

UPR Report on Trinidad and Tobago
12th Session of the Universal Periodic Review – October 2011

This report is submitted by the **Family Planning Association of Trinidad and Tobago (FPATT)**¹ the **Coalition Advocating for Inclusion of Sexual Orientation (CAISO)**² and the **Sexual Rights Initiative (SRI)**³. It focuses on human rights violations in Trinidad and Tobago, related, *inter alia*, to: **criminalization of consensual sexual activity between adults, violence directed towards persons on the basis of their sexual orientation, gender expression or gender identity, lack of attention to MSM in HIV programmes, access to safe and legal abortion services, and early marriage.**

Right to equality, equal protection of the law and freedom from all forms of discrimination based on sex, sexuality or gender

1. [Trinidad & Tobago's Constitution](#) affirms that the nation is “founded on...faith in...the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator” and it recognises “without discrimination by reason of race, origin, colour, religion or sex” “the right of the individual to equality before the law and the protection of the law” and “to equality of treatment from any public authority in the exercise of any functions”. This guarantee, however, does not apply to treatment by non-state actors. The [Equal Opportunity Act \(2000\) \(Ch. 22:03\)](#), which makes the right to freedom from discrimination under the Constitution enforceable as between citizens, prohibits discrimination in employment, the provision of accommodation and the provision of goods and services. It, however, explicitly excludes from its application “sexual preference or orientation”; and [was left standing by the final court of appeal despite a constitutional challenge](#).
2. Other statute law pointedly discriminates on the basis of sex and sexual orientation when it comes to relationships: The [Sexual Offences Act \(1986\) \(Ch. 11:28\)](#) defines “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 on or towards another” as “serious indecency”, an offence liable on conviction to imprisonment – *except if* it is “committed in private between a husband and his wife; or a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.” No such exception is provided for such acts when committed in private by consenting adults of the same sex. Similarly, a series of late 20th century updates to family and relationship law – the [Administration of Estates Act \(2000\) \(Ch. 9:01\)](#) (provides for a cohabitant to have right to inherit a portion of the deceased’s estate), the [Cohabitation Relationships Act \(1998\) \(Ch. 45:55\)](#) (provides for a Court to make an order declaring a title or right to, or adjusting interests in property as well as the payment of maintenance to persons who live together “on a bona fide domestic basis”) and the [Domestic Violence Act \(1997\) \(Ch. 45:56\)](#) (provides, *inter alia*, for survivors of domestic violence to obtain a protection order from the Court which can order the abuser to vacate any premises, compensate the victim for losses, pay maintenance for the applicant and any child) – all provide recognition and protection for non-marital *cohabitational* relationships, but define these relationships as between persons of the *opposite* sex.

Right to participation for all persons, regardless of sex, sexuality or gender

¹ **The Family Planning Association of Trinidad and Tobago (FPATT)** is a Non-Governmental Organization (NGO), whose mission is to advance sexual and reproductive health and rights, through advocacy and the provision of quality services to men, women and young people in Trinidad and Tobago.

² The **Coalition Advocating for Inclusion of Sexual Orientation (CAISO)** is a coalition umbrella for individuals and groups committed to upholding the essential humanity and worth of people of all sexual orientations, gender identities and expression, and their full inclusion in all aspects of national life, social policy and citizenship in the nation of Trinidad & Tobago.

³ **The Sexual Rights Initiative:** a coalition including: Action Canada for Population and Development (ACPD); Creating Resources for Empowerment and Action (India), Mulabi - Latin American Space for Sexualities and Rights, Federation for Women and Family Planning (Poland), and others.

3. A persistent stigma against homosexuality and gender non-conforming expression limits the free and full participation of gay, lesbian, bisexual and transgender (GLBT) persons in many aspects of national life. Fifty percent of participants in [an online newspaper poll asking “Do you support calls for the government to grant equal rights to members of the gay community?”](#) answered *No*. Comments posted on newspaper websites on articles that treat with matters of homosexuality or transgender experience routinely assert such individuals ought to be limited in their social participation and in the exercise of rights and freedoms. In parliamentary and political debate, Government leaders have qualified matters of sexual orientation as “sensitive” and “cultural”. The host of [a leading television newsmagazine framed it during a February 21, 2011 broadcast](#), “the activities of those involved in lesbian/gay communities...are the work of the devil – in many people’s eyes...and it should not be tolerated, it should not be encouraged, it should not be promoted, it should not be given any sort of leeway or slack in the society of Trinidad & Tobago.”

