



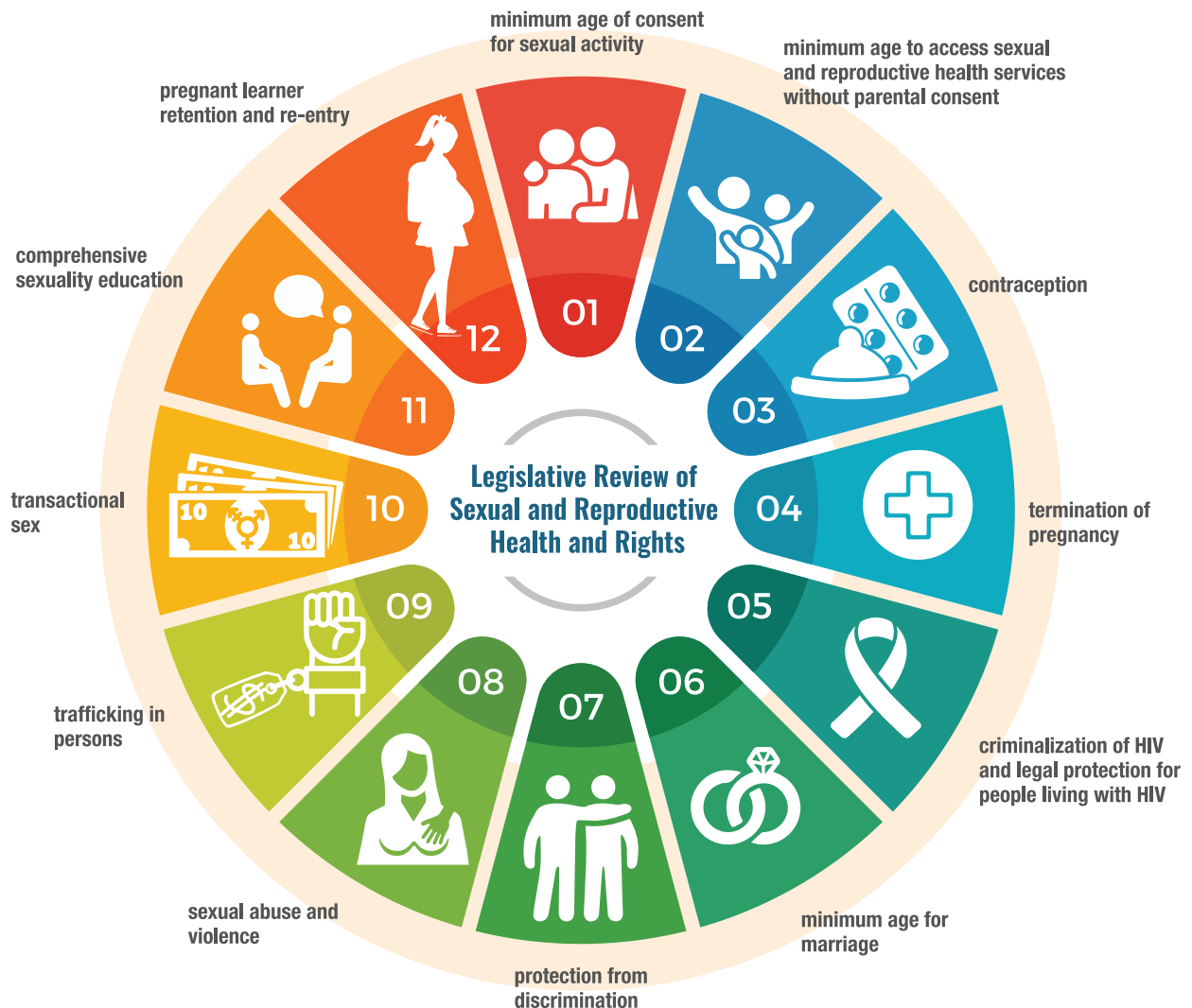
Strengthening the Legislative Framework governing Sexual and Reproductive Health and Rights in the English and Dutch-speaking Caribbean

POLICY BRIEF
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SUMMARY

English and Dutch-speaking countries in the Caribbean have made significant gains in efforts to secure the right to sexual and reproductive health (SRH). In many instances, however, state efforts are hampered by laws and practices that nullify or impair the ability of some individuals and groups from accessing the full range of sexual and reproductive health facilities, services, goods and information.

This policy brief highlights the status of the law on 12 issues affecting the realisation of the right to sexual and reproductive health in 20 English and Dutch-speaking Caribbean countries: Anguilla; Antigua and Barbuda; The Bahamas; Barbados; Belize; Bermuda; British Virgin Islands; Cayman Islands; Dominica; Grenada; Guyana; Jamaica; Montserrat; St. Kitts and Nevis; St. Lucia; Sint Maarten; St. Vincent and the Grenadines; Suriname; Trinidad and Tobago; and Turks and Caicos Islands. It explores the gains and gaps in laws governing (1) minimum age of consent for sexual activity; (2) minimum age to access sexual and reproductive health services without parental consent; (3) contraception; (4) termination of pregnancy; (5) criminalization of HIV and legal protection for people living with HIV; (6) minimum age for marriage; (7) protection from discrimination; (8) sexual abuse and violence – incest, statutory rape, sexual abuse of minors, grooming, child pornography, marital rape, sexual harassment, female genital mutilation, and domestic violence; (9) trafficking in persons; (10) transactional sex; (11) comprehensive sexuality education; and (12) pregnant learner retention and re-entry.



