

Report on Grenada
21st Round of the Universal Periodic Review – Jan/Feb 2015

This report is submitted by GrenCHAP¹, Groundation Grenada² and the Sexual Rights Initiative³. This report deals with the situation of sexual rights in Grenada, with special focus on the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people. The report draws upon the last UPR report released in July 2007 entitled 'Sexuality, Gender, HIV, Vulnerability and Human Rights in Grenada', local laws, international instruments, summary poll data, on the ground assessments and other information relevant to the presented issues. The report also draws upon the experience and expertise of people working as human rights defenders on behalf of vulnerable minorities in Grenada.

Key Words: LGBT People – Sexual Orientation – Gender Identity and Expression – Discrimination based on SOGIE

Background and Legal Framework

- 1) In Grenada there is still much stigma and discrimination against LGBT people together with strong public sentiments against equality movements. UN poll data from 2014 shows 38% of participants reporting strong homophobia that took the form of “hate” and 52% indicated that they would not “lime/hang out” with someone who is gay. 57% were not in favour of equal rights for gay, lesbian and bi-sexual populations.
- 2) The Constitution of Grenada codifies a number of human rights in Grenada. Section 1 of the Bill of Rights, referred to as the opening section, expresses them broadly as life, liberty, security of the person and the protection of the law; freedom of conscience, expression, assembly and association; protection for the privacy of his home and other property and from deprivation of property without compensation ; and the right to work.
- 3) Sections 2–15 of the Bill of rights, referred to as ‘the detailed section’ specifies the content of the broad rights stated in the opening section. Section 13 protects against discrimination by laws and public officials. The prohibited axes of discrimination are race, place of origin, political

1 GrenCHAP is the Grenada chapter of the Caribbean HIV/AIDS Partnership — a network of groups in small Caribbean countries working to promote Human Rights and Health, with a focus on marginalised populations such as LGBT, Sex Workers, and persons living with and affected by HIV.

² Groundation Grenada is a social action collective which focuses on the use of creative media to assess the needs of our communities, raise consciousness and act to create positive radical growth.

³ The Sexual Rights Initiative is a coalition including Akahata– Latin American team work on sexualities and genders-; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others)

opinions, colour, creed or sex. While 'sex' has been interpreted as including sexual orientation in international instruments⁴, those interpretations aren't binding on the high court of Grenada.

- 4) Section 16 allows people whose detailed section rights have been, are being or will be violated, to seek redress before the high court sitting in its constitutional capacity. Section 106 of the Constitution says that laws are void to the extent of their inconsistency with the constitution. This allows people to get redress for laws which violate their rights. Where the high court finds that rights have been violated it has the power to make orders compelling the state to pay compensation, take specific actions and/or cease and desist from doing something. High Courts in their constitutional capacity generally have wide powers to craft remedies in relation to constitutional rights violations.
- 5) Rights in the detailed section are much more restrictively defined than in the opening section. For instance, the 'right to privacy' mentioned in the opening section translates in the detailed section as "no person shall be subjected to the search of his person or his property or the entry by others on his premises". This is much more limited than is jurisprudentially entailed in the broader 'right to privacy', therefore private consensual sexual activity between same sex/gender persons are excluded of these provision.
- 6) Also, rights in the constitution are enforceable against the state of Grenada only and not against other private citizens. This also applies to the discrimination sections; consequently most acts of discrimination suffered by LGBT have no legal provisions.
- 7) The only law that provides discrimination protections among private citizens is the Employment Act which says that employees can't be discriminated against on the grounds of race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, age or disability. Sexual orientation and/or gender identity is not a protected category.
- 8) Section 106 of the Grenada Constitution establishes the Constitution as the supreme law of Grenada and says that any laws inconsistent with this Constitution shall be void to the extent of the inconsistency. This section operates along with the redress section to allow citizens to challenge laws that violate any of the fundamental rights in the constitution. As indicated earlier, the rights, which are redressable, are the detailed rights. The restrictive definitions in the detailed rights make it difficult for vulnerable communities like LGBTI people to bring challenges.
- 9) The Government of Grenada started a constitutional reform process in 2013. The draft that was initially circulated for consideration, extended protections from discrimination to LGBT people.

⁴ *Toonen vs. Australia*, the Human Rights Committee held that the references to "sex" in Article 2(1) (non-discrimination) and article 26 (equality before the law) of the ICCPR, include sexual orientation.

That draft has since been removed and replaced by the current 1974 constitution that citizens are expected to make suggestions on at the various ongoing island wide consultations.

International Instruments

- 10) Grenada is also party to a number of international instruments including The United Nations International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESR), The Charter of the Organization of American States (whereby Grenada became a member of the OAS). However, country legislation is not in accordance with international instruments signed.

