



**Human Rights Watch Submission  
to the Independent Expert’s Report  
on Colonialism and Sexual Orientation and Gender Identity  
May 2023**

**Statement of Interest**

Human Rights Watch is an international nonprofit, nongovernmental organization that reports on violations of human rights worldwide with the goal of securing the respect of those rights for all persons. This submission, based on research conducted by Human Rights Watch in recent years, focuses on the way that colonial-era laws that criminalize consensual same-sex conduct negatively impact the lives of lesbian, gay, bisexual, and transgender (LGBT) people. This submission focuses on the Anglophone Caribbean as an illustrative example of how, even if unenforced, these laws contribute to a climate where violence and discrimination occurs frequently.

**Legal and Historical Framework**

The criminal codes of Dominica,<sup>1</sup> Grenada,<sup>2</sup> Guyana,<sup>3</sup> Jamaica,<sup>4</sup> Saint Lucia,<sup>5</sup> and Saint Vincent and the Grenadines<sup>6</sup> retain “buggery” and “indecent” provisions, imposed on the region by Great Britain in the nineteenth century,<sup>7</sup> that penalize same-sex conduct between consenting persons.

Colonial-era laws regulating people’s bodies, which included laws criminalizing gay sex—as well as others related to, for example, vagrancy—sought to impose the control of the

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<sup>1</sup> Sexual Offences Act 1998, §§ 14, 16 (Dominica).

<sup>2</sup> Criminal Code §§ 430 (“grossly indecent act”), 431 (“unnatural connexion”) (Grenada).

<sup>3</sup> Criminal Law (Offences) Act, §§ 352, 353, 354 (Guyana).

<sup>4</sup> Offences against the Person Act, §§ 76, 79 (Jamaica).

<sup>5</sup> Criminal Code 2004, §§ 132, 133 (Saint Lucia).

<sup>6</sup> Criminal Code, §§ 146, 148 (Saint Vincent and the Grenadines).

<sup>7</sup> Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, December 2008, <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>, pp. 13-25.

colonial apparatus over social and economic life in the colonies.<sup>8</sup> Colonial legislators and jurists introduced such laws as part of a larger effort to consolidate or codify criminal laws introduced in the 19th Century colonial period.<sup>9</sup>

Cases of enforcement of these colonial-era laws today is infrequent,<sup>10</sup> but they inflict harm as their vague wording and broad latitude serve to legitimize discrimination and hostility towards LGBT people. While more empirical research is needed on the impact of the laws on the formation of public opinion,<sup>11</sup> they single out, in a discriminatory manner, a vulnerable social group and they sanction widespread beliefs, attitudes, and behaviors of discrimination, stigma, and violence against LGBT individuals.<sup>12</sup> The laws also promote violence and cloak it in impunity, giving additional discretion to police and others to engage in arbitrary “arrest, blackmail, and abuse.”<sup>13</sup>

## Human Rights Violations

With the exception of Guyana, Human Rights Watch has conducted research in each of the countries in the Caribbean that continue to criminalize gay sex, documenting violations related to these laws in the areas of public security, health, education, and employment, among others. For the present submission, Human Rights Watch will focus on violations of the rights to life and security.

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<sup>8</sup> A ruling in Guyana that struck down a law that criminalized cross-dressing in 2018 provides relevant context on the situation in Guyana, including on the context that led to the enactment of the law criminalizing cross-dressing, as part of a larger effort to curtail vagrancy, designed to control the formerly enslaved population and indentured laborers. *McEwan et al. v. Attorney General of Guyana*, [2018] CCJ 30 (A), paras. 30-34, <https://www.humandignitytrust.org/wp-content/uploads/resources/MC-EWAN-et-al-v-AG-OF-GUYANA-Copy.pdf>. See also “Guyana: Stop Dress Code Arrests,” Human Rights Watch, March 5, 2009, <https://www.hrw.org/news/2009/03/05/guyana-stop-dress-code-arrests>.