This policy brief urges Caribbean governments to strengthen the legislative framework governing sexual and reproductive health and rights. It advocates for law reform that allows Caribbean governments to align national legislation with international public health and human rights standards and guidelines on sexual and reproductive health and rights. Adoption of the recommendations herein will assist Caribbean governments in achieving the sexual and reproductive health goals and targets in the 2030 Agenda for Sustainable Development. This policy brief complements the report, *Legislative Review of Sexual and Reproductive Health and Rights in the English and Dutch-speaking Caribbean: A Review of 20 Countries* (UNFPA SROC, November 2023).

The Right to Sexual and Reproductive Health

Sexual and reproductive health is an integral part of the right to health.¹ The right to sexual and reproductive health is interdependent with other human rights and entails a set of freedoms and entitlements.² The freedoms include “the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual and reproductive health.” The entitlements include “unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health” under article 12 of the International Covenant on Economic, Social and Cultural Rights.³ Caribbean States have committed to secure the right of everyone to sexual and reproductive health by providing comprehensive health care that has the core elements of availability, accessibility, acceptability, and good quality. This requires repeal or reform of laws and policies that nullify or impair the ability of certain individuals and groups from realizing this right. It also requires that governments ensure equal access to justice and meaningful and effective remedies where the right to sexual and reproductive health is violated.⁴

MAIN FINDINGS

1. Minimum age of consent to sexual activity



The minimum age of consent to sexual activity is 16 in most of the English and Dutch-speaking Caribbean countries under review. The outliers are (1) St. Vincent and the Grenadines, with a 15-year minimum for girls and no stated minimum for boys, and (2) Trinidad and Tobago with an 18-year minimum for penetrative sexual activity and a 16-year minimum for sexual touching.⁵ In some jurisdictions such as Jamaica,⁶ minors who agree to engage in sexual activity with each other may be prosecuted. In some countries, the naming of the offence where an adult engages in sexual activity with a child who is below the age of consent, e.g., “sexual intercourse with a person under sixteen” seemingly minimizes the gravity of the offence and the consequent harm to the child victim - failing to communicate that a child below the stipulated age cannot in law give consent. Guyana and Bermuda are among some countries that make it clear that certain defences cannot be relied upon where one commits sexual offences against children.⁷

2. Minimum age to access SRH services without parental consent



Laws across the English and Dutch-speaking Caribbean do not explicitly set out the age at which persons can access sexual and reproductive health services without parental consent. Five countries - Antigua and Barbuda, the British Virgin Islands, Jamaica, St. Lucia and St. Vincent and the Grenadines have laws that stipulate that 16 is the age at which persons can consent to “surgical, medical or dental treatment.”⁸ Using its ordinary literal interpretation, the reference to “surgical, medical or dental treatment” includes sexual and reproductive health services.⁹ In other countries, it is presumed that the age of majority is

the age at which persons can access sexual and reproductive health services without parental consent. Where the age of consent to sexual intercourse is lower than the age of majority, there is a disparity between the age at which minors are allowed to engage in sexual intercourse and the age at which they are allowed to access sexual and reproductive health services. The uncertainty regarding the minimum age of access to sexual and reproductive health services without parental consent has meant the denial of sexual and reproductive services to adolescents.¹⁰ The denial of sexual and reproductive health services is particularly harmful given the region's high rates of adolescent pregnancies and early sexual debut.

A notable approach has been adopted in Guyana via the Medical Practitioners (Code of Conduct and Standards of Practice) Regulations 2008 and National Sexual and Reproductive Health Policy. The Government has committed to “ensure the access to sexual and reproductive health information and services for adolescent and youth, ensuring the application of the Gillick competency test and the Fraser guidelines in the provision of SRH information and services to adolescents and youths so that where a child has the level of maturity to consent to SRH services, that child can give his/her own consent.”¹¹

3. Contraception



Access to contraception is generally not restricted in law. Notwithstanding this, the unmet need for family planning in the Caribbean region is estimated at 16.3 per cent (2015) with substantive disparities among countries and, within countries, among age groups.¹² Where the method of contraception requires medical treatment or surgical intervention, the usual legal restrictions discussed prior concerning the age at which minors can consent apply. Consequently, adolescents face legal barriers in accessing contraception. There are no laws requiring the consent of a married person's spouse for the married person to access contraceptives or undergo sterilization. In practice, however, across many countries, women's requests for sterilization are denied where the spouse does not consent, where the woman is deemed too young, or where the woman has not yet given birth to a specified number of children.¹³

4. Termination of pregnancy



All countries under review use the criminal law to govern abortion. Barbados and Guyana have Medical Termination of Pregnancy Acts which exist alongside the criminal law but make it clear that notwithstanding the provisions of the criminal law, treatment for the termination of a pregnancy shall be lawful if administered in accordance with the provisions of the Act.¹⁴ Except for five countries - Jamaica, Trinidad and Tobago, Sint Maarten, Suriname, and Turks and Caicos Islands, all other countries expressly identify the circumstances under which abortion is permitted.¹⁵ There are 13 circumstances under which abortion is expressly permitted as follows: (i) to preserve the woman's life (12 countries), (ii) to preserve the woman's physical health (8 countries), (iii) to preserve the woman's mental health (8 countries), (iv) cases of foetal impairment (8 countries), (v) to prevent grave permanent injury to the woman's physical or mental health (6 countries), (vi) in cases of rape, sexual assault or incest (5 countries), (vii) preventing injury to health taking into consideration woman's social and economic environment whether actual or foreseeable (4 countries), (viii) where done in good faith and without negligence for the purposes of medical or surgical treatment (3 countries), (ix) preventing injury to the physical or mental health of any existing children of the pregnant woman's family (2 countries), (x) on account of being a person of unsound mind, the pregnant woman is not capable of taking care of an infant (1 country), (xi) where there is clear evidence of contraceptive failure (1 country), (xii) where the pregnant woman is known to be HIV positive (1 country), and (xiii) on request (1 country).

