

## **Criminalised states**


### **1) THE CARIBBEAN**

All Commonwealth Caribbean countries except The Bahamas continue to criminalise the LGBT community. The laws which criminalise the LGBT community in the majority of the commonwealth Caribbean countries are a product of previous colonial legislation which is still in force. Most Caribbean countries use the 1861 Offences Against the Person Act as a means of criminalising the LGBT community or have penal codes that contain 'sodomy' provisions similar to those found in the Offences Against the Person Act.

Although several countries are signatories to key international treaties that seek to protect individual's human rights, the presence of laws which criminalise homosexuality means that these states are failing in their obligation to protect basic human rights. The International Covenant on Civil and Political Rights (ICCPR) seeks to ensure all people are viewed equally before the law. The Commonwealth Caribbean countries have not entered express reservations to the various Articles under the ICCPR that protect privacy and equality before the law. The majority of the Commonwealth Caribbean are signatories to the Inter American Charter of Human Rights, Article 24 of the Charter guarantees equality before the law although the LGBT community in practice often struggle to be protected by state institutions.

Many Commonwealth Caribbean countries have large Christian populations; public opinion against homosexuality is a significant barrier against the repeal of these laws as is governmental reluctance to give effect to the notion of equality before the law by according members of the LGBT community the same rights as heterosexual people. There is a need to change public attitudes before this can be represented in the legislation. If public attitude does not change but governmental views do, then legislation should be implemented which is responsible for forcing that change upon the public, even if it will not be warmly welcomed.

Within the Commonwealth Caribbean, there are few organisations that advocate greater recognition of LGBT rights. This is partly due to the stigma that is attached to the LGBT community in the Commonwealth Caribbean. Fear of reprisal from members of the community, may deter such groups from forming. A Human Rights Watch report titled "Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic", reported that the spread of HIV/AIDS is becoming a growing concern within the LGBT community as continued stigmatization and discrimination are often leads to denial of access to basic services which are readily available to others. In cases, LGBT community do not report crimes committed against them fearing that the police will seek to persecute them. When the police fail to investigate complaints, it leads many to believing that the harassment and abuse of the LGBT community is permissible.

Country	Law that Criminalises Homosexuality	Practical consequences of the law	Constitutional Clause on Equality or Right to Privacy	Relevant International Treaties
<p data-bbox="188 539 385 596"><b>Antigua and Barbuda</b></p> 	<p data-bbox="409 539 969 663"><b>Section 12 (1) of The Sexual Offences Act, 1995<sup>1</sup></b>, states that “A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment -</p> <p data-bbox="409 671 969 759">(a) for life, if committed by an adult on a minor;  (b) for fifteen years, if committed by an adult on another adult;  (c) for five years, if committed by a minor.</p> <p data-bbox="409 799 969 924">(2) In this section "buggery" means sexual intercourse per anum by a male person with a male person or by a male person with a female person.</p> <p data-bbox="409 932 969 989">Moreover, under the <b>Offences Against the Person Act, 1873<sup>2</sup>, section 59</b> states that</p>		<p data-bbox="1312 539 1912 927">In The <b>Antigua and Barbuda Constitutional Order 1981<sup>5</sup></b> there is no explicit equality or privacy clause. What is apparent within the constitution, with a certain regard had to notions of equality and privacy, is <b>section 3</b> which states that, “Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p data-bbox="1312 935 1912 992">(c) Protection for his family life, his personal privacy, the privacy of his home and other property”.</p>	<p data-bbox="1935 539 2179 826">Antigua and Barbuda is not a signatory to the <b>International Covenant on Civil and Political Rights<sup>6</sup></b> and so would not be bound by the obligations under this international treaty.</p> <p data-bbox="1935 866 2179 991">Antigua and Barbuda is also not signatories to the <b>American Convention</b></p>

