

LEGAL REVIEW ON TRAFFICKING IN PERSONS IN THE CARIBBEAN:

The Bahamas
Barbados
Guyana
Jamaica

The Netherlands Antilles
St Lucia
Suriname
Trinidad and Tobago



Domestic Servitude



Forced Labor



Sexual Slavery

Second Edition



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

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Foreword

Notes on the First Edition

IOM published the First Edition of the *Legal review on trafficking in persons in the Caribbean: The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St Lucia and Suriname* in 2005. The *Legal Review* was designed to complement *The Exploratory Assessment on Trafficking in Persons in the Caribbean Region* published by IOM in 2005.

The contents of the First Edition of the *Legal Review* were segmented according to International and regional instruments and domestic legal frameworks such as criminal, employment and immigration law. The First Edition also analysed national law-enforcement efforts, regional initiatives and protection policies including those that pertain to women and children. The format of the First Edition did not consist of one chapter per participating country.

Notes on the Second Edition

For the Second Edition, IOM has updated the *Legal Review* by dividing the document into two parts and including new appendices. Part I consists of the legal review of seven countries from the First Edition and Part II consists of the legal review of Trinidad and Tobago that was conducted in 2006. A new appendix was added, consisting of the *Caribbean Regional Counter-Trafficking Model Legislation* that IOM developed in 2008 in partnership with the Caribbean Community (CARICOM) Legislative Drafting Facility and CARICOM Member States.

Since publishing the first edition in 2005, Caribbean countries have made considerable progress in the fight against human trafficking. Activities over the past five years have included training and information campaigns, the enactment and proclamation of comprehensive anti-trafficking legislation and institutional and legal improvements, such as the ratification of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. These efforts have resulted in the prosecution of some human trafficking cases in court, as well as the identification and provision of assistance to victims of human trafficking and/or the prosecution of human traffickers in Guyana, Jamaica, the Netherlands Antilles,¹ Suriname and Trinidad and Tobago.

1 The Netherlands Antilles (comprised of Curaçao, St Maarten, Saba, St Eustatius and Bonaire) was dissolved on 10 October 2010. Curaçao and St Maarten are now independent countries, and Saba, St Eustatius and Bonaire are part of the Kingdom of the Netherlands.

As of December 2010, the First and Second Editions of the *Legal Review* constitute the only material available publically that examines the legal context of human trafficking in several English and Dutch-speaking Caribbean countries. However, readers should consult with government sources for current legislation as governments modify their legal frameworks regularly.

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Acronyms and abbreviations

BBC	British Broadcasting Corporation
CAFRA	Caribbean Association for Feminist Research and Action
CARICOM	Caribbean Community
CEDAW	Convention on Elimination of Discrimination against Women
CIM	Inter-American Commission of Women
CRC	Convention on the Rights of the Child
CSME	Caribbean Single Market and Economy
GYP	Guyanese Dollars
JMD	Jamaican Dollars
ILO	International Labour Organization
IMP	International Migration Policy Programme
IOM	International Organization for Migration
NGO	Non-Governmental Organization
NUDE	National Union of Domestic Employees
OAS	Organization of American States
TTD	Trinidad and Tobago Dollars
UN	United Nations
UNHCHR	UN Office of the High Commissioner on Human Rights
US	The United States of America
USAID	The United States Agency for International Development

Executive summary

This report provides a review of legislation and government policy related to combating human trafficking in eight Caribbean countries: The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St Lucia, Suriname and Trinidad and Tobago. The region is considered to be both a transit route for trafficking victims moving towards North America and Europe and an area of destination with both internal and regional trafficking flows. As of December 2010, The Bahamas, Guyana, Jamaica, St Lucia and Suriname are the only countries of the eight reviewed in this *Legal Review* that passed an anti-trafficking law.

This review has assessed the applicability of existing statute law for the prosecution of human traffickers, the protection of trafficking victims and the prevention of trafficking activities. This includes criminal provisions that constitute one or more elements of the trafficking process such as procurement, forced detention, prostitution, sexual offences, kidnapping, abduction and other offences against the person. These elements can then be used in combination as a “patchwork” replacement for a trafficking law. Employment law is examined to ascertain the rights of workers and the capacity to penalise employers for exploitative activities. In addition, immigration laws have been assessed to deduce whether immigration officers have any legislative basis for identifying and taking action against suspected trafficking activities. These laws have also been examined in terms of how they offer protection to victims of human trafficking. Other areas relevant to trafficking activities include asylum law, as a possible source of protection for victims, and money-laundering initiatives that offer an insight into the possibilities of combating transnational crime. Though laws in all of these areas have the potential to combat human trafficking, there are a number of weaknesses that need to be addressed, including the absence of the definition of human trafficking and a lack of clarity in local legislation.

Given that most of these countries are new to the issue of human trafficking, this review has examined the need for the criminal justice system to reform and adapt to the particular needs and constraints of this phenomenon in terms of court procedures and interaction with potential victims. Problems with gender-related violence and gender-based discrimination have been noted in the Caribbean.² More sensitive policies are required to ensure that gender-related violence is dealt with effectively within the court system and the attitudes accompanying gender-based discrimination do not pervade the criminal system to the detriment of female trafficking victims, many of whom will have been forced to work in the sex trade.

2 See for example, *Woman Inc.- Fighting for those who Suffer in Silence*, Lovern Hayes-Brown, Jamaica Information Service, November 19, 2004.

Special court procedures need to be developed to better protect the rights of victims in order to encourage them to volunteer as witnesses. In terms of specific protections, the services available to women and children who have suffered abuse, such as medical assistance, counselling and shelter and welfare advice, have been evaluated. The general finding is that while the existing services may be adapted for trafficking victims, much of this assistance is privately funded, worked beyond capacity and insufficient in number. Overall service provision is inadequate and requires committed government funding and regulation.

The small size of the states included in this study, and their limited resources, have led them to collaborate in a number of regional initiatives, many of which are relevant to the fight against human trafficking. These schemes have been assessed for best practices and overall effectiveness. The use of regional model legislation is a highly effective method of ensuring legislative uniformity that is tailored to the particular needs of the Caribbean, as well as method of pooling of resources. Also, the use of regional task forces capable of monitoring and evaluating any action taken by states can assist in the implementation of reform legislation and foster inter-agency and inter-state cooperation to boost effectiveness.

In conclusion, the main recommendations made by this review are as follows:

- Utilise existing regional model legislation, adjusting appropriately for the national statute books.
- Create a regional task force, either independent from or housed within existing mechanisms that can provide assistance in the implementation of legislative reform.
- Encourage regional cooperation in the criminal justice system for information-sharing, joint enforcement operations, witness protection and court procedures.
- Address the weaknesses in current legislation including the stiffening of current criminal penalties, the issuance of sentencing guidelines and implementation of international obligations under the 1951 Refugee Convention.
- Promote the training of law enforcement, public prosecutors, judiciary and social workers, to inform them of the realities of human trafficking and methods of using existing law to arrest and prosecute human traffickers.
- Expand protection and welfare services to ensure the well-being of trafficking victims.
- Conduct further research in the field to assess how the legislation works in practice, and to assess the informal procedures being used in the target countries in order to identify reforms in practice and procedure.

Introduction

In recent years, international focus has been directed to the problem of human trafficking and a myriad of measures and initiatives have been created to address the issue specifically. In developed countries, notably the United States, responses have been large-scale, with the creation of comprehensive counter-trafficking legislation, dedicated task forces to coordinate policy and new revenue streams to fund a variety of domestic and international programmes. However, measures to combat trafficking may take a variety of forms and they frequently overlap with other areas of legal and social programming. For example, legal elements of human trafficking can be found in kidnapping, assault and sexual offences. On a social level, resources for the counselling and protection of trafficking victims may have similar qualities to the services offered to victims of domestic violence or sexual abuse. Equally, the inclusion of the issue of counter-trafficking in education curricula would not require additional resources. Finally, the transnational nature of the phenomenon is echoed in other forms of trafficking and irregular migration patterns. These factors are important when assessing the capacity of other, less developed regions to combat trafficking in persons.

Though some states outside of North America and Europe do not have comprehensive legislation and programming to deal with human trafficking, many of them have a number of related laws and policies that offer potential help to conduct counter-trafficking activities. The purpose of this review is to assess the potential in the Caribbean to counteract human trafficking, either through specific initiatives or through related activities. The target countries of this study are The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St Lucia, Suriname and Trinidad and Tobago. This report shall examine potential avenues for effective reform, given the tools already identified and taking into account each element of Caribbean law and policy in the target countries as it pertains to the prevention and prosecution of human trafficking and the protection of trafficking victims.

Background

The Caribbean has not been immune to the human trafficking phenomenon. The majority of Caribbean states are small islands, or collections of islands, with few natural resources and small populations. Population size ranges from 164,000 in St Lucia, to 2.7 million in Jamaica.³ Guyana and Suriname, the two mainland states included in this review, have more natural resources, though these are found mostly in the rural and sparsely populated highland regions. Many countries of the region depend on one or two industries for their income, predominantly tourism. Indeed, in the wider Caribbean, tourism accounts for a quarter of all jobs and constituted over 45 per cent of all export earnings in Jamaica in the year 2000.⁴ In times of economic recession in the Western Hemisphere, the Caribbean is more severely affected than most regions due to this dependence upon external income. The slump in international tourism that followed the terrorist attacks of 11 September 2001 caused a major downturn in the economies of Caribbean countries, forcing many restaurants and hotels to close. All of the states in this study have a history of colonialism. Most of the countries in this study have become independent states within the past fifty years and retain the legal footprint of their previous governments.

As a predominantly maritime region, migration has been a significant characteristic in Caribbean history, with a great deal of this conducted informally. Elizabeth Thomas-Hope notes three main flows of irregular migration in the region today: illegal entry into the Caribbean from other regions, notably China and Latin America, by using the Caribbean as a transit point; illegal emigration from the Caribbean to North America and Europe; and the intra-regional migration within the Caribbean from poor to rich countries.⁵ The regulation of migration faces several barriers in the island states (The Bahamas, Barbados, Jamaica, the Netherlands Antilles and St Lucia). First, many of the countries are dependent upon high flows of visitors to their territories as tourism is their primary industry and it is difficult to ensure that all tourists entering destination countries do not overstay. Second, the vast majority of borders are coastline and spread over a myriad of small islands. Though the United States Coast Guard offers a number of Caribbean states joint interdiction services, monitoring these porous borders requires huge resources that are not available in the region. For the mainland Caribbean countries (Guyana and Suriname), irregular migration often takes place across land borders, such as those with Venezuela and Brazil. In these countries, the vast majority of the population

3 CIA Factbook, 2004.

4 Integrating People and Tourism: Prospects and Challenges, J Samuels, in *People and Tourism, Issues and Attitudes in the Jamaican Hospitality Industry*, Dunn and Dunn, 2002.

5 Elizabeth Thomas-Hope, *Irregular Migration and Asylum Seekers in the Caribbean*, June 2003, UNU/WIDER Discussion Paper No. 2003/48, p.1.

lives on the coastal plains. Regulation of remote highland areas with long land borders is limited (Guyana has nearly 2,500 km of borders with other countries). Mining is a vital source of income: bauxite makes up 70 per cent of the export earnings in Suriname, while gold and bauxite are the two biggest exports after sugar in Guyana.⁶ In addition, the rural mining communities rely upon a great deal of migrant labour, which include women offering sexual services. Sex work is also a reason for many to migrate both domestically and internationally: tourism in the Caribbean includes sex tourism, and both men and women move to the popular tourist areas in order to find employment in the sex trade.⁷

There are a number of legal, economic and social factors specific to the Caribbean region that affect the political will and capacity to combat trafficking in persons. In terms of law enforcement, most of the governments in this study are facing a rise in violent crime, particularly in larger states such as Jamaica. In this country, the 2004 murder rate is set to overtake the 2001 record of 1,139 homicides, an increase of 30 per cent on the previous year.⁸ Gang-related shootings have forced the Jamaican government to direct the military to patrol the streets.⁹ Much of this violence is linked to narcotics trafficking. Strategies to prevent drug smuggling are supported financially and materially by international sources, primarily the United States. Unrelated forms of violence, particularly violence against women and sexual offences, are also on the increase yet receive less attention from law enforcement. One in 11 women in Jamaica are likely to experience violence before the age of 65 years old, while 13 per cent have suffered attempted rape before the age of 14 years old.¹⁰ However, prosecution and sentencing for these crimes remains patchy, particularly when that violence is connected to sex work. In addition, law-enforcement officials are implementing criminal codes that are often outdated, with inadequate penalties and many of which have not been reformed since the states gained their independence. Economically, the majority of governments are constrained by their resources. Therefore, public support varies considerably with regard to victims of violence and child victims of abuse and neglect. Efforts to address these issues are subsidised by community-financed projects and charities. Although all the governments in this study have acknowledged to some extent the existence of human trafficking within their borders, their capacity to address the problem substantively is dictated by availability of resources and the competing priorities of other criminal activities. External support for counter-trafficking measures is vital and past experience suggests that region-wide initiatives would be most effective.

6 CIA Factbook, 2004.

7 Sun, Sex, and Gold Tourism and Sex Work in the Caribbean, Kamala Kempadoo, 1999.

8 Murder Rate Moves Toward Record High, Jamaica Gleaner, October 3, 2004.

9 Army Quells Jamaica Unrest, BBC News, 11 July 2001.

10 Vol.5 of the Greenwood Encyclopaedia of Women's Issues Worldwide, Lynn Walter, ed., 2003.

Official unemployment figures hover between 10 per cent and 15 per cent for most of the target states, with the exception of The Bahamas at 7 per cent (though the rates are much higher among young people).¹¹ As a result, the Caribbean experiences a high level of informal employment, especially within the service industries of the island states and the mining industries of Guyana and Suriname. The fluctuating nature of these activities gives rise to a high level of intra-regional migration, as Caribbean nationals search for employment. While there are a number of laws that regulate labour and labour conditions in all the target countries, the realities of industries based on seasonal employment, or located in remote and rural areas, are such that migrant workers may find it difficult to protect their rights. Though the governments would prefer to regulate their borders strongly, they also need the flexible labour that increased regional migration can provide. This dilemma has an impact upon policies taken towards identifying trafficking activities.

In addition to the above factors, there are also several areas of ambivalence that may have an impact on the domestic willingness to combat trafficking, especially trafficking for forced prostitution. On the one hand, much of the Caribbean is dependent upon tourism for income. Aside from the problems that high flows of visitors pose for the effective regulation of migration, many of these visitors are coming to the region for the purpose of sex tourism.¹² All the target countries, with the exception of the Netherlands Antilles, criminalize prostitution to some extent though many are aware of the attraction of the sex trade in their territories. Responses range from pragmatic tolerance of the activity, such as in Suriname, to increasing penalties for soliciting as in Jamaica, where the practice is viewed as damaging to the tourism industry. In some countries, the brothel owners seem to receive less scrutiny than the sex workers,¹³ and many irregular migrants working in the sex trade are deported without further investigation. This trend, combined with a strong history of tolerated gender-based violence in many of the states, leaves female migrants and potential trafficking victims in a vulnerable position.

11 CIA Factbook, 2004, *The Challenge of Youth Unemployment in the Caribbean: the Role of Youth Employment Training Programmes*, Dennis Pantin, ILO Caribbean, 1996.

12 Sun, Sex and Gold, as above.

13 Ibid.

Part I: Legal review on trafficking in persons in the Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St Lucia and Suriname (2005)

1. International and regional instruments¹⁴

International conventions

The state of international legislation on human trafficking places national legislation in context, providing common definitions and standards and committing state parties to particular courses of action. There are several international instruments that the countries in this study have signed and ratified which express their obligations under international law to address trafficking in persons. The most significant of these international instruments is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), which is attached to the United Nations Convention on Transnational Organized Crime. The countries in this study that have ratified this Protocol are The Bahamas (2008), Guyana (2004), Jamaica (2003) and Suriname (2007). Barbados (2001) and the Netherlands Antilles (2000) have also signed the treaty.¹⁵ The Protocol offers a broad, common definition for the crime of human trafficking, and requires countries to take action against human traffickers, protect and assist victims and take steps towards the prevention of trafficking. The Protocol emphasises the need for international cooperation, though it has been criticised for being overly focused on the criminal aspect rather than on the human rights approach to human trafficking. Despite creating common ground for counter-trafficking activities, the Protocol lacks any form of enforcement or monitoring mechanism, rendering it difficult to gauge its real effect upon the actions of signatory countries.

There are a number of other international instruments that can be used to identify national obligations to address trafficking in persons. These include the Convention on the Elimination of all Forms of Discrimination against Women (1979), Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Rights of the Child (1989), Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000), Slavery Convention (1926), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Forced Labour Convention (1930), Abolition of Forced Labour Convention (1957), Worst Forms of Child Labour Convention (1999), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), Convention

14 When possible, IOM updated the signature and ratification status as of December 2010.

15 United Nations Treaty Collection. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18&lang=en

on the Status of Refugees, and the Optional Protocol to the Convention on the Status of Refugees (1967). Appendix A provides a detailed listing of the countries in this study that have signed these instruments as well as those that have ratified them. The relevant articles that can be used in combating trafficking in persons are also identified in greater detail in Appendix A.

The main problem with these conventions is that they lack an effective enforcement mechanism. Though they are useful as a starting point for national reforms, signatories to human rights treaties are doing little more than stating an agreement to the principles contained within the document. Failure to implement those principles is of small consequence. However, the Elimination of all Forms of Discrimination against Women (CEDAW), Elimination of All Forms of Racial Discrimination (CERD), and Rights of the Child (CRC) include mechanisms for monitoring compliance. State parties are required to submit periodic reports detailing their efforts to reform legislation and combat the specific human rights abuses addressed by the treaty, which is then reviewed by a committee composed of member-state representative experts who make recommendations for future reform.

Most of the states included in this report have responded to the request to submit state party reports to varying degrees. These state reports and the committee responses note the relevance of counter-trafficking efforts to upholding the state obligations under these human rights treaties. In some cases, the absence of implementation of counter-trafficking measures has been admitted: the Netherlands Antilles stated in its first report to the CEDAW Committee in 1999 that “the legislation of the Netherlands Antilles does not, generally speaking, provide an adequate basis for combating trafficking in women.”¹⁶ Other countries have been criticised in committee reports for failure to provide adequate information; Jamaica,¹⁷ the Netherlands Antilles¹⁸ and Suriname¹⁹ were all charged by the CRC Committee to provide comprehensive information in their next reports on commercial sexual exploitation of children (including trafficking). These countries were also advised to implement legislative and policy reforms to address the issue.

This mechanism of accountability is useful for state governments to guide future policy reform, though it is difficult to measure the impact that committee recommendations actually have. Since the CRC Committee made its recommendations, Jamaica has instituted comprehensive legislation to protect the rights of the child (the Child Care and Protection Act, detailed below). However, it

16 State Party Report CEDAW/C/NET/2/Add.1.

17 Committee Report CRC/C/15/Add.210.

18 Committee Report CRC/C/15/Add.186.

19 Committee Report CRC/C/15/Add.130.

is unclear to what extent this legislation comes as a direct result of those committee recommendations. In addition, the ability to comply with both International conventions and the recommendations of monitoring bodies is limited by the administrative resources available to that country. There are a large number of “missing” reports from Caribbean states, for example St Lucia has been unable to submit any party reports to the human rights committees, despite being a signatory to all three treaties. Ultimately, the efficacy of International conventions depends upon both the political will and administrative capacity of the individual state.

Regional conventions

In addition to these international instruments, there have been several regional or hemispheric conventions or resolutions that also demonstrate commitment to combat trafficking in persons. This includes the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) or Convention of Belém do Pará,²⁰ which is part of the Inter-American System for the Protection of Human Rights within the Organisation of American States (OAS). The system provides recourse to people in the Americas who have suffered violations of their rights by the state and who have been unable to find justice in their own country. The pillars of the system are the Inter-American Commission on Human Rights (IACHR/OAS)²¹ and the Inter-American Court of Human Rights.²² The Commission promotes human rights throughout the hemisphere, focusing attention on specific issues such as freedom of expression, the rights of indigenous peoples and women’s rights. This is reflected in Chapter IV *Inter-American Mechanisms of Protection* of the above-mentioned convention, which states in Article 12 that any person or group of persons or non-governmental entity²³ are entitled to submit complaints about human rights violations to the IACHR. However, the conclusions and recommendations of the Commission are not legally binding.²⁴

20 The Convention was signed 9 June 1994 and entered into force 3 March 1995. To date, 31 States have ratified the Convention, including Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago and Venezuela.

21 The Commission is an organ of the OAS established in the OAS Charter, but its functions are detailed in article 41 of the Inter-American Convention on Human Rights. These include in-site visits, country and annual reports. In the case of petitions filed by individuals who claim the violation of a protected right, the Commission can supervise human rights in the territories of the states parties of the Convention (Suriname) as well as in the non-parties (which is the case for many Caribbean countries), on the basis of the American Declaration of the Rights and Duties of the Man.

22 Based in San Jose (Costa Rica), the Court settles controversies about the interpretation and application of the provisions of the American Convention through a special procedure designed to handle individual or state complaints against state parties (contentious jurisdiction) and may interpret not only the Convention but also other treaties concerning the protection of human rights in the American states (advisory jurisdiction).

23 NGOs have to be legally recognized in one or more member states.

24 This constitutes a controversial point between states and the Commission, since the Commission sustains the binding nature of its conclusions and recommendations on the basis of article 50 of the Convention.

Additionally, Article 10 established a procedure for state parties of the convention to include in their national reports to the Inter-American Commission of Women (CIM) information about “measures adopted to prevent and eradicate violence, to assist women affected by violence, as well as on the difficulties they encounter to implement those measures and factors that contribute to violence against women.” While discussions are underway within the OAS to study methods to enforce this article, there is currently no established mechanism to implement or monitor the actions of states to comply with this Convention.

In April 2002, the Inter-American Commission for Women (CIM) adopted Resolution AG/RES 1948 (XXXIII-O/03), “Fighting the Crime of Trafficking in Persons, Especially Women, Adolescents, and Children”. This resolution urges the member states to take action against human trafficking through “multidimensional actions” under Domestic legislation and the establishment of national, bilateral and multilateral coordination mechanisms. The resolution also noted the lack of effective legislation. OAS Resolutions are agreed upon by consensus; hence they are not binding for member states. The Declaration of Nuevo Leon, agreed upon in the Special Summit of Monterrey (January 2004), renewed the commitment to fight all forms of transnational organized crime, including “illicit trafficking in drugs, arms, and persons, particularly when they generate funds used in support of terrorist organizations.” In June 2004, the General Assembly of the OAS adopted a resolution asking member states to adopt the measures necessary to “enhance their legal, judicial and administrative systems” to combat the crime of human trafficking.

The Declaration of the Third Summit of the Americas²⁵ (Quebec, 2001) established the commitment of governments to “strengthen mechanisms for hemispheric cooperation to address the legitimate needs of migrants and take effective measures against trafficking in human beings.” The Plan of Action included human trafficking in several sections (Human Rights and Fundamental Freedoms, Transnational Organized Crime and Growth and Equity), since it was recognized that human trafficking is linked to other crimes and is a multi-rooted problem that demands a comprehensive approach. Decisions by states in the Summit process are made by consensus, which may be an indicator of a high-level political commitment to address common issues of concern.

Specially, after the Inter-American Court of Human Rights ruled that states must follow them *bona fide* (Case Loayza Tamayo, 17 September 1997, Series C, #33, para.80).

25 The Heads of State and Government of the Americas, the architects of this new system, decided to meet on a regular basis in order to define the fundamental precepts of the new hemispheric agenda. This decision to institutionalize the meetings led to the notion of a “Summit process”, where experiences are accumulated, a common language is forged and mandates for collective action are programmed, systematizing the new theoretical and practical references in hemispheric relations.

These regional conventions, resolutions and declarations highlight a commitment made by many of the countries in the region to recognize human trafficking as an area of concern and encourage states to take action. However, as in the International conventions, the primary problem in these regional resolutions is the lack of an implementation plan, a lack of resources and a lack of an effective enforcement mechanism. Though signatories demonstrate their agreement to the principles within the document, there are no consequences for any failure to implement changes or reforms based on these agreements. The Caribbean is also part of the OAS, which encompasses states from across the Western Hemisphere, and all of the target states are members with the exception of the Netherlands Antilles.

2. Domestic legislation

Trafficking in persons law

Though all the countries in this study have signed various forced labour and anti-trafficking conventions (see Appendix A), there has been little implementation of these obligations into national law. However, several of the target countries have made an effort in recent years to enact new legislation, including The Bahamas (2008), Guyana (2005), Jamaica (2007), St Lucia (2010) and Suriname (2006). The most successful of these efforts has been in Guyana, where the government was spurred on by its inclusion in Tier Three of the US State Department Trafficking in Persons Report in 2004, as well as by technical support from United States Agency for International Development (USAID). The result was a draft bill to combat trafficking in persons being presented to the Guyanese Parliament in 2004.²⁶ With respect to prosecution, the bill includes life penalties for trafficking in persons and stiff penalties for other trafficking-related activities. In addition, those convicted will have their assets seized and be liable for financial restitution to victims. Provisions relating to definitions and consequential injuries to trafficking victims are extremely detailed and cover every eventuality.

Aside from prosecution, the trafficked person is well protected by the Guyanese Combating Trafficking in Persons Bill. In this bill, the “victim” is explicitly defined and not criminally liable for any offences committed as a direct result of their trafficking situation. Part III of the bill offers a wide range of concrete protections and benefits to victims, including a visa that entitles them (and their dependents) to work and receive social benefits. Finally, the bill mandates various government agencies with a number of tasks, such as public awareness campaigns, the development of strategies to provide services to victims and the creation of an inter-agency task force (referred to as an “international agency taskforce”). One of the most positive aspects of the bill is its broad scope; it does not limit trafficking to sexual servitude, but defines exploitation widely to include “slavery”, “practices similar to slavery” and “forced labour or services”. This allows prosecutors a great deal of leeway to proceed with unusual or less clear-cut cases of human trafficking.

Closer examination of the bill reveals that is based largely upon the United States model legislation issued by the US State Department’s Office to Monitor and Combat Trafficking in Persons, which provides legal building blocks for countries attempting to reform their criminal law. While this is a valuable timesaving resource for developing countries, directly transferring the model as a “one size fits all” law raises the question whether a regionally tailored response would be more appropriate. Analysis of Part III of the model legislation reveals a number

26 Combating Trafficking in Persons Bill 2004, Bill No. 12 of 2004, Parliament office, 27th July, 2004

of provisions Guyana would struggle to implement. For example, section 14 states that victims of trafficking who act as witnesses may be eligible for witness relocation programmes that include relocation, a new identity and a new residence. Currently, Guyana does not have the necessary resources to provide an effective witness relocation programme, and has called for a regional Caribbean system to be established. Neither the domestic resources nor the national capacity exists to relocate trafficking victims.