Circumstances under which abortion is expressly permitted



In countries that criminalize abortion without stating the circumstances under which abortion is permitted reliance can be placed on the criminal law principle of necessity.¹⁶ Under this principle abortion is permitted to save the life of a pregnant woman. The English-speaking countries are further guided by the English case of *R v Bourne*¹⁷ which establishes that where an abortion is performed to preserve the life and health (including mental health) of a woman, then the abortion will not be considered unlawful. This decision, however, only has persuasive authority and in the absence of further guidance from the local legislature or local courts, medical practitioners remain uncertain about when they are allowed to perform abortions and are consequently inhibited from doing so.¹⁸ In an environment of broad criminalization, some women, especially women with limited economic resources, resort to backdoor options risking their health and life.¹⁹



5. Criminalization of HIV & legal protection for people living with HIV

Except for Anguilla, Bermuda, The Bahamas, and St. Lucia, countries in the English and Dutch-speaking Caribbean have not enacted specific laws that criminalize HIV non-disclosure, exposure and infection.²⁰ Belize recently repealed its HIV-specific criminal law. In 2016, Dominica's Sexual Offences Act was amended to make the transmission of HIV an aggravating factor in the determination of sentencing for offences committed under the Sexual Offences Act.²¹ In countries with a common law legal system and following persuasive precedent from the English common law, persons living with HIV can be prosecuted under the general criminal law for reckless and intentional transmission of HIV.²²

HIV-specific criminal laws do more harm than good.²³ There is no evidence showing that HIV criminal laws achieve the purported criminal justice goals of deterrence and retribution nor the public health goals of HIV prevention. The content and application of HIV-specific criminal laws do not account for the true nature of HIV exposure and transmission risks and the scientific limitations in proving whether a person transmitted the virus to another. On the contrary HIV-specific criminal laws (i) undermine existing public health efforts by providing a disincentive to HIV testing and create a false sense of security among people who are HIV-negative, (ii) have a disproportionate impact on vulnerable communities, (iii) fuel stigma and discrimination against persons living with and affected by HIV, and (iv) increase the risk of violence directed towards affected individuals, particularly women, who are especially vulnerable to prosecution under HIV criminal laws.²⁴ Prosecutions and convictions are also likely to be disproportionately applied to sex workers and men who have sex with men.²⁵

Anti-discrimination legislation across the region do not explicitly include HIV status as a prohibited ground of discrimination. Within the context of employment, however, there is some protection from discrimination on the basis of one's HIV status in the employment legislation of Anguilla, Barbados, St. Lucia, The Bahamas, and The British Virgin Islands.²⁶



6. Minimum age for marriage

Child marriage is recognized as a harmful practice that is associated with poor health and economic outcomes.²⁷ All countries allow child marriage except for Antigua and Barbuda and Trinidad and Tobago.²⁸ Suriname, Belize and Guyana are among those countries in the world with high rates of child marriage with 36% of women in Suriname, 34% of women in Belize and 30% of women in Guyana age 20 – 24 being first married or in union before they were 18 years old.²⁹ The minimum age for marriage is 16 in most Caribbean countries. A lower minimum age of 15 exists in The Bahamas, St. Vincent and the Grenadines (for girls only), and Suriname (for girls only). The Bahamas adopts a curious approach by explicitly stipulating that a marriage solemnized between persons either of whom is under the age of 15 years shall be void but nonetheless creates an exception where children as young as 13 years old can get married by an Order of the court.³⁰ Anguilla and Montserrat allow minors “under the age of 16 but over the age of 15” to get married at the discretion of the Governor and Registrar General respectively.³¹ A low minimum age of marriage inhibits the effectiveness of laws which are meant to protect against child sexual abuse.



7. Protection from discrimination

Discrimination within the context of sexual and reproductive health can manifest in various ways. It may include discriminatory treatment in accessing healthcare services, denial of information surrounding sexual and reproductive health and rights, criminalization of services and medical procedures that only women need, allowing the denial of services based on conscientious objection without guaranteeing referral to alternative healthcare providers, subjecting women's access to services to third party authorization, forced sterilization, forced virginity examinations, forced abortion, female genital mutilation (FGM), and early marriage.³²

Caribbean constitutions generally protect against discrimination on specified grounds. The scope of protection varies with the pre-1973 conventional bills of rights covering fewer rights and providing less protection from discrimination.³³ General antidiscrimination legislation is sparse within the region. Of significance are Trinidad and Tobago's Equal Opportunity Act 2000 and Guyana's Prevention of Discrimination Act 1997 which prohibit discrimination in the provision of goods and services. Relevant protected grounds include sex, pregnancy and marital status, and disability.³⁴ Trinidad and Tobago's legislation also protects against discrimination on the basis of "origin, including geographical origin." Jamaica, Antigua and Barbuda, and The Bahamas have standalone disability Acts that specifically address issues of discrimination and access to healthcare.³⁵