<sup>1</sup> <http://www.laws.gov.ag/acts/1995/a1995-9.pdf>

<sup>2</sup> <http://www.laws.gov.ag/acts/chapters/cap-300.pdf>

<sup>5</sup> <http://pdba.georgetown.edu/constitutions/antigua/antigua-barbuda.html>


<sup>6</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<p>“Whosoever is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for any term not exceeding ten years, with or without hard labour”</p> <p>Furthermore, under <b>The Larceny Act 1944</b>,<sup>3</sup> <b>section 34(3)</b> applies to any crime punishable with death, or imprisonment for no less than five years, or to any assault with intent to commit any rape, or to any attempt to commit any rape, or to any solicitation, persuasion, promise, or threat, offered or made to any person whereby to move or induce such person to commit or permit the abominable crime of buggery, either with mankind or with any animal.</p> <p><b>The Larceny Act (Amendment 2000)</b><sup>4</sup> states, under <b>section 33 A (2)</b> that “Every person who, being armed with a firearm, commits any of the crimes mentioned under sections 29, 30, 31 or 33 and if during the process of committing any of these aforesaid crimes, he also commits the crime of rape or buggery he shall be liable on conviction to imprisonment for life”.</p>			<p><b>of Human Rights</b>-.<sup>7</sup></p>
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<sup>3</sup> <http://www.laws.gov.ag/acts/chapters/cap-241.pdf>

<sup>4</sup> <http://laws.gov.ag/acts/2000/a2000-9.pdf>

<sup>7</sup> [http://en.wikipedia.org/wiki/American\\_Convention\\_on\\_Human\\_Rights](http://en.wikipedia.org/wiki/American_Convention_on_Human_Rights)


<p><b>The Bahamas</b></p> 	<p>Both male and female same-sex sexual activity is legal in the Bahamas- although there is still widespread homophobia in the country. Same-sex sexual activity between consenting adults was legalised in The Bahamas in July 1991 but there is discrepancy between the age of consent. The age of consent for gay men and lesbians is 18 whereas the age of consent for heterosexuals is 16<sup>89</sup>. This is an obvious form of discrimination faced by same sex couples.</p> <p>Though homosexuality has been decriminalized, there still exists a provision which criminalizes homosexuality, in the form of unnatural connection committed in public. This is apparent under <b>Section 16</b> labeled “<b>Unnatural Crime</b>” of the “<b>Sexual Offences and Domestic Violence</b>” Act 1991<sup>10</sup>, which states that “Any person who commits an act of unnatural connection with any animal is guilty of a sexual offence and liable to imprisonment for twenty years: and an offence under this subsection is complete upon penetration. Any adult male who-</p> <p>a) has sexual intercourse with another male who is a minor ; or</p> <p>b) has sexual intercourse, in a public place, with another male,</p>	<p>BGLAD (Bahamian Gays and Lesbians Against Discrimination) and Hope TEA (Hope Through Education and Awareness), when separate, actively engaged in the promotion of LGBT rights within The Bahamas. They soon after merged to form Rainbow Alliance of The Bahamas- it is a “support and advocacy group for persons in the gay, lesbian, bisexual and transgender community”<sup>12</sup> which was established in 1999.</p>	<p>In <b>The Constitution of the Commonwealth of the Bahamas- Chapter III- Protection of Fundamental Rights and the Freedom of the Individual</b> there is no explicit equality or privacy clause within the constitution of the commonwealth of the Bahamas. What is apparent within the constitution, with a certain regard had to notions of equality is <b>Section 15</b> states that “Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p>(a) life, liberty, security of the person and the protection of the law;</p> <p>(b) freedom of conscience, of expression and of assembly and association; and</p> <p>(c) protection for the privacy of his home and other property and from deprivation of property without compensation,</p> <p>the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such</p>	<p>The Bahamas is a signatory to the <b>ICCPR</b>.</p> <p>The Bahamas is not a signatory to the <b>American Convention on Human Rights</b> and so they would be under no obligation to ensure compliance with the Articles as enshrined in the declaration itself.</p>
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<sup>8</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_the\\_Bahamas](http://en.wikipedia.org/wiki/LGBT_rights_in_the_Bahamas)

