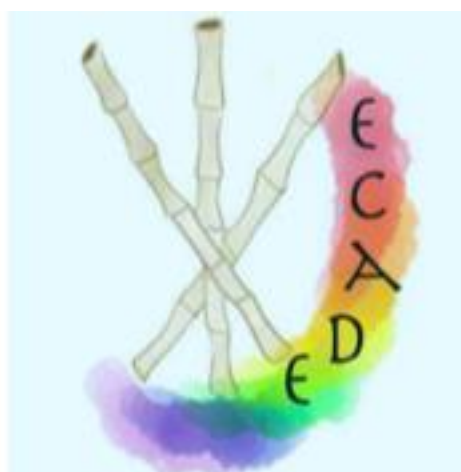


# **Keeping Barbadian Government Accountable**

Universal Periodic Review of Barbados

29th Session

Joint submission by: EQUALS, Eastern Caribbean Alliance for Diversity and Equality (ECADE) and ARC International



**Report on Barbados**

## **29th Session of the Universal Periodic Review (UPR) January/February 2018**

### **INTRODUCTION**

EQUALS is a civil society organization dealing directly members of the LGBTQ+ population of Barbados. The information obtained for this report was obtained by qualitative and quantitative research and investigation on the human rights situation and issues surrounding the LGBTQ+ population of Barbados. The situational evidence presented in this report are first accounts from LGBTQ+ individuals who have made complaints directly to EQUALS, others have been obtained from focus group dialogs with members of the LGBTQ+ population. The statistical evidence about attitudes and perceptions about the LGBTQ+ in Barbados was collected from surveys administrated to the general public of Barbados.

### **IMPLEMENTATION OF UPR RECOMMENDATIONS**

#### **Equality & Nondiscrimination**

It was recommended to repeal the provisions that criminalize consensual homosexual relations, notably those contained in the Sexual Offences Act and establish policies to combat discrimination, prejudice and violence based on sexual orientation on or gender identity (France) A/HRC/ 23/11- Para. 102. This recommendation was noted.

This recommendation has not been implemented. The provisions, which criminalize consensual same sex activity, are still maintained in the Sexual Offences Act.

Sexual Offences Act 1992, Chapter 154, Section 9, provides “Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life” and establishes one of the most severe punitive measures for sodomy in the Commonwealth.

Sexual Offences Act 1992, Chapter 154, Section 11 provides “ (1) A person who indecently assaults another is guilty of an offence and is liable on conviction on indictment to imprisonment for assault. 5 years. [...] (3) In this section “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention. “

Sexual Offences Act 1992, Chapter 154, Section 12 provides “ (1) Any person who commits an act of serious indecency on or serious towards another or incites another to commit that act with the person or with another person is guilty of an

offence, and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years [...] (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.”

While the language of these laws is gender and orientation neutral, in reality they disproportionately geared towards LGBTQ+ individuals as they criminalize forms sexual activities and expression, which LGBTQ+ individuals commonly engage in. The criminalization of consensual same sex activity in sections 9, 11 and 12 has the effect of amounting to de facto discrimination against LGBTQ+ persons and their links to the notion of “unnatural” behavior in section 11 and 12 allow these laws to be easily engineered to target and prosecute LGBTQ+ individuals who engage in non-reproductive sexual behavior.

These laws, which criminalize same-sex sexual activity, carve out a category of humans for separate and discriminatory treatment. Although such laws purport to regulate conduct and not status, the reality is that criminalizing consensual sexual conduct between partners of the same sex has the effect of marking individuals as criminals on the basis of their sexual orientation. These laws go to the core of diminishing LGBTQ+ individuals’ self-worth, self-respect, physical and psychological integrity, and punish a form of self-expression for LGBTQ+ individuals and devalue them in broader society.

### **Constitutional and Legislative Frameworks**

It was recommended to adopt legislation that prohibits discrimination on the basis of sexual orientation and gender identity (United States of America) A/HRC/23/11 Para. 102 and to establish policies and initiatives to address discrimination based on sexual orientation and gender identity (Brazil) A/HRC/23/11. These recommendations were noted.

