

Submission in the UPR review of: Barbados

Legal and Statutory framework:

Barbados maintains **criminal sanctions against sexual activity between consenting adults**. The Laws of Barbados, *Sexual Offences Act of 1992, Chapter 154* provides:

Buggery

Section 9. "Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life."

Indecent Assault

Section 11.

(1) A person who indecently assaults another is guilty of an Indecent offence and is liable on conviction on indictment to imprisonment for assault. 5 years.

(3) In this section "indecent assault" means an assault accompanied by words or circumstances indicating an indecent intention.

Serious indecency

Section 12. "(1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.

(2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.

(3) An act of "serious indecency" is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire. "

Chapter 154, §9—Barbados' criminalization of sodomy—has the effect of amounting to per se discrimination against homosexuals.

Similarly, §§11-12 of the Laws of Barbados which define and proscribe the crimes of "Indecent Assault" and "Serious Indecency", are troublesome because of their vague definition of "serious indecency" as "an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire." The use of the word "unnatural" in the definition of the crime parallels the statute at issue in Toonen that outlawed "intercourse against nature." These laws can be easily engineered to target and prosecute homosexuals and, more generally, all non-reproductive sexual behaviour.

The effect of having legal penalties for sodomy and for vaguely defined "indecent" acts is that even when they are not enforced, these laws strengthen social stigma against homosexuals. That stigma, in turn, can be even more effective than legal penalties in stripping individuals of their rights. When a homosexual person cannot find employment, secure adequate housing, or get proper medical treatment because of social stigma, these difficulties amount to deprivations of life, liberty, health and opportunity on the basis of sexual orientation. Barbados' law criminalizing sodomy reinforces the animus that enables these violations to occur.

Barbados's international human rights obligations:

Provisions against sexual activity between consenting adults have been found to constitute a **clear violation of international human rights law**.

In *Toonen v Australia*, the **UN Human Rights Committee** in March 1994 confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights.¹

The Committee further considered that such laws interfere with privacy rights, whether or not they are actively enforced, and “run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention” by driving marginalised communities underground.

The UN Human Rights Committee has affirmed this position on many occasions, either urging States to repeal laws which criminalize consensual same-sex activity or commending them for bringing their legislation into conformity with the Covenant by repealing such provisions.² In its concluding observation to the Government of Barbados (CCPR/C/BRB/CO/3), the U.N. Human Rights Committee called for decriminalization of same sex relations:

“13. The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex. (art. 26)

The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.”

This position is consistent with other **regional and national jurisprudence**, including decisions of the European Court of Human Rights³ and of the Constitutional Court of South Africa.⁴

States’ international obligations to respect the human rights of all persons, irrespective of sexual orientation and gender identity, were recently articulated in the “**Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity**”. The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including Asia-Pacific. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others.

Principle 2 of the Yogyakarta Principles affirms the right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity, and specifically confirms the obligation of States to “repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”

Principle 6 of the Yogyakarta Principles affirms the right of all persons, regardless of sexual orientation or gender identity, to the enjoyment of privacy without arbitrary or unlawful interference, and confirms States’ obligation to “repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”⁵ The Principles also call on States to “ensure that criminal and other legal provisions of general application are not applied to *de facto* criminalise consensual sexual activity among persons of the same sex who are over the age of consent.”

¹ *Toonen v Australia*, CCPR/C/50/D/488/1992, April 4, 1994.

² See Human Rights Committee Concluding Observations: United States of America, A/50/40, October 3, 1995; Cyprus, CCPR/C/79/Add.88, April 6, 1998; Ecuador, CCPR/C/79/Add.92, August 18, 1998; Chile, CCPR/C/79/Add.104, March 30, 1999; Lesotho, CCPR/C/79/Add.106, April 8, 1999; Romania CCPR/C/79/Add.111, July 28, 1999; Australia, A/55/40, July 24, 2000; Egypt, CCPR/CO/76/EGY, November 28, 2002; Kenya, CCPR/CO/83/KEN, March 28, 2005; United States of America, CCPR/C/USA/CO/3, September 15, 2006; Barbados, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

³ *Dudgeon v United Kingdom, Series A no. 45.*, 1981; *Norris v Ireland*, 1991; *Modinos v Cyprus*, 1993.

⁴ *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*, 1998.

⁵ Available in all 6 UN languages at: www.yogyakartaprinciples.org.

The **UN High Commissioner for Human Rights** has welcomed the Yogyakarta Principles as a “timely reminder” of the basic tenets of universality and non-discrimination, and noted that “respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental rights to life, security and privacy by criminalizing harmless private relations between consenting adults.”⁶

We commend Barbados for supporting the historic **OAS resolution on “human rights, sexual orientation and gender identity”** adopted by consensus by the 38th General Assembly of the Organization of American States on the occasion of the 60th anniversary of the OAS Charter. This resolution (AG/RES-2435(XXXVIII-O/08)) reaffirms the principles of universality, indivisibility, and interdependence of human rights, and “expresses concern about human rights violations perpetrated against individuals because of their sexual orientation and gender identity”. We welcome Barbados’s support for this initiative, and its commitment to strengthening human rights protections based on sexual orientation and gender identity, and in keeping with this commitment, we would urge Barbados to bring its criminal provisions into conformity with international standards on the right to privacy and non-discrimination.

Recommendation:

We therefore recommend that the Human Rights Council, in its upcoming review, urge Barbados to bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalise sexual activity between consenting adults.

This information is submitted jointly by:

- **ILGA** (International Lesbian and Gay Association), a global federation of over 600 lesbian, gay, bisexual, transgender and intersex (“LGBTI”) groups in over 90 countries – including 19 in Latin America and the Caribbean;
- **ILGA-Europe**, an NGO with ECOSOC consultative status that is recognized by the EU, COE and OSCE;
- **Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CARIFLAGS)** is a regional Lesbian, Gay, Bisexual, Transgender (LGBT) network of advocates, academics, groups, organizations and their allies across the Caribbean (including the Creole-, English-, Spanish-, French- and Dutch- speaking territories) and the Diaspora working for the promotion of the political, legal, economic, physical, social, cultural and spiritual well-being of all persons regardless of sexual orientation and/or identity and gender identity and/or expression, prioritising: Human Rights, Health, Spirituality and Culture.
- **International Gay and Lesbian Human Rights Commission**, a non-profit NGO which seeks to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status;
- **ARC International**, an NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation and gender identity.

⁶ Statement of UN High Commissioner for Human Rights, Launch of the Yogyakarta Principles, 7 November, 2007, United Nations, New York.