<sup>9</sup> An influential figure in this process was R.S. Wright, an English barrister which drafted a model criminal code for Jamaica at the request of the Colonial Office. While it was never enacted in Jamaica, his Code of Criminal Law and the Code of Procedure, drawing on the Offences Against the Persons Act 1861, c. 100 (24 & 25 Vict.), §§ 61-63 (England and Ireland), were finalized in 1877 and became one of the strongest influences in the Anglophone Caribbean. See Westmin R.A. James, “Buggery Laws and Gross Indecency Laws in the ‘Commonwealth Caribbean,’” in Human Rights Watch, *“I Have to Leave to Be Me”: Discriminatory Laws against LGBT People in the Eastern Caribbean* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

<sup>10</sup> Civil society reported at least three cases of proceedings against individuals for “unnatural connexion.” See Comisión Interamericana de Derechos Humanos (CIDH), “Informe sobre el 156 Período de Sesiones de la CIDH,” comunicado de prensa, December 24, 2015, <http://www.oas.org/es/cidh/prensa/comunicados/2015/120a.asp> (Spanish) (accessed May 19, 2023).

<sup>11</sup> A study based on survey data from 2013 in Barbados, Guyana, and Trinidad and Tobago found that half of heterosexual respondents (49.6%) believed the laws were in line with moral standards, 48.6% thought the laws were important from a public health perspective, and 40.8% believed that the laws protect young people from abuse. Mahalia Jackman, “Protecting the fabric of society? Heterosexual views on the usefulness of the anti-gay laws in Barbados, Guyana and Trinidad and Tobago,” *Culture, health & sexuality*, (2017), vol. 19, no. 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5213255/>, pp. 91–106 (accessed May 19, 2023).

<sup>12</sup> Human Rights Watch, *This Alien Legacy*, p. 5.

<sup>13</sup> *Ibid.*, p.5.

For a 2018 report on the Eastern Caribbean<sup>14</sup> and a forthcoming 2023 report on Saint Vincent and the Grenadines,<sup>15</sup> Human Rights Watch interviewed 62 LGBT people from the region,<sup>16</sup> almost all of which suffered at least one incident of physical or verbal abuse, threats, sexual violence, or harassment due to their sexual orientation or gender identity. Some interviewees linked the homophobic violence and impunity under which they live to the laws that criminalize same-sex conduct. For example, a 25-year-old gay man from Saint Vincent told Human Rights Watch in October 2022:

*“People feel they can harass us because of the laws. If people are having an argument, that’s [their] justification for homophobia. They say it’s the laws, that it’s illegal.”<sup>17</sup>*

One 20-year-old gay man from Dominica told Human Rights Watch in 2017:

*“The buggery and gross indecency laws say that we can’t be ourselves... These laws allow the negativity towards gay people to exist, the bigotry, [the] law allows people to insult and do anything [to us].”<sup>18</sup>*

Some interviewees explicitly noted that in part due to these laws they did not trust the police and would not report incidents of anti-LGBT violence. One 28-year-old lesbian from Saint Vincent and the Grenadines told Human Rights Watch in October 2022 what she thought would happen if she ever reported harassment to the police:

*“Nothing would come from going to the police. Because of the laws, same-sex [relations] are illegal. They [the police] would ask, ‘What triggered him?’ ‘Me being gay.’ ‘Okay, then he has the right.’”<sup>19</sup>*

A 24-year-old trans woman from Dominica told Human Rights Watch in 2017 that despite frequent abuses and violence:

*“[P]eople think it is a joke. Every time we make reports to the police station, they don’t take it serious. Many times, I have filed complaints and reports. They come, take the statement, and give attackers only a warning.”<sup>20</sup>*

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<sup>14</sup> Human Rights Watch, *“I Have to Leave to Be Me”: Discriminatory Laws against LGBT People in the Eastern Caribbean*. (New York: Human Rights Watch, March 2018), <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

<sup>15</sup> Human Rights Watch. *“They Can Harass Us Because of the Laws”: Violence and Discrimination against LGBT People in Saint Vincent and the Grenadines*, Forthcoming 2023.

<sup>16</sup> 41 of these interviews were conducted for the 2018 regional report including Saint Vincent and the Grenadines. See supra 16. The remaining 21 were conducted in Saint Vincent and the Grenadines for the 2023 report.

<sup>17</sup> Human Rights Watch interview with John Williams (pseudonym), Saint Vincent, October 25, 2022.

<sup>18</sup> Human Rights Watch interview with Peter (pseudonym), Dominica, February 21, 2017.