Rights to life, liberty, security of the person and bodily integrity

4. [Testimony was offered at an October 24, 2008 thematic hearing of the InterAmerican Commission on Human Rights \(IACHR\) on human rights violations related to gender expression, gender identity and sexual orientation](#) regarding several men in same-sex-practicing networks in Trinidad who sought sexual partners on a very popular internet site and began around 2007 to fall victim to a pattern of crimes that may still continue to occur. In the worst instances they were kidnapped, imprisoned, tortured, robbed, anally gang-raped and threatened with blackmail if they reported the crimes. The Trinidad and Tobago Anti-Violence Project (TTAVP) documented a number of these assaults by interviewing victims. Most did not pursue police action; the two known to reported sloppy investigation and one prosecution in which police repeatedly urged dropping the case and the victim was paraded in court. None of the rape victims interviewed pursued medical attention. TTAVP also received incomplete reports of assaults, robberies and carjackings of gay and bisexual in North and Central Trinidad, some of which included sexual violence, a number reported to have occurred in close proximity to GLBT social spaces. The opportunistic pattern of attacks and the victims’ responses to them, their refusal of help, and the limited community mobilisation in response illuminate the profound social vulnerability and marginalisation of same-sex practicing men even in a society with considerable social opportunities for gay men. IACHR testimony noted the role laws criminalizing same-sex intimacy in Trinidad & Tobago play in institutionalizing social exclusion and vulnerability. Because the sexual expression of same-sex desire is treated as criminal in law, and by extension the state, men are forced into hiding when they become the victims of opportunistic crimes in sexual situations. Deep-seated, socially and structurally mediated stigma and a vexing sense of shame and worthlessness are paralyzing homosexuals from self-efficacy even when it comes to powerful matters of health and justice. TTAVP noted that: “These men’s narratives illustrate their 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. They refused to accept TTAVP’s offers of peer and professional counseling services, free medical examination, STI screening and post-exposure prophylaxis for HIV.”
5. The [lead story in the daily Guardian newspaper on March 5, 2011](#) included an account of a 19-year old who “spent four days at Port-of-Spain General Hospital after being brutalised by his relatives for being gay”. “[A] relative took him to his home where he was slapped, then planassed [hit with the flat side of a machete] and his head banged on a wall. He said his shoulder-length hair was cut off. He escaped but was caught soon after. ‘Other family members join in and they beat me with a piece of wood, with a shovel and a belt.’ ... He said he was threatened with death and called derogatory names. He was ordered to take a bath, after which they rolled him down a hill and allowed a group of men to beat him. It was at that point he was rescued by officers passing in a police vehicle. [He] said the police took him to the station but did not arrest anyone. He suffered a long laceration to his hand [a photograph accompanied the article], as well as cuts and bruises, and his body was swollen. He had

to wear a neck brace and had difficulty walking. ...[H]e...said: ‘I would just like to be safe...I think people should be allowed to live their life as they want.’”

6. University of the West Indies at St. Augustine Psychiatry lecturer Dr. Sandra Reid, who co-authored a 2010 study on child sexual abuse in Trinidad & Tobago, notes in [the March 2010 issue of *UWI Today*](#) “how intricately woven child sexual abuse is into our culture”, where “children are perceived as having no rights, females are held responsible for sexual advances, and communities accept this”.

Right to privacy

7. Not only is same-sex sexual intimacy besides intercourse criminalized as “serious indecency” under §16 of the Sexual Offences Act. So is all anal intercourse (“buggery”) under §13, regardless to consent, the sex or age of the participants, or the privacy of the activity. The sentence for the offence stands at twenty-five years imprisonment, the second harshest sentence (after life imprisonment) in any Commonwealth Caribbean country, and one increased successively from the five-year sentence at the time of Independence half a century ago.
8. However, Parliament has recently shown bipartisan support for passing legislation that would “ensure that protection is afforded to an individual’s right to privacy and the right to maintain sensitive personal information as private and personal” in both the public and private sectors, and provides for enhanced regulation of the handling of “sensitive personal information”, defined to include sexual life and sexual orientation. The [Data Protection Bill \(2011\)](#) is anticipated to successfully pass both houses of Parliament.