<sup>9</sup> <http://www.ageofconsent.com/bahamas.htm>

<sup>10</sup> <http://www.interpol.int/public/Children/SexualAbuse/NationalLaws/csaBahamas.asp>

<sup>12</sup> [http://en.wikipedia.org/wiki/Rainbow\\_Alliance\\_of\\_The\\_Bahamas](http://en.wikipedia.org/wiki/Rainbow_Alliance_of_The_Bahamas)

	<p>-whether with or without the consent of that other male, is guilty of a sexual offence and liable to imprisonment for twenty years. Any female adult who-</p> <p>a) has sexual intercourse with another female who is a minor ; or</p> <p>b) has sexual intercourse, in a public place, with another female,</p> <p>-whether with or without the consent of that other female, is guilty of a sexual offence and liable to imprisonment for twenty years”.</p> <p>This law does NOT apply to heterosexuals. It can also be seen as another form of discrimination that homosexuals in The Bahamas are facing. Same sex sexual activity is an offence when carried out in public but would not constitute an offence if done in private<sup>11</sup></p>		<p>limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest”.</p>	
<p><b>Barbados</b></p> 	<p>The <b>Sexual Offences Act 1992</b><sup>13</sup> contains the following provision which criminalises homosexuality. <b>Section 9</b> states that “Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life”. <b>Section 12 (1)</b> states that “A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person indecency or with another person is</p>	<p>BGLAD- Barbados Gays and Lesbians Against Discrimination<sup>14</sup> is the only body which actively seeks to advocate for the rights of those within the LGBT community in Barbados.</p>	<p><b>The Constitution of Barbados</b><sup>15</sup> states that “Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -</p>	<p>Barbados is not a signatory to the <b>ICCPR</b>.</p> <p>Barbados is a signatory to the <b>American Convention on Human Rights</b>.</p>

<sup>11</sup> [http://en.wikipedia.org/wiki/Rainbow\\_Alliance\\_of\\_The\\_Bahamas](http://en.wikipedia.org/wiki/Rainbow_Alliance_of_The_Bahamas)


<sup>13</sup> <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbti2.pdf>

<sup>14</sup> <http://bglad2000.tripod.com/>

<sup>15</sup> [http://www.parliament.go.th/parcy/sapa\\_db/cons\\_doc/constitutions/data/Barbados/Barbados.htm](http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Barbados/Barbados.htm)

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". **Section 12 (2)** states that "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".


- a. life, liberty and security of the person;
  - b. protection for the privacy of his home and other property and from deprivation of property without compensation;
  - c. the protection of the law; and
  - d. freedom of conscience, of expression and of assembly and association,
- Protection from discrimination on ground of race, etc."
- Section 23 (1)** states that "no law shall make any provision that is discriminatory either of itself or in its effect; and no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority".
- Section 23 (2)** goes on to state that "In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which person of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description."

<p><b>Belize</b></p> 	<p>The <b>Belize Criminal Code [CAP. 101]</b> states that under <b>Section 53</b> “Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.<sup>16</sup>” <b>Section 26 ii (d) of the Immigration Act 1958</b> states that “Any prostitute or homosexual or any person who may be living on or receiving or who may have been living on or receiving the proceeds of prostitution or homosexual behaviour” is outlawed from entering Belize<sup>17</sup></p>		<p><b>Part II of the Belize Constitution- Protection of Fundamental Rights and Freedoms<sup>18</sup></b> states the following, under <b>Section 6 (1)</b> with respect to equality before the law: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. <b>Section 14 (1)</b> goes on to state that “A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The private and family life, the home and the personal correspondence of every person shall be respected”. <b>Section 16</b> goes on to state that “Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect. In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to</p>	<p>Belize is a signatory to the ICCPR.</p> <p>Belize is not a signatory to the <b>American Convention on Human Rights</b></p>
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<sup>16</sup> <http://www.belize-law.org/lawadmin/PDF%20files/cap101.pdf>