<sup>19</sup> Human Rights Watch interview with Lisa Brown (pseudonym), Saint Vincent, October 28, 2022.

<sup>20</sup> Human Rights Watch interview with Emily (pseudonym), Antigua and Barbuda, February 9, 2017.

For a 2014 report on Jamaica, Human Rights Watch interviewed 71 LGBT persons, most of whom said they had been victims of some form of violence based on their sexual orientation or gender identity. Those who had experienced violence frequently said they did not report crimes due to fear of retaliation from the perpetrators or because reporting implied leaving the protection that staying in the closet affords them.<sup>21</sup> Notably, Human Rights Watch documented instances of police threatening to arrest LGBT people to extort them with bribes.<sup>22</sup> Of the 19 who did report these crimes to the police, only 8 cases led to the authorities taking formal statements, and victims were only aware of arrests in 4 of these cases.<sup>23</sup>

As a lesbian woman from Jamaica told Human Rights Watch:

*“When it comes to a crime ...it shouldn’t be that I should be made to [feel] less of a person because of who I sleep with. If I go to a police station and my initial report wasn’t given the light of day, why would I ever go to the police station to report a crime? I’m not walking into a station with a gun but I am treated like a criminal.”<sup>24</sup>*

A previous Human Rights Watch report from 2004 focused on Jamaicans living with or at risk of contracting HIV. Several of the interviewees reported police harassment of people suspected of homosexual conduct, sex workers, and people living with HIV/AIDS, which public security forces often conflated.<sup>25</sup>

An outreach worker from the Jamaica AIDS Support organization, who recounted facing arrest in at least two occasions, told Human Rights Watch, “[P]olice always try to get in the way of handing out condoms ... Police say, ‘How can you be handing out condoms to battymen.... We do not encourage you to do this work because *battymen fi dead* [gay men should be dead].”<sup>26</sup>

## Institutional Response

Government inaction today plays a key role in sustaining the legacy of colonialism. For example, in 2020, the Inter-American Commission on Human Rights (IACHR) called on Jamaica to repeal laws criminalizing same-sex sexual activity, adopt a legal framework with

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<sup>21</sup> Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica*, (New York: Human Rights Watch, October 2014), <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Human Rights Watch interview with Winnie R. (pseudonym), Kingston, April 3, 2013.

<sup>25</sup> Human Rights Watch, *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic*, (Human Rights Watch, November 2004), <https://www.hrw.org/report/2004/11/15/hated-death/homophobia-violence-and-jamaicas-hiv/aids-epidemic>. Sec. Police Abuse.

<sup>26</sup> Human Rights Watch interview with Michael Baily (pseudonym), Kingston, June 18, 2003.

a view to prohibit all forms of discrimination, and effectively investigate violence against LGBT people.<sup>27</sup> Jamaica has failed to implement these measures.

Some politicians in the region have also played a negative role by supporting laws that criminalize gay sex and using homophobic and transphobic language.<sup>28</sup> Former Jamaican Prime Minister Bruce Golding, for example, stated in 2010 that "The encouragement or recognition of the appropriateness of the homosexual lifestyle is going to undermine the effectiveness of family ... and, in that process, undermine the basic fabric of a society."<sup>29</sup> Grenada's former prime minister has also used feminine names in a derogative manner to refer to male opposition representatives.<sup>30</sup>

Prejudice and inequalities affecting LGBT people are regularly reinforced through religion,<sup>31</sup> media,<sup>32</sup> music,<sup>33</sup> and other aspects of day-to-day life. Global political dynamics also have an influence in shaping local government's institutional response.<sup>34</sup> The ways in which the Caribbean has reformed laws on sexual offences and family law, according to some observers, reflect the influence of current trends like globalization in postcolonial nation-state making. For example, reforms in Saint Lucia dealing with violence against women and the family have redrawn the boundaries of authorized forms of conduct, recognizing categories such as "common law unions" and "visiting relationships" that were previously considered racialized threats to the colonial system, but stopping short at addressing the criminalization of homosexuality.<sup>35</sup>

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<sup>27</sup> *Gareth Henry and Simone Carline Edwards v. Jamaica*, Case 13.637, Inter-Am. Comm'n H.R., Report No. 400/20, OEA/Ser.L/V/II, doc. 418 (December 31, 2020), [https://www.oas.org/en/iachr/decisions/2020/JM\\_13.637\\_EN.PDF](https://www.oas.org/en/iachr/decisions/2020/JM_13.637_EN.PDF) (accessed May 22, 2023).