The range of commitments undertaken by the Guyanese government in the bill should be commended. For example, section 18 mandates the Ministry of Labour, Human Services and Social Security to develop plans to offer a wide range of services, including housing, counselling, medical and legal assistance. However, there is a lack of existing services for female and child victims of general violence and abuse. Therefore, this bill infers the establishment of an expensive and complex support infrastructure. However, there is the risk that this legislation may foster a disproportionate focus on the protection of those who have experienced violence through human trafficking, to the detriment of services for other types of victims. Also, the lack of resources may mean that the section will not be implemented in any significant way. Integration of services for trafficked victims with those for other victims of violence, rather than stand-alone services, may be more appropriate for a country with limited resources and would be a preferable approach for the government to adopt.

While the ambitious nature of the bill is to be commended, in order for an effective counter-trafficking strategy to emerge, there also needs to be some level of realism with respect to what can be achieved. The limited financial and material capacity in Guyana to implement all of the provisions may undermine the political will to effectively implement those parts that are well within the reach of the government. Cost-effective methods of realization should be considered, maximising integration with other, similar initiatives and exploring joint projects with neighbouring countries. Overall, the drafting of this legislation has spurred greater media interest and national awareness of the issue, which can only be to the benefit of trafficking victims; the more focus on human trafficking, the more likely that cases will be identified.

Other than Guyana, Jamaica introduced the Child Care and Protection Act in 2004. This Act was designed to fulfil Jamaica's obligations to the Convention on the Rights of the Child. As part of this Convention, the act introduces a penalty of ten years for trafficking in children and offers care and protection to child victims of trafficking. In addition, the act creates a Children's Advocate, who acts as legal representative for trafficked children and can protect them from having to give

evidence in public. However, the provision that pertains to human trafficking is brief, stating that:

10. (1) No person shall sell or participate in the trafficking of any child.²⁷

There is no further definition of human trafficking in Jamaica's Child Care and Protection Act. Given that Jamaica is a common-law system, this gives the judiciary a wide margin for interpretation of human trafficking, which may lead to a distortion of the accepted international definition in the Protocol. The Act should be amended to include such a definition, or stipulate that the judiciary refer to Jamaica's international obligations when interpreting the provision.

Fundamental rights: forced labour and slavery

Many of the target countries guarantee freedom from forced labour and slavery within their constitutions as a fundamental right. These protections are declaratory statements and all take a similar form to the following:

Protection from slavery and forced labour.

18. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour²⁸

However, none of the statements include material that relates to implementation. Though these statements have little practical value, their inclusion in the basic legal texts of the state provides normative value and strong legitimacy for government anti-trafficking policies. In addition, a body of case law has sprung up in the Commonwealth Caribbean, as individuals have come forward to enforce these rights.²⁹ However, these individual rights and freedoms are only enforceable against the state and other public authorities, but not against another private individual.³⁰ Thus, while government policy sanctioning forced labour and slavery is actionable, there is no redress against human traffickers. At best, an argument used with respect to violence against women can be analogous, inferring that the constitution places an obligation upon the state to act positively to protect the rights of women, which may allow a citizen to go to court where that state has neglected to act sufficiently on her behalf.³¹ This convoluted jurisprudence is the nearest the individual can get to protecting their fundamental rights.

27 Section 10, Child Care and Protection Act 2004, Jamaica. http://www.cda.gov.jm/downloads/Child_Care_and_Protection_Act_2004.pdf

28 Taken from the Bahamas Independence Order, 20 June 1973, S.I. 1973 No.1080.

29 See generally S.Y. Mohamed, *Fundamental Rights and Freedoms of the Commonwealth Caribbean*, 1993.

30 *Ibid.*, p13.

31 Roberta Clarke, *Violence Against Women in the Caribbean: State and Non-State Responses*, 1998, UNIFEM/CIM, p18.

Jamaica is a notable exception in not offering protection from forced labour and slavery as a fundamental right. A similar situation regarding the Netherlands Antilles requires clarification: although the constitution protects all fundamental rights, there is no detail as to what these rights include. Though not essential in the fight against human trafficking, Jamaica and the Netherlands Antilles would benefit from explicitly defining their position on the right to freedom from slavery and forced labour.

Aside from these constitutional texts, legislation prohibiting slavery in the Caribbean is obsolete. For the countries that were under British rule, slavery was abolished through the Emancipation Acts of 1838, which are no longer on the statute books. In the Netherlands Antilles and Suriname, slavery was abolished in 1863, through similar legislation that no longer has relevance in the modern legal system.

Criminal law

The Netherlands Antilles has a legal provision, stating that the trade “in women and trade in minors of the male sex” is punishable with up to five years imprisonment.³² Though this provision is included within a list of sex offences, the “trade” is not further defined, leaving the provision open to authorities to interpret for human trafficking (for all purposes). Aside from this, there are a number of criminal offences that include abduction, kidnapping, forced detention and assault. These provisions could be used to prosecute human traffickers for all forms of human trafficking. In the Caribbean, as worldwide, it is likely that a proportion of human trafficking is for sexual exploitation. Thus sexual offences law in the region and rules concerning prostitution in particular, can be useful to prosecute those responsible for forcing women into sex work.

Using the criminal law in this fashion to prosecute human traffickers is not without precedent. The Commonwealth Caribbean legal systems are very similar to that of the United Kingdom, which until recently also had no specific human trafficking legislation. Despite this, the Crown Prosecution Service has convicted a number of human traffickers using a patchwork of existing offences, including common assault, facilitation of illegal migration, kidnapping, false imprisonment, incitement to rape, living off the earnings of prostitution, controlling prostitution and procurement.³³ Though the sentences following conviction have been criticised for their leniency, it is clear that some success can be achieved through innovative use of existing penal codes.

32 Netherlands Antilles Criminal Code, Title XIV, Offences Against Morality, Section 260.

33 R v Dairo and Bodunrin (2004), R v Plakici and Islami (2003), R v Gadzijeve, Muruganahan and Chukanova (2004).

The Netherlands possesses legal systems that are similar to those of Suriname and the Netherlands Antilles, and can be held up as an example. Prior to 2005, human trafficking laws in the Netherlands were restricted to trafficking for sexual exploitation, but the penal code includes elements of the crime that can be used in prosecution, such as sexual violence, participation in a criminal organization, deprivation of freedom, threats and intimidation, abuse, extortion and forged travel documents.³⁴ An article in the Dutch legal system regarding slave trading is used very rarely. Nevertheless, Dutch protection policies, including the B9 regulation which allows victims a rest period (for up to three months) before deciding whether to collaborate with police investigations, are far more extensive than those of the United Kingdom and could offer a template for reform.³⁵

Prostitution

The laws in the Caribbean that apply to prostitution are diverse (see Figure B.1, Appendix B for details). The majority of the target countries prohibit prostitution to some degree, yet it is unclear whether the sex trade is fully illegal. Guyana provides a good example: though brothel-keeping and soliciting in a public place are illegal activities, there is no mention of the sale of sex as an illegal activity when conducted privately. In addition, it is considered illegal to live off the earnings of prostitution if the financial benefactor is male, which suggests that female benefactors are tolerated as long as their activities are conducted privately. Laws that target the owners of premises and pimps should be welcomed where law enforcement is directed at those in control of the industry. In Barbados, soliciting is prohibited, yet it is not illegal to live off the earnings of prostitution; however, the government considers prostitution to be an illegal activity.³⁶

However, in several of the target countries, prostitutes are prosecuted for the offence of living off the earnings of prostitution, as it effectively prohibits their profits. This is the case in The Bahamas and Jamaica, where the authorities seek to prevent the sex trade from interfering with the lucrative tourist industry. However, the debate on prostitution is less clear-cut in these countries: a significant lobby comprised of doctors, legal advocates, women's rights activists and commercial sex workers have called for the regulation and decriminalization of prostitution to better protect the health of sex workers and prevent abuse.³⁷ In the Netherlands Antilles and Suriname, sex workers must be registered with local medical clinics

34 In 2005, the Netherlands prohibited all forms of human trafficking through Criminal Code Article 273. Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries, Joanna Apap and Felicita Medved, IOM, 2003.

35 Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries, Joanna Apap and Felicita Medved, International Organisation for Migration, 2003.

36 Barbados: No Official Position Taken on Legalising Homosexuality, Prostitution, Caribbean Media Corporation, November 12, 2003.

37 Civic Leaders Want Sex Trade Regularised, Jamaica Gleaner, August 29, 2003.

and immigration authorities, which require them to undergo frequent health checks. The advantage to this regulation is that it enables the government to monitor the industry and the sex workers have access to healthcare and protection. However, clandestine prostitution still occurs in these countries and tolerance of the sex industry does not address many of the challenges that human traffickers pose to the sex trade.³⁸

With respect to procurement, the laws in each of the target countries are more consistent (Appendix B). With the exception of Suriname, all of the target countries carry some prohibition against procuring persons for sexual purposes. This legislation could be used for the prosecution of those involved in human trafficking for sexual purposes. However, the penalties for procurement range widely, from a fine (the Netherlands Antilles) to 15 years imprisonment (Barbados). This range is indicative of the varying attitudes towards prostitution in the Caribbean. It is also indicative of the outdated nature of some of the criminal codes, for example, flogging remains a punishment for soliciting for immoral purposes in Guyana.

Regardless of the strength of prohibitions concerning the sex trade, law-enforcement activities are constrained by limited resources, time and inclination. Interviews with prostitutes in Jamaica revealed that police officers were often indifferent or willing to turn a blind eye in return for bribes and sexual favours.³⁹ With rising crime rates and a growing realization that the tourist industry is inextricably connected to the sex trade, the realities of prosecuting for the offences of soliciting and prostitution suggests that successful prosecution requires too much effort for too little effect. Given the low maximum penalties for most prostitution-related offences and the limited resources of the criminal justice system, it is unlikely that many offenders receive a custodial sentence and occasional fines are seen as part of the transaction cost.

Despite the fact that the sex trade in the region relies on a strong transnational network,⁴⁰ regional regulation of the sex trade is unlikely given the differences in current legislation and policies between the states. However, attitudes regarding forced prostitution and the prostitution of minors are more aligned.

Forced prostitution

Whether or not prostitution is tolerated, legally or in practice, the situation regarding those forced into prostitution is far clearer. All the target countries

38 For example, despite legalisation and regulation in the Netherlands, it remains a destination country for women and children trafficked for sexual exploitation (US Trafficking in Persons Report, 2004).

39 "Come to Jamaica and Feel Alright", Chapter Six in Sun, Sex and Gold, as above.

40 See research by Pamela Downe, University of Saskatchewan, as cited in Sex Trade Workers Sent Overseas, Researcher Says, The Star Phoenix, September 19, 2002. The article notes: "There's quite a network among the eastern Caribbean islands where girls are moved from island to island based on the carnivals."

prohibit procurement of persons for prostitution and unlawful sexual activity in some form (see Figure B.2, Appendix B for details). For the purposes of this study, forced prostitution shall include the procurement of minors for prostitution as they are deemed incapable of consenting to the activity.

With respect to adults, many of the provisions take a similar form, as follows:

A person who -

- a. by threats or intimidation procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- b. by deception procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- c. applies, administers to or causes to be taken by any person, any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person⁴¹

This provision can be used to prosecute human traffickers who force their victims into prostitution. Also, the provision bears some resemblance to the Protocol definition of means to control victims: “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability.”⁴² However, Suriname lacks the element of force, coercion or deception in its criminal code, merely prohibiting the procurement of minors. In addition, Guyana and Jamaica criminalize the forced procurement of women, which leaves any young men and boys who may be trafficked in a vulnerable position. This gender-biased lacuna needs to be rectified in order to reflect the realities of the sex trade in these two countries.

In addition to procurement, many of the countries in the Caribbean, including The Bahamas, Barbados, Guyana, Jamaica and St Lucia, carry specific provisions prohibiting forced detention for sexual purposes. These take the following format:

- 15(1) A person who detains another against that other’s will
 - a. in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
 - b. in any brothel.⁴³

41 Barbados Sexual Offences Act 1991, Section 14.

42 Article 3, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

43 Barbados Sexual Offences Act 1991, Section 15.

This provision is essential for the effective prosecution of those involved in harbouring of trafficked persons, but not necessarily involved in procurement or solicitation. The provision can be added to procurement, living off the earnings and brothel-keeping, creating a list of offences likely to garner a more severe sentence.

With respect to child prostitution, all the states in this study criminalize the procurement of minors to some degree and do not limit this activity to prostitution, but rather use the wider term “unlawful sexual connection.” However, the age at which the victim is considered a minor differs between countries and frequently differs from the age of sexual consent for other offences within the same country. For example, in The Bahamas, St Lucia and Jamaica, the age of sexual consent is 16 years old, yet procurement of a person (or woman, in the case of Jamaica) for sexual purposes is prohibited for those less than 18 years old. Guyana has the lowest age of sexual consent (detailed below and in Figure B.4, Appendix B), yet the law prohibits procurement of women under the age of 21 years old. However, procurement of minors for prostitution, as a specific offence in Guyana, deems the age of consent to be 12 years old. The inconsistency between ages of sexual consent for various procurement and sexual offences makes effective prosecution difficult, especially with respect to deciding which offence to use for charges against a human trafficker.

In terms of penalties, most of the target countries place equal severity on forced procurement as on procurement of minors, though the penalties in the region range from three to 15 years. The lenient penalties in Jamaica, the Netherlands Antilles and Suriname (three years minimum for the procurement of minors) stand out, and reform should be considered to ensure that sentencing becomes more of an effective deterrent.

Sexual offences

Many of the women and children trafficked internationally suffer sexual and physical violence at the hands of their human traffickers.⁴⁴ Legislation against sexual offences provides a simple way to prosecute human traffickers and more importantly, identify the trafficked person more clearly as a victim. Both adult and child victims of sexual abuse have some access to a number of different services through government and non-government sources. In addition, rape is an established method of prosecution where evidence of other elements of the crime of trafficking is lacking.

44 A Comparative Study of Women Trafficked in the Migration Process: Patterns, Processes and Health Consequences in Five Countries (Indonesia, the Philippines, Thailand, Venezuela, and the United States), Janice G. Raymond, Coalition against Trafficking in Women, 2000.

All the countries in this study criminalize rape and sexual assault (Figure B.3, Appendix B). In addition, The Bahamas, Barbados, Guyana, Jamaica and St Lucia offer a maximum penalty of life imprisonment, while the Netherlands Antilles and Suriname offer 12 years. Penalties for sexual assault are much lower, ranging from three to eight years. It is difficult to assess the adequacy of the three-year penalty in Jamaica, as there is no further definition of “indecent assault” in the Offences against the Person Act, and the jurisprudence that emanates from case law needs to be analysed thoroughly to understand what acts are criminalized under this section. There are two limitations to the sexual offences law that need to be addressed. First, The Bahamas and the Netherlands Antilles define rape as extramarital non-consensual sexual intercourse; aside from the concerns this raises generally, it poses a problem for prosecuting those involved in the mail-order bride industry, where the victim is married. Second, The Bahamas, Guyana, the Netherlands Antilles and Suriname all limit rape to women and girls, excluding the possibility that the victim may be male. Though in a number of these countries the homosexual acts themselves are illegal, male rape should be included in the criminal code in order that the victim not be penalised along with the perpetrator.

Though strong laws exist in each target country, the effectiveness of these provisions depends in part on attitudes of the judicial system and law enforcement to claims of sexual violence. As the regional Caribbean organization CARICOM has pointed out, “the trial of sexual offences often turns out to be hardest on the victims and many are therefore reluctant to report the offences or to attend court to give evidence.”⁴⁵ Statistical evidence in the target countries show that increasing numbers of sexual offences from rape to assault are being reported, due in great part to improvements in the judicial systems’ attitudes towards the victims and the crimes. As a final point, this report recommends that the CARICOM model legislation on sexual offences be implemented to ensure regional uniformity and eliminate the weaknesses noted in the previous paragraph.

Minor sexual offences

As with adult sexual violence, strong sanctioning for the sexual abuse of children is vital to the effective combat of human trafficking. An added dimension to this is the effect that strong penalties and effective enforcement of legislation may have upon the demand for trafficked children. “Clients” of child sex workers may be deterred if faced with a high possibility of imprisonment for sex with a minor, which would reduce the profitability of trafficking in minors.

All of the countries in this study criminalize sex with minors, and with the exception of the Netherlands Antilles, offer a maximum life sentence for the

45 Explanatory Memorandum on Model Legislation on Sexual Offences, CARICOM Secretariat.

offence (Figure B.4, Appendix B). However, there are some weaknesses. First, statutory rape is divided into two age groups: a lower age group for which there can be no defence and an older age group for which reasonable cause to believe-in-majority can be a defence. In most of the target countries, the age of majority (the upper limit of the older age group) is 16 years old, commensurate with most child rights recommendations. However, in Guyana, the Netherlands Antilles and Suriname, the age of sexual consent is lower than 16 years old, and as low as 13 years old in Guyana. The organization End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), among others, has recommended that in these countries the age range is raised and the two-tier system be replaced with one provision on statutory rape.⁴⁶ This measure would afford those between 12 and 16 years old far greater protections, as the upper age group carries more lenient penalties (between 7 to 15 years). The new Childcare and Protection Act in Jamaica and the Trafficking in Persons Bill in Guyana both define a child as any person less than 18 years old. Also, several of the target countries limit the offence to girls only, leaving young males vulnerable. This report recommends that criminal laws be expanded to include both sexes.

Kidnapping and abduction

Provisions concerning kidnapping and abduction are only found in some of the target countries (Figure B.5, Appendix B). Kidnapping generally involves the carrying away of a person against their will for the purposes of extortion, carnal knowledge or marriage. Abduction is slightly different (though this is frequently difficult to determine) in that the person carried away is the ward of another, whether parent or guardian. Thus, abduction is more useful in the case of trafficked minors. These criminal provisions, where they occur in the target countries, may be used in conjunction with sexual offences such as rape and forced prostitution to add to the chain of crimes that human trafficking constitutes. Kidnapping and abduction refer to the actual removal and transport of a person, while the other offences refer to the acts that occur in the place of destination. Thus, kidnapping and abduction may be useful in the country of origin for the prosecution of those involved in procuring victims, but not necessarily in exploiting them.

Not all the countries in this study carry these provisions. Barbados, the Netherlands Antilles and Suriname do not prohibit these activities in their criminal codes, though the two Dutch legal systems may have provisions in their civil codes and The Bahamas only prohibits the abduction of minors. In terms of penalties, there are few consistencies. Jamaica has the relatively low maximum term for abduction set at three years, which contrasts with a life sentence for a kidnapping conviction. Other penalties range from 5 to 15 years, with similar lack of rationale.

⁴⁶ ECPAT Database, Guyana Country Profile, Overview and Legislation against Child Prostitution.

This report does not recommend that the Caribbean states attempt to amend their criminal codes to include kidnapping and abduction. Trafficking legislation would be a better alternative. These provisions are merely a useful addition for prosecutors in the absence of specific anti-trafficking laws.

Employment law

Current research indicates that human trafficking in the Caribbean is not limited to sexual exploitation, but can occur in a number of different informal labour markets, including the construction, agriculture, hospitality, garment and domestic service industries. In addition, exploitation in the workplace is not limited to persons trafficked expressly for that purpose: the International Labour Organization (ILO) has noted that many migrants who were not initially trafficked into the country end up in exploitative situations due in part to their irregular status.⁴⁷ All the target countries require some form of work and residence permits in order to maintain legal status in the country as a migrant worker.

Without work permits, migrant workers (especially trafficked populations) are vulnerable. Employment laws cannot protect workers in a country where they are not allowed to be working; they fall outside the scope of minimum wage schemes, regulations on working hours and health and safety standards and have no recourse for complaint. The most likely outcome from contacting authorities about violations of employment law is the deportation of those employees. Meanwhile, without specific anti-trafficking laws, the employers risk little in exploiting workers. Employment legislation regarding foreign nationals stipulate that it is an offence to work without a permit, but do not penalise employers for employing those without permits. As has been noted, the constitutions in most target countries protect against forced labour, but these are not provisions that can be enforced against private organizations. Highlighting the trafficking issue to employment and workplace inspectors may improve the situation for victims of forced labour by drawing focus away from the legitimacy of the workforce and directing it towards the actual conditions of employment. Re-classifying an exploited irregular migrant from criminal to victim is an essential first step to offering meaningful protection.

However, not all trafficking victims are without documentation. There have been numerous reports from the media, officials and social workers in the target countries that trafficked persons are often in possession of some form of work permit. One of the most popular is the “entertainment visa” which authorises women to enter the country in order to dance or serve in bars and restaurants. There are suggestions of official collusion with bar owners on the distribution and renewal of these visas and that the permit to dance is merely a method of recruiting

47 Designing Trafficking from a Labour Market Perspective: The ILO Experience, Beate Andrees and Mariska van der Linden, presented at the IOM conference on Improving Research on Trafficking, June 2004, Rome.

women into sexual exploitation.⁴⁸ Information available to this study has been limited, but further in-country research will be necessary to ascertain the extent of the abuse of the entertainment visa as a mechanism for trafficking for sexual exploitation. In addition, the extent of authorisation of work permits for other industries is unknown, which is an area that requires further investigation. In the meantime, this section will detail legislation concerning work permits, recruitment and employment protections in the Caribbean, as well as focus on a few key laws that protect vulnerable sectors of the workforce.

Work and residence permits

All of the target countries have legislation detailing the procedures for obtaining residence and work permits (see Appendix C), which are required in order to reside beyond a temporary stay and work legally, such as the Foreign Nationals and Commonwealth Citizens (Employment) Acts found in Jamaica and St Lucia. Those found working without a permit usually commit an offence, are liable to a fine and imprisonment and possibly also deportation. The application processes for work permits vary from country to country; though those identified all require an offer of employment and identification of the employer in the application, if they do not actually require the application to be by the employer. In The Bahamas, there are policies in effect that prohibit employers from offering jobs to foreign workers without ensuring that the position cannot be filled with domestic skills.⁴⁹ Finally, work permits are frequently linked to specific employment after they have been granted, so employees are unable to change employers without submitting to a new application process and its attendant fees. Thus migrant workers are dependent to a great extent upon their employers.

The policy impetus behind linking work permits to employment is clear: high levels of unemployment and limited job opportunities within the Caribbean mean that there are large numbers of people looking for work in the region. However, these policies also allow employers to abuse their position of control and force migrant workers into unhealthy employment conditions, using a threat of dismissal. There is little legislation to protect migrants' employment rights. One of the few, the Recruiting of Workers Act 1940 in Jamaica, provides that the health and safety of the employee during the journey is the responsibility of the employer and that the recruitment should not involve coercion or misrepresentation. However, this act does not include personal or domestic servants; therefore it would be of limited use to those trafficked into domestic labour.

48 "Sex Slaves in St Lucia? Don't Doubt it!", Rick Wayne, June 18, 2004, St Lucia Star.

49 Known as the "Bahamianization" policy to give employment priority to Bahamian workers.

General employment provisions

Once authorised to work, all the employment laws in the state protect the migrant worker. These are fairly wide-ranging in all of the target countries, though information on the Netherlands Antilles was limited. Some countries encompass all the legislation within one main Act. For example, The Bahamas Employment Act 2001 outlines conditions of work, minimum hours of working, maternity and family leave, redundancy payments, as well as provisions with respect to the employment of young persons and children. The Bahamas Minimum Wages Act 2001 also regulates the labour market. In 1996, two Columbian women who were trafficked into the Netherlands Antilles took their human traffickers to court, suing them for back wages and won.⁵⁰ Other legislation includes the creation of government oversight, through the ministry of labour and other inspectorates, such as in the Guyanese Labour (Conditions of Employment of Certain Workers) Act. This Act also includes a provision, found in several of the target states' statute books, that prohibits employers from restricting how and where any wages may be spent, or restricting the purchase of any work-related equipment. There is anecdotal evidence that sex workers have been forced to spend their wages on renting rooms for their activities from their employer, in addition to other expenditures, leaving them with very little surplus money, which consequently limits their freedom.⁵¹ Other employment laws are more disparate, with industries regulated individually. This is the case in Jamaica, where shops and offices, factories, docks and other industries are all regulated separately. All the target countries have some form of minimum wage, maximum working hours and some health and safety standards. Further research would be required to detail the exact parameters and weaknesses of each.

Recruitment of foreign workers

The Bahamas, Barbados, Guyana and Jamaica regulate the recruitment of foreign workers. Those who recruit such workers must be licensed to do so by the government and are prohibited from recruiting persons less than 18 years old (or less than 16 years old in Barbados). This legislation may be used to apprehend unlicensed persons who bring trafficked persons into the country. For those who may be recruiting "entertainers", the Act could be used to regulate such recruitment more closely. Finally, the prohibition on recruitment of minors is of use for prosecuting those who import child labour.

Child labour

Most of the target countries have some laws prohibiting child labour and participate in the ILO initiative to combat the worst forms of child labour, which

50 Martis, J. "Tourism and Sex Trade in St. Maarten and Curaçao" in *Sun Sex and Gold: Tourism and Sexwork in the Caribbean*. Kempadoo, Kamala (ed), Maryland: Rowann and Littlefield 1999.

51 Women and Sex Work in Guyana, Chapter Twelve in *Sun, Sex and Gold*, as above.

include detailed assessments of the actual, legal and social situation of children.⁵² Weaknesses identified by these assessments include a failure to define child labour and child slavery in The Bahamas and Barbados (making it difficult for prosecutors to actually pursue a case) and a lack of coordination between government agencies, which prohibits implementation of child labour laws (in Guyana). Where and at what age children are allowed to participate in the labour market varies widely between countries, with night work, industrial labour and other more dangerous sectors subject to restriction. Penalties also vary wildly: in The Bahamas, an employer may face up to a USD5,000⁵³ fine (Employment Act 2001, Section 53), yet Guyana's Employment of Women, Young Persons and Children Act (Ch.99.01) charges a fine of GYD10,000 for a first offence and GYD15,000 for subsequent offences for employing children in industrial labour.⁵⁴

An in-depth discussion of legislation and policy on child labour is unnecessary given the wealth of research that has been completed by the ILO and their own efforts to reduce child labour, which includes children who have been trafficked. In reforming labour laws to better monitor and prevent the trafficking of children into forced labour, collaboration with the ILO would ensure greater coherence and effectiveness. A major difficulty lies in regulating such a large informal economy in the region, and the lack of an effective records system to monitor the whereabouts of young persons, many of whom are without parents or guardians, is a challenge. Comprehensive laws in the region will have no substance if they cannot be implemented effectively.

