

Universal Periodic Review of Saint Lucia

23rd Session

November 2015

Joint submission by: United and Strong Inc. U&S, CariFLAGS and Sexual Rights Initiative

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**Submission by:**

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**CariFLAGS**

**Sexual Rights Initiative SRI**

**Key words: women's rights – gay, lesbian, bisexual and transgender people – children rights -**

**Executive Summary**

1. This report is submitted by United and Strong Inc. from Saint Lucia, CariFLAGS and the Sexual Rights Initiative. This is the second occasion on which United and Strong is submitting a report to the UPR mechanism. A previous report was submitted in 2011 and contains relevant background information about the organization.
2. The following analysis and recommendations addresses a range of human rights issues, from the ratification of human rights instruments to the rights of women, children, and LGBT persons.
3. The report reviews recommendations made to Saint Lucia during the first cycle and provides an update on certain recommendations that were accepted, as well as reiteration of key areas that were rejected by Saint Lucia and which require urgent action. The report also highlights achievements of the Government of Saint Lucia in promoting and protecting human rights of its citizens.
4. The report includes a number of recommendations that the Government of Saint Lucia should swiftly implement to address outstanding human rights concerns. This can be achieved through various mechanisms such as legislation, administrative, public awareness, funding and budget allocations and technical and political support for state initiatives.

**International Obligations and Ratifications after 2011 UPR**

5. Saint Lucia signed both the **ICCPR** and **CRPD** but has failed to ratify/accede to these instruments.
6. Saint Lucia ratified **UNTOC** and acceded to the **Protocol to Prevent, Suppress and Punish Trafficking in Persons**.

7. Saint Lucia has not signed the **IESCR**, although it accepted a recommendation to do so.
8. Saint Lucia signed and ratified **Optional Protocol on Sale of Children, Child Prostitution and Child Pornography**.
9. Saint Lucia ratified **Optional Protocol on The Involvement of Children in Armed Conflict**.
10. Saint Lucia has not signed the CRC Optional Protocol on Communications Procedure.
11. Saint Lucia has not signed the Optional Protocol to CEDAW although the state accepted recommendation 89.9 to consider signing it.

**Recommendations:**

**The State of Saint Lucia should:**

12. Ratify as soon as possible the ICCPR and its Optional Protocols.
13. Ratify CRPD, IESCR and its Optional Protocol.
14. Sign Optional Protocols under CEDAW.
15. Sign the third Optional Protocol under the CRC.

**Legislative Framework**

16. Post UPR 2011, save for the Labour Code Act (2006), Saint Lucia has not implemented or revised any domestic laws which covers the international instruments to which it is party; despite accepting recommendations to do so. Whereas there exists pieces of legislation which generally addresses some human rights concerns, no new legislation has been implemented to particularly address many of the key human rights issues as provided under these Instruments. This is necessary as Saint Lucia is a dualist state and citizens do not have direct access and redress to several of the protections afforded under these Conventions unless implemented domestically. In 2012 Saint Lucia implemented the Labor Code Act (2006) which captures some concerns under ILO Convention in areas of unfair dismissal, child labor, sexual orientation, and workers' rights generally. Saint Lucia has not reviewed the Civil Code to eliminate gender based discriminatory provisions as agreed to/accepted by the State during its previous review.

**Recommendations**

**The State of Saint Lucia should:**

17. Implement domestic legislation for all of the international instruments to which Saint Lucia is party, so citizens can have direct access to provisions under these instruments.