8. Sexual abuse and violence



Countries in the English and Dutch-speaking Caribbean have varying scope of protection against sexual abuse and violence. All countries have laws protecting against incest, sexual abuse of minors and domestic violence. Most countries criminalize child pornography. The sexual grooming of a child is criminalized in Bermuda, Dominica, Guyana, Jamaica, Trinidad and Tobago, and Suriname.³⁶ Rape within marriage and sexual harassment remain contested issues. Bermuda, Cayman Islands, Dominica, Grenada, Guyana, Montserrat, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Turks and Caicos Islands fully criminalize marital rape with no exceptions.³⁷ Standalone sexual harassment legislation exists in Belize, Barbados and Jamaica and there is some protection against sexual harassment in Guyana's antidiscrimination law and the criminal laws of St. Lucia and The Bahamas.³⁸ Female genital mutilation is expressly criminalized only in Trinidad and Tobago.³⁹

9. Trafficking in Persons



Trafficking in persons is criminalized in all countries. Thirteen countries - Antigua and Barbuda, The Bahamas, Barbados, Belize, Cayman Islands, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad & Tobago, and Turks and Caicos have standalone trafficking in persons legislation.⁴⁰ In some instances, however, the legal provisions do not guarantee comprehensive support for victims of trafficking. Most countries do not expressly immunize victims from prosecution for engaging in unlawful activities as a direct consequence of being trafficked. Belize, Guyana, St. Lucia and St. Vincent and the Grenadines seemingly provide full immunity to victims for immigration-related offences and any criminal offence that is a direct result of the victim being trafficked.⁴¹ While some countries provide for immunity from prosecution for immigration-related offences only,⁴² for immigration-related and prostitution-related offences,⁴³ or allow victims to provide evidence of being compelled to engage in unlawful activities as a defence to a charge for unlawful activities.⁴⁴

10. Transactional sex



Transactional sex as distinct from "sex work" is not regulated in the English and Dutch-speaking Caribbean. The reference to transactional sex in this Policy Brief adopts the definition provided by UNAIDS that transactional sex is not sex work but "refers to non-marital, non-commercial sexual relationships motivated by an implicit assumption that sex will be exchanged for material support or other benefits."⁴⁵ Acts surrounding sex work, on the other hand, are generally criminalized via offences concerned with vagrancy, procurement, solicitation, trading in sex, living off the earnings of prostitution, and keeping a brothel. The criminalization of acts surrounding sex work "represents a barrier to accessing services, establishing therapeutic relationships and continuing treatment regimes, leading to poorer health outcomes for sex workers, as they may fear legal consequences or harassment and judgement."⁴⁶ Criminalization laws often heighten the risks that sex workers face, limit their ability to protect their physical and sexual health and inhibit them from accessing remedies when they experience sexual violence and other rights violations.⁴⁷



11. Comprehensive sexuality education

The right to education for persons of school learning age is generally guaranteed in the Education Acts. Guyana and Jamaica go a step further by having a constitutionally guaranteed right to education.⁴⁸ The provision of comprehensive sexuality education, however, is not specifically guaranteed and is provided at varying degrees across the region. In some instances where sexuality education has been provided the lessons “reinforced harmful existing gender stereotypes, which feed some of the social norms and beliefs behind violence against women and girls” and reflected “the complete erasure of LGBTQI+ individuals” within the curricula despite LGBTQI youth being among the most marginalised and vulnerable.⁴⁹



12. Pregnant learner retention and re-entry

Notwithstanding the guarantee of access to education in publicly funded schools, girls who become pregnant are usually required to withdraw from their learning institution or generally do so due to the stigma associated with attending school while being pregnant. Re-entry is usually not guaranteed in law. A recent study by UNICEF pointed out that in the Eastern Caribbean Area where teenage mothers are given the option to return to school after giving birth, “few teenage mothers opt to return owing to the stigma attached to teenage pregnancy, and because the decision to return to school is often made by school administrators who are reluctant to have teenage mothers as students.”⁵⁰ Consequently, girls are denied access to an education and this negatively impacts their lives and livelihoods.⁵¹ Jamaica and Guyana have adopted policies that specifically guarantee the retention or re-entry of girls who become pregnant.⁵²

RECOMMENDATIONS FOR LAW REFORM

1. Minimum age of consent to sexual activity

1. Amend laws so that the age of consent to sexual activity for males and females is the same. The age of consent to sexual activity should align with the age of consent to SRH services
2. Repeal laws criminalising adolescents of similar age and close in age who willingly engage in sexual activity with each other⁵³
3. Narrow the defences available to adults who engage in sexual activity with a child below the age of consent by making it clear that “(a) it is not necessary for the prosecution to prove that the complainant did not consent, and (b) belief in consent (whether reasonable or not) is not a defence”
4. Narrow the defences available to adults who engage in forced sexual activity against a child, by making it clear that “it is irrelevant whether at the time of the offence, the accused believed that the complainant was above the minimum age of consent”
5. Rename sexual offences governing adult sexual activity with children below the age of consent so that the naming of the offence sufficiently communicates (a) the gravity of the offence, (b) the harm caused to the child, and (c) the fact that the child cannot in law consent to the sexual activity