Domestic workers

One of the most vulnerable labour sectors with respect to human trafficking is domestic servitude. The discrete nature of the employment whereby individuals work in private homes can make the sector difficult to regulate. However, several of the target countries have made an effort to do so. The Domestic Employees Act 1985 in Barbados stipulates maximum hours of duty and was recently amended to include minimum wage. The Household Service Workers Act in Guyana regulates working hours. These measures offer a method for government agencies to regulate and investigate the situation of domestic workers, though it is unclear how widely this legislation is used in practice, or how much it may rely on employee complaints. Nevertheless, this type of legislation should be encouraged in other jurisdictions as well as the active implementation of the legislation to regulate the industry.

52 For further information, see the Rapid Assessments of the Situation of Children in the Worst Forms of Labour in The Bahamas, Barbados, Guyana and Suriname, as well as the more in-depth report on Child Prostitution and other forms of Labour in Jamaica. All are available on the ILO Caribbean website.

53 The Bahamian dollar is fixed to the US dollar: one to one.

54 As of December 2010, approximately GYD200 equalled USD1.

Immigration law

As this study is intended to focus on international human trafficking, it is pertinent to assess how migrants are treated under current immigration law in the region. Whether immigration authorities are aware of the possibility of processing a trafficked person during the regular course of their work is important to ascertain. There is the concern that trafficked persons found to be illegally living and working in the region are deported without further investigation. In addition, authorities may encounter trafficked persons on entry, but are unable to identify them as such. All of the target countries regulate entry and exit, work and residence, irregular migration and smuggling, yet it is difficult to determine how many resources are available to effectively monitor foreign presence within their territories. Though zero-tolerance policies may be espoused with respect to smuggling and migrants working illegally, the large informal economies in each of the target countries suggest that actual enforcement of these policies is difficult. In addition, the countries that rely upon high flows of tourists are reluctant to be overly draconian in enforcing entry procedures. Finally, different immigration and work rules exist for intra-regional migration. For example, member states of the CARICOM Single Market and Economy (CSME) are currently in the process of offering free movement to a number of skilled workers, including artists and musicians. In addition, those moving between Caribbean countries frequently do not require visas before travel.

Entry procedures

Entry procedures are fairly similar in all of the target countries where such legislation has been identified (see Appendix C). Persons entering the territories must present themselves at an official port of entry to an immigration officer, along with appropriate identification. Many of the target countries legislate against the entry of certain persons, such as:

Persons who-

- a. are prostitutes or persons whose behaviour offends public morality; or
- b. seek to enter Barbados to engage in immoral sexual acts.⁵⁵

It is difficult for an immigration officer to determine which persons are intending to become prostitutes or engage in immoral sexual acts. Those who are found working in the sex trade are considered to be prohibited persons and liable for immediate deportation.

55 First Schedule - Prohibited Persons, Immigration Act 1976, Barbados.

However, the provisions on prohibited persons in Barbados also include those convicted of criminal offences (punishable by a term of imprisonment of up to one year) and those who “knowingly or for profit, aid, encourage or procure other persons who are not citizens of Barbados to enter Barbados illegally.”⁵⁶ More explicit provisions on barring the entry of those suspected of criminal involvement in human trafficking would be useful in other target countries and could provide a legislative base for immigration officers to ask questions to determine this more effectively.

Irregular migration

As noted earlier, the Caribbean consists largely of island and mainland states with borders that are difficult to monitor. With the region playing a significant role as a transshipment point for both narcotics and irregular migrants into the United States and Europe, the governments of the Caribbean have focused upon control of irregular migration, often with the help of the United States. Though relevant legislation has been examined during this research, the more informal procedures and policies followed by the immigration authorities may be more illuminating with respect to the treatment of irregular migrants and those who aid their entry. In the absence of measures to promote awareness of the human trafficking problem and identify potential trafficking victims, the assumption can be made that persons found to be entering or working in the country illegally will be treated as irregular migrants.

The majority of laws provide for the deportation of irregular migrants. Persons subject to a deportation order may be held in custody while awaiting the execution of the order (see Appendix C). In practice, that the target countries tend to deport those living and working illegally in their territories, without detailed investigation into their circumstances. Email communication with an immigration lawyer in the Netherlands Antilles found that illegal migrants are generally placed in prisons for a short period before deportation and that a zero-tolerance policy is enforced. These policies can actually be of use to human traffickers in maintaining control over their victims by threatening to report them to authorities as illegal migrants if they do not comply with demands. Indeed, sex workers in Suriname without work permits tend to avoid all contact with official authorities, including health services, out of fear of deportation,⁵⁷ which places them in a vulnerable position. There is no legislation outlining alternative care for irregular migrants where abuse is suspected, and more importantly, no specific provision for the care of unaccompanied migrant children (with the possible exception of Jamaica).

⁵⁶ Ibid.

⁵⁷ Gold and Commercial Sex, Christel Antonius-Smith et al, in Sun Sex, and Gold: Tourism and Sex Work in the Caribbean, Kamala Kempadoo ed., 1999, p240.

This absence of alternative procedures for migrant victims of abuse is compounded by a general lack of asylum legislation; there are no procedures for dealing with irregular migrants other than custody and deportation, a situation that needs to be rectified. Whether this is achieved through formal legislation or through informal guidelines issued by the relevant government ministry should depend upon the resources and capacities in each target country. In addition, a more circumspect attitude needs to be fostered within the government towards those found to be working illegally, particularly those working in the sex trade; relevant training for both law enforcement and immigration officers to help them identify signs of human trafficking would be instrumental in achieving this objective.

Smuggling

The majority of the target countries legislate against assisted legal entry as an offence (see Appendix C), with penalties including fines or three years imprisonment. In several of the target countries, harbouring illegal migrants and procuring illegal migrants is sanctioned, though the penalties are not more severe. In terms of law enforcement, these countries take illegal entry seriously, though limited resources hinder the execution of extensive operations to apprehend human smugglers. Instead, a number of multinational operations have taken place, usually with the United States as a major partner. For example, Operation Crossroads International, in which 12 countries including Jamaica participated, whereby nearly 8,000 irregular migrants were interdicted and over 75 smugglers were arrested over the course of two weeks. The operation revealed the high numbers of irregular migrants that move through the region.⁵⁸ Some of the target countries partner with the United States on such projects on a more continuous basis: The Royal Bahamas Defence Force is working in conjunction with the United States Coastguard to address human smuggling through several interception initiatives.⁵⁹

However, while the target countries have taken steps to combat migrant smuggling as a transnational crime, there are no indications that interdiction initiatives are taking into account the possibility that many of these irregular migrants may be potential or actual trafficking victims. Training of coast guard and immigration officials is important to ensure that human traffickers are identified and victims protected.

58 Largest Multinational Alien Smuggling Operation results in 7898 Arrests in Latin America and the Caribbean, News Release, US Department of Justice, June 27, 2001, <http://uscis.gov/graphics/publicaffairs/newsrels/crossroadsintl.htm>

59 Human Smuggling to be Made More Difficult, Keva Lightbourne, Nassau Guardian, 4 June 2004.

Asylum

Information on the asylum protection mechanisms offered in the target countries is limited. This is due in part to a lack of availability of information, but mainly to the lack of formal protection in general. Barbados and Guyana are not signatories to the 1951 Convention (see Appendix A), and though the Netherlands has signed the treaty, the Netherlands Antilles is not obliged to offer protection to asylum-seekers.⁶⁰ Suriname transposed its international obligations for the 1951 Refugee Convention into domestic law through the Aliens Act. In addition, this country offers protection to those who “in light of the social and political situation in his country of origin, and his personal circumstances cannot reasonably be required to return to that country.”⁶¹ This measure could be interpreted to include victims of human trafficking who are reluctant to return home, though to date there has been no record of this section being used as such. Nonetheless, the other target countries are encouraged to offer similar legislative protection.

Several of the target countries offer asylum protection without a specific legislative basis, frequently with the help of the UN High Commissioner for Refugees. However, a number of weaknesses can be identified. First, The Bahamas detains asylum-seekers in centres with other illegal migrants for long periods of time pending determination of their application. Children are also frequently detained.⁶² This approach would not be appropriate for trafficking victims who may be in need of medical assistance and counselling. A second issue is the lack of clarity with respect to the nature of the asylum offered. Several of the target countries state that they provide protection against *refoulement*, yet there is no detail as to whether such protection include residence and work permits, or social benefits and shelter. Such asylum applicants could be held in limbo, unable to support themselves independently and thus placed in a vulnerable position. Should justice officials treat trafficking victims as analogous to refugees, these persons could find themselves in a precarious position. In the absence of formal procedures and specific protection for trafficking victims, government policies should clarify the exact rights offered to refugees and extend these protections to include trafficked persons.

Anti-money laundering law

Money laundering has been of primary concern for the region; all of the target countries apart from Guyana and Suriname have significant financial centres. The United States has placed considerable pressure on the Caribbean region to strengthen its legislative response to the proceeds of crime; this pressure has

60 Email communication with Myra Massar, immigration lawyer, Netherlands Antilles, August 23, 2004.

61 Section 17, Aliens Act 1991.

62 Bahamas Forgotten Detainees - Human Rights in Detention, Amnesty International, 5 November 2003, AMR 14/005/2003.

continued to increase due to the connection between money laundering and terrorist financing. This external influence has combined with domestic pressure to maintain the lucrative offshore financial industry in countries such as The Bahamas and Barbados, where institutions would prefer not to hassle customers. However, the target countries have recognised the benefits of increased regulation and a number of measures have been enacted, including those to tighten anti-terrorism laws. This legislation has relevance to trafficking in persons in that it concerns transnational crime. In addition, there are laws that allow the government to forfeit assets from convicted drug and human traffickers. As the Guyanese human trafficking law and the United States model both offer provisions on the forfeiture of assets, an examination of these measures in practice would be advantageous. Though there will be no in-depth review of provisions, the speed and nature of reform in the region is of interest.

The 1990s has seen the implementation of a regional mechanism to coordinate anti-money laundering activity in the form of the Caribbean Financial Action Task Force. As part of this regional process, the target countries have enacted and amended various pieces of legislation to criminalize money laundering, such as Barbados' Money Laundering (Prevention and Control) Act 1988, Jamaica's Money Laundering Act 1996, and St Lucia's Money Laundering Prevention Act 1999. More recently, a variety of terrorism-prevention Acts have been presented to the respective parliaments to extend financial oversight to include this illegal activity. There is a plethora of relevant legislation in the Caribbean, proving that the region is capable of putting systems into place. However, despite "noteworthy efforts", "the lack of uniformity in the adoption of anti-money laundering legislation remains a crucial obstacle to the deceleration of the activity."⁶³ The regional coordination has achieved a great deal in guiding and encouraging reform, though without the existence of a "model law" that can be adapted to the domestic legislature. Furthermore, these reforms retain certain weaknesses.

Provisions concerning the forfeiture of assets have been the subject of specific drafting in The Bahamas, Barbados, Jamaica, the Netherlands Antilles, and St Lucia. These allow for the confiscation of illegally gained assets from the holdings of convicted drug and human traffickers; the government may also apply for a confiscation order from the court when the trafficker has absconded during the criminal proceedings. Using the Proceeds of Crime Act 2000 from The Bahamas as an example, the confiscated assets are placed into a fund and may be expended on related government activities including counter-narcotics law enforcement, the rehabilitation of drug addicts and public awareness programmes.⁶⁴ The strength

63 Bryan, Anthony T., *Transnational Organised crime: The Caribbean Context*, Working Paper No.1, The Dante B. Fascell North-South Center Working Paper Series, October 2000, p4.

64 Section 52, Bahamas Proceeds of Crime Act 2000.

in this provision, with respect to human trafficking, is that the prosecution of a trafficker can financially bolster protection and support for his victims and opens the possibility of direct compensation, such as in the United States model. The weakness, in practice, is that the process for seizing assets is extremely lengthy and orders can only be executed once all avenues of appeal have been exhausted. Furthermore, court cases can take years to be heard. To date, very little money has been recovered using this legislation.

The criminal justice system

An assessment of judicial systems in the region found that “law and order in most Caribbean countries are comparatively good.”⁶⁵ However, these systems are attempting to deal with increasing levels of crime, frequently transnational in nature, and new forms of criminal behaviour. Trafficking in persons is a new area to which the criminal justice system is learning to adapt and there are other, older criminal problems that are only now being addressed seriously, such as gender-based violence and child abuse. The criminal justice system includes police, prosecutors, legal-aid organisations, private practitioners, courts and correction systems. Detailed analysis of these areas is outside the scope of this report and requires in-country research; however, some assessment of law-enforcement and court attitudes and procedures to human trafficking and related cases shall be made in the following section.

Prosecution of trafficking cases

This study has examined whether any human trafficking cases have been prosecuted to date in the target countries. It has been confirmed that human traffickers operate in the region; for example, the United States government prosecuted two American human traffickers for luring Jamaican men into forced labour in New Hampshire.⁶⁶ However, there are few reports of trafficking cases in the target countries. This is due in part to the lack of specific provisions in the law, but also to a lack of recognition as to when the activity is occurring. Just as sex workers in the target countries are often hesitant to approach law-enforcement officers, fearful of being deported or arrested for their activities, the police and prosecution are frequently ill-equipped to identify when a person has been forced into labour. In addition, cases that are prosecuted are often not classed as trafficking cases, though they may bear the hallmarks of such. For example, an employee of the Director of Public Prosecutions office in St Maarten stated that no trafficking cases had been prosecuted in the Netherlands Antilles, only migrant smuggling cases.⁶⁷ However,

65 Challenges of Capacity Development: Towards Sustainable Development of Caribbean Justice Sectors, Caribbean Group for Cooperation in Economic Development, May 2000, World Bank, p3

66 US vs. Bradley, as detailed in Anti-Trafficking News Bulletin, US Department of Justice, Volume 1, No. 2, February 2004

67 Email Communication with Paul Mooij, August 20, 2004

a local researcher noted a case of forced prostitution in the courts in Curacao in 1997, where women recruited for work as waitresses or domestics were then forced to work as prostitutes.⁶⁸ Further research will be required to discover whether analogous cases such as migrant smuggling, illegal employment or violent crimes bear similarities to human trafficking.

Some Caribbean countries are becoming more aware of the problem, which will help with identifying cases for prosecution. However, public reports often deny that human trafficking manifests domestically. For example, the country reports in the Greenwood Encyclopaedia of Women's Issues Worldwide claim that there has been no record of human trafficking in The Bahamas or Barbados.⁶⁹ Fortunately, countries such as Guyana have recently placed greater emphasis on uncovering and identifying cases. For example, in July 2004 Guyanese police arrested a bar owner on suspicion of trafficking four young girls for sexual purposes.⁷⁰

There are a number of barriers to prosecuting trafficking cases, aside from a lack of specific legislation through which human traffickers may be charged. On the most general level, negative attitudes and rules still pervade proceedings that involve violence against women despite a strong effort over the past decade to diminish the problem of gender-based discrimination. The US State Department Human Rights report for Jamaica cites a case where a man who severely beat his girlfriend was given only a suspended sentence, as he was "obviously a good and just man" according to the judge.⁷¹ Of even greater concern, an appeal decision in the Eastern Caribbean Supreme Court declared that it was a mitigating factor that a man who had sexually abused a nine-year-old girl in St Lucia was a friend of the family "who seemed to live a quiet life."⁷² These cases suggest that women trafficked into sex work may find their cases trivialised and their human traffickers receive a lenient sentence. In addition, foreign workers often suffer discrimination, which might hamper a successful prosecution. Many nationals feel threatened by foreign workers replacing them as a source of cheaper labour.

As such, the trauma that a victim would have to go through under current court procedures would not balance favourably with the result. Though several of the target countries, notably Guyana, provide in-camera hearings for all sexual offences cases many of the target countries do not provide anonymity for the complainant. Given the ordeal suffered by many persons who have been trafficked

68 For details of the case, see *Tourism and the Sex Trade in St. Maarten and Curacao, the Netherlands Antilles*, Jacqueline Martis, in *Sun, Sex and Gold*, as above, p212

69 Vol.5 of the Greenwood Encyclopaedia of Women's Issues Worldwide, as above

70 Bar Owner forced me to have sex with patrons, *Stabroek News*, July 14, 2004

71 Country Report on Human Rights Practices, Jamaica, Bureau of Democracy, Human Rights and Labour, US State Department, 2003.

72 *R vs. Felix Dominique*, The Eastern Caribbean Supreme Court, Case No. 73 of 2004, March 16 2004.

for sexual exploitation, to be forced to relive the trauma in a courtroom in front of the perpetrator and a sceptical magistrate is an unnecessarily painful experience. Furthermore, the evidence given by the victim may not be believed; corroboration is required for many sexual offences, known as the double-witness rule. This is found in The Bahamas. Legal experts have noted, “The underlying assumption embodied in the corroboration rule, which does not apply to other criminal offences, that women fabricate testimony of rape continues to pervade this area of law.”⁷³ Though relying solely on witness evidence in a trafficking case places pressure on the victim, and corroboration with police intelligence is to be encouraged, this rule immediately suggests that the word of a victim of sexual violence has lesser value. Few sentencing guidelines were available for this report, but jurisprudence suggests that the maximum penalties are rarely used.

There are other, more practical issues that apply to all forms of human trafficking. Each of the countries in this study has a small population, often in concentrated areas, where community networks are strong. Therefore, it is difficult for these countries to offer effective witness protection, especially with limited resources. A number of the target countries have experienced the loss of key witnesses in criminal trials due to a lack of an effective procedure. Officials in Guyana have admitted that they cannot afford a witness protection programme; due to the population numbering less than one million, it would entail sending witnesses abroad.⁷⁴ Cooperation to create a regional protection mechanism that would allow for witness-exchange and the pooling of law-enforcement resources remains in the discussion stage. In order for trafficking victims to be effectively protected during a court procedure, this mechanism should become a reality. Finally, in the absence of any suitable asylum provisions that can be used to protect victims, some consideration of the visa status of potential witnesses is required. Whether or not permission to remain in the country is granted on the basis of participation in the criminal prosecution, as in the United States, there are no current provisions in any of the statute books of the target countries that allow for trafficking victims to legally stay in the country. At the very least, informal procedures to offer temporary residence should be created and more long-term residence permits should be considered.

Criminal cases in the target countries tend to take a long time to be heard before a magistrate; time delays range from six months (Suriname) to 12 years (Guyana), with all the target countries aside from Suriname seeing delays of over a year.⁷⁵ When considering visa protections, witness protections and the sheer feasibility

73 Pargass, G., *The incidence of Sexual Offences in the Caribbean*, CAFRA/UNECLAC Meeting on Women Violence and the Law, 1991.

74 Governments must Cooperate on Witness Protection, Official says, Associated Press.

75 Challenges of Capacity Development: Towards Sustainable Development of Caribbean Justice Sectors, as above, Annex C-2, p4.

of prosecuting trafficking cases, the judicial process clearly requires reforms to ensure greater efficiency.

Law enforcement

Law-enforcement officials are the first contact victims will have with the criminal justice process. Unfortunately, there is evidence that similar attitudes to those found in the courtroom pervade the police force. Many of the women's rights groups working in the region note reluctance in the police force to become involved in domestic disputes and a lack of sensitivity when dealing with sexual offences complaints. Though violence against women and children, particularly sexual violence, is thought to be widespread among the target countries, only a small proportion of the total number of cases is reported. This is due in great part to an unwillingness to submit to a process that carries a strong social stigma in small, tight-knit communities. Steps need to be taken to reverse this sense of shame and to improve accessibility to the police by women and children. Most of the target countries are training police officers to deal with domestic and sexual abuse; for example, all incoming officers in The Bahamas are trained to deal with domestic disputes and police officers in Suriname have received training on all forms of gender-based violence. In addition, the creation of specialised units to deal with these offences, as in Jamaica, St Lucia and Suriname, has gone some way to addressing the issue. However, more needs to be done as the majority of police officers remain inadequately trained.

The problem is compounded for those who work in the sex trade. Researchers in Guyana found that sex workers who were victims of abuse were likely to encounter "extreme discrimination and disrespect: they are not credible because they are, by virtue of their occupation, immoral and untrustworthy."⁷⁶ This is partly due to a belief that it is impossible to rape a woman who sells sex, and also due to the tolerance police officers often have towards prostitution. By turning a blind eye to prostitution, law enforcement is less inclined to become involved when there is abuse. In Jamaica, interviews with sex workers reveal that police officers are often complicit in the abuse; some of the women complained of unnecessary physical and verbal abuse and coercion by police officers to perform sex acts, as well as instances of police officers taking bribes from tourists and locals. Some Jamaican police officers were accused of being involved in the sex trade as pimps and gigolos.⁷⁷ Complaints about these activities were generally ignored. Though Surinamese authorities claimed that random checks were made on brothels to

76 Red Thread Women's Development Programme, *Women and Sex Work in Guyana*, Chapter 12, in Sun, Sex and Gold, as above, p266.

77 Campbell, S., A. Perkins, P. Mohammed, *Come to Jamaica and Feel All Right*, Chapter 6, in Sun, Sex and Gold, as above, p141.

investigate abuse and forced detention, no brothel owners have been arrested in the country, though sex workers are frequently detained.

The importance of reform in law enforcement should not be underestimated. Police officers are integral to the criminal justice process, frequently operating as prosecutors as well as investigators, as in The Bahamas, Barbados, Guyana, and St Lucia.⁷⁸ As such, they have a powerful influence in the successful prosecution of trafficking cases and could provide a structural solution to any future inter-agency cooperation and harmonisation in the region. Training and the creation of specialised units in each of the target countries would go a long way to combating the trafficking problem, especially if the police forces in the different target countries were able to coordinate. There has been some inter-country training, with officers from several countries going to Jamaica to receive training. Such training should also be extended to others who work in law enforcement, such as the maritime and immigration authorities. They face a difficult dilemma with respect to conflicting policy; their primary activities are to interdict potential smuggling groups and drug traffickers, while they could play a vital role in identifying victims of trafficking and human traffickers at an early stage. However, these two roles require markedly different attitudes and responses, as well as a great deal of sensitivity.

Protection policies

The report has thus far described the strengths and weaknesses of the laws and judicial systems in the target countries to prosecute and prevent human trafficking. The subsequent section will assess the machinery that exists that could offer protection to trafficking victims. As noted above, the target countries suffer from widespread violence against women. Abuse and neglect of children is also commonplace. Nevertheless, the target countries have all ratified the Convention for the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which require the governments to take action to combat these issues. Both of these conventions address forced labour and human trafficking (see Appendix A for relevant sections). As expected, there is little action being taken to protect trafficking victims specifically, but more services exist for other victims of abuse and crime. Given the limited human and financial resources that exist in all of the target countries, this report shall assess the quality and nature of available facilities and the feasibility of extending existing services to include trafficking victims.

Protection of women

The issue of violence against women has been highlighted in the target countries over the past two decades and the governments have created dedicated agencies

⁷⁸ Challenges of Capacity Development: Towards Sustainable Development of Caribbean Justice Sectors, as above, Annex C-2, p1.

to deal with all forms of gender-based discrimination. Most have also convened commissions and created detailed policy strategies, such as Jamaica's National Policy Statement on Women. The majority of these "Women's Bureaus" are housed within the government ministry that deals with social services and labour, which are the most relevant to women's issues, and are mandated to develop and implement policies related to women which include violence against women. As such, these agencies are well placed to offer technical assistance to governments on the trafficking of women and coordinate with support services in the community. In addition, the Women's Affairs section of the regional Caribbean Community (CARICOM) Secretariat has brought these bureaus together for a number of meetings to coordinate their activities. One of their main achievements has been the creation of model legislation on issues affecting women. In addition, many of these offices support inter-agency cooperation on gender issues, for example, the Inter-agency Committee housed in the Guyanese Women's Affairs Bureau, which is an indispensable asset for the coordination of anti-trafficking activities. A number of government departments, including the ministries of justice, immigration and labour, will need to coordinate with each other for effective implementation of future laws and policies.

There is a concern that these agencies are merely symbolic structures to comply with international obligations; they are minimally staffed and mired in bureaucracy. A report from the Committee on the Elimination of Discrimination against Women noted that the Bureau of Gender Affairs in Barbados was not receiving sufficient resources to be effective,⁷⁹ a problem the Bureau for Gender Development in Suriname also seems to be battling. In order for these agencies to play a role in new strategies to combat trafficking in women and girls, they will require increased material and financial resources and a more influential role in government policy-making. Overall, if they become responsible for issues related to the protection of trafficking victims, their activities would be bolstered and protection would be more efficiently integrated with other victim services.

Outside of the main bureaucracy, government welfare services for women in the target countries remain inadequate, though they have improved over the past decade. In the absence of official facilities, a strong civil society system has developed in each country to support abused women. Non-governmental women's groups are some of the most vocal and well-organised rights advocates in the region. Services provided by these groups include shelter, counselling, training, public education and legal services, and they have used strong community networks to build trust with clients. Many of the target administrations, recognising the strength of the NGOs in this field and their own limited resources, have turned to subsidising

79 CEDAW Report, A/57/38, para. 214.

existing homes and shelters, rather than duplicating services. For example, the Women's Crisis Centre in The Bahamas, the main group offering services to victims of physical, sexual and emotional abuse, receives an annual subsidy of USD30,000.⁸⁰ Though the government has also constructed two housing facilities for battered women, this NGO remains the expert in the field. Governments have supported community initiatives in other ways: in Guyana, the government donated land for a shelter constructed by Help and Shelter, and provided USD3 million towards running costs in 2003; in Suriname, the government aids in the work of the Stichting Maxi Linder Associatie by providing social workers and other civil service staff. Other NGOs have been helped by overseas development funding, such as the government-run St Lucia Women's Support Centre, which was established in 2001 as part of a partnership with Health Canada to improve support services.

Cooperation between government and non-government agencies is to be encouraged. Victims of trafficking may feel more comfortable approaching non-governmental agencies for help and shelter. However, more state resources need to be dedicated to welfare for women in the region and the strength of the civil society in increasing political will in this area needs to be recognised. As the Bureau for Women's Affairs in Jamaica has pointed out, "non-governmental organisations are taking up the slack and doing much of the work that should be done by government."⁸¹ Most of the shelters in the target countries are working to capacity and extra services need to be created. This is particularly evident in the multi-island states: experts have noted that one of the primary constraints to providing services in The Bahamas is the prohibitive cost of decentralising efforts in the archipelago, resulting in a concentration of services in the main population centres.⁸² This problem also hampers efforts in the Netherlands Antilles, which consists of five islands in two clusters.

Few of these organisations are currently dealing with trafficking victims. However, most have dealt with rape, sexual violence, domestic abuse and extreme emotional trauma, and have the facilities for dealing with trafficking victims. With training, these services could be better tailored to serve the needs of trafficked women.