18. Review the Civil Code and eliminate gender based discriminatory provisions.

### **Sexual Orientation**

19. Post UPR 2011 there continues to be acts of violence committed against persons because of their sexual orientation or gender identity, and persons who defend the rights of these individuals are often subjected to verbal attacks<sup>1</sup>. In March 2011, two months after Saint Lucia was reviewed at the UPR, two gay tourist were brutally attacked and robbed on the island while inside their vacation cottage. The incident received widespread news coverage.<sup>2</sup> Both of Saint Lucia's then Government Ministers for Tourism and Foreign Affairs immediately condemned the attacks and indicated that offensive discriminatory remarks had been made to the victims. The Minister for Tourism highlighted that the men were concerned about reporting the matter to the police, because of the laws in Saint Lucia that criminalize homosexuality. Notwithstanding, neither Minister nor any other Government official made any pronouncement regarding the need to protect the rights of persons in same sex relationships by amending the laws in Saint Lucia that criminalize homosexuality, and discriminate against consenting adults engaged in consensual same sex relations.<sup>3</sup>
20. During UPR 2011 Saint Lucia indicated that it was in the process of constitutional reform and further pledged to raise public awareness with regard to discrimination where it occurs.<sup>4</sup> However following the attack on the gay tourists in Saint Lucia, no action has been taken to raise public awareness regarding the discrimination suffered by these and other LGBT persons as pledged by the State. In addition this matter remains pending without any arrests, charges or prosecutions advanced by the authorities against the attackers despite accepting recommendation 89.88 to ensure prompt and thorough investigations of acts of violence committed against persons because of their sexual orientation or identity.
21. Saint Lucia's constitution does not protect persons of different sexual orientation or gender identity from discrimination but reserves this protection for persons only on the basis of traditional grounds as: race, sex, religion, etc. However "sexual orientation" as a basis for protection, has for the very first time entered Saint Lucia's law books under Section 131 (1)(a) of the new Labor Code Act (2006) implemented in 2012. This section provides that it is unlawful for an employer to dismiss or institute disciplinary action against an employee based on "sexual orientation." This is a significant but limited

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<sup>1</sup> Saint Lucia accepted recommendation 89.97 to condemn acts of violence and human rights violations committed against persons because of their sexual orientation or gender identity and ensure adequate protection for human rights defenders who work on the rights of LGBT persons :

<sup>2</sup> [https://www.youtube.com/watch?v=3xL4jd\\_7sJI](https://www.youtube.com/watch?v=3xL4jd_7sJI).

<sup>3</sup> Section 132 of the Criminal Code criminalizes private acts between any consenting same-sex adults and section 133 of the Criminal Code criminalizes anal sexual intercourse between two male persons.

<sup>4</sup> See response to recommendation 89.92

achievement, in that persons of different sexual orientation are excluded from protection under the Labor Code where it concerns “general discrimination,” whereas all other traditional categories of race, color, sex, religion ... are protected.<sup>5</sup> This means persons of different sexual orientation can be discriminated against in all other areas not captured under sections 131(1) (a) including: promotions, awards, bonuses, etc. Sexual Orientation is further excluded within the core definition of “discrimination” under the Act and is not considered as a ground upon which one can be discriminated against.<sup>6</sup> Other protections available under the act such as protection from Sexual Harassment<sup>7</sup> also exclude persons of different sexual orientation. This is because sexual harassment is punishable under the provision relating to unlawful discrimination which excludes sexual orientation. The new Labor Code Act is regressive in that previous legislation provided protection against sexual harassment to all employees without regard to classifications/groupings.<sup>8</sup> Unfortunately the old legislation does not provide as many avenues for redress as currently operational under the new Act.

22. At UPR 2011 Saint Lucia rejected recommendations to decriminalize consensual relations between consenting same sex adults and deferred to the pending report of The Constitutional Reform Committee (**TCRC**). This report has now been distributed in limited circles but has not yet been tabled for debate in Parliament despite its release since April 2013. The TCRC considered decriminalizing sexual acts between consenting adults of the same sex, but purposely neglected to make any recommendations on this issue.<sup>9</sup> **TCRC** also rejected recommendations that sexual orientation be afforded any protection from discrimination under Chapter 1 of the Constitution of Saint Lucia<sup>10</sup> but upheld a proposal that “discrimination on the basis of sexual orientation is unacceptable.” **TCRC** positively recommended that “discrimination on the basis of sexual orientation be addressed under well-defined ordinary and separate legislation.”<sup>11</sup> This proposal can cure the imbalance which currently exists under the Labor Code Act (2006)
23. Because sexual acts between consenting same sex adults are criminalized, this serves as an impediment in accessing necessary healthcare; and LGBT persons continue to confront unacceptable levels of discrimination and stigma when visiting health clinics.

## **Recommendations**

### **The State of Saint Lucia should:**

24. Swiftly implement the recommendations of the Constitutional Reform Committee and establish well defined separate legislation to address discrimination on the basis of sexual orientation.