<sup>17</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Belize](http://en.wikipedia.org/wiki/LGBT_rights_in_Belize)

<sup>18</sup> <http://pdba.georgetown.edu/Constitutions/Belize/belize81.html#mozToCId483751>

			persons of another such description”.	
<b>Dominica</b> 	<p>The <b>Sexual Offences Act 1998</b> states, under <b>Article 14</b> that “Any person who commits an act of gross indecency with another person is guilty and is liable on conviction to imprisonment for five years”. Furthermore, <b>Article 15</b> states that “This article punishes anal sex (regardless of whether with men or women) with a prison sentence of up to 10 years, or in some cases can lead to internment in a mental asylum. Finally, <b>Article 16</b> sets out that “The punishment for attempted anal sex is imprisonment of up to 4 years.”<sup>19</sup>”</p>	<p>From 1995 to 2000, 35 people were arrested for the criminal offence of buggery<sup>20</sup>.</p>	<p>There is no explicit equality or right to privacy clause in the Constitution of the Commonwealth of Dominica 1978<sup>21</sup></p>	<p>Dominica is a signatory to the <b>ICCPR</b>.</p> <p>Dominica is also a signatory to the <b>American Convention on Human Rights</b>.</p>
<b>Grenada</b>	<p>Under the <b>Criminal Code, CAP. 76, 1958 Revised Edition</b>,<sup>22</sup><b>Section 435</b> the offence of “unnatural</p>	<p>The Grenada Caribbean HIV/AIDS Partnership</p>	<p>There is no explicit clause on equality or protection of privacy in the Grenada Constitution of 1973<sup>24</sup></p>	<p>Grenada is a signatory to the</p>



<sup>19</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/DM/SRI\\_DMA\\_UPR\\_S06\\_2009.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/DM/SRI_DMA_UPR_S06_2009.pdf)

<sup>20</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Dominica](http://en.wikipedia.org/wiki/LGBT_rights_in_Dominica) and <http://www.ndu.edu/chds/REDES2001/Papers/Block1/Caribbean%20Security%20Panel/George.Caribbean%20Security%20Panel.rtf>

<sup>21</sup> [http://www.da-academy.org/DA\\_Constitution.html](http://www.da-academy.org/DA_Constitution.html)

<sup>22</sup> [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow\\_Grenada\\_annex.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Grenada_annex.pdf)


<sup>24</sup> <http://pdba.georgetown.edu/constitutions/grenada/gren73eng.html>

	<p>crime” is committed by way of sexual intercourse <i>per anum</i>, i.e., anal penetration. Such offence is punishable by imprisonment for ten years. The Criminal Code does not specify the ‘penetrating’ object. Through reliance on the common law; the penetrating object is the male sexual organ. The offence is committable by, male person with/to male person and/or, male person with/to female. The offence cannot however, be committed by two female persons</p>	<p>(GrenCHAP), is a non-governmental organization (NGO) which advocates for sexual minorities, sex workers and other at risk populations<sup>23</sup></p>		<p><b>ICCPR.</b></p> <p>Grenada is a signatory to the <b>American Convention on Human Rights.</b></p>
<p><b>Guyana</b></p> 	<p><b>Section 351, 352 and 353 of the Criminal Law Offences Act (8:01)</b> states that under <b>Section 351</b> that "Any male person who, in public or private, commits, or is a party to the commission, by any male person, of any act of gross indecency with any other male person shall be guilty of a misdemeanor’s and liable to imprisonment for two years. Under <b>Section 352</b> Everyone who: (a) attempts to commit buggery;; or</p> <p>(b) assaults any person with intent to commit buggery; or</p>	<p>Society Against Sexual Orientation Discrimination<sup>26</sup> This is a local human rights organisation in Guyana which seeks to prevent discrimination based on a person’s sexual orientation. When compared to the other Caribbean states, Guyana has a particularly high Muslim population.</p>	<p>There is no explicit clause on equality or protection of privacy in the Guyana Constitution<sup>28</sup></p>	<p>Guyana is a signatory to the <b>ICCPR.</b></p> <p>Guyana is not a signatory to the <b>American Convention on Human Rights</b></p>