Child protection

There is a significant number of children suffering from abuse, neglect and abandonment in the target countries and that they are in need of a wide variety of protection services. These facilities are not only necessary to protect minors who

80 Vol.5 of the Greenwood Encyclopaedia of Women's Issues Worldwide, as above.

81 National Report on the Situation of Gender Violence Against Women: Jamaica, Regional Project RLA/97/014, UN Inter-Agency Campaign on Violence Against Women and Girls, March 1999, p49.

82 Vol.5 of the Greenwood Encyclopaedia of Women's Issues Worldwide, as above.

have already been trafficked, but are vital in the battle to prevent exploitation of vulnerable children with no access to alternative care. All the target states have dedicated agencies mandated to develop and implement child welfare policies, housed in the ministries responsible for social services. However, the quality and size of these bodies varies widely. In Suriname, the Bureau for the Rights of the Child has suffered from repeated budget cuts and has been unable to pursue comprehensive programmes to prevent child abuse and treat children who have been abused. Jamaica has recently passed the Child Care and Protection Act, an 88-page law designed to fully implement the provisions of the Convention on the Rights of the Child. The Jamaican government has also created a Child Development Agency, which has amalgamated the Child Services Division, the Adoption Board and the Child Support Unit.

The Child Care and Protection Act creates a Children's Registry, where all complaints about child abuse may be made, and imposes a duty to report suspected abuse on all persons "who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child."⁸³ Failure to make such a report can result in a fine of up to JMD500,000 and a prison term of up to six months. This duty could improve the identification of child trafficking by law enforcement and social workers and prevent corruption within the government. The Act also establishes regulation of children's homes; homes containing four or more children require a licence and must submit to regular random checks. This legislation is comprehensive and should be a model for other child legislation reform in the region. However, aside from the lack of trafficking definition, the Act omits to provide resources for additional childcare facilities. This weakens the impact of an Act that has created an excellent legislative basis and procedure for dealing with child abuse, but unfortunately cannot deal with the practical aspects of actual care. Of the 45 children's homes in Jamaica, 40 are privately run. It is not known whether any resources have been allocated separately. Other target countries have similar legislation, such as the Childcare Board and Prevention of Cruelty to Children Acts in Barbados and draft legislation in Guyana expected to be passed at the end of 2004.

In terms of service provision, the governments rely on the expertise and resources of non-governmental agencies, religious institutions and charities, which in turn are frequently supported by international agencies. Some of the target countries have more government-run facilities than others. The Child Care Board in Barbados operates 11 children's homes, though there is a level of overcrowding experienced periodically.⁸⁴ However, there are no foster homes available on any of the Windward

83 Section 6, Jamaica Child Care and Protection Act.

84 Corbin, B., and D. Nurse, Presentation of the Child Care Board to the IIN/OEA, http://iin.oea.org/ BARBADOS_ing.pdf

Islands of the Netherlands Antilles, and the government in Suriname closed a home for girls that had been run by the Ministry for Social Affairs. However, some subsidisation of privately run homes occurs. In The Bahamas, the Children's Emergency Hostel receives a grant from the Department of Social Services and the services of a social worker.

While cooperation between government and non-governmental agencies is welcomed, additional resources must be expended, as the numbers of children in need outweigh the places available within facilities. This is a more expensive prospect, if only because children require housing, closely monitored care and educational services. However, while few of the organisations currently working with children have experience in human trafficking, training programmes may equip them to deal with trafficked children and help them tailor their services accordingly.

Regional initiatives

It is becoming increasingly more difficult for governments to fight crime and violence acting alone. Transnational collaboration is proving to be almost indispensable to tackle problems that, while domestic in nature, have deeply transnational sources.⁸⁵

The transnational nature of trafficking in persons makes regional collaboration a distinct necessity. In addition, the complexity of response required to prevent, protect and prosecute trafficking complicates unilateral action by small states with limited human, economic and technical resources. In a number of organisational guises, the target countries have already begun to cooperate in areas relevant to the fight against human trafficking. Any regional measures taken to address the issue specifically should build upon these initiatives and make use of resources already pooled.

The Caribbean community (CARICOM)

The Caribbean Community (CARICOM) is the primary mechanism for regional cooperation and was initially created to administrate a free trade area and common market. From its inception, the organisation has also been dedicated to functional cooperation with respect to human and social development, as well as economic integration (see Appendix E for structure). In working towards harmonisation, the CARICOM Secretariat has focused upon several particular legal and social issues for reform that have relevance to human trafficking. All of the target countries, with the exception of the Netherlands Antilles, are members of this organisation.

85 Challenges of Capacity Development: Towards Sustainable Development of Caribbean Justice Sectors, as above, p4.

Of most relevance to this report is the Legislative Drafting Facility that was created within the Secretariat in January 2003, with a mandate to prepare model legislation with respect to the Caribbean Single Market and Economy, international trade, HIV/AIDS, and justice and security issues. This mandate has been achieved with technical assistance from USAID⁸⁶ and is expected to be the focal point for the development of new regional laws in areas such as money laundering and terrorism. The CARICOM Secretariat proposed in 2004 that the Legislative Drafting Facility within the organisation develop model legislation as a guide for domestic governments for the implementation of the UN Convention Against Transnational Organised Crime and its Protocols, which includes the Protocol on Trafficking in Persons.⁸⁷ The Secretariat has already gained experience in similar areas, having published model laws on issues affecting women.

The strategy used to create these model laws is illuminating. The project was conceived through a joint meeting of Women's Bureaus in the region and the initial exploratory research stages were funded by the Canadian International Development Agency. Following detailed investigation of the legal status of women in the region, a second project was developed (funded by the Commonwealth Secretariat) to develop model legislation. The drafting was supported by extensive communication with legal experts from many Caribbean countries, and consultation with both government and non-governmental organisations, including the Caribbean Association for Feminist Research and Action (CAFRA) and the Caribbean Women's Association (CARIWA).⁸⁸ Relevant national ministers adopted final legislation in 1991 that included provisions on sexual offences, domestic violence and sexual harassment. The model law on sexual offences (see Appendix E) is of most relevance to this report and has proved effective in several ways. The model law has helped governments draft national legislation, of which The Bahamas Sexual Offences and Domestic Violence Act 1991, and the Sexual Offences Act 1991 in Barbados are two examples. The model law has also given women's organisations and advocacy groups a benchmark to refer to in their own activities.

There are a number of strengths to this approach. It allows for some regional harmonisation without needing to resort to a formal treaty, which would require consultation at the executive levels and would become a political rather than a

86 See the data sheet for Caribbean region, Rule of Law Program, USAID, http://www.usaid.gov/our_work/democracy_and_governance/regions/lac/538-006.pdf

87 The Role of the Caribbean Community (CARICOM) Secretariat in Strengthening Practical Cooperation between Regional and Institutional Organisations in the Common Effort against Global Terrorism, CARICOM Secretariat, March 5 2004, http://www.osce.org/documents/sg/2004/03/2243_en.pdf

88 Details of the project can be found on the CARICOM Secretariat website at <http://www.caricom.org/womenlegislation.htm>

technical process. Also, though externally funded, ownership of the project remains within the region, endogenously created rather than externally imposed. Finally, the consultation process was extensive and included many different types of actors from the non-governmental groups who deal with the problems on the ground, to the members of the government and judicial system who will eventually have to apply the law in practice. Thus, the drafting responded to both the particular needs of the problem, as well harmonising with the legal systems and legislation already in place. It is to be hoped that the Legislative Drafting Facility works in a similar fashion.

Aside from these legislative initiatives, CARICOM has begun a series of more practical regional measures. As the Deputy Secretary-General of CARICOM has pointed out with respect to domestic violence, legislative reform alone cannot solve these problems, but must be supported by an enabling environment for proper implementation.⁸⁹ Thus, in the late 1990s, CARICOM participated in the launch of the Domestic Violence Intervention Project, intended to strengthen the capacity of police officers and other frontline workers to support and assist the victims of domestic violence. CAFRA, the Caribbean Development Bank (CDB), and the Association of Commissioners of Caribbean Police (ACCP) organised the project, bringing together the most relevant existing organisations in the region. The parallels to human trafficking reform are clear: there should be legislative reform to provide a basis for action, accompanied by training and awareness programs involving those who have the necessary expertise and responsibility for trafficking in persons. In the case of trafficking, this requires not only law-enforcement training to identify and protect victims, skills training for social and assistance workers to deal with counselling and other more long-term needs, but public prosecutors and the judiciary are also likely to need training to ensure that any trafficking legislation is put to most effective use.

The changing global security environment has influenced other regional initiatives. In the past few years, there have been a number of different mechanisms created to combat global terrorism and transnational crime. In July 2001, a Regional Task Force on Crime and Security was established by the CARICOM Heads of Government to examine the causes of crime and recommend approaches to deal with crime and terrorism. Measures suggested by the task force included improvement of border control measures and port security, more efficient management of intelligence including information-exchange mechanisms and the creation of a regional strategic plan to implement initiative against crime and security threats.⁹⁰

89 Domestic Violence Legislation Requires Enabling Environment - Dr Barnett, *Stabroek News*, September 23, 2000, <http://www.sdnv.org.gy/hands/hsevents/cafarticles.html>

90 The Role of the Caribbean Community (CARICOM) Secretariat in Strengthening Practical Cooperation between Regional and Institutional Organisations in the Common Effort against Global Terrorism, as above.

These measures have an impact on potential anti-trafficking activities and it would be advantageous to work with the task force to address the transnational criminal elements involved. Other initiatives already underway include a Caribbean Treaty on Mutual Legal Assistance, which will obligate member states to assist each other in the investigation and prosecution of serious criminal offences. Though Mutual Legal Assistance Treaties (MLATs) are in effect bilaterally between a number of Caribbean countries and the United States, their use in the Caribbean will impact the prosecution of trafficking intra-regionally. Finally, the CARICOM Secretariat is considering a Regional Justice Protection Programme designed to protect both witnesses and members of the judicial process who may be under threat. Though not intended to address human trafficking directly, this regional cooperation will have a positive effect on any domestic counter-trafficking measures.

Finally, one of the most high profile legal reforms being undertaken by CARICOM is the Caribbean Court of Justice (CCJ). This court was created primarily to interpret and apply the provisions of the Treaty of Chaguaramas (the treaty that established the Caribbean Community) and become a court of last resort for the members of CARICOM, replacing the Privy Council of the United Kingdom. All appeals, including criminal cases, referred by the national courts of the CARICOM countries will be decided in the CCJ. This gives countries that currently use the Privy Council and those that do not an opportunity to harmonise parts of their legal system and retain regional control over decisions, rather than exporting them to the United Kingdom.⁹¹ As a court of last instance, the CCJ may play a role in ensuring that the national jurisprudence in each CARICOM country remains consistent with respect to the adjudication of trafficking cases, even where that legal system is different (as with the civil law system in Suriname). Though not currently in effect, the CCJ is beginning to prepare members of the domestic judicial system for the new procedures. However, not all of the member states have signed on to the CCJ; The Bahamas has decided to retain the Privy Court for the present.

Caribbean financial action task force (CFATF)

Following two meetings to address drug smuggling and money-laundering activities in the early 1990s, the Caribbean Financial Action Task Force (CFATF) was created to coordinate and monitor activities as laid out by the Kingston Declaration (1992), a statement by government ministers endorsing their commitment to action on the issue. In 1996, the member governments entered into a Memorandum of Understanding, which now serves as the basis for the goals of the CFATF. All of the target countries are members of the task force.

91 However, one of the primary criticisms of the CCJ is that it was created in order to avoid further Privy Council rulings inhibiting the use of the death penalty, earning it the name “the hanging court”.

The CFATF works to ensure the implementation of measures for the prevention and control of the proceeds of serious crime, and engages in self-assessment and mutual evaluation programmes to ascertain the degree of compliance with the UN Convention against Illicit Traffic in Narcotics and the obligations expressed in the various regional declarations. In addition, the task force coordinates training and technical assistance for member states, which includes assistance with drafting and amending anti-money laundering legislation, training for prosecutors, judges and magistrates in money laundering and asset forfeiture proceedings, the creation of Financial Intelligence/Investigation Units, training of law-enforcement officials and public awareness schemes for banks and other financial institutions. This programme has been a focal point for reform and is responsible for a number of changes.

However, this project has gained impetus from the United States, which has highlighted the strengths and weaknesses of activities through an annual International Narcotics Control Strategy Report, issued by the State Department, and composed of a similar format to the Trafficking in Persons Report. This report has highlighted the lack of cooperation in a number of the target countries, such as The Bahamas, and has more forcefully pushed CFATF member states to act through the issuance of financial advisories. The regional mechanism, combined with external pressure from the United States and the international Financial Action Task Force, has proved to be extremely effective, especially in the past few years.

UNHCR temporary protection scheme

Other proposals that have made recommendations that are relevant to legal reform for counter-human trafficking have not resulted in any specific measures. For example, there was an attempt to create a regional asylum system in the Caribbean. In 1995, UNHCR supported a proposal by the Open Society Institute to create a Temporary Refuge Scheme for the Caribbean in order to deal with migration emergencies in Central America and the Caribbean, following refugee movements from Haiti and Cuba.⁹² The proposal noted that the Organisation of American States (OAS) and CARICOM were best placed to provide a systematic response, which could coordinate reception and conditions of stay, and recommended that a binding treaty be signed to regulate this coordination based upon the principles of the 1984 Cartagena Declaration.

Despite the comprehensive and practical nature of this proposal, no such mechanism has been agreed upon or implemented in the region. This could be due to a national reluctance to cede control over migration, which has proved problematic with respect to European Union attempts to produce a common asylum system.

⁹² A Proposal to Establish a Temporary Refuge Scheme in the Caribbean Region for Refugees and Migration Emergencies, December 1995, Forced Migration Project, Open Society Institute,

The advantage of using treaties is that a solid legislative base for cooperation is created as well as a normative obligation for action. However, because of their binding nature, intergovernmental negotiations frequently result in weakened agreements, or cooperation proposals that never find ultimate agreement. For Caribbean countries, there is little common interest in creating a formal mechanism for accepting forced migrants as opposed to the measures to counter-money-laundering and transnational crime. Therefore, there is little political impetus for agreement and subsequent implementation. This is not to say such an agreement should not occur, but that it is often difficult to achieve. With respect to human trafficking, though ratification of the Protocol should be encouraged, initial action may be more effectively fostered through cooperation agreements, leaving binding obligations until a later stage. As we have seen, the use of model legislation as an alternative method of harmonisation has been fairly successful.

Other regional reviews

Many organisations have proposed reform on human trafficking or proposed reform linked to human trafficking and the Caribbean, though no direct reform has stemmed from these proposals. The wealth of information examined in the regional review is demonstrated by the proposals listed below:

- In 2003, the Commonwealth Secretariat convened an Experts Group to develop strategies for combating the trafficking of women and children, which subsequently produced its findings in a report.⁹³ In terms of legislative action, the group recommended the criminalisation of trafficking, with stiffer punishments, provisions for the confiscation of assets for the benefit of victims, regional cooperation for extradition, protection of victims, including witness protection, and intelligence-led collection of evidence. Though the Commonwealth Secretariat proposed community-led participation in the formulation and enforcement of trafficking laws, no concrete plans to implement the Commonwealth strategy have emerged.
- In 2002, the International Migration Policy Programme (IMP) featured inter-agency cooperation between the United Nations Population Fund (UNFPA), the United Nations Institute for Training and Research (UNITAR), The International Labour Office (ILO) and the International Organization for Migration (IOM) which was designed to aid government capacity building and cooperation. This project joined with a number of regional groups, such as the Economic Commission for Latin America and the Caribbean (ECLAC) and CARICOM, to hold jointly with IOM two International Migration Policy Seminars for the Caribbean Region (Jamaica in 2001 and

93 Report of the Expert Group on Strategies for Combating the Trafficking of Women and Children, Human Rights Unit, Commonwealth Secretariat, 2003.

Dominican Republic in 2002). The second seminar had a wider scope in terms of substantial coverage and government participation. This three-day dialogue covered all aspects of migration, including migrant smuggling and human trafficking, and brought together international and local experts.⁹⁴ This inter-agency programme was established in 1998 and concluded its activities in 2003. One of the most important conclusions arrived at by the IMP is the need for a more formal regional forum in the Caribbean, such as the Puebla Process for North and Central American states.

- The United Nations Development Fund for Women (UNIFEM) and the Inter-American Commission for Women (CIM) collaborated on a review of state and non-state responses to Violence against Women in the Caribbean, as part of UNIFEM's Capacity Building on Gender in the Caribbean Project, begun in 1995.⁹⁵ The report noted the need for more integrated and comprehensive responses to violence against women, both with respect to service provision for the protection of women and the eradication of inequality between the genders. Specific reforms included legal reform, training within the judicial system, the development of services and programmes and improved data collection and research.
- The Caribbean Group for Cooperation in Economic Development, a forum for policy dialogue chaired by the World Bank, produced a review of justice sector reform in the region.⁹⁶ Emphasising the need for transnational collaboration in the justice sector, the report makes the interesting point that the "institutional economics" of understanding the incentives shaping the "why" and "what" are as important as grasping the more technical "how" question when designing reform. As such, the report recognises the importance of stakeholder support in the Caribbean for reinforcing political will. Though the analysis does not look at specific laws, but rather the procedures, of the judicial system, it offers the recommendation that greater transparency and the introduction of more preventative and rehabilitative measures to the judicial system may help address social goals.
- The MacArthur Foundation funded a comprehensive study of governance, security and globalisation in the Caribbean, including field research in Jamaica and St Lucia. The research, being undertaken by The University of Miami, The University of the West Indies and the Council on Foreign

94 In particular, representatives from Belize, the Netherlands Antilles and Turks and Caicos attended as new participants in 2002, in addition to continued participation by representatives from Bahamas, Barbados, Cuba, Dominican Republic, Guyana, Haiti, Jamaica, Trinidad and Tobago, and Suriname.

95 Roberta Clarke, *Violence Against Women in the Caribbean: State and Non-State Responses*, as above.

96 *Challenges of Capacity Development: Towards Sustainable Development of Caribbean Justice Sectors*, as above.

Relations, involves an assessment of transnational organised crime in the region. The study is intended to produce policy recommendations on how regional organisations, governments and the private sector can develop practices to manage people and goods more effectively. Currently, these recommendations are not available.

Little substantive progress has been made for many of these initiatives, aside from the production of new governmental policy statements, and the raising of awareness among experts. The most successful regional initiatives have been those that have utilised existing mechanisms or created new regional systems for coordination. International initiatives that have sought to create change solely through bilateral contacts with Caribbean countries have generally lost momentum, probably due to the large number of issues that these small administrations have to deal with. To avoid a “flash in the pan” effect with a capacity-building project and provide a long-term strategy that is feasible, regional organisation is a far more effective tool for reform. In this context, given the membership, normative value and past projects of the Caribbean Community, it would be an ideal partner for instituting domestic change.

Incorporating the Netherlands Antilles

The Netherlands Antilles does not participate fully in a number of these regional initiatives and only has observer status within CARICOM and the OAS. This is linked to the fact that the Netherlands Antilles is not fully independent, but remains a member of the Kingdom of the Netherlands. Division of competence between the Netherlands and the Netherlands Antilles is unclear, though ostensibly the Netherlands has control of foreign policy, including the ability to make international agreements.

An examination of the methods of involving the islands of the Netherlands Antilles in region-wide initiatives is necessary. The most obvious option is to lobby the Netherlands to allow and encourage greater Caribbean participation in counter-trafficking. The issue of human trafficking has received serious attention in Europe and the Netherlands has taken an active role in promoting prosecution and protection policies. More specifically, there is evidence that despite observer status, the Netherlands Antilles has competence to participate in discrete projects. For example, in January 2004, the territory signed a memorandum of understanding with the OAS to allow them to contribute to the activities of the Inter-American Drug Abuse Control Commission (CICAD).⁹⁷ Adopting a similar strategy for counter-trafficking activities would be useful.

97 Netherlands Antilles to be more involved in OAS anti-narcotics agency, Caribbean Net News, January 16, 2004.

Finally, that the uncertainty of the future of the Netherlands Antilles is worth consideration. The Jesurun Commission, appointed by the Dutch and Netherlands Antillean governments, has advised granting the larger islands of Curacao and St. Maarten independent status, while placing the remaining three islands, Saba, Bonaire and St Eustatius, under direct control.⁹⁸ When considering the long-term role the Netherlands Antilles shall play in regional counter-trafficking activities, careful attention should be paid to its future international legal status. A political accord on the issue may be signed before the end of 2004.

⁹⁸ New Rules for the Netherlands Antilles, BBC Caribbean, October 8, 2004.

3. Recommendations and strategy for reform

Regional model legislation

The *Caribbean counter-trafficking model legislation* published by IOM in 2008 provides the region with a comprehensive legal tool to combat human trafficking (see Appendix G). The model legislation was developed in partnership with the CARICOM Legislative Drafting Facility, CARICOM Member States and IOM. The model legislation upholds the standards established by the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*. By implementing this model legislation, the target countries have an opportunity to harmonize the penalties for human trafficking on a regional level, resulting in a more effective deterrent for human traffickers and potential human traffickers. Such legislation may also provide a legislative base for more practical regional cooperation. The size and attendant resource constraints that the individual countries face imply that the adoption of this model law would be a more efficient method of reform. The application of the model legislation has the advantage of remaining apolitical at the drafting stage, unlike treaty negotiation and law.

Regional task force

The Caribbean Financial Action Task Force (CFATF), bolstered by the external pressure of the US State Department and the International Financial Action Task Force, has achieved a great deal over the past decade, particularly in the last five years. The Office to Monitor and Combat Trafficking in Persons is providing similar external pressure in the form of the Trafficking in Persons Report. The creation of a regional body, whether within CARICOM or separately (recognising that the Netherlands Antilles is not a member of the Caribbean Community), to perform monitoring and assistance functions in the region would be a necessary addition and would ensure successful transposition and implementation of model laws.

Some of the more relevant and successful practices used by the CFATF should be adopted by this regional trafficking task force, such as the various mutual evaluation, training and technical assistance programmes. In addition, such a task force should become the focal point for further research on the trafficking phenomenon in the Caribbean and act as the regional liaison for any inter-agency cooperation on issues relevant to combating human trafficking.

Regional cooperation in the criminal justice system

A number of inter-agency cooperative initiatives are being discussed in the region and this report would recommend that this work continue, as such interaction would help law enforcement in the counter-trafficking effort. Best practices from inter-

agency cooperation concerning narcotics trafficking would inform any regional task force on the most successful elements. Areas that are of priority to human trafficking include intelligence sharing, border control, witness protection, anti-money laundering and other measures to combat transnational crime. An example of useful instruments to combat such crime is the bilateral Mutual Legal Assistance Treaties (MLATs) that exist between countries within the Caribbean region, as well as with the United States. These treaties allow states to assist each other in the extradition and prosecution of criminals.

Reform of criminal law and penalties

In the absence of human trafficking legislation, or while it is being drafted, the “patchwork” criminal approach should be used, which would include prosecuting human traffickers for sexual offences, offences to the person and kidnapping. However, there is some evidence that sentencing for these activities is frequently too lenient and there is a lack of coherent rationale in the maximum penalties that are provided in the various criminal codes. Sentencing guidelines should be issued to members of the prosecutor’s office and the judiciary to ensure that human traffickers receive sentences proportional to their criminal activities. The maximum penalties should be raised where necessary. Finally, this report has highlighted a number of areas where the criminal law is weak or inconsistent. Many sexual offences are undefined, the age of sexual consent is frequently too low and males often fall outside the scope of minor sex offences. Reform of criminal laws to rectify these limitations is recommended regardless of whether human trafficking legislation is drafted.

Training for law enforcement, public prosecution and judiciary

There is a need for greater awareness of human trafficking in the target countries. Training is necessary for all aspects of dealing with the problem, from educating police officers on how to deal with suspected cases, and greater sensitivity towards gender-based violence, to briefing prosecutors on the most effective methods of charging human traffickers and proceeding with trafficking cases. Given the recent nature of the global interest in human trafficking, it may be necessary to educate public officials on the trafficking issue. There is a strong need to focus on the owners of establishments rather than the trafficked worker. In addition, technical assistance from the United Kingdom or the Netherlands (given the similarities in legal systems) would be useful in teaching law enforcement and public prosecutors how to use the existing criminal law to pursue human traffickers, in the absence of specific legislation. The UK has extensive knowledge on using legislation that applies to cases of rape, kidnapping and forced detention to create a “patchwork” of offences.

Protection and welfare policies

This report has highlighted the inadequate provisions for women and children who are victims of violence, largely due to the limited resources that are available to expend on services. Current services need to be expanded both directly through the creation of government-run units and indirectly through increased financing of expert NGO service providers. However, these reforms should not be limited to victims of human trafficking, but extended to all victims of abuse. Resources are limited enough that dedicated units for trafficking victims may divert funding away from other services, leaving many women and children unsupported. Separate structures for trafficking services would be an unnecessary bureaucracy and expense. Instead, trafficking protection policies should be integrated into existing mechanisms for welfare, such as the women's bureaus in each target country and the various shelters that are already in place. Persons working in female and child protection should receive training on trafficking issues and the specific needs of a trafficking victim, while administrative units should focus on best practices that have been used elsewhere for protecting trafficked persons.

Services for abused persons should also have a concrete legislative base. The recent reform of child protection services in Jamaica should be considered as a template for the other target countries, as it offers regulation of services and a reorganisation of government agencies that incorporates protections for child trafficking. An additional element would be the specific commitment of government funds, to bolster these reforms. Legislation concerning services for women and protections should be widened in a similar fashion, and the work that has been achieved in domestic violence reform should be scanned for best practices in this respect.

Further research

Though this report has provided a thorough assessment of criminal legislation and useful provisions to prosecute human traffickers and protect victims, there is a notable absence of any analysis concerning implementation of these laws and informal rules such as regulations, sentencing and procedural guidelines, and how the judicial system works in practice. For example, though immigration laws outlining entry procedures in the target countries are contained in this report, a number of questions remain unanswered. How stringent are the documentation checks made by immigration officers? Are there sufficient resources to maintain an effective system? How sensitive are officers to the possibility that some of those entering the country may be caught in a trafficking process? Field research is necessary to gain a full understanding of the smaller reforms necessary in each of the target countries, and to inform the parameters of training programs for law enforcement and functionaries of the criminal justice system.

Finally, this report has made a number of assumptions with respect to the nature of human trafficking in the target countries. The high level of tourism and the extent of the sex trade suggest that a number of trafficking victims are women and girls forced into the sex trade, an assumption confirmed by a number of local researchers. However, these researchers have also noted that there is a sizable gap in data on the movements and characteristics of those trafficked and that research on human trafficking in Caribbean countries has typically occurred through larger studies focused upon the Americas that include one or two Caribbean states.⁹⁹ In order to create legislative reform that is tailored to address issues specific to the region, improved research on the nature of human trafficking in the Caribbean is necessary. This is a mutually reinforcing cycle, as improved legislation will help identify and regulate all aspects of the issue, which in turn further informs research and data.

