



OUTRIGHT INTERNATIONAL

HIGHLIGHTS OF THE WORK OF CARIBBEAN HUMAN RIGHTS DEFENDERS IN SECURING POSITIVE SYSTEMIC CHANGE IN THE CARIBBEAN

19 October 2022

For submission to the UN Special Rapporteur on Human Rights Defenders

Outright International

Introduction

Outright International (“Outright”) is pleased to submit input on the positive change achieved by human rights defenders in advance of the 25th anniversary of the adoption of the UN Declaration on Human Rights Defenders. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, and civil society partners. Outright holds consultative status at the United Nations, where it serves as the secretariat of the UN LGBTI Core Group.

QUESTIONS

1. Have you, or other human rights defenders, played a role in achieving a small victory and/or positive systemic change in your region/country which has led to sustained improvements in the human rights of others? If so, please provide examples.
2. How did you or other human rights defenders achieve these improvements and what has been the impact on those whose rights were improved?
3. Were you or other human rights defenders subjected to risk while working to bring about this change? Please state what kind of risk. N/A
4. Who (eg Government agencies, NHRIs, other NGOs, INGOs, international mechanisms, media) supported and protected you other human rights defenders in achieving this change? What did they do? N/A
5. What actions do you suggest the Special Rapporteur can take to:
 - a. Assist human rights defenders to achieve successes similar to the ones you achieved or have seen?
 - b. Encourage States and businesses to provide an environment to enable other human rights defenders to achieve successes similar to the ones you achieved or have seen?

RESPONSES TO QUESTIONS #1 AND 2

Over the past 25 years, human rights defenders in the Caribbean have made significant contributions in securing legal and policy changes which advance the human rights situation of LGBTIQ people in the region. Caribbean human rights defenders used (1) direct advocacy with decision-makers; (2) documentation; (3) strategic litigation and (4) media campaigns to advance their efforts in securing positive change. Key advances have been made in:

1. **Guyana (2011)** - **Human rights defenders in Guyana used direct advocacy with decision-makers to prevent regressive legislation on the issue of HIV.** In 2011, the National Assembly of the Parliament of Guyana resolved to criminalize HIV transmission by (1) making it an indictable offence any person to transmit the virus to any other person, when they would have had prior knowledge of their infected status;(2) amending non-disclosure laws or guidelines to allow information to be used by the prosecution if so required; (3) ensuring that all agencies, clinics, hospitals which have the results of tests and other vital information are bound by law to release such information to any court engaged in a matter. In response, the Society against Sexual Orientation Discrimination (SASOD) and the National AIDS Committee (NAC) made submissions and participated in oral hearings with the Special Select Committee of Parliament which was established to consider the issue. They highlighted the potential disproportionate and discriminatory effect of HIV criminalization on certain groups. Men who have sex with men, e.g. would be further stigmatized and thereby inhibited in accessing HIV testing, prevention, and care. Through direct advocacy, these human rights defenders helped in preventing the passage of a law which would further alienate and criminalize groups including those in the LGBTIQ community that are in a position of vulnerability and which are most targeted for discriminatory policing and prosecution.
2. **Belize (2016)** – **Human rights defenders used strategic litigation in removing sodomy law in section 53 of the Belize Criminal Code which criminalized ‘carnal intercourse against the order of nature’ and which in effect criminalized consensual anal intercourse between males.** In *Caleb Orozco v Attorney General of Belize*¹, Caleb Orozco and United Belize Advocacy Movement (UNIBAM) challenged the constitutional validity of section 53 of the Belize Criminal Code to the extent that it operated to criminalize anal sex between two consenting male adults in private. The challenge was launched with the guidance and support of lawyers from the University of the West Indies Rights Advocacy Project (U-RAP). The Court declared that section 53 contravened the constitutional rights to privacy and dignity, equality before the law and equal protection of the law. The Court revised the language of the law making it clear that section 53 shall not apply to consensual sexual acts between adults in private.
3. **CARICOM States (2016)** – **Human rights defender, Maurice Tomlinson used strategic litigation to challenge the immigration laws of Belize and Trinidad and Tobago.**² These laws prohibited

¹ *Caleb Orozco v Attorney General of Belize* Claim no. 688 of 2010 Supreme Court of Belize decided 10 August 2016 <https://www.belizejudiciary.org/uncategorized/caribbean-judicial-information-system/>

² *Maurice Tomlinson v State of Belize, Maurice Tomlinson v State of Trinidad and Tobago* [2016] CCJ 1 (OJ) <https://www.cci.org/wp-content/uploads/2022/01/2016-CCJ-1-OJ.pdf>