2. Minimum age to access SRH services without parental consent

1. Enact law to (a) ensure that the minimum age at which persons can consent to sexual and reproductive health services aligns with the age of consent to sexual activity, and (b) ensure that in cases where an adolescent is below this minimum age, professionals can apply the Gillick competency test and the Fraser guidelines in the provision of sexual and reproductive health information and services where it is in the adolescent’s best interest and where the adolescent has the sufficient level of maturity to be able to give his or her own consent⁵⁴

3. Contraception

1. Enact law stipulating that women do not need the permission or approval of their spouse in order to undergo sterilization or access any other method of contraception in recognition of the fact that the requirement for third-party consent for women’s access to sterilization is recognized as a violation of women’s privacy rights⁵⁵
2. Enact law to (a) ensure that the minimum age at which persons can consent to sexual and reproductive health services (including contraception) aligns with the age of consent to sexual activity, and (b) ensure that in cases where an adolescent is below this minimum age, professionals can apply the Gillick competency test and the Fraser guidelines in the provision of sexual and reproductive health information and services (including contraception) where it is in the adolescent’s best interest and where the adolescent has the sufficient level of maturity to be able to give his or her own consent⁵⁶

4. Termination of pregnancy

1. Ensure that termination of pregnancy as provided for under law is safe, accessible and affordable and aligns with the World Health Organization abortion care guidelines and international human rights standards⁵⁷
2. Enact or amend laws to guarantee State provision of post-abortion care

5. Criminalization of HIV and legal protection for people living with HIV

1. Repeal HIV-specific laws that criminalize non-disclosure of HIV status and exposure to HIV
2. Repeal HIV-specific criminal laws governing reckless and intentional transmission of HIV
3. Limit criminalization to the rare instances of intentional or deliberate transmission of HIV. This should be done using the general criminal law, not an HIV-specific criminal law⁵⁸
4. Enact anti-discrimination legislation that includes HIV status as a prohibited ground of discrimination

6. Minimum age for marriage

1. Amend the law to provide that the minimum age at which any person can consent to marriage is 18

7. Protection from discrimination

1. Guarantee equality before the law and enact antidiscrimination legislation that protects against discrimination in all spheres, including in the provision of goods and services. The protected grounds should be expansive and include the grounds of sex, gender, sexual orientation, pregnancy, marital status, disability, and HIV/AIDS, which are important within the context of the right to sexual and reproductive health.
2. Enact or amend disability legislation to expressly protect the “right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability” and “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes”⁵⁹
3. Create a National Human Rights Institution with a broad mandate and competence to promote and protect human rights. This should be complemented by the adoption and implementation of the Paris Principles in the framework and operation of that institution
4. Ensure that migrants have non-discriminatory access to health care services and that such laws and policies protect migrants’ right to sexual and reproductive health services, regardless of nationality and migration or residence status, equal to nationals⁶⁰

8. Sexual abuse and violence

1. Amend laws governing incest so that they (a) equally apply to all family members and (b) apply to violations committed against a person of the same sex
2. Stipulate mandatory reporting of suspected and confirmed cases of child sexual abuse.
3. Divert child offenders from the criminal justice system with a focus on their reformability⁶¹
4. Criminalize the sexual grooming of a child by an adult
5. Criminalize child pornography in accordance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and which at minimum covers producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography at minimum⁶²
6. Enact law securing appropriate measures to protect the rights and best interests of child victims at all stages of the criminal process⁶³
7. Ensure that minors have “access to redress and secure the availability of child- and gender-sensitive, confidential and safe counselling, reporting and complaint mechanisms to address incidents of sexual exploitation and sexual abuse”⁶⁴
8. Amend law to fully criminalize rape within marriage with no exceptions

9. Enact comprehensive sexual harassment legislation that prohibits sexual harassment and provides appropriate redress for victims
10. Enact law that specifically criminalizes female genital mutilation (FGM)
11. Expand the scope of protection under domestic violence legislation to cover the wide range of acts that constitute domestic violence, including but not limited to physical abuse, sexual abuse, emotional or psychological abuse, financial abuse, stalking including cyberstalking, intimidation, harassment, damage to or destruction of property, and entry into a person's residence without consent where the parties do not share the same residence
12. Expand the scope of persons who are entitled to seek protection under domestic violence legislation to expressly include spouses (married or cohabiting), former spouses, members of the household, persons who share a child or have parental responsibility for a child, persons who are in or were in an engagement, dating or visiting relationship
13. Expressly set out the duties of the police in responding to reports of domestic violence
14. Stipulate that persons providing services to victims of domestic violence are prohibited from treating victims in a discriminatory manner

9. Trafficking in Persons

1. Amend trafficking in persons legislation to ensure that it fully accords with State obligations under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
2. Amend law to expand support services for victims of trafficking to include legal aid, counselling, and medical assistance
3. Expressly provide immunity to victims of trafficking by stipulating that "trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons"⁶⁵

10. Transactional Sex

1. Ensure that individuals who experience violence within the context of their transactional sexual relationship have equal access to legal remedies
2. Ensure that persons engaged in sex work can equally and safely access public services, such as health, social, justice and police services and can similarly access relief if their rights are violated

11. Comprehensive sexuality education

1. Amend law to guarantee the "right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate."⁶⁶ Measures should be adopted to ensure that the information being provided does not reinforce harmful existing gender stereotypes

12. Pregnant learner retention and re-entry

1. Enact law and develop policy guaranteeing the reintegration of adolescent mothers into appropriate formal educational institutions
2. All laws and policies should form part of the proactive measures that States implement to "ensure that pregnant girls continue to attend and complete school, including through the availability of childcare facilities, breastfeeding rooms and counselling on the school premises, and encourage young mothers and girls who have dropped out to reintegrate and re-engage in the educational system"⁶⁷