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- 11) During Grenada's inaugural Universal Periodic Review, Grenada recognized that section 435 of the Criminal Code, which broadly criminalizes anal sex, including, anal sex between consenting adult men, "could be viewed as discriminatory, as it took away from the freedom of the individual. With the passage of time, growing tolerance on the part of the people would help in addressing this issue. It was a policy issue on which the Cabinet would have to deliberate. It was noted that there was no discrimination in the provision of health and other services in that regard."
- 12) Considerable stigma continues to exist in Grenada against LGBT people, partly fuelled by public expressions against homosexuality by religious leaders. In November 2013, the a Seventh Day Adventist Church organised a march where participants walked through Grand Anse in Grenada chanting "man to man is so unjust, woman to woman is even worst" and other anti-gay sentiment.

Criminalization of same gender/sex intimacy

- 13) Section 435 of the Grenada Criminal Code still criminalizes consensual anal sex between adult consenting men. Section 435 remains a very active threat to LGBT people in Grenada. It legislatively entrenches discrimination and signifies the state's contempt for LGBT people and MSM in particular. Section 435 is also actively used in Grenada.
- 14) Within the last 5 years, GrenCHAP and Groundation Grenada have become aware of 2 people charged under the section for having sex with people above the legal age of consent in circumstances that suggest. One of the people was convicted in 2011 and is currently serving a 6 year sentence. The other person was charged but the charge was withdrawn by the DPP after 2 lawyers in Grenada mounted a constitutional challenge to section 435.

- 15) Section 435 also impedes public health efforts in the fight against HIV/AIDS despite arguments to the contrary. There is international public health consensus, including in organisations like the Pan Caribbean HIV AIDS Alliance (PanCap) and UNAIDS that laws criminalising same sex intimacy help to drive stigma and discrimination against LGBT which causes LGBT people and particularly MSM to avoid situations where they might have to reveal practices implicating them in homosexuality. Laws criminalising same sex intimacy also impede the ability of health care providers to tailor interventions specifically to MSM who are particularly vulnerable.
- 16) Section 435 violates the international human rights to non-discrimination, privacy and health. It also violates Grenada's OAS undertakings.

Lack of Legislative Protections Against Discrimination

- 17) No civil protections exist in relation to non-workplace related discrimination such as discrimination in the context of provision of services. The workplace related discrimination clauses don't protect against discrimination on the basis of sexual orientation and/or gender identity. LGBT people in Grenada are particularly socio-economically disadvantaged. Workplace discrimination is one of the key instruments of this disadvantage.
- 18) St. Lucia, Grenada's CARICOM neighbours, in a 2012 amendment to their *Employment Act*, includes sexual orientation as a prohibited category of discrimination.
- 19) The existence of these discriminatory laws in Grenada also contributes to the barriers LGBT people face in accessing to healthcare. LGBT persons continue to face high levels of stigma and discrimination from healthcare workers and auxiliary staff that deters them from visiting health facilities. Reports⁵ have found that HIV prevalence rates are higher among men who have sex with men (MSM) and transgender persons in countries with these punitive laws.

Other Forms of Exclusionary Legislative Discrimination

- 20) The laws in Grenada applicable to succession are the *Probate Act* and the *Intestate Estate Act*. Under these laws, unmarried couples are precluded from benefits such as priority in applying for letters of probate and of letters of administration. Unmarried spouses are also denied beneficiary benefits, which apply generally to spouses, children and other family.
- 21) Some countries in the region like Barbados and Trinidad and Tobago have passed legislation extending spousal benefits to unmarried cohabiting couples. However, these laws still define spouses in ways, which exclude LGBT people.

⁵ Global Commission on HIV and the Law: http://www.opensocietyfoundations.org/sites/default/files/HIV-and-the-Law-Men-Who-Have-Sex-with-Men-20130930_0.pdf

22) This issue is not specific to LGBT rights or issues but cross cuts across the issue of extending rights to non-married couples who are precluded from many spousal rights and benefits.

Recommendations

The government of Grenada should:

23) Repeal section 435 of the Grenada Criminal Code;

24) Harmonize national legislation with international conventions so as to ensure that its citizens enjoy the human rights set out in such legislation and those conventions, and give international conventions precedence over national legislation;

25) Extend constitutional protections against discrimination based on sexual orientation, gender identity and expression;

26) Conduct continuous sensitivity training of health-care, police, legal system, police officers and workers on non discrimination based on SOGIE;

27) Ensure healthcare facilities adopt policies, which unequivocally prohibit discrimination of all of persons accessing healthcare, and have measures in place to sanction persons who violate these regulations.

28) Take every necessary measures, such as legislation, training, policies among others, to eliminate discrimination both in public and private sphere.