⁹⁹ Elizabeth Thomas-Hope, *Human Trafficking in the Caribbean*, presented at the IOM International Expert Meeting on Improving Data and Research on Human Trafficking.

Part II: Legal review on trafficking in persons in Trinidad and Tobago (2006)

1. Summary of the legal review on Trinidad and Tobago

This report, prepared in 2006, on Trinidad and Tobago is supplementary to the *Legal review on trafficking in persons in the Caribbean: The Bahamas, Barbados, Guyana, Jamaica, Netherlands Antilles, St Lucia and Suriname*, published by IOM in 2005. As such, it does not offer recommendations, aside from those specific to the country of Trinidad and Tobago. General recommendations can be found in the previous review.

Despite having no specific trafficking legislation, criminal law in Trinidad and Tobago could be effectively used to prosecute human traffickers, particularly those trafficking women and children for sexual exploitation. Penalties are sufficiently severe, though there is concern that these are not always applied. In addition, the country has passed a separate Kidnapping Act, which is of great use to those forcibly detained during the human trafficking process. In terms of employment law, the use of collective bargaining in industrial relations could leave workers without membership in a union vulnerable to exploitation by employers. Further research is needed to ascertain the frequency of this trend in Trinidad and Tobago. In terms of immigration law, the country is similar to others in the region. Training is recommended for immigration officers in identifying and protecting potential victims of human trafficking.

The criminal justice system in Trinidad and Tobago suffers from delays and a backlog of cases. The rise in violent crime in the country is stretching resources severely.¹⁰⁰ However, the country is unique in the creation of a Justice Protection Programme for witnesses in criminal proceedings and a review body to ensure that sentencing for crime is adequate. In terms of protecting victims of human trafficking for sexual exploitation, law enforcement seems to target the sex workers as criminals rather than managers of brothels and there are few programmes in place to assist sex workers in the country. As such, there is a concern that suspected victims of trafficking are not being identified.

In terms of shelter and counselling, there are a number of NGO and government-organised services for women and children. However, none have focused specifically on human trafficking issues. With extensive expertise in dealing

¹⁰⁰ See the Prime Minister's Budget Statement for 2005/6, *Vision 2020: Ensuring Our Future Prosperity, Addressing Basic Needs*, presented to Parliament on September 28th, 2005, <http://www.ttparliament.org/budget/2005/bs20050928.pdf>

with gender violence and child abuse, these organisations should be encouraged and funded to offer awareness-raising programmes and counselling services to vulnerable communities.

Introduction

In line with the rest of the Caribbean, mobility into and out of Trinidad and Tobago is fluid. While the population of Trinidad and Tobago is small, numbering just over 1 million people, the annual flow of people in and out of the country is high: in 2004, the two islands received over 440,000 visitors, many of these from within the Caribbean region.¹⁰¹ The government encourages economic emigration, while migrant workers from the rest of the Caribbean, particularly Barbados and Guyana, are in steady supply.¹⁰² Given the level of flows into the country, the difficulties encountered during the policing of borders effectively (the size of the drug trafficking industry in Trinidad and Tobago attests to this),¹⁰³ and the strength of the tourist industry, it is likely that migration flows are frequently informal and undocumented. In terms of trafficking in persons, it is thought that Trinidad is both a country of origin and transit for victims en route to North America and Europe.¹⁰⁴ However, there is also some evidence that women are being trafficked into prostitution in Trinidad, with newspapers reporting that a Trinidadian company lured several Guyanese women into prostitution with promises of legitimate work.¹⁰⁵

Compared to other Caribbean countries, Trinidad and Tobago is a wealthy country as it is the leading producer of oil and gas in the region and has been a recipient of high levels of foreign investment. The island has also been a popular destination for migrant workers. However, a significant proportion of the population remains below the poverty line with low levels of income, and unemployment is at 8 per cent. The principle sector for employment is the services industry with around 64 per cent of the labour force, followed by manufacturing and mining (14%), construction (12%) and agriculture (9.5%).¹⁰⁶ Tourism is a growing sector in Trinidad and Tobago, along with a growing trade in sex tourism and attendant evidence that children are being exploited within the industry.¹⁰⁷ The International

101 Prestige Business Publications Ltd, *Who's Who in Trinidad and Tobago Business 2005-6*, Industry Details for Travel, Hotels and Tourism, <http://www.whoswhotnt.com/industry/details.aspx?iid=79>

102 IOM (2004) *HIV/AIDS and Mobile Populations in The Caribbean: A Baseline Assessment*, Santo Domingo, June. http://www.iom.int/DOCUMENTS/PUBLICATION/EN/Final_Report_HIV-AIDS_and_Mobile_Populations_in_the_Caribbean.pdf

103 Trinidad and Tobago is a major transit country for narcotics travelling from Latin America to the United States. For more information see the International Narcotics and Control Strategy Report 2006, Bureau for International Narcotics and Law Enforcement Affairs, US Department of State.

104 Protection Project Country Report, Trinidad and Tobago, available at <http://www.protectionproject.org>

105 Wendella Davidson, *Guyanese girls lured into prostitution by Trinidad company*, July 2005.

106 CIA, Factbook (2005), Trinidad and Tobago, <http://www.cia.gov/cia/publications/factbook/geos/td.html>

107 Alexa Khan (2003) *Trinidad and Tobago Country Report*, paper presented at the Regional Governmental Congress on Sexual Exploitation of Children, http://www.iin.oea.org/TRINIDAD_TOBAGO_ing.PDF.

Labour Organisation has found evidence of children working on farms, scavenging and doing domestic work in addition to sex work.¹⁰⁸

In terms of the government's ability to police and prevent human trafficking, Trinidad and Tobago faces issues of resource and priority. Currently, the country faces a crisis in crime control, with murder and violent crime at an all-time high. Thousands of nationals took to the streets in October 2005 to protest the apparent lack of control demonstrated by the government.¹⁰⁹ Much of the violence is rooted in the rise of drug trafficking in the country and fuelled in part the forced return of a number of convicted criminals deported from the United Kingdom, United States and Canada. As a result, the government has called for international assistance from the United States and United Kingdom to address the problem.¹¹⁰ While local police forces are focused on combating drug trafficking and violent crime, the question remains whether they have the time and resources to successfully investigate potential cases of trafficking in persons. Therefore, clear laws and explicit obligations are imperative to support the authorities in conducting counter-trafficking investigations.

108 Desmond Hunte and Cheryl Lewis (2002) *Worst Forms of Child Labour: ILO Rapid Assessment - Trinidad*, www.ilocarib.org.tt/childlabour/library/rapid_assessment/ratrinidad.pdf

109 BBC News, *Thousands March on Trinidad Crime*, 23 October 2005, <http://news.bbc.co.uk/2/hi/americas/4368582.stm>

110 BBC News, *Trinidad seeks UK-US Help*, 23 September 2005, <http://news.bbc.co.uk/2/hi/americas/4292760.stm>

2. International and regional instruments

Trinidad and Tobago ratified the main international legal instrument for trafficking in persons, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. However, the lack of any enforcement or monitoring mechanism for the Protocol renders it difficult to verify whether the main elements of the Protocol have been implemented.

Trinidad and Tobago has also signed the other international instruments relevant to human trafficking, such as the 1926 Slavery Convention and the 1999 Worst Forms of Child Labour Convention (see the Annex for details and dates of ratification). The only exception is the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, agreed in 2000. Given the rising level of sex tourism in Trinidad and Tobago and the concerns expressed by experts on child sexual exploitation in the region,¹¹¹ it is imperative that the government sign and implement the terms of this document.

The government's willingness to conform to international obligations is evidenced through the most recent report to the UNHCHR Committee monitoring compliance with the Convention on the Rights of the Child.¹¹² The report notes that since signing the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 2003, the Attorney General has completed a legal opinion that identifies the legislative amendments required to align domestic law with the Convention. Trinidad and Tobago ratified the United Nations Trafficking in Persons Protocol in November of 2007 and is currently reviewing Domestic legislation to determine how to incorporate provisions required under the Protocol.

¹¹¹ Hunte and Lewis (2002), Khan (2003) *ibid*.

¹¹² United Nations, *State Party Report CRC/C/83/Add.12* submitted to the Committee on the Rights of the Child, Nov. 2004 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/406/70/PDF/G0540670.pdf?OpenElement>

3. Domestic legislation

Human trafficking law

No specific human trafficking law exists in Trinidad and Tobago. As of December 2007, Belize, Cayman Islands, the Dominican Republic, Guyana, Jamaica and Suriname have adopted comprehensive legislation to combat trafficking in persons (see previous review). Caribbean regional model counter-trafficking legislation was drafted and published by IOM in coordination with the CARICOM legislative drafting facility in 2008.

Fundamental fights: forced labour and slavery

Though the Trinidad and Tobago Constitution of 1976, with amendments through to 2000, does not offer protection against forced labour and slavery in the form of a specific Article of law, as do a number of other Commonwealth Caribbean States, the preamble to the Constitution states that “labour should not be exploited or forced by economic necessity to operate in inhumane conditions by that there should be an opportunity for advancement on the basis of recognition of merit, ability and integrity.”¹¹³

No other Acts prohibit slavery since the Emancipation Acts of 1838 abolished slavery in British colonial territories of the Caribbean. These Acts are no longer on the Statute books.

Criminal law

As a former British colony, much of the Penal Code is based on that of the system in the United Kingdom. Much of the law is derived from the British system, especially as both are common-law systems that have developed through case law. Trinidad and Tobago takes much of its precedent from the higher British courts. As detailed in the previous review, elements of the crime of trafficking in persons can be found in the main provisions of criminal law, including assault, kidnapping, facilitating illegal migration, abduction, forced detention, procurement and forced prostitution.

As trafficking in women and children for sexual exploitation is a growing concern in the Caribbean region, the following analysis will mainly address the potential for prosecuting trafficking for sexual exploitation. However, much of the sexual offences legislation is relevant to all forms of human trafficking, as many victims in domestic servitude or forced labour are sexually abused. The main legislation that pertains to this area is the Sexual Offences Act of 1986, which has been modified by the Sexual Offences (Amendment) Act of 2000. The amendments are focused

¹¹³ Constitution of the Republic of Trinidad and Tobago, <http://www.georgetown.edu/pdba/Constitutions/Trinidad/trinidad76.html>

on creating a broader definition of rape and sexual assault and impose harsher penalties for other sexual offences.

Prostitution

Prostitution is illegal in Trinidad and Tobago and the laws are fairly comprehensive as to who can be prosecuted. While soliciting for immoral purposes is prohibited (Section 23, SO 1986), those involved in the management of prostitution may be prosecuted through a number of methods. For example, those living off the earnings of prostitution are liable (Section 23), as are those who manage brothels or knowingly permit premises under their control to be used as a brothel (Section 22). The broadest offence is that of “aiding in prostitution” (Section 24), which states:

A person who for the purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for five years.

This legislation would allow authorities to prosecute persons connected with the human trafficking process. Most significantly, the legislation refers to control and influence on the movements of a prostitute, which suggests that persons involved in the recruitment process could be prosecuted under this section. The immigration Act supports these penalties against prostitution and those aiding and abetting the cross-border movement of persons for sexual exploitation. All the penalties relating to prostitution carry the same penalty of five years imprisonment.

Despite the wide range of provisions available, most prosecution cases are for soliciting. In 2002, 19 charges of soliciting were brought before the courts, 18 of which were against women.¹¹⁴ The focus upon sex workers rather than their handlers could mean that vulnerable women and minors are being charged and non-nationals are deported without an assessment of whether they are working voluntarily.

Procurement in Trinidad and Tobago is also illegal and carries more severe penalties of 15 years, rather than five, and is at the higher end of penalties available for the target countries in this study (Section 17). Procurement of a minor for sex (defined in Trinidad and Tobago as someone less than 16 years old), carries the same penalty as the procurement of an adult for prostitution. However, the provision states procurement for prostitution can occur “either in Trinidad or Tobago or elsewhere”. This suggests that human traffickers could be prosecuted

114 US State Department, *Human Rights Report: Trinidad & Tobago*, 2002. <http://www.state.gov/g/drl/rls/hrrpt/2002/18346.htm>

for procuring non-national women to come to Trinidad and Tobago to work, as well as procuring nationals for sex work abroad.

Forced prostitution

In Trinidad and Tobago, prostitution is comprehensively prohibited and forced abduction and detention for sexual purposes is also clearly addressed. Trinidad and Tobago has similar provisions to the other target countries with respect to forced “defilement” - any person who procures another for sex through threats, intimidation, deception, or the use of drugs faces a penalty of up to 15 years (Section 18). Forced detention of a person for sexual purposes carries a penalty of 10 years, including forced detention in a brothel (Section 19). Abduction of a woman for sexual purposes carries a similar penalty (Section 20), though it is unclear why there is a gender bias in this case only.

Broader rules apply to the defilement of minors (those less than 16 years old). These rules can be applied to a householder - whether an owner, manager or occupier of a premises - who knowingly permitted sexual intercourse with a minor in the premises. The role of the householder in the defilement or procurement of the minor is irrelevant and can result in up to 10 years imprisonment. This legislation could be used to prosecute any person who sexually abuses a victim of human trafficking under their control, whether that victim has been trafficked for the purposes of prostitution or not. The prostitution of minors is also addressed by the Children’s Act, Chapter 46:01. Anyone in custody or charge of a minor who allows them to reside in or frequent a brothel (Section 7), or “causes or encourages the seduction or prostitution or unlawful carnal knowledge of” a girl less than 16 years old (Section 8) is liable to two years imprisonment. Consent is irrelevant for children less than 16 years old, in which case they are deemed to have been forced prostitution. However, Section 8 of this Act only pertains to females and is thus biased against young men who may be drawn into prostitution. This Section should be amended to pertain to both sexes.

Overall, the prostitution of minors is more than adequately addressed by existing law. Law-enforcement agencies must now seek out and prosecute instances of child sexual exploitation in Trinidad and Tobago.

Sexual offences

In 2000, laws against sexual offences were tightened and penalties increased. A person can be liable for rape where consent is extorted through threats, impersonation, fraud, or unlawful detention, all of which may be relevant to a victim of trafficking (Section 4, Sexual Offences Amendment Act, 2000). In cases where the crime is particularly heinous, or is committed by more than one person, or

by someone previously convicted of rape, the accused can face life imprisonment. This is the severest penalty for rape in the Caribbean, where penalties range from 12 years to life imprisonment. However, the penalties imposed are often much more lenient.

In terms of sexual assault, the law is less comprehensive and before 2000 there is no evidence of crime of grievous sexual assault (Section 4A). However, the parameters of the offence and penalties imposed are now the same as for rape and are the most severe in the region. The lesser offence of indecent assault (Section 15, Sexual Offences Act 1986) offers a maximum penalty of five years, though it is unclear what constitutes this offence.

Despite the existence of these laws, there are concerns that much of the sexual violence which occurs in Trinidad and Tobago goes unreported, though efforts are being made by the government to improve responses to rape and sexual assault. A domestic violence hotline has been set up by the government to handle all sexual violence complaints. There is a rape crisis centre that offers counselling to victims and the community-policing unit has been trained especially to deal with crimes against women. This unit is working with regular units to expand its reach.¹¹⁵

Minor sexual offences

As with a number of the other target countries, Trinidad and Tobago divides the offence of sex with a minor into two categories and makes a distinction between the sexes. First, sex with a minor male less than 16 years old when committed by a female carries a five-year penalty (Section 8). Second, sex with a minor female is divided into those less than 14 years old (Section 6), which carries a penalty of life, and those aged between 14 and 16 years old (Section 7), which carries a penalty of five years. All three offences can be committed regardless of whether the minor consented to the act. Both distinctions, as to age and gender, are arbitrary, and it is recommended that the two-tier system be replaced with a single offence for sex with all minors less than 16 years old, and males be treated the same way as females. The disparity may be explained by the fact that homosexual acts are still illegal in Trinidad and Tobago, but this is not a valid reason for the gender gap. With the eventual decriminalisation of homosexual acts, which is increasingly sought by international rights groups, care should be taken to ensure that male minors are protected from sexual exploitation by both sexes.

¹¹⁵ US State Department (2003, 2004), *Human Rights Report: Trinidad & Tobago*.

Kidnapping and abduction

Trinidad and Tobago is fairly unique in having created a dedicated piece of legislation to prohibit kidnapping in 2003. The main provision states that:

A person who, for ransom, reward, or for any similar consideration, unlawfully leads, takes, entices away, abducts, seizes or detains any person without his consent or with his consent obtained by fraud or duress and without lawful excuse such that the person... is held, confined, restricted, imprisoned, or prevented from returning to his normal place of abode or sent or taken out of Trinidad or Tobago, commits an offence and is liable to imprisonment for not less than twenty-five years.

This legislation is based on a broad definition of kidnapping which includes persons enticed away through fraud, which is relevant to a wide range of trafficking scenarios. Of all the legislation detailed above, this measure most resembles the definition of trafficking as agreed in the Optional Protocol on Prevent, Suppress and Punish Trafficking in Persons in 2000. It goes even further to include the provision that the personal gain of the trafficker does not have to be proved, or that forced labour was involved.

Though it is difficult to differentiate whether or not this legislation pertains to nationals of Trinidad and Tobago only or also applies to those kidnapped and brought to the country, the protection of both populations would be ideal. The penalty of 25 years imprisonment is the most severe in the region though there is no concrete evidence that the maximum penalty has ever been imposed.

Employment law

All the target countries in this study have substantial informal labour markets and high intra-regional flows of migrants. As a result, an examination of the employment protections and laws to protect migrant workers is necessary, as well as any measures to ensure they do not end up in exploitative positions.

Work and residence permits

All non-nationals migrating to Trinidad and Tobago for work need to have a work permit (Section 10, Immigration Act, Chapter 18.01). The employer applies for the permit and there are a number of documents that need to be submitted, including a cover letter from the employer (outlining why a national cannot be hired), as well as character references for the prospective employee (including from a previous employer), a police certificate of character and proof of advertisement of the position. While these conditions have been put in place for the benefit of the government, these measures provide some safeguards for the migrant regarding

the legitimacy of the process. However, the recent media-reported case of three Guyanese women arriving in Trinidad to be forced into sex work suggests that care is still needed. The women had gone through the process detailed above and were under the impression that they would be working as telephone operators or masseuses.¹¹⁶ More rigorous vetting of proposed job offers by the Ministry of National Security may prevent such a situation from occurring on a widespread basis.

In addition, tying the work permit to an explicit employer can leave the migrant worker vulnerable to abuse by that employer. Fear of deportation, should the employee lose their position, may lead that worker to endure exploitative practices and bad treatment and render them reluctant to enforce their employment rights. It is recommended that work permit issuance be reviewed to allow shared ownership of permits, or the right to change employer under certain circumstances, which would allow the migrant worker to have more control of their employment situation.

General employment provisions

Generally, employment provisions are sound for legal workers. Minimum wages are fixed by the Minister for Employment and monitored by the Minimum Wages Board (Chapter 88.04). The Act also provides for inspectors to ensure that minimum wages are paid and that records are kept. Employers offering misleading or false information regarding wages are liable to a fine of TTD1,500 and two years imprisonment, while those found to be paying less than the minimum wage are liable to a TTD2,000 fine and two years imprisonment and required to compensate that worker for lost wages. The application of these rules to a case whereby the employee is an undocumented migrant is unknown, though persons in possession of a work permit should be able to enforce their employment rights.

Trinidad and Tobago has a strong culture of trade union membership and unions exist in a wide variety of sectors.¹¹⁷ Industrial relations are based upon voluntary collective bargaining between employers and employees. An important, and vocal, example is the National Union of Domestic Employees (NUDE), which registered with the government in 1982, and campaigns for better recognition of domestic work and the broader issue of the protection of the human rights of women in Trinidad and Tobago. The ILO has suggested that this casual method of regulating employment may be leaving employees inadequately protected.¹¹⁸ A study by the organisation found a rise in so-called “independent contractor relationships”,

116 Wendella Davidson, *Guyanese girls lured into prostitution by Trinidad company*, July 2005.

117 For a full list of trade unions registered in Trinidad and Tobago, see the Ministry of Labour’s website at: http://www.labour.gov.tt/documents/about/trade_unions.htm

118 ILO, *Workers Protection: the Case of Trinidad and Tobago*, Caribbean Studies Working Paper No.7. <http://www.ilo.org/public/english/dialogue/ifpdial/downloads/wpnr/trinidad.pdf>

which disguise employee relationships and allow employers to avoid some of their obligations. In addition, the study noted a rise in clandestine and undeclared work. Neither of these situations can be adequately addressed by collective bargaining through trade unions.

While self-regulation and advocacy is the dominant *modus operandi*, the Labour Inspectorate Division of the Ministry of Labour is fairly limited in its human and financial resources. A report submitted to the Office of the High Commissioner on Human Rights (UNHCHR) in November 2004 stated that there were only seven permanent inspectors (five at grade I and two at grade II), and four temporary inspectors.¹¹⁹ The General Secretariat of the Organisation for American States has been working with the government on a project to strengthen the Labour Inspectorate.¹²⁰ In addition, the Labour Inspectorate participated in regional training seminars on child labour, held in October 2002.

Recruitment of foreign workers

As indicated above, the employer has to show that no national with equivalent skills is available within the country and that the employment of the foreigner is intended to train a national to eventually take over the work. However, given the large number of those recruited to work in low-skilled sectors in a country where unemployment is around 8 per cent, the information examined in this study indicates that the stringent terms on recruiting foreign labour are not upheld. Therefore, it would be pertinent to address the extent to which the recruitment of foreign labour subverts the collective bargaining of trade unions on the terms of employment and further erodes employee protection. In which case the migrant worker may be at a disadvantage compared to a national worker. An examination of the extent of this trend is beyond the scope of this study.

Child labour

The age of majority in Trinidad and Tobago is 18 years old (Children's (Amendment) Act 2000). Despite this, the general employment age for children in the country is 12 years old, except in industrial work, where the age limit is 14 years old (Sections 91 and 94, Children's Act, Chapter 46.01). Reform of these laws is expected following the ratification by Trinidad and Tobago of the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Indeed the Attorney General noted that ratification would require "the enactment of several pieces of Domestic legislation."¹²¹ The proactive

119 State Party Report CRC/C/83/Add.12 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/406/70/PDF/G0540670.pdf?OpenElement>

120 Organization for American States (OAS), *Work Plans of the Offices of the General Secretariat in the Member States 2004: Trinidad and Tobago*.

121 Desmond Hunte and Cheryl Lewis (2002) *Worst Forms of Child Labour: ILO Rapid Assessment - Trinidad*. www.ilocarib.org.tt/childlabour/library/rapid_assessment/ratrinidad.pdf

response of the government towards reforming the law should be welcomed and supported.

The lack of legislation on child labour in Trinidad and Tobago may be contributing to the rise in child labour, though data on this trend is scarce. A rapid assessment conducted by the ILO in 2002 found children working in the informal economy, often under the supervision of a guardian. They were also found to be scavenging or doing domestic work. Anecdotal evidence implies the sexual exploitation of street children and the sale of children. Despite provisions criminalising sexual activities with minors, there is a gap between legislation and enforcement. Unless this gap is narrowed, child labour law reforms will be of little value.

Other relevant provisions prohibit sex with employee who is a minor (Section 11, Sexual Offences Act 1986), and prohibits the economic exploitation of children by allowing them to “be in any street, premises or place for the purpose of begging or receiving alms, or inducing the giving of alms” (Section 5, Children’s Act, Chapter 46.01). However, there is little evidence that these provisions form the basis of many prosecutions.

Domestic workers

According to Section 2 of the Industrial Relations Act, Chapter 88.01:

For the purposes of this Act, no person shall be regarded as a worker if he is -

...employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling home and paid by the householder.

This leaves persons trafficked into domestic labour in a particularly vulnerable position and this report recommends that this category of worker be brought under the scope of the Act as soon as possible.

Immigration law

Trinidad and Tobago is similar to rest of the target countries in terms of legislation. The country is also a member of CARICOM’s Single Market and Economy, and has begun to implement the legislation required to create a programme for free movement for skilled workers. However, this does not include the vast majority of migrants to the islands of Trinidad and Tobago, as it currently only pertains to highly-skilled graduates, media workers, sportspersons, musicians and artists. The bulk of persons entering the country do so through tourist visas. With a significant international dimension to its economy and a growing tourism sector, fostering

efficient international travel is important to the well-being of the country. However, this must also be balanced against the need to control drug trafficking within the region, and its attendant problems. As a result, the focus of immigration authorities may be displaced from the difficult responsibility of identifying possible cases of human trafficking and dealing with the situation sensitively.

Entry procedures

The Immigration Act, Chapter 18.01, is the relevant piece of legislation (see appendices for details). Persons must present themselves for inspection at an official port of entry, with appropriate identification. Immigration officers may deny entry to persons on a number of grounds, including convicted criminals, prostitutes and those suspected of procuring prostitutes (Section 8). As noted in the previous review, the ability of an officer to determine these characteristics at the port of entry is difficult to assess, though a register of persons who have been convicted of trafficking-related offences would be very useful to immigration officers.

In addition to listing prohibited persons, the immigration legislation lists a number of situations in which the minister can make a deportation order against previously permitted entrants. Relevant categories include persons who assist in the practice of prostitution and persons entering with false documentation, or were admitted as a result of misleading or false information provided (Section 9). Thus, anyone found involved in sex work or working illegally in the country can be deported. This measure could imply that human traffickers will be deported without a criminal investigation of their activities. However, Section 16 of the Immigration Act permits detention of those “in respect of whom an inquiry is to be held”, which suggests that if officers suspect human trafficking they have the power to detain the person before deportation. Whether this occurs in practice is uncertain.

Conversely, once a deportation order has been issued, that person “shall have no right of appeal and shall be deported as soon as possible.” This measure suggests that potential victims of trafficking who are not facing an inquiry may be deported before they have the opportunity to explain their situation. It is recommended that in such situations, immigration and law enforcement investigate the possibility of exploitation as far as possible before issuing a deportation order and refrain from using detention facilities for doing so by making use of any services and shelters available in the country.

Irregular migration

Immigration officers accept that there are a number of irregular migrants in the country, mostly working as petty traders or in domestic work. These officers admit that they take a “soft stance” against the problem, preferring to turn a blind eye

unless a specific complaint is made.¹²² The danger implied in this trend is that immigration officers are also turning a blind eye to human trafficking and failing to recognise someone in a vulnerable position.