Right to personal autonomy and recognition before the law

9. On March 11, 2011, Parliament passed a law expanding a discretionary Government death benefit for public sector workers, to make eligible as beneficiaries persons in traditionally stigmatized non-marital relationships to the deceased. In drafting the bill, Government excluded same-sex common-law partners and [defended this provision in Parliamentary debate, based on the criminalization in law of same-sex intimacy, as well as on religious and cultural grounds](#). Government during the bill’s debate [proposed a “national referendum” to determine if same-sex relationships should be recognized by the state](#) – a plebiscite on minority rights.

Right to freedom of thought, opinion and expression; right to association

10. In December 2008, a name reservation application was made under the [Companies Act \(1995\) \(Ch. 81:01\) to the Companies Registry in the Registrar General’s Department at the Ministry of Legal Affairs in order to incorporate a non-profit company](#): National Pride: The Trinidad & Tobago Society Against Sexual Orientation Discrimination. The application was delayed and targeted for review by legal staff of, among other matters, the purposes and activities of the proposed organization, given the prohibitions on sexual activity in the Sexual Offences Act and the language of the Equal Opportunity statute excluding sexual orientation from protection against discrimination. The Government was concerned whether the purpose of the corporation was to promote something illegal. This demonstrates how not only the criminalization of sexuality but its work in conjunction with the exclusion of sexual orientation from the Equal Opportunity Act confer the shadow and stigma of illegitimacy on sexual rights advocacy, and how citizen advocacy to change discriminatory laws is subject to heightened Government scrutiny. The name reservation was ultimately approved, with changes.

Right to health and to the benefits of scientific progress

11. [In available sampling, HIV prevalence among men who have sex with men \(MSM\) in Trinidad & Tobago has been measured at 20%, four to eight times higher than estimated national rates of HIV. Homophobia and structural barriers are seen as key determining factors in these disparities](#) in that they [limit access to HIV prevention](#) and other services, as well as the self-efficacy of persons at [self-](#)

[protection](#), self-care and self-advocacy. [Fresh estimates from the national HIV authority](#) show national HIV spending from 2002 to 2009 on MSM and all “most-at-risk populations” was “low and has limped along” at less than 7% of the TT\$560 million spent, even as it exceeded budgeted figures”, with “very little emphasis...placed on research within the most at risk Populations”. Only 1% of the overall HIV budget was spent on “advocacy and human rights”, and that was subject to “significant reductions in expenditure” from 2008. Although “institutional strengthening” was the primary HIV prevention strategy proposed for MSM in the [last national HIV strategic plan](#), this activity was allocated a mere \$75,000 of the intended spending of US\$90.3 million over five years.

12. On September 4, 2009, Government laid in Parliament a revised [National Policy on Gender and Development green paper](#) that, inconsistent with contemporary, widely accepted concepts of gender, [even as reflected in local jurisprudence](#), categorically excluded from its scope any treatment of sexual orientation and homosexuality, and expunged all such references included in a 2004 draft prepared by the Institute for Gender & Development Studies at the University of the West Indies at St. Augustine. The preparation of the Gender Policy was an outgrowth of the state’s [2002 Convention for the Elimination of all forms of Discrimination Against Women review](#) which, among other concerns, drew critical attention to the incompatibility with the Convention of the provisions excluding sexual orientation from the Equal Opportunity Act.

Right to education and information

13. Trinidad & Tobago’s Minister of Education announced in Parliament on January 16, 2011 that in the past four years seven *primary* school girls had to leave school because of their pregnancies. Government has no clear strategy or designated approach for school-based health and family life education (HFLE), which depends largely on teachers’ and principals’ good will and beliefs. A lack of educational materials to support the curriculum exacerbates teachers’ feelings they are not competent, and their reluctance to teach the subject. HFLE has been formally introduced in only nine of 198 secondary schools and in five of 544 primary schools.
14. Notwithstanding this, on October 25, 2010 in the United Nations General Assembly Third Committee, in response to [the July 2010 report of the Special Rapporteur on the Right to Education](#), which sought to advance a right to comprehensive sexuality education, [“the representative of Trinidad and Tobago, on behalf of...CARICOM...noted with deep concern that...\[a\]ccording to CARICOM’s understanding, a right to sexual education, a right to comprehensive sexual education or a right to sexuality education does not exist”](#)

Right to choose whether or not to marry and to found and plan a family, and to decide whether or not, how and when, to have children