“homosexuals” from entering each country. Belize and Trinidad and Tobago are Member States of Caribbean Community (CARICOM) with a legal obligation under the Revised Treaty of Chaguaramas to allow CARICOM nationals entry and free movement. Maurice Tomlinson launched his challenge in the Caribbean Court of Justice because it is the court that has jurisdiction to hear and determine matter arising under the Revised Treaty of Chaguaramas. Maurice Tomlinson claimed that the immigration laws of Belize and Trinidad and Tobago violated his right to freedom of movement as a CARICOM national. Maurice Tomlinson was unsuccessful in his challenge. The Court determined that as a matter of practice, the restriction under the immigration laws were not being applied, and so Maurice Tomlinson was not at risk of being denied entry. However, Tomlinson’s challenge brought awareness to the presence and discriminatory effect of these immigration laws. It further caused the Court to reiterate the legal obligation of Member States to allow all CARICOM nationals hassle-free entry and an automatic stay of six months unless they ‘present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.’ Of note is the Court’s statement that homosexuals, as such do not present such a threat and that homosexual CARICOM nationals have a right to freedom of movement on the same terms as any other CARICOM national.

4. **Guyana (2018) – Human rights defenders used strategic litigation in removing a discriminatory law targeted at trans persons.** In *Quincy McEwan et al. v. AG of Guyana*³, four trans persons and the Society Against Sexual Orientation Discrimination (SASOD) successfully challenged the constitutionality of an 1893 law which criminalized cross-dressing for an improper purpose. The Caribbean Court of Justice Guyana’s final appellate court determined that this law violated the trans persons’ right to equality and non-discrimination and freedom of expression. It was also unconstitutionally vague and contrary to the rule of law. The Court ordered that section 153(1) (xlvii) be struck from the Summary Jurisdiction (Offences) Act. The litigation in McEwan was coordinated by human rights defenders at the Faculty of Law, The University of the West Indies Rights Advocacy Project.
5. **Trinidad and Tobago (2018) – Human rights defenders successfully challenged buggery and serious indecency laws.** In 2018, human rights defender Jason Jones was successful in his constitutional challenge of sections 13 and 16 of the Sexual Offences Act which created the offences of buggery and serious indecency, respectively. These laws criminalized same-sex sexual relations between consenting adults. The High Court in *Jason Jones v The Attorney General of Trinidad and Tobago*⁴, declared that sections 13 and 16 of the Sexual Offences Act were unconstitutional, illegal, null, void, invalid, and are of no effect to the extent that these laws criminalise any acts constituting consensual sexual conduct between adults. **Although a commission of parliament, the Equal Opportunity Commission joined the constitutional challenge as an Interested Party and adopted the submissions made by Jason Jones. The Equal Opportunity Commission** was established by section 26(1) of the Equal Opportunity Act 2000 and appointed in 2008 with a mandate to work towards the elimination of discrimination and

³ *Quincy McEwan et al. v. AG of Guyana*, [2018] CCJ 30 (AJ)
<http://www.ccj.org/wp-content/uploads/2021/02/2018-CCJ-30-AJ2-mod.pdf>

⁴ *Jason Jones v The Attorney General of Trinidad and Tobago and The Equal Opportunity Commission, The Trinidad and Tobago Council of Evangelical Churches, The Sanatan Dharma Maha Sabha of Trinidad and Tobago* Claim No. CV2017-00720 decided 12 April 2018
http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/rampersad/2017/cv_17_00720DD12apr2018.pdf

the promotion of equality and good relations between persons of different statuses.⁵ The Commission has been a staunch defender of the human rights of LGBTIQ persons advocating for changes to the Equal Opportunity Act that will allow LGBTIQ persons to be able to seek redress where they are discriminated against on the basis of their sexual orientation. Although this legal change is not yet realized the efforts of the Equal Opportunity Commission must be noted.

6. **Saint Lucia (2022) – Human rights defenders secured strengthened protection from domestic violence via the Domestic Violence Act, 2022.** Civil society organizations including Raise Your Voice St. Lucia and United and Strong Inc. engaged in direct advocacy with decision-makers to ensure that the new domestic violence legislation offers equal protection to persons in same-sex relationships – a group that is routinely excluded from the full scope of protection in domestic violence laws in the region. This new domestic violence legislation allows persons in same-sex relationships to access remedies under the Act. The law also prohibits discriminatory treatment in the provision of services on grounds which include sexual orientation and gender identity.

7. **Eastern Caribbean States (2022) – Antigua and Barbuda AND Saint Kitts and Nevis (2022) Human rights defenders in the Eastern Caribbean are using strategic litigation to get rid of colonial era sodomy laws.** Constitutional challenges have been launched in Antigua and Barbuda, Saint Kitts and Nevis, Barbados, Grenada and Saint Lucia. These efforts are led by the Eastern Caribbean Alliance for Diversity and Equality (ECADE) working with local human rights and LGBTIQ organizations and with a team of Caribbean and international human rights lawyers advising. ECADE is an independent umbrella organization working with LGBTIQ and other human rights organizations to secure equality in the Eastern Caribbean.

