, they do so because current laws enlarge discrimination and diminish effective communication of the words and strategies that will save lives and reduce the toll of HIV in a most beautiful corner of the world.

In Australia, we achieved a number of changes in the law as it affected vulnerable minorities, in part because of political leadership and, in part, because our citizens came to understand the injustice of discrimination and the need for legal and social reform. Our journey is not yet complete. In every country, there are reforms still to be made. But now, the whole informed world, through the United Nations, is speaking to the Caribbean about HIV/AIDS, urging action. But will the Caribbean listen and act?

In the course of this dialogue, there were some hopeful signs. The participation of past and continuing political leaders in the Caribbean, of great distinction, offered the prospect of the emergence of legislative champions who would speak up for equality and against stigma. In St. Kitts and Nevis, the Prime Minister, the Hon. Denzil Douglas MP has already called on his colleagues as heads of government to consider the proposals for reforms made at all levels of the United Nations. Similar proposals will be urged on Commonwealth countries in the report of the Eminent Persons Group, of which I am a member, now pending. That report will be tabled at the next meeting of the Commonwealth Heads of Government (CHOGM) to take place in Perth, Australia, in October 2011. This also is the message that is being considered and advanced by the UNDP Commission. It is a message that has worked elsewhere, when it has been adopted. It needs to be addressed in the Caribbean. Many have been the voices at this dialogue, raised in support of such a consideration. It is to those voices that I now add my own.

Each one of us brings to an interchange such as this dialogue has been his or her life’s experience. None of us can insist or demand still less impose proposals on independent countries. All we can do is share experiences and wisdom on what has worked elsewhere and what has failed. Something seriously has been failing in the Caribbean. Amidst the sunshine and the sand, the second most serious epidemic of HIV in the world has continued to unfold, substantially unabated. Those who truly love their fellow citizens will want to do better. We must hope for legislative champions. We must help them to emerge. And we must believe that the initiative of the UNDP Commission will serve to strengthen them and to fortify their resolve. Law reform alone is not enough to change inhibitory cultures and attitudes. Law alone cannot erase discrimination, disempowerment and stigma that afford the breeding ground for HIV and AIDS. But law reform is necessary to stop arbitrary action; to reinforce rational policies and action; and to spread lifesaving knowledge and kindness to fellow human beings in one of the most beautiful corners of our world.