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<sup>5</sup> See Section 7 (1) Labor Code Act (2006) implemented in 2012

<sup>6</sup> Section 267 Labor Code Act (2006) implemented in 2012

<sup>7</sup> Section 272 Labor Code Act (2006) implemented in 2012

<sup>8</sup> See Equality of Opportunity and Treatment in Employment and Occupation Act (2000), Section 8.

<sup>9</sup> Section 267 Labor Code Act (2006) implemented in 2012

<sup>10</sup> Section 272 Labor Code Act (2006) implemented in 2012

<sup>11</sup> Report of The Constitutional Reform Committee

25. Noting that sexual orientation is already included under Section 131(1) (a) of the new Labor Code Act, review the Act to include sexual orientation as a ground for discrimination under Section 7 (1).
26. Noting that sexual orientation is already included under Section 131(1) (a) of the new Labor Code, review Section 262 of the Act, to include sexual orientation as part of the core definition of “Discrimination” classification.
27. Decriminalize same-sex consensual relations.
28. Raise public awareness regarding non-discrimination of LGBT persons and include sexual orientation as part of the curriculum in the Health and Family Life Education for schools.
29. Promptly investigate all complaints of violence against LGBT persons.
30. Implement non-discriminatory policies at health facilities and reporting processes, with sanctions for health workers who discriminate against LGBT persons and generally.
31. Implement a policy moratorium on prosecutions under Section 133 of the Criminal Code which criminalize same sex consensual relations.

#### **Children and Marginalized Youth.**

32. Existing legislation does not fully encompass the principles and provisions of the CRC. Draft OECS model legislation for harmonization of laws to the CRC has not materialized since commencement of this initiative over 10 years ago. National legislation must be implemented to deal with discrimination against children born out of wedlock, juvenile justice, and corporal punishment among other human rights concerns. It must be noted that the Draft/Model OECS laws do not deal with eradication of corporal punishment. The Government is to be commended for provisions within the new Labor Code Act (2006) implemented in 2012, which protects the rights of children and young persons at work.
33. In September 2012, the Cabinet of Ministers approved the National Action Child Protection Committee (NACPC) whose mandate is to coordinate and report on Saint Lucia’s implementation of the CRC and to act as an advisory body in child protection matters. The NACPC was established following a recommendation made to Saint Lucia by the CRC Committee (2011). The NACPC has not yet activated its mandate or taken specific steps in its pursuit. A National Action Plan for children is currently being developed.
34. During the 2011 UPR Saint Lucia rejected recommendations to ban corporal punishment in schools or generally. Saint Lucia however undertook to implement a gradual phasing out of corporal punishment which the State indicated had commenced through the Child-Friendly pilot project. Notably, this pilot project is nothing more than a behavior modification program which takes no steps towards eradication of corporal punishment.

Corporal punishment continues to be lawfully administered at school, and generally, under Article 5 of the Children & Young Persons Act (1972), Article 50 of the Education Act (1999), within alternative care settings and well as in the Penal System which accommodates juvenile boys. With respect to the Education Act (1999), classroom teachers are not allowed to administer corporal punishment, unless authorized by the Principal. Unauthorized administration of corporal punishment is an offence under section 50(4) of the Act, and carries a fine of up to EC\$1000.00. However teachers often violate/breach this law with impunity and are not held accountable or prosecuted by the State for this offence.

35. There is a need for targeted reintroduction of vocational schools and vocational training programs within secondary schools to facilitate young persons with different learning abilities, by affording them an alternative to mainstream academia. This can likely reduce the number of children especially boys who drop out of school without completing their education. School drop out by boys in particular remains a challenge for the State.
36. Since 1980 the Upton Gardens Girls Centre (NGO) has provided a day care rehabilitation service to abused, disadvantaged and neglected girls aged 12 to 17 years. The center facilitates training in several key areas including technical and vocational skills, remedial learning for slower girls and behavior modification programs. The Centre has been able to successfully rehabilitate and integrate several girls back into society. However the Center experiences challenges as girls return daily to vulnerable home communities and some drop out of the program before they can be successfully rehabilitated. The Director is convinced that partial residential accommodation is absolutely necessary to ensure that the more vulnerable girls can reside at the Center for the duration of the program. This requires financial assistance and staffing support from Government.<sup>12</sup> The Center currently accommodates \*\* girls. A Transit Home and Therapeutic Centre for child victims of abuse and neglect was opened in 2013 and is fully operational. However space is limited to 22 children and does not cater to boys over 10 years.
37. There are three NGO day care centers that cater to children with disabilities. Two are located in the south (Soufriere and Vieux Fort) and one in the East (Denery) of the island. The Center in Denery especially provides care to children with severe multi-disability. The Childhood Development and Guidance Centre is another NGO that provides early intervention services to children with special needs.<sup>13</sup> The Center receives a government subvention and is also supported by international and local grants.
38. The CARE Agency (NGO) must be highly commended for its efforts in providing young persons with an opportunity to pursue technical training and vocational education, however capacity/ accommodation at this institution is limited.