The High Court of the Justice of the Eastern Caribbean Supreme Court in Antigua and Barbuda and Saint Kitts and Nevis have already declared that the respective criminal laws violate constitutional rights and as such must be read as not applying to consensual sexual acts between adults in private. In *Orden David et al v The Attorney General of Antigua And Barbuda*⁶, the Court found that sections 12 and 15 of the Sexual Offences Act violated the constitutional rights to liberty, protection of the law, freedom of expression, protection of personal privacy and protection from discrimination on the basis of sex. These sections address the offences of buggery and serious indecency respectively. In *Jamal Jeffers et al and St Kitts & Nevis Alliance for Equality v The Attorney General of St. Christopher and Nevis*⁷, the Court determined that sections 56 and 57 of the Offences against the Person Act violated the constitutional rights to privacy and freedom of expression. These sections criminalise buggery and indecent assault against males respectively.

⁵ Equal Opportunity Commission, About Us, <https://equalopportunity.gov.tt/about/> accessed 14 October 2022

⁶ *Orden David et al v The Attorney General of Antigua And Barbuda* Claim No. ANUHCV2021/0042 decided July 5, 2022 <https://www.eccourts.org/orden-david-et-al-v-the-attorney-general-of-antigua-and-barbuda/>

⁷ *Jamal Jeffers et al and St Kitts & Nevis Alliance for Equality v The Attorney General of St. Christopher and Nevis* Claim No.: SKBHCV2021/0013 decided August 29, 2022 <https://www.eccourts.org/jamal-jeffers-et-al-v-the-attorney-general-of-st-christopher-and-nevis/>

8. **Jamaica (2011) – Human rights defenders in Jamaica are securing changes at the institutional levels.** Through the efforts of LGBTQ human rights organizations, such as J-FLAG, Jamaican lawmakers and policymakers are more sensitized on issues affecting LGBTQ persons in Jamaica. There is also some institutional progress. In August 2011, the Jamaica Constabulary Force published its Diversity Policy which provides overall direction to all members of the Force.⁸ The Diversity Policy mandates fair and equitable treatment of all individuals and expressly prohibits police officers from discriminating against anyone on several grounds, including on the basis of a person’s sexual orientation. The Policy adopts a definition of diversity as *a concept that recognizes individuals and groups from a broad spectrum of demographic and philosophical differences. It includes the acceptance of persons without prejudice and discrimination, irrespective of their religion, ethnicity, sexual orientation, class, colour, creed or political ideology.* The Policy expressly states that it is the duty of all members of the police force to adhere to the policy on diversity, which aims to eliminate all forms of discrimination and inequitable treatment towards all members of the public.

Regional Initiatives

9. In addition to the specific examples provided above, regional organizations and networks such as the Caribbean Vulnerable Communities Coalition (CVC) and United Caribbean Trans Network (UCTRANS) continue to work with inadequately served and marginalized populations across the region in securing access to key services and protection from discrimination. UCTRANS works with transgender persons while CVC works with men who have sex with men, persons of trans experience, sex workers, people who use drugs, marginalized children and youth, and migrant populations.⁹ Both organizations use direct advocacy with decision-makers, documentation and media campaigns to advance their efforts.
10. The UWI Rights Advocacy Project (U-RAP) has also made significant strides in coordinating strategic litigation across the region targeting laws which discriminate against LGBTIQ persons. U-RAP is a project within the Faculty of Law, the UWI, aimed at promoting human rights, equality and social justice in the Caribbean by undertaking and participating in human rights litigation in collaboration with human rights lawyers and civil society organizations.¹⁰

RESPONSE TO QUESTION #5: SUGGESTED ACTIONS FOR THE SPECIAL RAPPORTEUR

1. Increase the visibility of the Special Rapporteur’s mandate within the Caribbean region
2. Provide guidance on the mechanisms that human rights defenders in the Caribbean can use to help them in engaging with policymakers and lawmakers to secure positive legal and policy changes

⁸ Jamaica Constabulary Force, Force Orders 3351, August 25, 2011

⁹ Caribbean Vulnerable Communities Coalition, Who We Are <https://cvccoalition.org/who-we-are/> accessed October 12, 2022; UCTRANS, Who We Are <https://uctrans.org/about/> accessed October 12, 2022

¹⁰ See Janeille Matthews and Tracy Robinson, “Modern Vagrancy in the Anglophone Caribbean,” *Caribbean Journal of Criminology* 1, 4 (2019): 123-134, endnote 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3210831 (accessed 12 October 2022); Arif Bulkan and Tracy Robinson, “Enduring Sexed and Gendered Criminal Laws in the Anglophone Caribbean,” *Caribbean Review of Gender Studies* 11 (2017): 227-228, https://sta.uwi.edu/crgs/december2017/documents/CRGS_11_Pgs_219-240_ABulkan_TRobinson_EnduringSexedGendered.pdf (accessed 12 October 2022).