<sup>23</sup> <http://www.unhcr.org/refworld/docid/4b20f03dc.html>

<sup>26</sup> <http://www.sasod.org.gy/>

<sup>28</sup> <http://pdba.georgetown.edu/Constitutions/Guyana/guyana96.html>

	<p>(c) Being a male, indecently assaults any other male person, shall be guilty of felony and liable to imprisonment for ten years.</p> <p><b>Section 353</b> sets out the relevant punishment to be imposed as it states that “Everyone who commits buggery, with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life”.<sup>25</sup></p>	<p>There are 76,528 Muslims in Guyana, representing 10% of the population<sup>27</sup></p>		
<p><b>Jamaica</b></p> 	<p><b>Offences Against the Person Act</b><sup>29</sup> maintains that under <b>Article 76</b> “Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years”. <b>Article 77</b> adds</p>	<p>Jamaican Forum for Lesbians, All Sexuals and Gays. “J-Flag” is the principle non-governmental organization (NGO)</p>	<p><b>Section 1 of The Jamaican Constitution of 1962</b> states that “Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of</p>	<p>Jamaica is a signatory to the <b>ICCPR</b>.</p> <p>Jamaica is also a signatory to the <b>American</b></p>

<sup>27</sup> [http://en.wikipedia.org/wiki/Islam\\_in\\_Guyana](http://en.wikipedia.org/wiki/Islam_in_Guyana)


<sup>29</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Jamaica](http://en.wikipedia.org/wiki/LGBT_rights_in_Jamaica)

	<p>that “Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labor”.</p> <p><b>Article 79</b> further states that “Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male</p>	<p>advocating on behalf of sexual minorities in Jamaica<sup>30 31</sup></p> <p>This reference shows evidence of violence towards homosexuals and the convictions that are imposed on those that are the perpetrators of such violence<sup>32</sup>.</p> <p>The man responsible for the murder of the founder</p>	<p>others and for the public interest, to each and all of the following, namely-</p> <p>a. life, liberty, security of the person, the enjoyment of property and the protection of the law;</p> <p>b. freedom of conscience, of expression and of peaceful assembly and association; and</p> <p>c. <b>respect for his private and family life</b>, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such</p>	<p><b>Declaration of Human Rights.</b></p>
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<sup>30</sup> <http://www.jflag.org/>

<sup>31</sup> <http://www.unhcr.org/refworld/country,,IRBC,,JAM,,45f1475a2,0.html>

<sup>32</sup> [http://en.wikipedia.org/wiki/Violence\\_against\\_LGBT\\_people](http://en.wikipedia.org/wiki/Violence_against_LGBT_people)

	person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour”.	of J-Flag (Brian Williamson) was convicted of murder and sentenced to life imprisonment <sup>333435</sup>	limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”	
<b>St Kitts and Nevis</b> 	<b>Offences against the Person Act Chapter 56 of the Laws of the Federation</b> <sup>36</sup> states that under <b>Section 57</b> 'Whosoever attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, is guilty of	“Homosexuals have not been actively targeted by the laws” <sup>38</sup> .	<b>Federation of Saint Kitts and Nevis Constitutional Order of 1983</b> <sup>39</sup> states that “Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, birth, political opinions, colours, creed or sex, but subject to respect	St Kitts and Nevis is not a signatory to the <b>ICCPR</b> <sup>40</sup>  St Kitts and Nevis is not a signatory to the

<sup>33</sup> <http://www.jamaica-gleaner.com/gleaner/20060521/news/news7.html>

<sup>34</sup> <http://news.bbc.co.uk/1/hi/world/americas/3795247.stm>. Press article relating to the murder of Brian Williamson