Table I

Highlighting the legislative status of 12 SRHR issues in the English and Dutch-speaking Caribbean

SRHR ISSUE	LEGISLATIVE STATUS	SOME AREAS OF CONCERN
<p>1. Minimum age of consent to sexual activity</p>	<p>16 in most countries</p> <p>18-year minimum for penetrative sexual activity and 16-year minimum for sexual touching in Trinidad and Tobago</p>	<p>Criminalization of adolescents who willingly engage in sexual intercourse with each other</p> <p>Range of defences available to adults who engage in sexual intercourse with children below the age of consent</p> <p>Naming of some sexual offences</p>
<p>2. Minimum age to access SRH services without parental consent</p>	<p>Not expressly legislated</p> <p>16 for “surgical, medical or dental treatment” in 5 countries - Antigua and Barbuda, the British Virgin Islands, Jamaica, St. Lucia and St. Vincent and the Grenadines</p>	<p>Disparity between the age at which minors are allowed to engage in sexual intercourse and the age at which they can access SRH services without parental consent</p> <p>Uncertainty regarding adolescents’ right to access SRH services and consequent denial of services</p>
<p>3. Contraception</p>	<p>Not expressly legislated</p> <p>Age 16 for “surgical, medical or dental treatment” in 5 countries - Antigua and Barbuda, the British Virgin Islands, Jamaica, St. Lucia and St. Vincent and the Grenadines</p>	<p>Uncertainty regarding adolescents’ right to access contraception and consequent denial of access</p> <p>Spousal authorization for female sterilization is required in practice in some countries</p>
<p>4. Termination of pregnancy</p>	<p>Prohibited altogether with no statutory exceptions in 5 countries – Jamaica, Trinidad and Tobago, Sint Maarten, Suriname, Turks and Caicos Islands</p> <p>Permitted under different grounds in the other countries - 13 altogether</p>	<p>Uncertainty among medical professionals regarding when they can legally provide treatment for termination of pregnancy</p> <p>Denial of safe and accessible treatment for termination of pregnancy</p>
<p>5. Criminalization of HIV</p>	<p>HIV non-disclosure, exposure and/or infection specifically criminalized in Anguilla, Bermuda, The Bahamas, St. Lucia</p> <p>Dominica – HIV transmission is an aggravating factor in the determination of sentencing for sexual offences</p>	<p>Undermines public health efforts by providing a disincentive for HIV testing</p> <p>Disproportionate impact on vulnerable communities</p> <p>Women, sex workers, and men who have sex with men are more vulnerable to prosecution</p>

<p>6. Minimum age for marriage</p>	<p>18 in Antigua and Barbuda, and Trinidad and Tobago</p> <p>16 in most countries</p> <p>15 in The Bahamas (but as young as 13 allowed with court's permission), St. Vincent and the Grenadines (girls only), Suriname (girls only)</p> <p>15 allowed in Anguilla and Montserrat with the Governor's/ Registrar General's permission</p>	<p>Child marriage is allowed in all countries except Antigua and Barbuda and Trinidad and Tobago</p> <p>Low minimum age for marriage inhibits the effectiveness of laws meant to protect against child sexual abuse</p>	
<p>7. Protection from Discrimination (within the context of SRH)</p>	<p>Limited protection generally</p> <p>Protection from discrimination in "the provision of goods and services" in Guyana and Trinidad and Tobago</p> <p>Disability Acts in Jamaica, Antigua and Barbuda, The Bahamas address issues of discrimination and access to healthcare</p>	<p>Limited availability of remedies where one experiences discrimination within the context of sexual and reproductive health particularly for members of vulnerable groups who are discriminated against on the basis of certain status</p> <p>Migrants' access to healthcare is not generally restricted in law but challenges in accessing SRH services in practice</p>	
<p>8. Sexual abuse and violence</p>	<p>Incest, sexual abuse of minors, and domestic violence are criminalized in all countries. Child pornography is criminalized in most countries.</p>	<p>Limited diversion of child offenders from the criminal justice system</p> <p>Non-existent or limited definitions of domestic violence under some domestic violence Acts</p>	
	<p>CRIMINALIZATION</p> <p>Sexual grooming</p> <p>Marital Rape (full criminalization with no exceptions/no partial immunity for husbands)</p>	<p>Bermuda, Dominica, Guyana, Jamaica, Trinidad and Tobago, and Suriname</p> <p>Bermuda, Cayman Islands, Dominica, Grenada, Guyana, Montserrat, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Turks and Caicos Islands fully criminalize marital rape with no exceptions</p>	<p>Narrow scope of persons who can seek relief under some domestic violence Acts</p> <p>Limited protection from sexual grooming, child pornography, sexual harassment, marital rape in some countries</p>

	Sexual harassment	Belize, Barbados, Jamaica, Guyana, St. Lucia, The Bahamas	
	Female genital mutilation	Trinidad and Tobago	
10. Transactional sex	Not regulated in any country but “acts surrounding sex work” are criminalized in all countries	Challenges in access to health services especially for sex workers Challenges in access to remedies where experience violence and other rights violations	
11. Comprehensive sexuality education	Not specifically legislated	Provided at varying degrees	
12. Pregnant learner retention and re-entry	Not legislated Policy exists in Guyana and Jamaica	Re-entry is not guaranteed in law Denial of access or limited access to education for girls who become pregnant	