<sup>28</sup> International Gay and Lesbian Human Rights Commission and United and Strong, "Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, Saint Lucia", 2015, <https://unitedandstrongstlucia.files.wordpress.com/2015/08/final-baselineaugust102015-2.pdf> (accessed May 22, 2023).

<sup>29</sup> "Is Jamaica Homophobic?" *Big Think*, September 25, 2010, <http://bigthink.com/videos/is-jamaica-homophobic> (accessed May 18, 2023).

<sup>30</sup> "Prime Minister under fire over homophobic comments," *Caribbean News Service*, May 29, 2017, <https://caribbeannewsservice.com/prime-minister-under-fire-over-homophobic-comments/> (accessed May 18, 2023).

<sup>31</sup> For example, Christianity has a strong influence in Jamaica, but religious leaders have openly condemned homosexual behavior and religious groups have organized mobilizations against the "homosexuality agenda." See Human Rights Watch, *Not Safe at Home*.

<sup>32</sup> Media reflect and fuel widespread homophobia in Jamaican society, including by publishing cartoons that stereotype, ridicule, foment hate against, and demonize LGBT people, as well as publishing sensationalist and homophobic stories. *Ibid.*

<sup>33</sup> A number of popular Jamaican musicians, particularly in the dancehall genre, perform and produce music that contains inflammatory lyrics with regard to LGBT people. *Ibid.*; Human Rights Watch, "*I Have to Leave to Be Me*".

<sup>34</sup> For example, St. Lucia has had a two-pronged approach, where the State—largely reliant on tourism—has been publicly held responsible to address anti-LGBT violence when the targets are legal non-citizens, especially white gay male tourists, but not so when it comes to Saint Lucians themselves. See: Amar Wahab, "Queer affirmations: negotiating the possibilities and limits of sexual citizenship in Saint Lucia," in *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, ed. Nancy Nicol et. al. (London: Human Rights Consortium, 2018), p. 131. Downloaded from the Humanities Digital Library [https://library.oapen.org/bitstream/handle/20.500.12657/46151/1/external\\_content.pdf#page=163](https://library.oapen.org/bitstream/handle/20.500.12657/46151/1/external_content.pdf#page=163) (accessed May 19, 2023).

<sup>35</sup> *Ibid.*

That said, there are some notable positive developments in the region. Barbados, which decriminalized consensual same-sex conduct in 2022,<sup>36</sup> passed legislation providing protections against discrimination in the workplace, including on the basis of sex, sexual orientation, and other characteristics.<sup>37</sup> Its prime minister, Mia Mottley, has also publicly stated that the country will not “discriminate against anybody for any reason”.<sup>38</sup> Additionally, some police officers in the Eastern Caribbean have improved their interactions with LGBT people after undergoing human rights and sensitivity training for police.<sup>39</sup> Saint Vincent and the Grenadines also provided training for law enforcement officers, educators, social workers, and health care providers to create awareness among the civil service on the importance of respecting LGBT people’s rights and expanding their access to public services.<sup>40</sup>

### Regional Efforts to Decriminalize

A growing number of countries in the English-speaking Caribbean have decriminalized same-sex conduct, including Belize (2016), Trinidad and Tobago (2018), Saint Kitts and Nevis (2022), Barbados (2022), and Antigua and Barbuda (2022).<sup>41</sup> This change is the result of civil society efforts to challenge discriminatory laws, spearheaded by organizations like the Eastern Caribbean Alliance for Diversity and Equality (ECADE)<sup>42</sup>.

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<sup>36</sup> Cristian González Cabrera, “Barbados High Court Decriminalizes Gay Sex,” commentary, Human Rights Dispatch, December 13, 2022. <https://www.hrw.org/news/2022/12/13/barbados-high-court-decriminalizes-gay-sex>.

<sup>37</sup> Employment (Prevention of Discrimination) Act, 2020 (Barbados), [https://www.barbadosparliament.com/uploads/bill\\_resolution/06948a67143d62e36c426fbd077e1055.pdf](https://www.barbadosparliament.com/uploads/bill_resolution/06948a67143d62e36c426fbd077e1055.pdf).