<sup>35</sup> <http://www.independent.co.uk/news/world/americas/leading-gay-activist-murdered-in-jamaica-731713.html> - more press articles relating to above

<sup>36</sup> <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaStKittsNevis.pdf>

<sup>38</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Trinidad\\_and\\_Tobago#Enforcement](http://en.wikipedia.org/wiki/LGBT_rights_in_Trinidad_and_Tobago#Enforcement)

<sup>39</sup> <http://pdba.georgetown.edu/constitutions/kitts/kitts83.html#Chapter2>

<sup>40</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

	<p>misdemeanour, and being convicted thereof shall be liable to be imprisoned for any term not exceeding four (4) years with or without hard labour.'</p> <p>Same sex sexual activity is not, however, illegal between women<sup>37</sup></p>		<p>for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p>a) life, liberty, security of the person, equality before the law and the protection of the law;</p> <p>b) freedom of conscience, of expression and of assembly and association; and</p> <p>c) protection for his personal privacy, the privacy of his home and other property and from deprivation of property without compensation”.</p>	<p><b>American Convention on Human Rights.</b></p>
<p><b>St Lucia</b></p> 	<p><b>Section 133 (1) of the Criminal Code of St Lucia 2001</b><sup>41</sup> states that</p> <p>(1) A person who commits buggery is guilty of an offence and liable on conviction on indictment to imprisonment for —</p> <p>(a) life, if committed by an adult on a minor; or</p> <p>(b) ten years, if committed by a minor; and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.</p> <p>(2) Any person who attempts to commit buggery, or is guilty of an assault with intent to commit buggery, is guilty of an offence and liable to imprisonment for five years and, if the Court thinks</p>	<p>Saint Lucia was also the only UN member in the Americas to formally oppose the UN declaration on sexual orientation and gender identity<sup>42</sup>. The proposed declaration includes a condemnation of violence, harassment, discrimination, exclusion, stigmatization, and prejudice based on sexual orientation and gender identity. It also includes</p>	<p><b>The Constitution of St Lucia- Chapter I Protection of Fundamental Rights and Freedoms</b><sup>43</sup>states that</p> <p>Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-</p> <p>a) life, liberty, security of the person, equality before</p>	<p>St Lucia is not a signatory to the <b>ICCPR</b></p> <p>St Lucia is not a signatory to the <b>American Convention on Human Rights.</b></p>

<sup>37</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_by\\_country\\_or\\_territory#Caribbean\\_islands](http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory#Caribbean_islands)

<sup>41</sup> <http://www.stlucia.gov.lc/docs/DraftCriminalCode20031.pdf>

<sup>42</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Saint\\_Lucia](http://en.wikipedia.org/wiki/LGBT_rights_in_Saint_Lucia)

<sup>43</sup> [http://www.stlucia.gov.lc/saint\\_lucia/saintluciaconstitution/arrangement\\_of\\_sections.htm](http://www.stlucia.gov.lc/saint_lucia/saintluciaconstitution/arrangement_of_sections.htm)