¹ CESCR, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) para 1

² CESCR General Comment No. 22 (2016) para 9

³ CESCR General Comment No. 22 (2016) para 5

⁴ CESCR General Comment No. 22 (2016) paras 11 – 21, 34, 64

⁵ Trinidad and Tobago Children Act 2012 sections 18, 90; Saint Vincent and the Grenadines Criminal Code CAP 171, section 125(1)

⁶ Jamaica Sexual Offences Act 2009, section 10

⁷ Guyana Sexual Offences Act 2010 section 9; Bermuda Criminal Code as amended by the Criminal Code (Sexual Offences) Amendment Act 1993, section 190

⁸ Antigua and Barbuda Age of Majority Act CAP 11, s. 13; British Virgin Islands Age of Majority Act, 1994 s. 13; Jamaica Law Reform (Age of Majority) Act Cap.11 s.8; St Lucia Criminal Code CAP 3.01, s. 21; St Vincent and the Grenadines Age of Majority Act, CAP 226, s. 4

⁹ See generally John Bell and George Eagle, Cross-Statutory Interpretation (3rd edn, OUP 1995)

¹⁰ Situation Analysis of Adolescent Sexual and Reproductive Health and HIV in the Caribbean – Executive Summary, Washington DC, PAHO, WHO 2013; Government of the Republic of Trinidad and Tobago, Legal Barriers that affect Adolescent Access to Sexual and Reproductive Health Services in Trinidad and Tobago: A Qualitative Study, (UNFPA, 2021) p. 33-39

¹¹ Government of Guyana Ministry of Public Health, Guyana Sexual and Reproductive Health Policy, p. 34 Commitment 6 (e)

¹² UNFPA Caribbean Sub-Regional Office, Family Planning, available at <https://caribbean.unfpa.org/en/topics/family-planning-17> [accessed 10 November 2023]

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¹⁴ Guyana Medical Termination of Pregnancy Act 1995, Barbados Medical Termination of Pregnancy Act 1983