These recommendations have not been implemented there is still no existing constitutional provision or legislative provision that protects against discrimination on the ground of sexual orientation. There is no protective legislation such as an Equal Opportunities Act or Anti-Discrimination Act that affords protection from discrimination in the areas of employment, healthcare, and education. Additionally there is no specific LGBTQ+ hate crime or hate speech legislation under which LGBTQ+ individuals can claim protection from

discrimination. The absence of such constitutional or legislative protection leaves LGBTQ+ persons who encounter discrimination without recourse for legal redress and protection.

### **Liberty and security, SDG 10- in equality**

It was recommended to implement measures to protect the LGBTQ+ population from harassment and violence (Uruguay A/HRC/23/11-para 192). This recommendation was supported.

This recommendation has not been implemented. No specific legislative framework has been established to protect the LGBTQ+ population from harassment and violence. Furthermore reports of incidences of harassment and violence against the LGBTQ+ population are not treated with the same due attention, seriousness and diligence as other matters reported to the police.

LGBTQ+ individuals report being subjected to violent crimes, acts of discrimination and to cruel, inhuman and degrading treatment by private individuals and in some instances state actors such as members of the police force.

It has been established that laws such as Section 9, 11 and 12 of the Barbados Sexual Offences Act engenders violence against LGBTQ+ persons. Research shows that many of the crimes committed against sexual and gender minorities are enabled because perpetrators know they will not be punished or believe that they are privately enforcing the law. Many LGBTQ+ persons also fear reporting crimes that have been committed against them out of fear that charges will be brought against them because of their sexual orientation.

There have been documented cases of discrimination by the police towards members of the LGBTQ+ community. In 2016 a trans-woman was taken into police custody. This individual was subjected to discriminatory, egregiously insulting and derogatory statements and hostile treatment meted out by several of the police officers that were present at the station. She was insulted about gender identity and her female attire by the police officers. The police officers refused treat her as a female, told her that she was not a female, and persisted to

refer to her, using male pronouns and styles of address. This individual; who has fully formed breast was also subjected to a humiliating strip search in the presence of males<sup>7</sup>. A report of this incident was made to the police complaint authority, to date there has been no update as to the status of the matter, none of the police officers have faced internal disciplinary action or criminal prosecution, neither has the victim been afforded any remedy such as compensation, an apology or satisfaction and guarantees of non-repetition.

This situation of failure to conduct and provide effective investigations, prosecution, punishment and remedies amounts to impunity in crimes committed against LGBTQ+ individuals and sends the message that violence and discrimination against LGBTQ+ individuals is tolerated. This favors the perpetuation and social acceptance of this phenomena and leads to feelings of insecurity among LGBTQ+ individuals as well as persistent distrust on their part in the administration of justice.

Some members of the LGBTQ+Q+ community have reported having positive interactions with police officers, noting that certain police stations were sensitized to the needs of the LGBTQ+Q+ community and maintained confidentiality while protecting their safety. Others describe experiencing discrimination at the hands of the police while reporting crimes committed against them or seeking protection. A female LGBTQ+Q+ individual reported, "When I interact with the police, it ends up being about my sexuality rather than the incident. I can't find justice. Safety and justice are things that are so basic. [Does this mean] I can't count on you (the police) to protect me from being shot because I am a lesbian?" Another individual relayed an incident in which the police respondent refused to provide protection to men in gender non-conforming attire who feared for their lives. In response to these concerns, the officer stated, "he did not care" and added that if his son was among the group, "he would kill him just then. There is a need for well - trained, sensitized police officers and police stations." In short there is no uniform standard of treatment given to the LGBTQ+Q+ community by police officers, it varies and is very much dependent on

the individual officer's attitude and feelings about LGBTQ+Q+ persons, and which police station the complaint is made at. <sup>1</sup>