	<p>it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.</p> <p>(3) In this section “buggery” means sexual intercourse per anus by a male person with a male or by a male person with a female person.</p> <p><b>Section 134</b> states that</p> <p>(1) A person who commits bestiality is guilty of an offence and liable on conviction on indictment to imprisonment for ten years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.</p> <p>(2) A person who, by the use of force or drugs, causes another to commit bestiality is guilty of an offence and liable on conviction on indictment to imprisonment for twenty-five years.</p> <p>(3) In this section “bestiality” means sexual intercourse per anus or per vaginum by a male or female person with an animal.</p>	<p>condemnation of killings and executions, torture, arbitrary arrest, and deprivation of economic, social, and cultural rights on those grounds. The proposed declaration was praised as a breakthrough for human rights, breaking the taboo against speaking about LGBT rights in the United Nations. It has yet to be adopted as a resolution.</p>	<p>the law and the protection of the law;</p> <p>b) freedoms of conscience, of expression and of assembly and association; and</p> <p>c) protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without compensation,</p> <p>Furthermore, <b>Section 13</b> states that “Subject to the provisions of subsection (4), (59 and 87) of this section, no law shall make any provision that is discriminatory either of itself or in its effect. Subject to the provisions of subsection 86), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person or authority. In this section, the expression "discriminatory" means affording different treatment to different person attributable wholly or mainly to their respective descriptions by sex, race place of origin, political opinions, colour or creed whereby persons of one such descriptions are subject to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are nor accorded to persons of another such descriptions.</p>	
<p><b>St Vincent and Grenadines</b></p>	<p><b>Section 148</b> of the <b>Criminal Code</b><sup>44</sup> states that "Any person, who in public or private, commits an act of gross indecency with another person of the same</p>		<p>There is no clause which expressly seeks to ensure equality before the law and which seeks to protect a person’s privacy. What is contained within the St Vincent and the Grenadines constitution is the</p>	<p>St Vincent and the Grenadines is a signatory to <b>ICCPR</b>.</p>

<sup>44</sup> <http://www.unhcr.org/refworld/country,,,VCT,4562d94e2,4b20f0422,0.html>



sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years”

**Section 146** of the **1990 Criminal Code**<sup>45</sup> states that” Any person who commits buggery with any other person; commits buggery with an animal; or permits any person to commit buggery with him or her; is guilty of an offence and liable to imprisonment for ten years.

following. **Section 1** of the **Constitution of St Vincent and the Grenadines- Chapter 1- Protection of Fundamental Rights and Freedoms**<sup>46</sup> states that “Where every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-


- a. life, liberty, security of the person and the protection of the law;
- b. freedom of conscience, of expressions and of assembly and association: and
- c. protection for the privacy of his home and other property and from deprivation of property without compensation.”

Also apparent is a provision which seeks to ensure a citizen’s protection from discrimination on grounds of race etc. **Section 13** states that subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect. Subject to the provisions of subsections (6),(7) and (8) of this section, no persons shall be treated in a discriminatory manner by any persons acting by virtue of any written law or in the performance of the functions of any

St Kitts and Nevis is not a signatory to the **American Convention on Human Rights**

<sup>45</sup> <http://www.unhcr.org/refworld/country,,,VCT,4562d94e2,4b20f0422,0.html>

<sup>46</sup> <http://pdba.georgetown.edu/Constitutions/Vincent/stvincent79.html>

			public office or any public authority. In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such descriptions are not made subject or are recorded privileges of advantages which are not accorded to persons of another such description <sup>47</sup>	
<b>Trinidad and Tobago</b> 	<p>The <b>Sexual Offences Act N° 27 of 1986 as amended by Sexual Offences Act N° 31 of 2000</b><sup>48</sup> states under <b>Section 13</b> that</p> <p>“A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment –</p> <p>(a) if committed by an adult on a minor, for life;</p> <p>(b) if committed by an adult on another adult, for twenty-five years;</p> <p>(c) If committed by a minor, for five years.</p> <p>In this section “Buggery” means sexual intercourse per anus by a male person with a male person or by a male with a female person”.</p>	<p>The following cases are of importance in illustrating the way in which the laws which criminalise homosexuality are used.</p> <p>In the case of <b><i>The State v Steve Williams</i></b><sup>50</sup> the offender committed buggery in the course of committing other serious crimes including rape and burglary and was seeking</p>	<p><b>Article 4 of The Constitution of the Republic of Trinidad and Tobago</b> labelled Chapter 1 Part 1- The Recognition and Protection of Fundamental Human Rights and Freedoms<sup>53</sup> states that</p> <p>It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-</p> <p>a. the right of the individual to life, liberty, security of the person and enjoyment of property and the right</p>	<p>Trinidad and Tobago is a signatory to the <b>ICCPR</b><sup>54</sup></p> <p>Trinidad and Tobago is not a signatory to the <b>American Convention on Human Rights</b>.</p>