<sup>38</sup> “Prime Minister Mottley says all welcomed to Barbados,” *Loop News*, July 22, 2020, <https://barbados.loopnews.com/content/pm-says-all-welcomed-barbados> (accessed May 19, 2023).

<sup>39</sup> Human Rights Watch interview with Bill, Antigua and Barbuda, February 8, 2017; Human Rights Watch interview with Toby, St. Lucia, February 27, 2017; Human Rights Watch interview with Nicholas, St. Kitts and Nevis, February 3, 2017.

<sup>40</sup> The Government of Saint Vincent and the Grenadines Ministry of National Mobilisation, Social Development, Family, Gender Affairs, Youth, Housing and Informal Human Settlement, Gender Affairs Division, “Training Of Trainers Workshop: Sexual Orientation And Gender Identity (SOGI),” October 15, 2019, <http://mobilization.gov.vc/mobilization/index.php/37-news/255-training-of-trainers-workshop-sexual-orientation-and-gender-identity-sogi> (accessed May 19, 2023).

<sup>41</sup> “Antigua and Barbuda: High Court Decriminalizes Gay Sex”. Human Rights Watch news release, July 11, 2022, <https://www.hrw.org/news/2022/07/11/antigua-and-barbuda-high-court-decriminalizes-gay-sex>.

<sup>42</sup> “Justice is never given, it is won: How Eastern Caribbean activists developed the successful strategy to defeat the laws which criminalised LGBT people,” UNAIDS, August 31, 2022, [https://www.unaids.org/en/resources/presscentre/featurestories/2022/august/20220831\\_decriminalization-strategy-eastern-caribbean](https://www.unaids.org/en/resources/presscentre/featurestories/2022/august/20220831_decriminalization-strategy-eastern-caribbean) (accessed May 22, 2023).

Legal challenges are pending a final resolution in Saint Lucia,<sup>43</sup> Dominica,<sup>44</sup> Jamaica,<sup>45</sup> and Saint Vincent and the Grenadines.<sup>46</sup>

## Recommendations

Legal change alone will not be sufficient to transform the overarching legacy of colonialism and its impact on LGBT people, but decriminalization is also a precondition for states to begin playing a positive role. States in the Caribbean should start with the following steps:

- Decriminalize consensual same-sex sexual behavior in Dominica, Grenada, Guyana, Jamaica, Saint Lucia, and Saint Vincent and the Grenadines.
- Enact comprehensive anti-discrimination legislation that protects LGBT people's rights, including in the health, education, and labor sectors.
- Establish public security policies to respect LGBT people's rights, especially against violence.
- Conduct awareness-raising campaigns for the general public, journalists, and public officials, including law enforcement officials and medical professionals, that promote respect for diversity, including gender expression, gender identity, and sexual orientation.
- Pass laws defining rape in a gender-neutral manner and ensuring that an equal age of consent applies to same-sex and different-sex sexual activity.

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<sup>43</sup> "ECADE announces 5-country legal challenge to anti-gay laws," *Now Grenada*, November 2, 2019, <https://nowgrenada.com/2019/11/ecade-announces-5-country-legal-challenge-to-anti-gay-laws/> (accessed May 19, 2023).

<sup>44</sup> "Dominica's anti-buggery law is about to fall- it's about time," *The Sun Dominica*, October 20, 2022, [sundominica.com/articles/dominicas-anti-buggery-law-is-about-to-fall-its-ab-7005/](https://sundominica.com/articles/dominicas-anti-buggery-law-is-about-to-fall-its-ab-7005/) (access May 19, 2023).

<sup>45</sup> Norman Gridley, "Public Defender blocked from joining court challenge to anti-buggery laws," *Jamaica Gleaner*, November 9, 2018, <https://jamaica-gleaner.com/article/news/20181109/public-defender-blocked-joining-court-challenge-anti-buggery-laws> (accessed May 19, 2023).

<sup>46</sup> "Gay men file legal challenges to homosexuality laws in St Vincent," *Barbados Today*, July 27, 2019, <https://barbadostoday.bb/2019/07/27/gay-men-file-legal-challenges-to-homosexuality-laws-in-st-vincent/> (accessed May 19, 2023).