15. Sections 56 and 57 of the [Offences Against the Person Act \(1925\) \(Ch. 11:08\)](#) establish that abortions are criminal when they are “unlawfully” procured. Prevailing case law provides, however, that termination of pregnancy would be lawful to save the life of a pregnant woman or to preserve her physical and/or mental health, and requires the corroboration of two medical practitioners. Nonetheless, Government and religious discourse opposing and stigmatizing abortion make this provision subject to widespread speculation and uncertainty; and unsafe abortions are a major cause of maternal mortality and hospital admissions, [ASPIRE \(Advocates for Safe Parenting Improving Reproductive Equity documents\)](#). The impact is also discriminatory on poor women unable to afford to services of a private clinic in terminating pregnancy. Government continues to fail to clarify the legal status of termination of pregnancy, and [has proposed subjecting such public health measures to a national plebiscite](#).
16. Child marriage remains legal in specific religious traditions: marriages of minor girls as young as 12 years and boys as young as 16 are legitimized by the [Muslim Marriage & Divorce Act \(1961\) \(Ch. 45:02\)](#), as are those of minor girls as young as 14 by the [Hindu Marriage Act \(1945\) \(Ch. 45:03\)](#) and 16 (the age of consent) by the [Orisa Marriage Act \(1999\) \(Ch. 45:04\)](#). This reality is consistent with

the state's enduring failure to protect the right to sexual autonomy from religious control, reflected in its unwillingness to decriminalize homosexuality without religious consent.

Right to accountability and redress

17. GLBT plaintiffs (e.g. Jowelle Taylor deSouza vs. SRP Eric George (HCS220 of 1998), [Kennty Dave Mitchell vs. The Attorney General of Trinidad and Tobago \(HCS209 of 2001\)](#), Kennty Mitchell vs. The Attorney General of Trinidad and Tobago (CV03220 of 2007)) willing to endure the stigma of a public trial have had success prosecuting their right to freedom from discrimination, and found favourable judgments in local courts. Right to accountability and redress for discrimination based on sexual orientation by non-state actors, however, is explicitly forbidden under the Equal Opportunity statute. And in criminal matters, as well, bias crimes against GLBT people are poorly prosecuted.

Recommendations to the Government of Trinidad and Tobago

18. Immediately repeal, through legislation and policy, provisions of the Hindu, Muslim and Orisha marriage acts that legitimate marriages of boys and girls under 18 and the consent to such marriages by the parents of such children
19. Immediately amend the Equal Opportunity Act to add "sexual orientation" and "gender" to enumerated statuses the Act protects from discrimination
20. The Minister of Health must issue unambiguous, affirmative legal guidance to the public and public health services regarding the status of women's access to termination of pregnancy
21. Amend all statutory references to cohabitational relationships (in the Administration of Estates, Cohabital Relationships and Domestic Violence Acts and elsewhere) to remove the limitation on recognition of such relationships to those between partners "of the opposite sex"
22. Immediately decriminalize all consensual private sexual activity between adults
23. Government leaders must speak out forcefully in defence and promotion of sexual rights, including clear messages that discrimination based on sexual orientation and gender identity are inhumane, wrong, and subject to punishment
24. Immediately implement measures for monitoring and for streamlined complaints by sexual minorities regarding treatment and access in policing and administration of justice; train members of all protective services, the criminal justice system and courts on sexual and gender diversity, sexual citizenship, bias crime, and equal and sensitive treatment of victims
25. Ministers responsible for Gender Affairs, Justice and National Security and others must mainstream violence based on sexual orientation and gender expression into gender based violence initiatives
26. Ministers responsible for Education, Health and Gender Affairs and others must strengthen and ensure delivery of accurate, developmentally appropriate sexuality and gender education to all schoolchildren, and programmes to equip teachers and other school personnel to perform these roles and manage their faith beliefs; implement initiatives to prevent bullying and promote school cultures of diversity and tolerance; and promote public education and science-based discourse about sexuality, sexual diversity and sexual citizenship
27. Ministers responsible for Social Development, Health, Youth Affairs and training and others must develop safety-net services and policies targeting areas (e.g. homelessness, life skills, gender-appropriate healthcare, bullying) where stigma and social vulnerability of GLBT people, especially those of young ages, imperil their enjoyment of equal rights
28. Create a centre of coordination and excellence, and build Government's capacity across various sectors (through staffing, research, training and technical assistance) to: develop sound policy and programmes that engage the needs of sexual minorities; and mainstream sexual orientation and gender identity awareness and responsiveness
29. Strengthen protective and preventive measures against sexual abuse of minors, including young people whose developing sexual orientation makes them vulnerable to targeting