<sup>47</sup> <http://pdba.georgetown.edu/Constitutions/Vincent/stvincent79.html>

<sup>48</sup> <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaTrinidadTobago.pdf>

<sup>50</sup> <http://www.ttlawcourts.org/Judgments/coa/2002/warner/stevewilliams.pdf>

<sup>53</sup> <http://pdba.georgetown.edu/Constitutions/Trinidad/trinidad76.html>

<sup>54</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

	<p><b>Section 16</b> labelled <b>Serious Indecency</b> states that “A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment –</p> <p>(a) if committed on or towards a minor less than sixteen years of age, for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence.</p> <p>(b) If committed on or towards a person sixteen years of age or more, for five years.</p> <p>Subsection (1) does not apply to an act of serious indecency committed in private between – (i) a husband and his wife; or (ii) a male person and a female person each of whom is sixteen years of age or more, both of who consent to the commission of the act.</p> <p>An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire”.</p> <p><b>Article 8</b> of the <b>Immigration Act</b><sup>49</sup> states that “Homosexual men and women are not allowed to enter the country. Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely prostitutes, homosexuals or</p>	<p>an appeal against the decision to charge him with both robbery and burglary. Although the conviction for indecent assault was quashed (and to this extent the court ruled that the appeal has been allowed), the convictions and sentences with respect to rape, buggery, serious indecency, robbery and robbery with aggravation were affirmed.</p> <p><b><u>The State v Jacob Ramjattan</u></b><sup>51</sup></p> <p>The appellant was convicted of one count of rape, two counts of indecent assault and one count of serious indecency. He was acquitted on a count of buggery which was alleged to have been committed at the same time as the other offences. He was sentenced to 12 years hard labour for rape, 12</p>	<p>not to be deprived thereof except by due process of law;</p> <p>b. the right of the individual to equality before the law and the protection of the law;</p> <p>c. the right of the individual to respect for his private and family life;</p> <p>d. the right of the individual to equality of treatment from any public authority in the exercise of any functions.</p>	
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<sup>49</sup> [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Trinidad\\_and\\_Tobago](http://en.wikipedia.org/wiki/LGBT_rights_in_Trinidad_and_Tobago)

<sup>51</sup> <http://www.ttlawcourts.org/Judgments/coa/2002/jones/JACOB%20RAMJATTAN.pdf>

	<p>persons living on the earnings of prostitutes or homosexuals, or person reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes”</p>	<p>months and 9 months respectively on the counts of indecent assault and 18 months for the offence of serious indecency.</p> <p>There is larger Muslim population in Trinidad and Tobago when compared to the other Caribbean islands. There are approximately 65,138 individuals who are Muslims, which constitutes 6% of the population<sup>52</sup>. This could have an effect in terms of public hostility towards according members of the LGBT community more rights.</p>		
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The lack of evidence relating to the number of arrests or imprisonments leads one to question what the purposes of such laws are. If they are not responsible for bringing about convictions, should they continue to exist? The lack of arrests and convictions under sodomy laws in the Caribbean support the thesis that such laws exist for their symbolic function. It is further evidence of the inability of public law to police what is essentially a private matter. With the distinction between public and private life becoming more prominent, as a result of greater emphasis being given to human rights, it is clear that these laws are symbols of colonial times that have become more and more difficult to eradicate.

There is also a lack of explicit reference to equality or privacy within many of the constitutions of the Caribbean commonwealth countries. This is of great importance as it could be taken to suggest that the state is conscious of its inability to ensure equality before the law or personal privacy, when it legally permits differential treatment and encroaches on the personal lives of adults.

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<sup>52</sup> [http://en.wikipedia.org/wiki/Islam\\_in\\_Trinidad\\_and\\_Tobago](http://en.wikipedia.org/wiki/Islam_in_Trinidad_and_Tobago)