- ¹⁵ Jamaica Offences Against the Person Act 1864 sections 72 and 73; Sint Marteen Criminal Code, SB 2015 No. 44, Arts. 309, Art. 355 and 356; Suriname Criminal Code, SB 2015 No. 44, Arts. 309, 355 and 356; Trinidad and Tobago *Offences Against the Person Act* Chap 11:08 sections 56,57; Turks and Caicos Islands Offences Against the Person Ordinance, CAP 3:08 (2018 Rev. Ed), ss. 41, 42
- ¹⁶ Stephens, *A Digest of Criminal Law (Crimes and Punishments)* (5th edn, MacMillan and Co. 1894) p. 24
- ¹⁷ *R v Bourne* [1939] 1 K.B. 687
- ¹⁸ See 2007 Report of the Abortion Policy Review Advisory Group, Ministry of Health, Parliament Library, Gordon House, Kingston, Jamaica; Tenesha Myrie, 'Substantive Equality, Reproductive Rights and Constitutional Reform in Jamaica' (10,000 words) presented at the international conference "Beyond Human Rights? Rethinking Gender Equality in Law and Politics", 19 – 20 October 2017, Bogotá, Colombia, organized by Oxford Human Rights Hub, Oxford University.
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- ²⁰ Anguilla Criminal Code R.S.A 2000 c.C140 section 150; Bahamas Sexual Offences and Domestic Violence Act, Ch 99, section 8(2); Saint Lucia Criminal Code, section 140
- ²¹ Section 36A Dominica Sexual Offences Act as amended by section 14 of the Sexual Offences (Amendment) Act 2016
- ²² *George Flowers v The Director of Public Prosecutions For and On Behalf of the Government of Canada, The Commissioner of Correctional Services and the Attorney General of Jamaica* [2016] JMFC Full 3
- ²³ HIV Justice Network, *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities*, July 2022 p. 9 available at https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf [accessed 31 October 2023]; Global Commission on HIV and the Law, *HIV and the law: risks, rights and health* (New York: UNDP 2012); Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, (New York (NY): United Nations 2010) para 52 - 76; Joint United Nations Programme on HIV/AIDS (UNAIDS), *United Nations Development Programme, Policy Brief: Criminalisation of HIV transmission* (Geneva: UNAIDS 2008); First Global Parliamentary Meeting on HIV/AIDS, Manila, Philippines, 28–30 November 2007. Final Conclusions. Geneva: Inter-Parliamentary Union, 2007; WHO, *Sexual health, human rights and the law* (2015) p. 22 – 23; Tenesha Myrie, *Making the Case against an HIV-specific Criminal Law in Jamaica: Legal Assessment of the Effectiveness of HIV Criminalisation Laws – From High to Low-Income Countries*, (National Family Planning Board, Ministry of Health and Wellness, Jamaica, 2019) available at <https://www.hivjustice.net/wp-content/uploads/2020/08/Position-Paper-Final-v.-Making-the-Case-against-an-HIV-Specific-Law-in-Jamaica-19.08.29-4.pdf> [accessed 31 October 2023]; UNAIDS, *Guidance Note - Ending Overly Broad Criminalisation of HIV Non-disclosure, Exposure and Transmission: Critical Scientific, Medical and Legal Considerations* (2013) p. 9
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- ²⁵ Joint United Nations Programme on HIV/AIDS (UNAIDS), *United Nations Development Programme, Policy Brief: Criminalisation of HIV transmission* (Geneva: UNAIDS 2008)
- ²⁶ Anguilla Labour (Relations) Act, 2018, s.97, Saint Lucia Labour Code section 7; The Bahamas Employment Act section 6; British Virgin Islands Labour Code 2010 sections 82(e), 114; Barbados Employment (Prevention of Discrimination) Act 2020 section 3(2) by virtue of protection against discrimination based on "medical condition" which is defined in section 2 to include "the presence in the body of organisms causing, or capable of causing, disease or illness"
- ²⁷ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, para. 20
- ²⁸ Trinidad and Tobago Miscellaneous Provisions (Marriage) Act 2017 s. 23(1) & (2), s.36 (3); Antigua and Barbuda Marriage Act, CAP 26:1, s.25 and s.26 (2)(a) (b) as amended by The Marriage (Amendment) Act, No 31 of 2019, ss.3(a)(b), 4, 5
- ²⁹ United Nations Children's Fund, *The State of the World's Children 2023: For every child, vaccination*, UNICEF Innocenti – Global Office of Research and Foresight, Florence, April 2023, p. 179 – 182.
- ³⁰ The Bahamas Marriage Act Ch. 120, section 50 (1)
- ³¹ Montserrat Marriage Act, Cap. 5:01, s. 25(1), (2), (3); Anguilla Marriage Act RSA, CAP. M40, as amended, s. 25(1), (2) & (3)
- ³² See generally, CEDAW Committee General Recommendation No. 24, esp. para 11, 14; Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng - *Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic*, 2021; OHCHR and women's human rights and gender equality available at <https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights> accessed July 19, 2023
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- ³⁴ Guyana Prevention of Discrimination Act 1997 section 4 contains an extensive list of grounds.
- ³⁵ Jamaica Disability Act 2014, sections 24, 25, 35; Antigua and Barbuda Disabilities and Equal Opportunities Act 2017 sections 14, 22-25, The Bahamas' Persons with Disabilities (Equal Opportunities) Act, 2014, sections 3, 18
- ³⁶ Dominica Sexual Offences Amendment Act 2016 section 10, creating new section 22 A in Dominica Sexual Offences Act; Guyana Sexual Offences Act Cap 8.03 section 13; Guyana Cybercrimes Act 2018 section 15; Jamaica Sexual Offences Act 2009 section 9; Bermuda Criminal Code Act 1907 sections 182E, 182EA; Trinidad and Tobago Children Act 2012 sections 25, 25A, 25B; Suriname Law of February 18, 2020, further amending the Criminal Code (G.B. 1911 no.1, as last amended by S.B. 2017 no. 85), Art. 292a
- ³⁷ Bermuda Criminal Code Act 1907, section 329; Cayman Islands Penal Code (2022 Revision), s.127; Trinidad and Tobago Sexual Offences Act Chap 11:28, section 4; Grenada S. 177 Criminal Code, Act No. 76 of 1958, as amended by section 19 of the Criminal Code Amendment Act, No. 29 of 2012; Guyana Sexual Offences Act, section 3; and Dominica Sexual Offences Amendment Act, section 3 (3), (4), and (5); St. Vincent and the Grenadines Criminal Code, CAP 171, s. 123; Montserrat Penal Code, Cap 04.02 (2019 Rev. Edition), s. 135; St. Kitts and Nevis Offences Against the Person Act, CAP 4:21, s. 46; Suriname Criminal Code, SB 2009 No. 122, Art. 295 reflected in neutral provision in Criminal Code, SB 2015 No. 44, Art. 295; Turks and Caicos Islands Sexual Offences Ordinance No. 20 of 2020, s.3
- ³⁸ Belize Prevention against Sexual Harassment Act Cap 107; Barbados Employment Sexual Harassment (Prevention) Act 2017; Jamaica Sexual Harassment (Protection and Prevention) Act 2021; Guyana Prevention of Discrimination Act 1997, The Bahamas Sexual Offences Act Cap 99, section 26, Saint Lucia Criminal Code Chap 3:01 section 139
- ³⁹ Trinidad and Tobago Children's Act 2012, section 9
- ⁴⁰ Antigua and Barbuda Trafficking in Persons (Prevention) Act 2010, the Bahamas Trafficking in Persons (Prevention and Suppression) Act Ch.106, Barbados Trafficking in Persons Prevention Act 2016, Cayman Island Trafficking in Persons, Prevention and Suppression Law 2016, Grenada Prevention of Trafficking in Persons Act, No 34 of 2014, Guyana Combatting Trafficking in Persons Act 2005, Jamaica The Trafficking in Persons (Prevention Suppression and Punishment Act), St. Lucia Counter Trafficking Act
- ⁴¹ Belize Trafficking in Persons (Prohibition) Act CAP. 108.01 2020 Rev.Ed., section 27; Guyana Combating of Trafficking in Persons Act Cap 10.06, s 11; St Lucia Counter-Trafficking Act, No. 7 of 2010, Cap 3.17, s. 13; St Vincent and the Grenadines Prevention of Trafficking in Persons Act 2011, s. 11
- ⁴² For example, Grenada Prevention of Trafficking in Persons Act, No. 34 of 2014 section 21, Turks and Caicos Trafficking in Persons (Prevention) Ordinance, CAP 3.23, section 23
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This policy brief was prepared by
Tenesha Myrie, Attorney-at-Law, MPP (Oxford)