### **OTHER HUMAN RIGHTS ISSUES**

#### **Right to work; Article 6 ICESR, Article 11 CEDAW**

Gender identity and expression have a significant, negative impact on employment. "Individuals with non-traditional gender expressions (be they transgendered or cis-gendered persons whose gender expression does not align with traditional gender expectations) face discrimination in the job market and lack of protection in the workplace." LGBTQ+ interviewees reported experiences of discrimination, where employers evinced "reluctance or unwillingness to hire qualified applicants with non-traditional gender expression. While these applicants may receive a callback or interview on the basis of their written application, employers may discontinue the interviewing process once visual or verbal cues reveal a non-traditional gender expression. Women are penalized for lack of femininity; men for lack of masculinity and transgender persons are subject to intense scrutiny" <sup>2</sup>

Neither public nor most public employers have policies to address discrimination on any basis, including sex, gender identity or expression or sexual orientation. The lack of national legislation to offer employees leaves LGBTQ+ individuals vulnerable to discrimination. In the 2013 CADRES survey on attitudes towards homosexuals 30 % of Barbadians reported that they would prefer not to have a homosexual as an employee and 12% of Barbadians were unsure of about how they would feel having a homosexual as an employee. <sup>3</sup>

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<sup>1</sup> Haynes, T. *Input to National Gender Policy Lesbian, Gay, Bisexual and Transgender Focus Group*, UWI Institute for Gender & Development Studies, 10, (9, July, 2014)

<sup>2</sup> Haynes, T. *Input to National Gender Policy Lesbian, Gay, Bisexual and Transgender Focus Group*, UWI Institute for Gender & Development Studies, 8, (9, July, 2014)

<sup>3</sup> Wickham, P. *Attitudes Towards Homosexuals* (2013). Rep. Bridgetown : Caribbean Development Research Services Inc,

Where discrimination on the basis of gender identity frustrates the ability of LGBTQ+ individuals to earn a living, it exacerbates their vulnerability and narrows their choices. As one LGBTQ+ individual notes, it can lead to poverty. She said, “I have to change my gender expression to find a job. Jobs are hard to find for everyone, but we become the poorest of the poor because we have an extra disadvantage”

Confronting these obstacles bears a toll on individuals. As a LGBTQ+ individual noted, “it is frustrating for people to decide what I can or cannot do based on the way I look.” Another detailed the lived experience, adding, “You get passed over for jobs and for promotions you know you are qualified for. I’ve had interviews where in the middle of the person got up and carried out a conversation; in another the interviewer shut down and stop taking notes.”<sup>4</sup>

### **Right to health- Article 12 ICESR, Article 12 CEDAW, and Article 24 CRC, SDG 3 Good Health and Well Being**

#### **Discrimination in accessing health care**

Discrimination and stigma are major barriers to accessing health care for LGBTQ+ individuals. Discrimination can result in outright refusal to provide health care, poor quality care and disrespectful or abusive treatment. Health care providers may also have a poor understanding of the specific health care needs of LGBTQ+ people. The pervasive stigma and discrimination that LGBTQ+ individuals face has a negative impact on mental and emotional health, “leading to higher levels of stress, anxiety and self-harming behaviors such as suicide. However the cost of qualified mental health care [sensitized to the needs of the LGBTQ+ community] barred low-income individuals from accessing these services. The research added that individuals seeking care to address the anxiety and stress triggered by discrimination sometimes re-traumatized by negative, discriminatory experiences with staff. Participants “suggested that government could save a percentage of health care costs by addressing stigma and discrimination.”