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<sup>12</sup> Discussions with the Director Upton Gardens Girls Center: March 12, 2015.

<sup>13</sup> Insert webpage link

39. Saint Lucia has experienced a sudden surge in child suicides with an unprecedented number of four (4) child suicides recorded for the period 2013-2014. Government must investigate the root causes/patterns of these suicides and immediately institute preventative measures to intercept this behavior.
40. Data Collection: there is a need for a well-established centralized data register, with compiled information relating to child and juvenile concerns and complaints within the Division of Human Services/Government. This register is fundamental so that Government can deliberately pursue appropriate and targeted policy development to effect necessary change.
41. BTC/Facility for boys: update pending.

### **Recommendations**

#### **The State of Saint Lucia should:**

42. Implement outstanding OECS Draft/Model Family Laws.
43. Establish domestic legislation to incorporate fully all the principles of the Convention on the Rights of the Child.
44. Prohibit all forms of corporal punishment and especially invoke Section 51 of the Education Act (1999) which allows the Minister for Education to abolish corporal punishment in schools.
45. Immediately enforce Section 50(4) of the Education Act 1999 so that unauthorized teachers who unlawfully administer corporal punishment are prosecuted on every occasion.
46. Fully re-introduce vocational and technical training in secondary schools to provide alternative learning to students of different abilities and talents.
47. Allocate funding and support staff for the Upton Gardens Girls Center to establish partial residential quarters for girls, and implement all necessary legal and policy measures to facilitate this service.
48. Seek technical support to establish a centralized data register which contains child and juvenile violations, complaints and issues within the Division of Human Services.

### **Women and Violence**

49. During UPR 2011 when asked to address the link between prostitution and the tourism industry, Saint Lucia stated that “prostitution is unlawful and the Government does not condone this activity.” The state commented further that there existed no official data or research that confirmed such a link and recognized the need for research to be conducted to confirm such linkage. Saint Lucia has not taken any steps to conduct research and has not actioned this



issue at all. However a privately produced television documentary series titled “Untold Stories” aired in 2012 and featured an hour long interview with a well-known local prostitute who identified herself as a “tourism sex worker.” This story confirmed the link between prostitution and the tourism industry and was also broadcasted in local news media.<sup>14</sup> Persons are not actively prohibited by the authorities from working as prostitutes/sex workers but are afraid to seek the protection of the law or even medical attention when exploited, abused or at risk, due to the fact that prostitution is illegal. Sex workers are open to various types of abuse and neglect. The State has simply turned a blind eye to this issue.

50. Saint Lucia has not taken any action to address the accepted recommendation relating to reforms in gender/domestic violence that would allow prosecution of perpetrators without the necessity for the victim to lodge a complaint. It is absolutely vital that Saint Lucia incorporates legislation that allows the State to independently prosecute perpetrators as the cycle of domestic violence is such that the victim is often too afraid of the perpetrator or too dependent on him/her to lodge such complaint. In these instances the State must be obligated to prosecute the matter and protect the victim from further violence and abuse. Reacting to a February 2015 incident of extreme violence by a male against his female partner, the Director of Public Prosecution has made strong statements calling for the laws to be changed to facilitate state intervention and independent prosecution in matters of domestic and sexual violence.<sup>15</sup>
51. The Vulnerable Persons Team within the Royal Saint Lucia Police Force assists with the investigation and management of all domestic violence as well as child abuse and neglect. However there are various impediments which mitigate against the work of this team.<sup>16</sup> These include a high turnover in team members who are police officers and are often transferred or assigned other tasks. This breaks the continuity in rapport, relations and support of victims. The physical structure where victims are received by team members lacks the privacy necessary to adequately and comfortably support the needs of victims. Discussions with the Director of Gender Relations also revealed a need for targeted and specialized training of members within the vulnerable person’s team to adequately meet the needs of victims.
52. Data Collection: there is a need for a well-established centralized data register, with compiled information relating to domestic and sexual violence complaints and prosecutions. This is because various agencies deal with these matters. This register is fundamental so that Government can deliberately pursue appropriate and targeted policy development to effect necessary change.
53. The Constitutional Reform Committee (CRC) above, has recommended that with regards to discrimination against women, that the provisions of CEDAW be