As with the rest of the Caribbean islands, there are resource difficulties in effectively monitoring illicit entry into the islands, a problem most often highlighted with respect to the illegal trade in drugs. As with several of the other target countries, Trinidad and Tobago has collaborated with the United States Coastguard to improve their supervision of maritime activities. As part of joint operations, the United States has donated five boats to the Trinidad and Tobago Coastguard to help them in their efforts to reduce criminal activity. Though drug trafficking is the primary target of these operations, they should also address migrant smuggling and human trafficking.

Finally, the heads of government of the Caribbean Community agreed in February 2006 to expedite the development of “regional management systems in relation to border control, maritime operations and intelligence and information sharing” and discussed measures for impacting on the crime and security situation.¹²³ This study recommends that such measures and systems take full account of the particular parameters of organised crime in human trafficking and pay due attention to the rights of victims while upholding the principles of crime control.

Smuggling

In Trinidad and Tobago it is an offence to assist someone in an attempt to enter the country illegally (Section 40). More relevant, any person who “makes a false promise of employment or any false representation by reason of which a person is induced to seek admission to Trinidad or Tobago” is also guilty of an offence. Such a person is liable to a fine of TTD50,000 and three years imprisonment, and a fine of TTD100,000 and five years imprisonment for subsequent offences. Therefore, this legislation addresses persons who receive fees for assisting entry and persons who induce others to enter the country through fraudulent offers of work. The latter category is relevant for the prosecution of human traffickers, though there is no mention of prosecuting persons who induce others to enter the country through threats and coercion.

122 IOM (2004) *HIV/AIDS and Mobile Populations in The Caribbean: A Baseline Assessment*, Santo Domingo, June 2004.

123 CARICOM, *Communique Issued by the Conference of Heads of Government of the Caribbean Community at the Conclusion of the 17th Inter-Sessional Meeting of the Conference, 9-10 February 2006, Port-of-Spain, Trinidad and Tobago.*

Asylum

Trinidad and Tobago signed the 1951 Refugee Convention in November 2000, but has yet to enact provisions to implement asylum legislation. The US State Department has reported cooperation between the Trinidad and Tobago government and the UNHCR and the processing of asylum-seekers on a case-by-case basis.¹²⁴ However, an Amnesty International report criticised the government for treating seven Liberian asylum-seekers as “prohibited immigrants” and detaining them in a local prison. There seems to be no systematic approach for the reception of asylum-seekers that can be employed for the reception of victims of trafficking, as has been suggested in other jurisdictions. It would be advantageous if the government can explicitly clarify the rights associated with asylum claims and the possibility of extending asylum-seeker status to trafficking victims, pending a long-term resolution of their situation.

The criminal justice system

Trinidad and Tobago is facing a crisis in crime control, a crisis with an increasingly transnational dimension. Media reports indicate that the government is under increasing pressure to demonstrate control over the situation, while faced with a severely overstretched justice system. Though this crime wave is rooted in drug trafficking and attendant violence, there are contingent implications for the prevention and prosecution of human trafficking in the country with respect to the parallel criminal networks which may spring up to foster trafficking in persons and the limits on the criminal justice system to respond to trafficking in persons.

Prosecution of human trafficking cases

In terms of prosecuting criminal cases in Trinidad and Tobago, delay seems to be a major problem.¹²⁵ This situation creates a traumatic and uncertain waiting period for the victims and there is precedent for a long delay to be used as grounds to stay proceedings for abuse of process. Trinidad and Tobago has seen the highest number of cases that successfully cite delay as grounds to stay proceedings in the Commonwealth Caribbean. However, for these measures to be successful exceptional circumstances must be proven and the court must take into account the public interest in having the accused tried.¹²⁶

There are a number of legislative provisions to protect vulnerable victims during court proceedings. Article 31E of the Sexual Offences Act 1986, as inserted by the Sexual Offences (Amendment) Act 2000, allows a minor to be screened from

124 US State Department (2002), *Human Rights Report, Trinidad and Tobago*. <http://www.state.gov/g/drl/rls/hrrpt/2002/18346.htm>

125 Annual Report of the Judiciary for Trinidad and Tobago.

126 Seetahal, Dana (2001), *Commonwealth Caribbean: Criminal Practice and Procedure*, Commonwealth Caribbean Law Series, p24.

the accused in a criminal proceeding. In rape, sexual assault and any other case involving minors, the case shall be heard in camera, unless the court otherwise directs (Section 29, Sexual Offences Act 1986).

Sentencing has been criticised for being too lax in Trinidad and Tobago, particularly for sexual offences. For example in 1995, a defendant was sentenced to just six years for unlawful carnal knowledge of an 11-year-old girl, which led to public outrage.¹²⁷ In response, the government passed the Administration of Justice (Miscellaneous Provisions) Act 28 of 1996, which allows the state to appeal against sentences thought to be too lenient.

In addition, the Sentencing Commission Act 80 of 2000 established a body with responsibility to develop sentencing guidelines and a framework for setting maximum penalties and ranges of sentences. Even in the absence of specific laws to combat human trafficking, the Commission could develop sentencing guidelines for the prosecution of traffickers under existing criminal law. Given the particularly heinous nature of the crimes involved, a recommendation to treat the situation of human trafficking as an aggravating factor would ensure that those found guilty of offences related to trafficking in persons are adequately sentenced.

The Justice Protection Act 78 of 2000 has established a Justice Protection Programme designed to offer witnesses protection during and after trials. Persons admitted to the programme can be protected in safe houses and may be eligible for financial assistance, access to employment, education, healthcare and tools to become self sufficient in the community. The crimes addressed by the programme include all sexual offences, aggravated assault, kidnapping and domestic violence. There appears to be no limitation with respect to nationality. Therefore, the Act would theoretically be applicable to victims of human trafficking who are willing to testify against their traffickers. It is difficult to determine the extent of a witness's safety and anonymity within such a small population, yet the government should be held up as an example to other Caribbean states for their effort to protect those willing to testify in criminal trials.

Law enforcement

In Trinidad and Tobago, the lack of reporting of crimes of violence against women continues to be a problem, despite some measures to better equip law-enforcement officers to deal with issues of sexual and domestic violence. This shortcoming is considered to be partly due to the unsympathetic response of police officers.¹²⁸ Reporting of crimes of violence against women has risen over the past few years, though gender violence is an issue that affects a substantial proportion of the female

¹²⁷ Ibid, p429.

¹²⁸ US State Department, *Human Rights Report: Trinidad & Tobago*, 2002.

population Women's groups in Trinidad and Tobago estimate that up to 25 per cent of women suffer from abuse.¹²⁹ The government has made strong efforts to encourage better responses to sexual violence and has taken steps to create a positive atmosphere for filing reports. These efforts should be encouraged and redoubled in order to encourage those in situations of sexual exploitation to come forward. A clear statement of support for victims of trafficking is necessary to diffuse the perception that persons who fall victim to the trafficking process will be treated as criminals.

The Sexual Offences Act 1986 allows the judiciary to issue warrants for raids on suspected brothels or places where prostitutes are thought to reside (Section 23), or premises where it is suspected that persons are being detained against their will for sexual purposes (Section 19). This Act is an important tool, as it gives the police power to investigate claims of trafficking for sexual exploitation and follow-up if they suspect someone is being held against their will. Unfortunately, the law on detention only extends to persons held for sexual purposes; therefore it cannot be applied to persons who may be held against their will for forced labour. However, as prostitution is illegal in Trinidad and Tobago, care is required to ensure that raids on brothels focus on the owners and managers of the premises and not treat the sex workers as criminals before assessing their voluntariness and status.

Despite these police powers, raids on brothels have resulted in the deportation of a number of non-national women working in the sex trade.¹³⁰ Though many sex workers seem to operate independently, there is little or no investigation into whether any of the women are working against their will. Recent reports of migrant women who had been tricked into sex work would suggest that there are risks for those who are keen to find employment in Trinidad and Tobago. Some media reports have suggested that the police regard owners of brothels who employ foreign women as "untouchable". Despite the clear illegality of owning and managing brothels and premises where sex work is carried out, law enforcement continues to focus their efforts on the sex workers.

Protection policies

The NGO sector plays a key role in the protection of vulnerable populations in Trinidad and Tobago, particularly women and children. There are a wide range of services provided by civil society, some of these in conjunction with the government.¹³¹ Despite this government oversight, much of the funding for

129 US State Department, *Human Rights Report: Trinidad & Tobago*, 2005. <http://www.state.gov/g/drl/rls/hrrpt/2005/61743.htm>

130 TnT Mirror, Prostitutes freelancing in Sando, December 25, 2005.

131 Much of the information in this section is taken from the UN Joint Agency Action against Gender Violence report on the situation in Trinidad & Tobago, 1999. <http://vision2020.info.tt/pdf/Statistics/TTnationalreport.pdf>.

these shelters is sourced through fundraising and charitable contributions. The government provides funding through training for service providers and grants.

Protection of women

The Division of Gender Affairs in the Ministry of Community Development, Culture and Gender Affairs is charged with the protection of women's rights and the development of gender policy within the government. This division has received support from the Inter-American Development Bank to improve management, planning, monitoring and evaluation. Their initiatives include the domestic violence hotline, which offers referrals for victims of domestic and other forms of gender violence to safe houses, counselling and shelter services. Currently, there are at least 15 safe houses in Trinidad and Tobago,¹³² such as the Mitzpeh Half Way House and the Our Lady of the Wayside Shelter, which offers shelter to battered women and women in crisis. In addition, at least 16 counselling services exist for victims of domestic violence, such as the Women Working for Social Progress and the Rape Crisis Society. The agency in charge of these services is the Family Services Division of the Ministry for Social Development.

Domestic violence has received a great deal of attention from the government in recent years, with the creation of community policing units designed to deal with social issues affecting communities. These units would be ideal conduits for raising awareness and educating communities about the risks associated with human trafficking, as well as other prevention programmes. In addition, the Caribbean Institute for Feminist Research and Action (CAFRA) has joined forces with the Inter-American Development Bank, the Department for International Development and the Association of Caribbean Commissioners' of Police to coordinate a programme to train officers and social workers on gender and violence. Any future developments of this programme should include training on trafficking in persons, particularly women and children. In general, the many actions designed to support victims of domestic violence should be extended to those thought to be victims of human trafficking.

Given the strength of work done to combat domestic violence, the absence of government measures towards the prevention of prostitution and lack of programmes that target prostitutes is all the more startling. According to the country's most recent report to the Committee for the Elimination of Discrimination against Women, "currently there are no preventative or rehabilitative measures in existence to protect women who are engaged in prostitution. Similarly no efforts have been implemented to re-integrate prostitutes in society."¹³³ This lack of focus on women

132 Trinidad and Tobago State Party Report CEDAW/C/TTO/1-3. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e3e1d6e80ad0fd3fc12572bf003b212c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e3e1d6e80ad0fd3fc12572bf003b212c?Opendocument)

133 Ibid.

in sex work needs to be addressed as soon as possible, especially considering the ample resources available in the community.

Child protection

In addition to the provisions covering child labour, there is also a great deal of new legislation designed to protect children at risk of abuse. The Miscellaneous Provisions (Children) Act 2000 raised the age qualification of a child from less than 14 years old to less than 18 years old, increasing the population that can be protected by the government. The Ministry for Social Development has overall responsibility for children's affairs in the government. None of the legislation discussed in this study is explicitly limited to nationals who are minors, however procedures are unclear regarding unaccompanied migrant children found residing in the country without the correct documentation.

The government also passed several Acts in 2000 to formalise services offered to protect children. The Children's Authority Act 2000 established a new Children's Authority to license and monitor childcare facilities and act as guardian of the children of Trinidad and Tobago. The Act also created the Central Authority for the purposes of the Hague Convention of the Civil Aspects of International Children Abduction (Section 5A), which includes a duty to discover the whereabouts of the child who has been wrongfully removed or detained. The scope of the Children's Authority includes those who have "neither parent nor guardian who is fit to exercise care and guardianship", or "is lost or has been and remains abandoned by their parents or guardians", and could be exposed to moral danger, is ill-treated, neglected, destitute, or found begging.¹³⁴ This provision can be interpreted to include children in danger or being trafficked or those who have been recovered from the hands of traffickers. The Children's Community Residences, Foster Homes and Nurseries Act 2000, provides for the licensing, registration and inspection of childcare facilities in Trinidad and Tobago, ensuring that some minimum standards of care are maintained. Much of this legislation was enacted in order to comply with Trinidad and Tobago's obligations under the Convention for the Rights of the Child.

Though the Ministry for Social Development has a mandate to network with non-governmental organisations on the islands, many NGOs have independently created services such as the Youth Outreach Programme organised by the YMCA, which offers counselling and support to street children, and Hope Centre Limited, a voluntary organisation providing temporary accommodation for abused and neglected children.

¹³⁴ Government of Trinidad and Tobago. Section 22 of the Children's Authority Act 2000. <http://www.ttparliament.org/legislations/a2000-68.pdf>

In addition, the government funds two programmes through the Office of the Prime Minister (Social Services Delivery) that address the needs of street children: the Credo Drop-in Centre for Socially Displaced Children, and the Credo Aylward House.¹³⁵ These Centres aim to reintegrate children back into family or school life and seeks to offer them training and development. These programmes should also include raising awareness on the risks of trafficking to minimise street children's susceptibility to human traffickers.

Regional initiatives

Trinidad and Tobago is a member of the Organisation of American States, the Commonwealth and the Caribbean Community and thus participates in all the initiatives which take place within the remit of these organisations (see previous review). As a number of international organisations have their regional headquarters based on the islands, Trinidad and Tobago is in a position to benefit from the institutional expertise and support that can be found within these organisations.

135 State Party Report CRC/C/83/Add.12 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/406/70/PDF/G0540670.pdf?OpenElement> State.

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Appendix A: International conventions

The Caribbean has ratified a number of International conventions to combat human rights violations and discrimination. Below are relevant international treaties to which one or more of the target countries have signed and a brief description of the monitoring system in effect in several of the most recent conventions. State compliance and response is contained in the separate country reports.

*Signature and ratification*¹³⁶

*1. Protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000)*¹³⁷

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	9 April 2001	26 September 2008
Barbados	26 September 2001	-
Guyana	-	15 September 2004
Jamaica	13 September 2002	29 September 2003
Netherlands Antilles	12 December 2000 (via Neth.)	-
St Lucia	-	-
Suriname	-	25 May 2007
Trinidad and Tobago	26 September 2001	6 November 2007

*2. Convention on the elimination of all forms of discrimination against women (1979)*¹³⁸

Article 6 - States Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	6 October 1993
Barbados	24 July 1980	16 October 1980
Guyana	17 July 1980	17 July 1980
Jamaica	17 July 1980	19 October 1984
Netherlands Antilles	17 July 1980 (via the Neth.)	23 July 1991
St Lucia	-	8 October 1982
Suriname	-	1 March 1993
Trinidad and Tobago	27 June 1985	12 January 1990

¹³⁶ Signature and Ratification status, as of December 2010.

¹³⁷ United Nations Treaty Collection. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18&lang=en

¹³⁸ Ibid. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en

3. *Convention on the elimination of all forms of racial discrimination (1965)*¹³⁹

Article 5 - In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- a. Other civil rights, in particular:
- b. The right to freedom of movement and residence within the border of the State;
- c. Economic, social and cultural rights, in particular:
- d. The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	4 September 1975
Barbados	-	8 December 1972
Guyana	11 December 1968	17 March 1977
Jamaica	14 August 1966	4 July 1971
Netherlands Antilles	24 October 1966 (via Neth.)	9 January 1972
St Lucia	-	14 February 1990
Suriname	-	15 March 1984
Trinidad and Tobago	9 June 1967	4 October 1972

4. *Convention on the rights of the child (1989)*¹⁴⁰

Article 34 - States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a. The inducement or coercion of a child to engage in any unlawful sexual activity;
- b. The exploitative use of children in prostitution or other unlawful sexual practices;
- c. The exploitative use of children in pornographic performances and materials.

139 Ibid. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en

140 Ibid. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

Article 35 - States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36 - States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	30 October 1990	22 March 1991
Barbados	19 April 1990	8 November 1990
Guyana	30 September 1990	13 February 1991
Jamaica	26 January 1990	13 June 1991
Netherlands Antilles	26 January 1990 (via the Neth.)	7 March 1995
St Lucia	30 September 1990	16 July 1993
Suriname	26 January 1990	31 March 1993
Trinidad and Tobago	20 September 1990	5 December 1991

5. Optional protocol on the sale of children, child prostitution and child pornography (2000)¹⁴¹

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	-
Barbados	-	-
Guyana	-	30 July 2010
Jamaica	8 September 2000	-
Netherlands Antilles	7 September 2000 (via the Neth.)	-
St Lucia	-	-
Suriname	10 May 2002	-
Trinidad and Tobago	-	-

6. *Slavery convention (1926)*¹⁴²

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	10 June 1976	-
Barbados	22 July 1976	-
Guyana	-	-
Jamaica	-	30 July 1964
Netherlands Antilles	7 July 1955 (via the Neth.)	-
St Lucia	14 Feb 1990	-
Suriname	-	-
Trinidad and Tobago	-	-

7. *Supplementary convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery (1956)*¹⁴³

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	10 June 1976
Barbados	-	9 August 1972
Guyana	-	-
Jamaica	-	30 July 1964
Netherlands Antilles	7 September 1956	3 December 1957
St Lucia	-	14 February 1990
Suriname	-	12 October 1979
Trinidad and Tobago	-	11 April 1966

8. *Forced labour convention (1930)*¹⁴⁴

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	25 May 1976
Barbados	-	8 May 1967
Guyana	-	8 June 1966
Jamaica	-	26 December 1962
Netherlands Antilles	-	31 March 1933
St Lucia	-	14 May 1980
Suriname	-	15 June 1976
Trinidad and Tobago	-	24 May 1963

142 Ibid. http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-3&chapter=18&lang=en

143 Ibid. http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=IND&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&lang=en

144 ILO Ratification Database. <http://www.ilo.org/ilolex/cgi-lex/ratifice.pl?C029>

9. Abolition of forced labour convention (1957)¹⁴⁵

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	25 May 1976
Barbados	-	8 May 1967
Guyana	-	8 June 1966
Jamaica	-	26 December 1962
Netherlands Antilles	-	18 February 1959
St Lucia	-	14 May 1980
Suriname	-	15 June 1976
Trinidad and Tobago	-	24 May 1963

10. Worst forms of child labour convention (1999)¹⁴⁶

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	14 June 2001
Barbados	-	23 October 2000
Guyana	-	15 January 2001
Jamaica	-	13 October 2003
Netherlands Antilles	-	14 February 2002
St Lucia	-	6 December 2000
Suriname	-	12 April 2006
Trinidad and Tobago	-	23 April 2003

11. Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (1949)¹⁴⁷

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	-
Barbados	-	-
Guyana	-	-
Jamaica	-	-
Netherlands Antilles	-	-
St Lucia	-	-
Suriname	-	-
Trinidad and Tobago	-	-

145 ILO Ratification Database. <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C105>146 ILO Ratification Database. <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182>147 UN Treaty Collection Database. <http://treaties.un.org/Pages/Treaties.aspx?id=7&subid=A&lang=en>

12. Convention on the status of refugees (1951)¹⁴⁸

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	15 September 1993
Barbados	-	-
Guyana	-	-
Jamaica	-	30 July 1964
Netherlands Antilles	28 July 1951	3 May 1956
St Lucia	-	4 September 1968
Suriname	-	29 November 1978
Trinidad and Tobago	-	10 November 2000

13. Optional protocol to the convention on the status of refugees (1967)¹⁴⁹

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	-	15 September 1993
Barbados	-	-
Guyana	-	-
Jamaica	-	30 October 1980
Netherlands Antilles	-	29 November 1968
St Lucia	-	-
Suriname	-	29 November 1978
Trinidad and Tobago	-	10 November 2000

14. Inter-American convention on the protection, punishment and eradication of violence against women (1994)¹⁵⁰

	<i>Signed</i>	<i>Ratified</i>
The Bahamas	16 May 1995	16 May 1995
Barbados	16 May 1995	16 May 1995
Guyana	10 January 1995	28 February 1996
Jamaica	14 December	11 November 2005
Netherlands Antilles	-	-
St Lucia	11 -November 1994	4 April 1995
Suriname	-	8 March 2002
Trinidad and Tobago	3 November 1995	8 May 1996

148 Ibid. http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=UNTSOnline&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en#Participants

149 Ibid. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en

150 OAS, Department of Law online database. <http://www.oas.org/juridico/english/sigs/a-61.html>

Appendix B: Criminal law and penalties in the Caribbean

Prostitution

	Soliciting	Living off Earnings
The Bahamas	5 yrs (S.8 1991 Act)	5 yrs (S.8 1991 Act)
Barbados	2 yrs/fine (Minor Offence Act)	-
Guyana	fine/flogging (S.166 Ch.8.02)	6 months/fine or 2 yrs/fine (S.165 Ch.8.02)
Jamaica	fine (S.3 T&C Act)	1 yr (S.63 OAP Act)
Netherlands Antilles	-	-
St Lucia	fine (S.150 D. Criminal Code)	5 yrs (S.151 D. Criminal Code)
Suriname	-	1 yr/fine (S.306 Criminal Code)
Trinidad and Tobago	5 yrs (S.22, SO Act 1986)	5 yrs (S.23, SO Act 1986)

Figure B1.

The Bahamas

Statute: Sexual Offences and Domestic Violence Act 1991, Section 8

Definition: Any person who -

- a. knowingly lives wholly or in part on the earnings of prostitution; or
- b. in any public place persistently solicits or importunes for immoral purposes...

Barbados

Statute: Minor Offences Act (text not found)¹⁵¹

Definition: Any person who loiters in any street or highway and importunes passengers for the purpose of prostitution...

¹⁵¹ As quoted in *Tourist-Oriented Prostitution in Barbados, Chapter Eight, p183, in Sun, Sex and Gold: Tourism and Sex Work in the Caribbean, Kamala Kempadoo, ed.*

Notes: It is unclear whether prostitution is illegal; the Sexual Offences Act 1991, which covers other prostitution-related offences, does not mention soliciting or living off the earnings of prostitution. The Minor Offences Act may also prohibit brothel keeping.

Guyana

Statute: Chapter 8:02: Summary Jurisdiction (Offences), Sections 165 and 166

Definition: Any person who

- a. keeps, or manages, or acts or assists in the management of a brothel; or
- b. being the tenant, lessee, occupier or person in charge of any premises knowingly permits such premises or any part thereof to be used as a brothel; or
- c. being the lessor or landlord of any premises, or the agent or such lessor landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel; or
- d. being the lessor or landlord of any premises, or the agent of such lessor or landlord, is wilfully a party to the continued use of such premises or any part thereof as a brothel,

Any person who -

- a. being a male person, knowingly lives wholly or in part on the earnings of prostitution; or
- b. being a male person, in any public place persistently solicits or importunes for immoral purposes; or
- c. loiters about, or importunes any person in, any street or other public place for the purpose of prostitution,

Notes: Living on the earnings of prostitution is only prohibited for males. Females who live on the earnings of prostitution are not sanctioned.

Jamaica

Statute: Town and Communities Act 1999, Section 3; Offences Against the Person Act, Section 63

Definition: Every person who -

- a. shall loiter in any public place and solicit any person for the purpose of prostitution,

Every male person who -

- a. knowingly lives wholly or in part on the earnings of prostitution; or
- b. in any public place persistently solicits or importunes for immoral purposes,

Notes: Living off the earnings of prostitution is only illegal if the person is male. Females who live off the earnings of prostitution are not sanctioned.

Netherlands Antilles

Statute: not applicable

Definition: not applicable

Notes: Prostitution is legal in the Netherlands Antilles, though local women may not work in the government-controlled areas. There are a number of regulations that foreign workers must comply with in order to be eligible to work, including regular medical checks.

St Lucia

Statute: Draft Criminal Code 2003, Sections 150 and 151

Definition: Any person who loiters about or importunes any passer-by in a public place for the purpose of prostitution

Every male or female person who -

- a. knowingly lives wholly or in part on the earnings of prostitution;
- b. in any public place persistently solicits or importunes for immoral purposes;

Suriname

Statute: Criminal Code, Title XIV, Offences against Morality, Section 306

Definition: Any person who makes a profession or regular practice of intentionally bringing about or promoting the commission of illicit sexual activities by others with third parties...

Notes: The precise illegal activities in Suriname are not clear. The US State Department is divided on the issue, with the Human Rights report stating that prostitution is legal and the Trafficking in Persons report stating that it is illegal. If prostitution is legal then Section 306 cannot apply to persons managing prostitution, as the sexual activity is not illicit. Soliciting is not specifically prohibited, yet "female indecent behaviour" is illegal, which would possibly cover soliciting.

Trinidad and Tobago

Statute: Sexual Offences Act (No.27 of 1986), Section 22, Section 23 and Section 24

Definition: A person who -

- a. keeps or manages or acts or assists in the management of a brothel; or
- b. being the tenant, lessee, occupier or person in charge of any premises, knowingly permits the premises or any part thereof to be used as a brothel or for the purposes of prostitution; or
- c. being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are or is to be

- used as a brothel, or is wilfully a part to the continues use of the premises or any part thereof as a brothel,
- d. is guilty of an offence and is liable on conviction to imprisonment for five years.

Living on the earning of prostitution:

(1) A person who -

- a. knowingly lives wholly or in part on the earnings of prostitution; or
- b. in any place solicits for immoral purposes,
- c. is guilty of an offence and is liable on conviction to imprisonment for five years.

(2) If it appears to any Magistrate or Justice, by complaint on oath, that there is reason to suspect that any premises is used for the purposes of prostitution and that any person residing in or frequenting the premises is living wholly or in part on the earnings of prostitution, the Magistrate of Justice may issue a warrant authorising any constable to enter (if need be by force) and search the premises and to arrest that person.

(3) Where a person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction, or influence over the movements of a prostitute in such a manner that the person is aiding, abetting or compelling the prostitution with any other person or generally that person shall be deemed to be knowingly living on the earnings of prostitution unless the person proves the contrary.

Aiding in prostitution:

A person who for the purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for five years.