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<sup>4</sup> Haynes. T, *Input to National Gender Policy Lesbian, Gay, Bisexual and Transgender Focus Group*, UWI Institute for Gender & Development Studies, 8, (9 July, 2014)

There is a dearth of LGBTQ+ friendly health care providers in the public sector and only a few in the private sector. For LGBTQ+ identified individuals who seek health care services, their ability to access appropriate care relies on the potential openness of the individual doctors and services. One participant note “it is only by pure chance of individuals being open minded, but there is no adopted policy of non-discrimination at any polyclinic.”<sup>5</sup>

### ***Access to healthcare for LGBTQ+ adolescents***

Accessing health care for adolescent LGBTQ+ individuals is made even more difficult because of the legal gap existing between the age consent and medical treatment age. The law does not state that health care providers cannot provide treatment to persons under the age of eighteen neither does it state that they can. However doctors operate on the basis that the legal age of majority is 18, and so “children” cannot receive treatment without their parents. Inconsistently the legal age of consent for sexual activity is sixteen. These laws and policies serve to refuse and deter LGBTQ+ adolescents from even inquiring about sexual and reproductive health treatment and services. The result is that LGBTQ+ adolescents are unable to obtain services, information and contraceptives to protect themselves from, HIV and other sexually transmitted diseases.

### ***Lack of access to hormone replacement therapy***

Many transgender people use or want to have access to feminizing or masculinizing hormones to align their physical appearance with their gender identity. However hormone replacement therapy is not a part of the national health program. This lack of provision of HRT involves out of pocket expenses and self-medication by transgendered persons. The pathophysiology of cross- gender hormone use is complicated, and with limited guidance and follow up by doctors, transgender people can unintentionally harm themselves by self-medicating.

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<sup>5</sup> Haynes. T, *Input to National Gender Policy, Lesbian, Gay Bisexual and Transgender Focus Group*, UWI Institute for Gender & Development Studies, 11 (9 July 2014)



Quality hormones at local pharmacies are limited, so transgender individuals report that they are forced to turn to the black market to access hormones

### **Legal recognition of gender identity before the law – Article 16 ICCPR**

There is no law in Barbados or court procedure/court process under the Civil Procedure Rules to have one's gender marker (the indication of male or female on identification documents) changed. For comparative example, an individual can go to the High Court of Barbados and file an application with the court registry by way of deed poll to have their name changed. There is no legal provision or court process that similarly would allow an individual to file an application to have their gender marker changed. However it must also be noted that there is no law existing which expressly prohibits an individual changing their gender marker. Therefore what exist is a void in the law.

There has been a situation of a transgender female seeking to have the gender marker on their birth certificate and other legal identification documentation changed from male to female. Court officers told this individual that there was no process to facilitate such a change.

### **RECOMMENDATIONS**

The Charter of Fundamental Rights and Freedoms should be amended to prevent discrimination on the basis of one's sexual orientation, gender identity, gender expression, or any other relevant trepidation.

Ratify and implement key international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women;

### ***Equality and Nondiscrimination***

Repeal Section 9 and 12 of the Barbados Sexual Offences Act, which criminalizes consensual same-sex activity. The removal of these laws would allow the

LGBTQ+Q+ population to access sexual and reproductive health services without fear of discrimination, stigma or criminal prosecution.

### ***Liberty and Security, SG10***

Enact LGBTQ+ specific hate crime legislations to allow for the prosecutions of individuals who commit acts of violence against members of the LGBTQ+Q community. Also enact legislation, which prohibits discriminations on the basis of sexual orientations and gender identity. Complimentary to this the Government should engage in public education and sensitization campaigns about LGBTQ+ individuals to combat and transform attitudes of prejudice, discrimination and stigma.

### ***Right to Work***

Enact legislation that prohibits employers from discrimination on the basis of sexual orientation and gender identity in the hiring process and at all levels and spheres of the employment process.

### ***Right to Health***

The Government should continue to collaborate with civil society to conduct human rights sensitisation training among health workers and use this as a model for other state agencies such as social and welfare services, education and youth and community development to build capacity to provide non-discriminatory services to LGBTQ+ people.

Train health care providers to address the medical and mental health needs of LGBTQ+ individuals. Such trainings would increase the understanding of health care providers of the impact of stigma and discrimination on HIV prevention, treatment and case and the other specific health care needs of LGBTQ+ individuals. Additionally broaden the scope of the public health care policy to include access to hormone replacement therapy for transgender persons. Enact legislation, which allows persons above the age of 16 but below the age of 18 to access medical treatment and services without the need for parental consent.