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<sup>14</sup> <https://www.youtube.com/watch?v=9zSaqJwrkok>.

<sup>15</sup> <http://stluciatimes.com/article/dpp-supports-changes-sexual-abuse-and-domestic-violence-laws>

<sup>16</sup> Meeting with Director of Gender Affairs March, 2015.

implemented in domestic legislation and where complementary included in the Constitution.

54. The Division of Gender Relations which is the national machinery for the advancement of Gender issues is severely understaffed. The staff compliment comprises the Director, two technical officers, one research officer and a Driver. This seriously affects the productivity of the Department.
55. In order to increase the participation of women in public life, including: the judiciary, legislature and administration, temporary special measures, in line with article 4, paragraph 1, of the Convention must be applied.

### **Recommendations**

#### **The State of Saint Lucia should:**

56. Implement the recommendation of the Director of Public Prosecution and adopt laws that allow for prosecution of perpetrators of domestic violence, without the victim lodging a complaint.
57. Address the link between prostitution and the tourism industry, ensuring that those who exploit prostitutes are punished.
58. Strengthen the Vulnerable Persons Team by providing specialized training to officers and maintaining well-trained staff within the unit. Improve privacy settings in areas where victims are received by staff.
59. Seek technical support to establish a centralized data register which captures information relating to domestic and sexual violence complaints and prosecutions within the Department of Gender Affairs.
60. Implement recommendation of the Constitutional Reform Committee regarding implementation of CEDAW into domestic law and within the Constitution where complimentary.
61. Increase the staff compliment within the Division of Gender Affairs to improve levels of productivity within the department.
62. Implement temporary special measures in order to increase participation by women in political life.

#### **National Human Rights Institutions.**

63. Several recommendations were made to Saint Lucia during UPR 2011 regarding the establishment of a NHRI. Saint Lucia did not accept these recommendations, suggesting that the office of the Ombudsman protects citizens' fundamental rights. Saint Lucia further pledged to strengthen the office of the Ombudsman. Post UPR 2011 Saint Lucia has taken no steps to strengthen the office of the Ombudsman which operates in a very limited capacity to only address maladministration by government/public officers.

## **Recommendation**

### **The State of Saint Lucia should:**

64. Establish an independent National Human Rights Institution in accordance with the Paris Principles.

## **Police and Criminal Justice**

65. There is a need for an independent body to exercise oversight and investigate citizen complaints against police officers. The Police Complaints (Amendment) Bill was passed in November 2013 and has retained police officers as part of the unit that will hear and determine citizen complaints, including human rights violations, committed by the Police.<sup>17</sup> On March 8<sup>th</sup> 2015 the Prime Minister in an address to the nation revealed aspects of the IMPACS report into the alleged extra judicial killing of 12 civilians by the Police during 2010 -2011.<sup>18</sup> The allegations were investigated by an external team from the Jamaica Constabulary who concluded that the police officers involved in the deaths of these citizens must be prosecuted. The Report has been passed to the Director of Public Prosecutions for further investigation. This independent inquiry was commissioned as a result of the United States refusal to maintain technical training for Saint Lucian Police officers, in the wake of the 12 killings of civilians by the Police.

## **Recommendation**

### **The State of Saint Lucia should:**

66. In light of the findings of the IMPACS report ensure that the body that hears and determines police complaints is in fact independent, and does not comprise police officers.

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<sup>17</sup> St. Lucia News Online: <http://www.stlucianewsonline.com/new-investigation-unit-for-rslpf/>

<sup>18</sup> The St. Lucia Times : <http://stluciatimes.com/article/pm-2010-black-list-existed-investigators-recommend-%E2%80%99Call-police-officers-involved-be>