Procurement

	Procurement	Procurement (Minors)	Forced Procurement
The Bahamas	8 yrs (S.7, 1991 Act)	8 yrs (S.7, 1991 Act)	8 yrs (S.7, 1991 Act)
Barbados	15 yrs (S.13 1992 Act)	15 yrs (S.13 1992 Act)	15 yrs (S.14 1992 Act)
Guyana	10 yrs (S.73 Ch.8.01)	10 yrs (S.73 Ch.8.01)	10 yrs (S.72 Ch.8.01)
Jamaica	3 yrs (S.58 OAP Act)	3 yrs (S.45 OAP Act)	3 yrs (S.59 OAP Act)
Netherlands Antilles	1 yr/fine (S.259 Criminal Code)	3-5 yrs (S.258 Criminal Code)	8-12 yrs (S.252/4 Criminal Code)
St Lucia	7 yrs (S.141 D. Criminal Code)	7 yrs (S.141 D. Criminal Code)	14 yrs (S.125 D. Criminal Code)
Suriname	NA	3-5 yrs (S.305 Criminal Code)	NA
Trinidad and Tobago	15 yrs S.17, SO Act 1986	15 yrs S.17, SO Act 1986	15 yrs S.18, SO Act 1986

Figure B2.

The Bahamas

Statute: Sexual Offences and Domestic Violence Act 1991, Section 7

Definition: Any person who -

- a. procures or attempts to procure any person under eighteen years of age to have unlawful sexual intercourse, either in or outside The Bahamas, with any other person;
- b. procures or attempts to procure any person to become, either in or outside The Bahamas, a common prostitute
- c. procures or attempts to procure any person to leave The Bahamas with intent that he may become an inmate of or frequent a brothel elsewhere;
- d. procures or attempts to procure any person to leave his usual place of abode in The Bahamas with intent that he may, for the purposes

- of prostitution, become an inmate of or frequent a brothel either in or outside The Bahamas;
- e. by threats or intimidation, procures or attempts to procure any person to have unlawful sexual intercourse either in or outside The Bahamas;
 - f. by false pretenses or false representations, procures any person to have any unlawful sexual intercourse either in or outside The Bahamas; or
 - g. applies, administers or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower, so as thereby to enable any other person to have unlawful sexual intercourse with such first-mentioned person,

Barbados

Statute: Sexual Offences Act 1991, Sections 13 and 14

Definition: A person who -

- a. procures a minor under sixteen years of age to have sexual intercourse with any person either in Barbados or elsewhere or
- b. procures another for prostitution, whether or not the person procured is already a prostitute, either in Barbados or elsewhere or
- c. procures another to become an inmate of a brothel or to frequent a brothel, whether the person procured is already an inmate of a brothel in Barbados or elsewhere,

A person who -

- a. by threats or intimidation procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- b. by deception procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- c. applies, administers to or causes to be taken by any person, any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person,

Guyana

Statute: Chapter 8:01: Criminal Law (Offences), Sections 72 and 73

Definition: Everyone who -

- a. by any threat or intimidation, procures or attempts to procure any female to have any unlawful carnal connection, either within or without Guyana; or
- b. by any false pretence, false representation, or other fraudulent means, procures any female, not being a common prostitute or of

known immoral character, to have any unlawful carnal connection either within or without Guyana; or

- c. applies, administers to, or causes to be administered to or taken by, any female, any drug, matter, or thing with intent to stupefy or overpower, so as thereby to enable any person to have unlawful carnal connection with her,

Everyone who -

- a. procures or attempts to procure any female under twenty-one years of age to have any unlawful carnal connection, either within or without Guyana, with any other person; or
- b. procures or attempts to procure any female to become, either within or without Guyana, a common prostitute; or
- c. procures or attempts to procure any female to leave Guyana with intent that she may become an inmate of a brothel elsewhere; or
- d. procures or attempts to procure any female to leave her usual place of abode in Guyana with intent that she may, for the purposes of prostitution, become an inmate of a brothel either within or without Guyana,

Notes: Procurement laws in Guyana apply only to persons who procure females for illicit sex services. Persons who procure young men or boys for illicit sex services would not be prosecuted under this Act.

Jamaica

Statute: Offences against the Person Act, Sections 58 and 59

Definition: Any person who-

- a. procures or attempts to procure any girl or woman under eighteen years of age, not being a common prostitute, or of known immoral character, to have unlawful carnal connection, either within or without this Island, with any other person or persons; or
- b. procures or attempts to procure any woman or girl to become, either within or without this Island, a common prostitute; or
- c. procures or attempts to procure any woman or girl to leave this Island, with intent that she shall become a prostitute, or an inmate of, or frequent a brothel elsewhere; or
- d. procures or attempts to procure any woman or girl to leave her usual place of abode in this Island (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel within or without this Island,

Any person who-

- a. by threats or intimidation procures or attempts to procure or attempts to procure any woman or girl to have any unlawful carnal connection, either within or without this Island; or
- b. by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without this Island; or
- c. applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl;
- d. has or attempts to have unlawful carnal connection with any woman or girl, when partially or entirely stupefied or overpowered as aforesaid,

Notes: As in Guyana, the Offences against the Person Act refers only to women and children, omitting men and boys who may be exploited in a vulnerable position.

Netherlands Antilles

Statute: Criminal Code, Sections 252, 258 and 259

Definition: Any person who, by violence or threat of violence, forces another person to commit or permit illicit sexual activities

Any person who brings about or promotes the commission of illicit sexual activities with a third party by a minor, whose status as a minor he knows or should reasonably suspect.

Any person who makes a profession or regular practice of intentionally bringing about or promoting the commission of illicit sexual activities by others with third parties.

St Lucia

Statute: Draft Criminal Code 2003, Sections 125 and 141

Definition: A person is guilty of an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person -

- a. by force or duress;
- b. by false or fraudulent representation as to the nature of the act; or
- c. by administering, to that other person, or by causing that other person to take, any drug, matter or thing with intent to stupefy or overpower that person.

Any person who -

- a. procures any male or female under eighteen years of age to have unlawful sexual intercourse or sexual connection with another person within or outside this State;
- b. procures any male or female to become, either within or outside this State, a common prostitute;
- c. procures any male or female to leave this State, with intent that he or she may for the purposes of prostitution, become an inmate of, or frequent, a brothel elsewhere;
- d. procures any male or female to leave his or her usual place of abode in this State with intent that he or she may for the purposes of prostitution, become an inmate or frequent a brothel, in any country;

Suriname

Statute: Criminal Code, Title XIV, Offences against Morality, Section 305

Definition: Any person who...brings about or promotes the commission of illicit sexual activities with a third party by a minor, whose status as a minor he knows or should reasonably suspect.

Notes: The procurement of adults for sex services is not explicitly criminalized, though Section 306 sanctions brothel keepers. There is no mention of forced procurement.

Trinidad and Tobago

Statute: Sexual Offences Act (No.27 of 1986), Section 17, Section 18 and Section 21

Definition: A person who -

- a. procures a minor under sixteen years of age to have sexual intercourse with any person either in Trinidad or Tobago or elsewhere; or
- b. procures another for prostitution, whether or not the person procured is already a prostitute, either in Trinidad or Tobago or elsewhere; or
- c. procures another to become an inmate, whether or not the person procured is already an inmate elsewhere, of or to frequent a brothel either in Trinidad or Tobago or elsewhere,
- d. is guilty of an offence and liable on conviction to imprisonment for fifteen years.

Definition: A person who -

- a. by threats or intimidation procures another to have sexual intercourse with any person either in Trinidad or Tobago or elsewhere; or
- b. by deception procures another to have sexual intercourse with any person either in Trinidad or Tobago or elsewhere; or
- c. applies, administers to or causes to be taken by any person, any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person,
- d. is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

Definition: A person who -

- a. being the owner, occupier or manager of premises; or
- b. having control of premises or assisting in the management or control of premises,

permits a minor under sixteen years of age to resort to or to be in or upon the premises for the purpose of having sexual intercourse with any person is guilty of an offence and is liable on conviction to imprisonment for ten years.

It is a defence for a person charged under this section to prove that he did not know or had no reason to believe or suspect that the minor was under the age of sixteen years.

A person shall not be charge for an offence under this section is the minor is a spouse of that person.

Sexual offences

	Rape	Sexual Assault	Forced Detention (sex)
The Bahamas	life (min.7yrs) (S.6 1991 Act)	8 yrs (S.17 1991 Act)	2 yrs (S.21 1991 Act)
Barbados	life (S.3 1992 Act)	10 yrs (S.12 1992 Act)	15 yrs (S.15 1992 Act)
Guyana	life (S.76 Ch.8.01)	5 yrs (S.45 Ch.8.01)	10 yrs (S.87 Ch.8.01)
Jamaica	life (S.44 OAP Act)	3 yrs (S.53 OAP Act)	3 yrs (S.61 OAP Act)
Netherlands Antilles	12 yrs (S.248 Criminal Code)	8 yrs (S.252 Criminal Code)	NA
St Lucia	life (S.123 D. Criminal Code)	7 yrs (S.130 D. Criminal Code)	10 yrs (S.135 D. Criminal Code)
Suriname	12 yrs (S.295 Criminal Code)	8 yrs (S.299 Criminal Code)	NA
Trinidad and Tobago	Life S.4, SO Amend. Act 2008	Life S.4A, SO Amend. Act 2008	10 years S.19, SO Act 1986

Figure B3.

The Bahamas

Statute: Sexual Offences Act 1991, Sections 3, 17 and 21

Definition: Any person not under fourteen (14) years of age having sexual intercourse with another person who is not his spouse -

- a. without the consent of that other person;
- b. with consent which has been extorted by threats or fear of bodily harm;
- c. with consent obtained by personating the spouse of that other person; or
- d. with consent obtained by false and fraudulent representations as to the nature and quality of the act.

Any person who -

- a. indecently assaults any other person;

- b. does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act,

Any person who detains any other person against his will -

- a. in or upon premises with intent that that other person may co-habit or have unlawful sexual intercourse with another person, whether any particular person or generally; or
- b. in a brothel,

Notes: Marital rape is legal and there are no provisions that apply to male rape.

Barbados

Statute: Sexual Offences Act 1991, Sections 3, 12 and 15

Definition: Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the intercourse or is reckless as to whether the other person consents to the intercourse

Any person who commits an act of serious indecency on or towards another or incites another to commit that act with the person

A person who detains another against that other's will -

- a. in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- b. in any brothel,

Guyana

Statute: Chapter 8:01: Criminal Law (Offences), Sections 45, 76 and 87

Definition: Everyone who commits rape...Rape is the unlawful carnal knowledge of a female either by force, fear or fraud against her will.

Everyone who -

- a. indecently assaults any female; or
- b. does anything to any female by her consent which, but for that consent, would be an indecent assault, the consent being obtained by false and fraudulent representations as to the nature and quality of the act.

Everyone who detains any female, against her will -

- a. in or upon any premises, with intent unlawfully and carnally to know her, or to cause her to be unlawfully and carnally known by any other person, whether the carnal knowledge is intended to be with any particular person or generally; or
- b. in any brothel.

Notes: There are no provisions that apply to male rape.

Jamaica

Statute: Offences against the Person Act, Sections 44, 53 and 61

Definition: The act of having unlawful carnal knowledge of a female by force, fear or fraud, against her will.

Any person who detains any woman or girl against her will-

- a. in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man, or generally; or
- b. in any brothel,

Notes: There is no definition of indecent assault or rape in the Offences against the Person Act. The definition of rape is based on the common law. In addition, there are no provisions that apply to male rape.

Netherlands Antilles

Statute: Criminal Code, Sections 248 and 252

Definition: Any person who compels a woman to engage in extramarital sexual intercourse through violence or the threat of violence

Any person who, by violence or threat of violence, forces another person to commit or permit illicit sexual activities.

Notes: Marital rape is legal under this provision and there are no provisions that apply to male rape.

St Lucia

Statute: Draft Criminal Code 2003, Sections 123, 130 and 135

Definition: Any person who has sexual intercourse with another person -

- a. without the consent of that other person; or
- b. without believing that the other person consents to such intercourse or is reckless as to whether the other person consents or not,

“Indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.

A person who detains another against that other’s will-

- a. in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- b. in any brothel

Suriname

Statute: Criminal Code, Title XIV, Offences against Morality, Sections 295 and 299

Definition: Any person who compels a woman to engage in sexual intercourse through violence or the threat of violence

Any person who, by violence or threat of violence, forces another person to commit or permit illicit sexual activities

Notes: There are no provisions that apply to male rape.

Trinidad and Tobago

Statute: Sexual Offences (Amendment) Act 2000, repealing sections of the Sexual Offences Act 1986, Article 4 and 4A

Definition: Rape - including where consent is extorted through threats, fraud or unlawful detention.

- (1) Subject to subsection (2), a person (“the accused”) commits the offence of rape when he has sexual intercourse with another person (“the complainant”) -
 - a. Without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
 - b. With the consent of the complainant where the consent -
 - i. Is extorted by threat or fear of bodily harm to the complainant or to another;
 - ii. Is obtained by personating someone else;
 - iii. Is obtained by false or fraudulent representations as to the nature of the intercourse;
 - iv. Is obtained by unlawfully detaining the complainant.
- (2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if -
 - a. The complainant is under the age of twelve years;
 - b. The offence is committed by two or more persons acting in concert or with the assistance, or in the presence, of a third person;
 - c. The offence is committed in particularly heinous circumstances;
 - d. The complainant was pregnant at the time of the offence and the accused knew that the complainant was pregnant; or
 - e. The accused has previously been convicted of the offence of rape, he shall be liable to imprisonment for the remainder of his natural life.

Includes the ability of the court to order the convicted person to pay adequate compensation.

Definition: Grievous sexual assault

- (1) Subject to subsection (2), a person (“the accused”) commits the offence of grievous sexual assault when he commits the act on another person (“the complainant”) -

- a. Without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
 - b. With the consent of the complainant where the consent -
 - i. Is extorted by threat or fear of bodily harm to the complainant or to another;
 - ii. Is obtained by personating someone else;
 - iii. Is obtained by false or fraudulent representations as to the nature of the intercourse;
 - iv. Is obtained by unlawfully detaining the complainant.
- (2) Subsections (2) to (4) of section 4 applies, *mutatis mutandis*, to the offence of grievous sexual assault as it does to the offence of rape.

Statute: Sexual Offences Act 1986, Section 19

Definition: A person who detains another against that other's will -

- a. in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- b. in any brothel,

is guilty of an offence and is liable on conviction to imprisonment for ten years.

A Magistrate or Justice who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorising any constable to enter (if need be by force) and search any place specified in the warrant and to remove any person so detained and apprehend any person accused of the unlawful detention.

Sex with a Minor

	Sex w/minor (Less than X yrs old)	Sex w/minor (X-Y yrs old)
Bahamas	Less than 14 yrs old - life (S.10 1991 Act)	14-16 yrs old - min.7yrs (S.11 1991 Act)
Barbados	Less than 14 yrs old - life (S.4 1992 Act)	14-16 yrs old - 10 yrs (S.5 1992 Act)
Guyana	Less than 12 yrs old - life (S.70 Ch.8.01)	12-13 yrs old - 10 yrs (S.69 Ch.8.01)
Jamaica	Less than 12 yrs old - life (S.48 OAP Act)	12-16 yrs old - 7 yrs (S.50 OAP Act)
N. Antilles	Less than 12 yrs old - 12 yrs (S.250 Criminal Code)	12-15 yrs old - 8 yrs (S.251 Criminal Code)
St Lucia	Less than 12 yrs old - life (S.126 D. Criminal Code)	12-16 yrs old - 15 yrs (S.127 D. Criminal Code)
Suriname	Less than 12 yrs old - 12 yrs (S.297 Criminal Code)	12-14 yrs old - 8 yrs (S.298 Criminal Code)
Trinidad and Tobago	Less than 14 yrs old - life S.6, SO Amendment Act 2000	14-16 yrs old - 5 yrs S.7, SO Amendment Act 2000

Figure B4.

The Bahamas

Statute: Sexual Offences Act 1991, Sections 10 and 11

Definition: Any person who has unlawful sexual intercourse with any person under fourteen (14) years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse

Any person who has unlawful sexual intercourse with any person being of or above fourteen (14) years of age and under sixteen (16) years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,

It shall be a sufficient defence to any charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of eighteen (18) years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen (16) years of age.

Barbados

Statute: Sexual Offences Act 1991, Sections 4 and 5

Definition: Where a person has sexual intercourse with another who is under the age of 14

Where a person has sexual intercourse with another with the other's consent and that other person has attained the age of 14 but has not yet attained the age of 16

A person is not guilty of an offence under this section -

- a. if that person honestly believed that the other person was 16 years of age or more and has reasonable cause for the belief; and
- b. if that person is not more than 24 years of age and has not been previously charged with the same or a similar offence.

Guyana

Statute: Chapter 8:01: Criminal Law (Offences), Sections 69 and 70

Definition: Everyone who unlawfully and carnally knows any girl of or above the age of twelve years and under the age of thirteen years

It shall be a sufficient defence to any indictment under this section if it is made to appear to the Court or jury that the accused person had reasonable cause to believe that the girl was of or above the age of thirteen years.

Everyone who unlawfully and carnally knows any girl of or above the age of twelve years and under the age of thirteen years

Notes: There are no provisions covering sex with a minor male.

Jamaica

Statute: Offences against the Person Act, Sections 48 and 50

Definition: Whosoever shall unlawfully and carnally know and abuse any girl under the age of twelve years

Whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years and under the age of sixteen years

Provided that in the case of a man of twenty three years of age or under, the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion.

Notes: There are no provisions that apply to rape of a male who is a minor.

Netherlands Antilles

Statute: Criminal Code, Sections 250 and 251

Definition: Any person who engages in sexual intercourse with a girl under the age of twelve years

Any person who engages in sexual intercourse with a woman who has reached the age of twelve years but has not yet reached the age of fifteen years

St Lucia

Statute: Draft Criminal Code 2003, Sections 126 and 127

Definition: Any person who has sexual intercourse with another person who is under the age of twelve years, whether or not the other person consented and whether or not the first-mentioned person believes that the other person is twelve years of age or more,

Any person who has sexual intercourse with another person who -

- a. is twelve years of age or more but has not attained the age of sixteen years;

It is a defence to a charge under this section if the person charged proves that -

- a. the other person consented; and
- b. the person charged -
 - i. was not more than twenty-one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and
 - ii. had reasonable cause to believe and did believe that the other person was sixteen years of age or more.

Suriname

Statute: Criminal Code, Title XIV, Offences against Morality, Sections 297 and 298

Definition: Any person who engages in sexual intercourse with a girl under the age of twelve years

Any person who engages in sexual intercourse with a woman who has reached the age of twelve years but has not yet reached the age of fourteen years

Notes: There are no provisions that apply to rape of a male who is a minor.

Trinidad and Tobago

Statute: Sexual Offences Amendment Act 2000, Section 6, Section 7, Section 8 and Section 11

Definition: Statutory Rape (Under 14)

(1) Where a male person has sexual intercourse with a female person who is not his wife and who is under the age of fourteen, he is guilty of an offence, whether or not the female person consented to the intercourse and whether or not at the time of the intercourse he believed her to be fourteen years of age or more, and is liable on conviction to imprisonment for life.

Definition: Statutory Rape (14-16 years)

(1) Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years, but has not yet attained the age of sixteen years he is guilty of an offence, and is liable on conviction to imprisonment for five years.

- (2) A male person is not guilty of an offence under subsection (1) -
- a. if he honestly believed that the female person was sixteen years of age or more; or
 - b. if the male person is not more than three years older than the female person and the court is of the opinion that the evidence discloses that as between the male person and the female person, the male person is not wholly or chiefly to blame.

Definition: Statutory rape with a male under 16

(1) Where a female adult has sexual intercourse with a male person who is not her husband and who is under the age of sixteen years, she is guilty of an offence, whether or not the male person consented to the intercourse, and is liable on conviction to imprisonment for five years.

- (2) A female adult is not guilty of an offence under subsection (1) -
- a. if she honestly believed that the male persons was sixteen years of age or more; or
 - b. if the female person is not more than three years older than the male person and the court is of the opinion that the evidence discloses that as between the male person and the female person, the male person is not wholly or chiefly to blame.

Definition: Sex with a minor employee

- (1) An adult who has sexual intercourse with a minor who -
- a. is in the adult's employment; or
 - b. is in respect of any employment or work under or in any way subject to the adult's control or direction; or
 - c. receives his or her wages or salary directly from the adult,
 - d. is guilty of an offence and is liable on conviction to imprisonment for ten years.

[penalty raised by 2000 Act to 25 years]

Abduction

	Kidnap	Abduction of minor (for sex)	Abduction of minor
The Bahamas	NA	NA	2 yrs S.22, S.23 1991 Act
Barbados	NA	NA	S.16, 1992 Act
Guyana	7 yrs (for a minor) S.91 Ch8.01	14 yrs S.85 Ch.8.01	NA
Jamaica	Life S.70 OAP Act	3 yrs (for girls less than 18 yrs old) S.60 OAP Act	3 yrs (girls) S.57 OAP Act
Netherlands Antilles	NA	NA	NA
St Lucia	10 yrs S.120 D Criminal Code	14 yrs (any age) S.163 D. Criminal Code	5 yrs (less than 16 yrs old) S.162 D. Criminal Code
Suriname	NA	NA	NA
Trinidad and Tobago	25 yrs Kidnapping Act 2003	10 yrs S.20, SO Act 1986	10 yrs S.20, SO Act 1986

Figure B5.

The Bahamas

Statute: Sexual Offences Act 1991, Sections 22, 23 and 25

Definition: Any person who is guilty of an abduction of any unmarried person under sixteen (16) years of age

Any person who is guilty of an abduction of any unmarried person being of or above sixteen (16) years of age and under eighteen (18) years of age

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury that the person so charged had reasonable cause to believe that such unmarried person was of or above eighteen (18) years of age

For the purposes of the sections of this Part relating to abduction -

- a. it is not necessary that the taking or detaining should be without the consent of the person taken or detained, and it suffices if the person is persuaded, aided or encouraged to depart or not to return;
- b. it is not necessary that there should be an intent permanently to deprive any person of the custody or control of the person taken or detained;
- c. a taking or detention is unlawful unless some person entitled to give consent to the taking or detention of the person taken or detained, for the purposes for which he is taken or detained, gives consent to the taking or detention for those purposes;
- d. a person having the temporary custody, care or charge of another person for a special purpose, as his attendant, employer or schoolmaster or in any other capacity, can be guilty of abduction of that person by acts which he is not authorised to do for such special purpose, and he cannot give consent to any act by another person which would be inconsistent with such special purpose; and
- e. notwithstanding the application of the general provisions of Book I of the Penal Code with respect to mistake of law, a person is not guilty of abduction of another person by anything which he does in the belief that he is entitled by law as a parent or guardian, or by virtue of any other legal right, to take or detain the other person for the purposes for which he takes or detains him ; but this rule shall not be construed to exempt a person from liability to punishment on the plea that he did not know or believe or had not the means of knowing, that the other person was under sixteen (16) or eighteen (18) years of age, as the case may be, not to exempt a person from liability to punishment for abduction if he took or detained the other person for any immoral purpose.'

Barbados

Statute: Sexual Offences Act 1991, Section 16

Definition: unknown

Guyana

Statute: Chapter 8:01: Criminal Law (Offences), Sections 85 and 91

Definition: Everyone who, by force, takes away or detains any female against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person

Everyone who, with intent to deprive any father, mother, or guardian of any child of the possession of the child...

- a. leads, or takes away, or decoys or entices away, or detains, the child; or
- b. receives, or harbours, the child knowing it to have been dealt with as aforesaid.

Jamaica

Statute: Offences against the Person Act, Sections 57, 60 and 70

Definition: Whosoever shall unlawfully take, or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her...

Any person who with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her....

Whosoever shall kidnap a person with intent -

- a. to hold him against his will for ransom, whether by way of money or valuables or any promise to do or refrain from doing anything or any other consideration; or
- b. to cause him to be unlawfully sent or transported out of Jamaica against his will; or
- c. to hold him for service against his will,

Netherlands Antilles

Notes: The Netherlands Antilles Civil Code has provisions on kidnap and abduction. However, at the time of writing, the text was not available.

St Lucia

Statute: Draft Criminal Code 2003, Sections 120, 162 and 163

Definition: Where a person without lawful excuse, proof of which lies on him or her takes or carries away another person by force or deception without the consent of that person

It is no defence to show that the person so kidnapped did not resist unless it appears that the kidnapping was not caused by threats or force.

Any person who is guilty of an abduction of any unmarried male or female under sixteen years of age,

Any person who takes away or detains a male or female of any age against his or her will, with intent to marry, or have sexual intercourse or sexual connection with, him or her or to cause him or her to be married or have sexual intercourse or sexual connection with any other person

Suriname

Notes: The Surinamese Civil Code may have provisions on kidnap and abduction. However, at the time of writing, the text was not available.

Trinidad and Tobago

Statute: Sexual Offenses Act 1986, Section 20

Definition: A person who take away or detains a female person against her will with intent -

- a. to marry her or to have sexual intercourse with her; or
- b. to cause her to marry or to have sexual intercourse with a male person,

is guilty of an offence and is liable on conviction to imprisonment for ten years.

Statute: Kidnapping Act 2003, Section 3

Definition: A person who, for ransom, reward, or for any similar consideration, unlawfully leads, takes, entices away, abducts, seizes or detains any person without his consent or with his consent obtained by fraud or duress and without lawful excuse such that the person... is held, confined, restricted, imprisoned, or prevented from returning to his normal place of abode or sent or taken out of Trinidad or Tobago, commits an offence and is liable to imprisonment for not less than twenty-five years.

A person under the age of sixteen years is deemed incapable of consenting to being led, taken, enticed away, abducted, seized, detained, held, confined, restrained or imprisoned.

Appendix C: Immigration law in the Caribbean

The Bahamas

Statute: 1967 Immigration Act

Relevant Provisions

Part V Entry into the Colony

S.17 Persons entitled to land and embark.

1. Notwithstanding any other provisions of this Act, a person shall be entitled to land or embark in the Colony and shall be permitted by any Immigration Officer so to land or embark, if he satisfies the Immigration Officer that he comes within any of the following categories-

- a. citizens of The Bahamas;
- b. permanent residents;
- c. persons who are diplomatic or consular officers or representatives or officials duly accredited of a country other than The Bahamas, or of the United Nations or any of its agencies or of any inter-governmental organisation in which The Bahamas participates, coming to The Bahamas to carry out these officials duties;
- d. persons employed in the service of the Government of The Bahamas;
- e. persons whom an Immigration Officer is authorised by the Board to treat as entitled to land in The Bahamas; and
- f. wife and children of any person coming within the foregoing category (c) or (d) whether travelling with or separately from such person.”
- g. persons whom an Immigration Officer is authorized by the Board to treat as entitled to land in the Colony; and(h)wife and children of any person coming within the foregoing category (d), (e) or (f) whether travelling with or separately from such person.

[amended by Schedule of Act No. 26 of 1975]

2. The burden of proof that any person is a person to whom this section applies shall lie upon that person.

S.19 Grant of leave to land.

1. Subject to the provisions of this Act an Immigration Officer may grant leave to any person to land and remain in the Colony for such period as he may determine in accordance with the provisions of subsection (2) of this section, upon being satisfied that that person-

- a. has in his possession either a ticket, or some other means of travelling to some other country which he will be able to enter, or a valid permit, not having been obtained by fraud or misrepresentation, issued to him under section 27 permitting him to remain in the Colony for the period specified therein;
 - b. will not engage in any gainful occupation other than any occupation which may be specified in a valid permit, not having been obtained by fraud or misrepresentation, granted under section 27;
 - c. is not likely to behave in a manner prejudicial to the peace, order and good government of the Colony;
 - d. is not suffering from a mental disorder nor is a mental defective;
 - e. is not suffering from any contagious or infectious disease which, in the opinion of a medical practitioner appointed in accordance with the provisions of paragraph (d) of section 6(1) makes his presence in the Colony dangerous to the community;
 - f. is not a person who is reasonably believed to have come to the Colony for any immoral purpose, or who being a woman or a girl, is not reasonably believed to be a prostitute or to have come to the Colony for the purpose of prostitution;
 - g. has not, since attaining the age of fourteen years, been convicted in any place of murder or an offence of a nature punishable in the Colony with imprisonment for a term of three years or more who by reason of such conviction is deemed by the Board or an Immigration Officer to be undesirable;
 - h. is not a person whose name is for the time being entered in the stop list;
 - i. is not a member of a class of persons declared by Order, issued by the Governor acting in his discretion in the exercise of his special responsibilities under the constitution to be a prohibited class of person for the purpose of this section;
 - j. is not a person whose presence in the Colony would in the opinion of the Board (or the Governor acting in his discretion in the discharge of his special responsibilities under the Constitution) be undesirable and not conducive to the public good;
 - k. is capable of supporting himself and his dependants during such time as he may be permitted to remain in the Colony; and
 - l. is not the dependant of a person who is precluded from being granted leave to land by reason of any of the provisions of this section.
2. The period for which an Immigration Officer may grant to any person leave to remain in the Colony under subsection (1) of this section shall be -

- a. where such person produces a permit issued to him under section 27 permitting him to remain in the Colony, the period specified in that permit;
 - b. where such person does not produce to the Immigration Officer such a permit, such period not exceeding eight months as the Immigration Officer may, subject to any directions of the Board, determine.
3. When a person has been granted leave to land and remain in the Colony for a period under the provisions of subsection (1) of this section the Director of Immigration may, for good cause, vary that period so however that the total period during which such person is permitted to remain in the Colony does not exceed eight months from the date when he last landed in the Colony.

S.21 Stop list.

1. Where the Board is satisfied that any person who is not a citizen of the Bahamas or a permanent resident and who is for the time being outside the Colony- [*amended by Bahamas Nationality Act and Schedule of Act No. 26 of 1975*]
 - a. is a person who has, while in the Colony, conducted himself in a manner which is undesirable; or
 - b. (b) is a person whose landing in the Colony appears undesirable in view of information or advice received from any source which the Board considers reliable, then and in either case the Board may cause that person's name to be entered on a list to be called "the Stop List" to be maintained by the Board.
2. In the exercise of his special responsibilities under the Constitution, the Governor may, in his discretion, require the Board to include the name of any specified person in the Stop List and the Board shall forthwith comply with such requirement.

S.23 Removal of persons landing unlawfully, etc.

1. If any person-
 - a. is found in the Colony after landing in contravention of this Act; or
 - b. has been permitted to land in the Colony from a ship of which he was a member of the crew subject to a condition that he should leave the Colony by a specified ship or within a specified period, but fails to comply with that condition or is reasonably suspected of intending so to fail; or
 - c. has landed in the colony from a ship of which he was a member of the crew in accordance with section 18 without the leave of

an Immigration Officer, but fails to leave with that ship from the port where he has landed, or is reasonably suspected of intending so to fail, the provisions of section 22 shall apply to him as if he had been refused leave to land by an Immigration Officer: Provided that in respect of any person to whom the provisions paragraphs (b) or (c) of this subsection apply, the period of two months specified in subsection (2) of section 22 shall be extended to twelve months.

2. If any person lands in the Colony from a ship on which he was a stowaway, section 22 shall thereupon apply to him as if he had been refused leave to land by an Immigration Officer: Provided that in any such case-
 - a. subsection (2) of section 22 shall not apply; and
 - b. subsection (1)(c) of section 22 shall be deemed to include a reference to the country in which that person stowed away.

Part VI - Residence and Employment in the Colony

S.25 Restrictions upon residence.

1. No person other than a person entitled to land in the Colony in accordance with the provisions of section 17 shall remain in the Colony after the expiration of the period during which he is permitted to remain in the Colony by the Immigration Officer or the Director of Immigration under section 19 unless such person is in possession of a valid permit issued in accordance with the provisions of section 27 permitting him to so remain in the Colony.
2. Where any person ceases to be a person entitled to land in the Colony in accordance with the provisions of section 17 the provisions of this section shall apply to that person upon the expiration of such period of time as reasonably to allow for the departure of that person from the Colony as the Director of Immigration may in his discretion allow.
3. Any person who contravenes the provisions of this section shall be guilty of an offence against this Act.

S.26. Restrictions upon engaging in gainful occupation.

1. No person to whom the provisions of this section apply shall engage in any gainful occupation in the Colony unless he is in possession of a valid permit issued in accordance with the provisions of section 27 permitting him to engage in such employment.
2. This section shall apply-
 - a. to any permanent resident, whose certificate of permanent residence, or the endorsement of such certificate, is made subject to

a condition made under subsection (2) of section 12 or subsection (2) of section 13 as the case may be restricting him from engaging in any gainful employment, but shall apply only to the extent of that restriction;

- b. to the wife and any child of any person to whom paragraphs (c) and (d) of subsection (1) of section 17 applies.

[amended by Schedule of Act No. 26 of 1975]

3. Any person who engages in any gainful occupation in contravention of the provisions of this section shall be guilty of an offence against this Act.
4. Any person who whether on his own behalf or on behalf of another engages in employment, or employs, a person to whom this section applies in gainful occupation shall be guilty of an offence against this Act unless the person so engaged or employed has first been granted a permit under section 27 permitting him to engage in that gainful occupation.

S.27 Permission to reside or to engage in gainful employment.

1. Subject to the provisions of this section upon application being made in the prescribed form the Director of Immigration may in accordance with the provisions of any regulations and of any directions of the Board grant a permit in accordance with the provisions of this Act and in the prescribed form to any person permitting such person-
 - a. to remain in the Colony for the period specified in the permit otherwise than for the purpose of engaging in any gainful occupation; or
 - b. to remain in the Colony for the period specified in the permit for the purpose of engaging in the gainful occupation specified in the permit; or
 - c. in the case of any person to whom section 26 applies to engage in the gainful occupation specified in the permit. *[amended by Schedule of Act No. 26 of 1975]*
2. Without prejudice to any other provisions of this Act, any person applying for a permit under the provisions of this section may be required by the Director of Immigration-
 - a. to furnish him with such evidence of good character in respect of himself and his dependants as the Board may consider necessary;
 - b. to furnish him with medical certificates with respect to himself and his dependants certified by medical authorities acceptable to the Board and with such particulars as the Board may consider necessary;
 - c. to satisfy him that he is able to maintain himself and his dependants in the Colony;

- d. to provide-
 - i. in the case of a person wishing to remain in the Colony for purposes other than engaging in gainful occupation, an undertaking, in writing, that he will not engage in any gainful occupation in the Colony; or
 - ii. in the case of a person wishing to remain in the Colony for the purposes of engaging in any gainful occupation, full particulars of such occupation;
- e. to give a bond for such sum and with such sureties as the Board may approve for securing payment of any public charges including any cost of transporting the applicant and his dependants to a country outside the Colony willing to receive them, that may be incurred in respect of the applicant or his dependants: Provided that the Board shall cancel any such bond on the applicant subsequently acquiring a certificate under section 12 or 14 and may cancel any such bond at any time on being satisfied that the necessity for the bond no longer exists: And Provided Further that in the case of a person who is to be employed by an employer in the Colony, the prospective employer shall be required to give such bond in lieu of the person himself;
- f. to furnish such particulars (whether of the same kind as those hereinbefore referred to or not) as the Board may consider material to the consideration of any application.

3. *[repealed by Schedule of Act No. 26 of 1975]*

4. Notwithstanding any other provisions of this section, no permit under the provisions of subsection (1) of this section shall be granted to any person if the Governor in his discretion in the exercise of his special responsibilities under the Constitution, has notified the Board in writing that such a permit shall not be granted to such person.

5.

S.28. Conditions of permits.

1. Any permit granted under the provisions of section 27-
 - a. may be limited in duration to a period specified in the permit;
 - b. may be granted subject to such conditions or restrictions, in addition to any conditions or restrictions which may be prescribed, as the Board may in any case direct; and
 - c. shall be subject to any special conditions or restrictions which the Governor in his discretion in the exercise of his special responsibilities under the Constitution may require the Board to impose in respect of any particular person;

- d. may be cancelled by the Board in the event of the Board being satisfied that the person to whom it is granted has failed to comply with any condition or restriction to which the permit is subject; and
 - e. shall be cancelled by the Board forthwith upon a deportation order being made under section 36 in respect of the person to whom the permit is granted.
2. Any condition or restriction imposed under the provisions of paragraph (b) or (c) of subsection (1) of this section shall be set in the permit.

Part VIII - Deportation and Provisions relation to the Removal of Persons from the Colony

S.36 Procedure where deportation is desirable.

1. If at any time after a person, other than a citizen of The Bahamas or a permanent resident has landed in the Colony, it shall come to the knowledge of the Governor that such person- *[amended by Bahamas Nationality Act and Schedule of Act No. 26 of 1975]*
 - a. has landed or remained in the Colony contrary to any provisions of this Act;
 - b. has been convicted of any offence against this Act or of any other offence punishable on indictment with death or imprisonment for two years or upwards; or
 - c. is a person whose presence in the Colony would in the opinion of the Board or of the governor acting in his discretion in the exercise of his special responsibilities under the constitution, be undesirable and not conducive to the public good, the governor may make an order (hereinafter referred to as a “deportation order”) requiring such person to leave the Colony within the time fixed by the deportation order and thereafter to remain out of the Colony.
2. In the exercise of the powers conferred upon him by subsection (1) of this section, the governor may act in his discretion in any matter where he deems it necessary to do so for the proper discharge of his special responsibilities under the Constitution.
3. Where a deportation order is made in respect of a person who immediately before the making thereof was lawfully within the colony under the provisions of this Act, a copy of the order shall be served upon him by an Immigration Officer or by any police officer and he shall be entitled within the period of seven days next following the date of such service to appeal in writing to the governor against the making of the order.

S.37 Removal of person subject to deportation orders.

1. Subject to the provisions of subsection (5) of this section any person in whose case a deportation order has been made may be placed, under the authority of the Governor, on board any ship or aircraft which is about to leave the Colony and the master of the ship or commander of the aircraft shall, if so required by an Immigration Officer, take such steps as may be necessary for preventing the person from landing from the ship or aircraft before it leaves the colony, and may for that purpose detain the person in custody on board the ship or aircraft.
2. The Governor or an Immigration Officer may give directions to the master of any ship or commander of any aircraft which is about to leave the Colony, requiring him to afford to any person in whose case a deportation order has been made, and to his dependants (if any), a passage to any port specified in the directions, being a port at which the ship or aircraft is to call in the course of its voyage, and proper accommodation and maintenance during the passage.
3. The Governor, may, if he thinks fit, apply any money or property belonging to any such person as aforesaid in payment of the whole or any part of the expenses of or incidental to the voyage from the Colony and the maintenance until departure of the person and his dependants (if any).
4. Subject to the provisions of subsection (3) of this section any person in whose case a deportation order has been made may be detained, under the authority of the Governor until he is dealt with under subsection (1) of this section; and a person in whose case a recommendation for deportation is in force under section 36 shall (unless the court, in a case where the person is not sentenced to imprisonment, otherwise directs) be detained until the Governor makes a deportation order in his case or directs him to be released.
5. A person in whose case a deportation order is made who is entitled in accordance with the provisions of subsection (3) of section 36 to appeal to the Governor against the making of the order, shall not be placed upon a ship or aircraft under the provisions of subsection (1) or detained under the provisions of subsection (4) of this section until the expiration of the period of seven days from the date of service upon him of a copy of the order or, in the event of his making such an appeal, until the decision of the Governor thereon is known.

S.38 Lien on ship or aircraft landing passengers contrary to this Act.

1. If a passenger lands or attempts to land in the Colony, or does any act preparatory to landing in the Colony to the knowledge of the master of a ship or the captain of an aircraft by which such passenger arrived and

such landing is, or would be, in contravention of any provision of this Act, such ship or aircraft shall be subject to a lien in favour of Her Majesty for the sum of Fifteen hundred dollars in respect of each such passenger so landing, attempting to land or making preparation to land and the amount so charged may be sued for and recovered by the director of Immigration in the Supreme Court.

2. Any Immigration Officer or any police officer, acting under instructions of the Treasurer shall detain, by force if necessary, any ship or aircraft charged with the payment of any sum under this section, until the hour of six o'clock in the afternoon of the third day following the landing of the passenger in respect of which the same is charged: Provided that such detainer shall cease upon payment to the officer detaining such ship or aircraft, or the person placed by him in actual charge of such ship or aircraft, of all sums charged upon such ship or aircraft under this section, or upon the ship or aircraft being arrested under the process of the Supreme Court issued in any action for the recovery of the sums last aforesaid.
3. For the purposes of any action for the recovery of any sums charged upon an aircraft under the provisions of this section such aircraft shall be deemed to be a ship and the law relating to Admiralty actions *in rem* shall apply to such action accordingly.
4. Where the sum charged upon a ship or aircraft under this section exceeds the value of such ship or aircraft it shall be lawful for the Supreme Court on the application of the Director of Immigration to order the destruction of the ship or aircraft.

Part IX - Regulations, Procedure and Appeal

S.43. Assisting illegal landing.

1. Any person who-
 - a. knowingly assists any person to land in the Colony; or
 - b. connives in the landing in the Colony of any person; or
 - c. wilfully does any act preparatory to the landing in the Colony of any person where such landing, is, or would be, from any ship entering or leaving the Colony otherwise than in accordance with any regulations made under paragraph (e) of section 41 applying to such ship, shall be guilty of an offence against this Act.
2. Any person who commits an offence under this section or who contravenes any regulations shall be liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and imprisonment, and any vessel found in the Colony in contravention of any regulations shall be liable to forfeiture and

shall be proceeded against and condemned in such manner as is prescribed by The Customs Regulations Act: Provided that any such vessel which is of or below one hundred net tons may be condemned by the Chief Magistrate or by a Stipendiary and Circuit Magistrate upon proof to his satisfaction that such vessel has been used in contravention of such regulations.

3. In any proceedings under this section for the condemnation of a vessel found in the Colony in contravention of any regulations, the Supreme Court, Chief Magistrate or Stipendiary and Circuit Magistrate having jurisdiction therein may order the destruction of such vessel.

S.44 Boarding of vessels.

Where any officer of the Royal Navy or any customs officer or police officer has reasonable grounds for believing that any person on board any vessel which is in the territorial waters of the Colony is landing or preparing to land in the Colony in contravention of the provisions of this Act, he may board such vessel and exercise the powers conferred on an Immigration Officer under section 7.

S.45 General penalty.

Any person who commits or attempts to commit an offence under this Act or any regulations made there under shall, except where any other penalty is provided, be liable on summary conviction to a fine of three thousand dollars or imprisonment for two years or to both such fine and imprisonment. [*amended by Schedule of Act No. 26 of 1975*]

Barbados

Statute: Immigration Act 1976

Relevant Provisions:

Part II - Entry into Barbados

S.6 Qualification for status of immigrant.

1. Subject to this Act and the regulations, a permitted entrant who,
 - a. by reason of his education, occupational qualifications, personal history, employment record, training, skills or other special qualifications
 - i. is in employment on a full time basis in the public service, the service of a statutory board or a government agency,
 - ii. has established himself successfully in Barbados in a profession, trade, business or agricultural enterprise, or
 - iii. is likely to establish himself successfully in Barbados in profession, trade, business or agricultural enterprise and

- has sufficient means to support and maintain himself and his dependants in Barbados until he has so established himself;
- b. is a child under the age of 18 years whose father or mother
 - i. is a permanent resident or a citizen of Barbados residing in Barbados,
 - ii. establishes parenthood of that child to the satisfaction of the Minister, and
 - iii. is willing and able to provide for that child's care and maintenance;
 - c. not being a citizen, is the parent or grandparent of a citizen who resides in Barbados and is willing and able to provide for the care and maintenance of that parent or grandparent; or
 - d. desires to reside in retirement in Barbados and has sufficient means of support to maintain himself support to maintain himself and his dependants, may, on application to the Minister in the prescribed form, be granted by the Minister permission to become an immigrant.

[amended by Act 27 of 1979]

S.7 Loss of status of resident.

1. Subject to subsection (5), a person mentioned in paragraph (a) or (b) of section 5 (2) loses the status of permanent resident if he voluntarily resides outside Barbados for a continuous period of one year, unless he obtains from the Minister a certificate in the prescribed form exempting him from the operation of this section.
2. A person who the Minister is satisfied is or has been-
 - a. engaged in activities detrimental to the security of Barbados; or
 - b. an habitual criminal, shall be deemed to have lost the status of permanent resident at the time of engaging in such activities or of becoming an habitual criminal.
3. For the purposes of subsection (2), an habitual criminal is a person who-
 - a. is not less than twenty-five years of age;
 - b. is convicted on indictment of an offence punishable with imprisonment for two years or more; and
 - c. has been convicted n indictment on at least two previous occasions since he attained the age of seventeen years of offences punishable as mentioned in paragraph (b).
4. The Minister, if he has reasonable grounds for believing that a permanent resident is a person mentioned in paragraphs 3, 4, 5, 6, 7 or 8 of the First Schedule, may declare in writing under his hand that that person has lost

the status of permanent resident from such time as is specified in the declaration.

5. Residence outside Barbados for the purposes of the public service or the diplomatic, consular or other service of the Crown shall not cause the loss of the status of permanent resident.
6. The Minister may make a deportation order against any person who has lost the status of a permanent resident under this section.

[amended by Act 27 of 1979]

S.8 Prohibited persons.

1. Subject to subsection (2), entry into Barbados of the persons described in the First Schedule other than citizens or, subject to section 7, permanent residents, is prohibited. *[amended by Act 27 of 1979]*
2. The Minister may, in writing under his hand or the hand of a person designated by him, exempt from the operation of subsection (1)-
 - a. a person described in paragraph 1 (a) or 2 of the First Schedule whose entry into Barbados to seek treatment and care at a hospital or other place or institution for that treatment and care is approved by the Minister responsible for Health;
 - b. a person described in paragraph 1 (a) of the First Schedule, if the Minister is satisfied that that person is a member of a family already lawfully in Barbados and another member of that family gives security satisfactory to the Minister against that person becoming a charge on public funds;
 - c. a person described in paragraph 7 of the First Schedule, in respect of whom the Minister is satisfied that-
 - i. that person has ceased to be a member of or associated with an organisation, group or body so described, and
 - ii. the entry of that person would not be detrimental to the security of Barbados;
 - d. a person in lawful custody passing through Barbados in transit to another country.
3. An exemption under subsection (2) may be granted subject to such conditions as the Minister thinks fit, and, if the person to whom the exemption relates fails to comply with or contravenes any such condition, the Minister may make a deportation order against him.

S.10 Entry into Barbados only at port of entry.

1. No person may enter Barbados by sea or air except at a port of entry.
2. No person arriving in Barbados by sea or air may disembark without the consent of an immigration officer.

3. The master of a vessel in which a person arrives in Barbados shall not allow that person to disembark without the consent of an immigration officer.
4. A person who contravenes subsection (1), (2), or (3) is guilty of an offence under this Act.
5. Notwithstanding any enactment to the contrary, an information for an offence under this section may be laid at any time.

S.16 Persons unlawfully entering or in Barbados.

1. Nothing in this Act shall be construed as conferring the right to be or remain in Barbados on any person who-
 - a. either before or after the commencement of this Act has entered Barbados otherwise than in accordance with the former Act or this Act, as the case may be; or
 - b. is at the commencement of this Act a prohibited immigrant within the meaning of the former Act, and the Minister may make a deportation order against any such person.

Part III - Work Permits

S.17 Work permits.

1. A person other than a citizen, permanent resident or immigrant may not in Barbados engage in any occupation or accept employment without having first obtained a written permit for the purpose granted by the Minister.
2. A person may not engage or employ another person who is not a citizen, permanent resident or immigrant unless there is a work permit in force in relation to that other person and for the purpose of that engagement or employment.
3. A work permit shall be in such form and may be granted subject to such conditions as the Minister thinks fit.
4. Any person who-
 - a. contravenes subsection (1) or (2); or
 - b. being the holder of a work permit, contravenes or fails to comply with any condition subject to which that permit was granted, is guilty of an offence under this Act.
5. The Minister may at any time-
 - a. modify or cancel any condition specified in; or
 - b. revoke, a work permit.
6. For the purposes of this section, the expression “immigrant” does not include a person to whom permission has been granted by the Minister to become a permanent resident on the ground mentioned in paragraph (d) of section 6.

[amended by Act 27 of 1979]

S.18 Applications for work permits.

1. An application for a work permit shall be made in such form renewal of a work permit, such fees as may be prescribed.
2. There shall be paid in respect of the application, grant and renewal of a work permit, such fees as may be prescribed.
3. Regulations under this section may specify the level of fees in respect of different categories of employment and in respect of different categories of persons.

Part IV Removal of Persons not permitted to enter Barbados, deportation and detention

S.20 Person not permitted to enter Barbados.

1. Where a person who seeks to enter Barbados is not permitted to do so an immigration officer may give directions-
 - a. to the master of the vessel on which the person arrived in Barbados requiring him to remove the person from Barbados in that vessel;
 - b. to the owners, or agents in Barbados of that vessel, requiring them to remove the person from Barbados in any vessel of which they are owners or agents; or
 - c. to the owners or agents of that vessel requiring them to arrange for the person's removal from Barbados in any vessel bound for a country specified in the directions, being a country-
 - i. of which the person is a citizen,
 - ii. in which the person obtained a passport or other document of identity,
 - iii. in which the person embarked for Barbados, or
 - iv. which there are reasonable grounds for believing that the person will be permitted to enter, and for securing the person a passage to that country.
2. Where a person who is not permitted to enter Barbados appeals against the decision of the immigration officer, the liability of the owners or agents of the vessel in which he arrived in Barbados for his removal from Barbados is not affected by the appeal.
3. Nothing in subsection (1) affects the liability of a person who is not permitted to enter Barbados to pay to the owner or agents of the vessel in which he arrived in Barbados the cost of his passage from Barbados.
4. If it appears to Minister that in the circumstances of any particular case it is not practicable for directions to be given under subsection (1) in respect

of any person who is not permitted enter Barbados, or that directions so given would be ineffective, the Minister or any person acting under his authority may give to the owner or agents of any vessel any directions an immigration officer is empowered to give to the owners or agents of the vessel in which the person arrived in Barbados; but, in any such case, the costs of complying with the directions shall be defrayed out of moneys provided for the purposed by Parliament.

5. If a person to whom directions are given under subsection (1) or (4) fails or refuses to comply with those directions, he is guilty of an offence under this Act.
6. Any person in respect of whom directions are given under this section may be placed, under the authority of an immigration officer, on board any vessel in which he is to be removed from Barbados in accordance with the directions.

S.21 Deportation orders.

1. A deportation order in the prescribed form or a copy thereof shall be served on the person against whom it is made and on such other persons as may be prescribed.
2. Unless otherwise provided in this Act, a deportation order shall be executed as soon as practicable.
3. A deportation order does not become invalid on the ground of any lapse of time between its making and execution, and remains valid after execution unless cancelled by the Minister.
4. An appeal made under section 23 (2) against a deportation order stays the execution of the order pending the determination of the appeal.
5. A person who commits an offence under this Act or the regulations may, notwithstanding the fact that a deportation order has been made against him, be prosecuted and required to undergo any punishment imposed upon him in respect of that offence before he is deported.
6. Where a deportation order is made against a person who-
 - a. at the time of its making is an inmate; or
 - b. before its execution becomes an inmate, of a prison, it may not be executed until that person ceases to be liable to be detained therein.
7. A person against whom a deportation order is made shall leave Barbados in accordance with the terms of the order and shall thereafter, so long as the order is in force, remain out of Barbados.
8. A person who re-enters Barbados in contravention of a deportation order may again be deported under that order.

9. A person who contravenes or fails to comply with subsection (7) or (8) is guilty of an offence under this Act.
10. A person who, having been removed or otherwise lawfully sent out of Barbados, enters or resides in Barbados without the permission in writing of the Minister is guilty of an offence under this Act, and, in addition to any other penalty provided by this Act, is liable to be again removed from Barbados.
11. Unless otherwise directed by the Minister, a person against whom a deportation order is made may be requested or allowed to leave Barbados voluntarily provided that he complies with the conditions governing his voluntary departure.

S.22 Detention.

1. A person who is refused permission to enter Barbados may be detained in custody by an immigration officer or a member of the Police Force in such place as the Minister approves until he is removed from Barbados in accordance with directions given under section 20.
2. Where a deportation order is made against a person, the Minister may order that person to be detained in custody in such place as the Minister directs and for such period as may be necessary for the purpose of making arrangements for his removal from Barbados.
3. Where a person is detained under this section, an immigration officer, a member of the Police Force, prison officer or any other person authorised by the Minister may take such steps as may reasonably be necessary for photographing, measuring or otherwise identifying him.
4. A person who is detained pursuant to the sentence or order of a court and would otherwise be liable to be detained under this section may be taken in the custody of a member of the Police Force or prison officer to or from any place where his attendance is required for the purpose ascertaining his citizenship or of making arrangements for his removal from Barbados.
5. A person who is ordered or authorised to be detained under this section may be arrested without warrant by an immigration officer or a member of the Police Force.

S.23 Appeals.

1. No court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or an immigration officer had, made or given under the authority of this Act relating to-
 - a. the refusal of permission to any person to enter Barbados or the removal of that person from Barbados; or

- b. the detention or deportation of any person, upon any ground whatsoever unless that person is a citizen or a permanent resident.
2. A citizen or permanent resident may appeal to the High Court and thence to the Court of Appeal against any proceeding, decision or order mentioned in subsection (1).
3. Appeals under subsection (2) shall be brought by way of originating summons.
4. Where an appeal is made under subsection (2) the Court may order the detention or admission to bail of the appellant pending the determination of the appeal.

[amended by Act 27 of 1979]

S.24 Recovery of costs of deportation.

1. Where a magistrate is satisfied by information in writing made on oath-
 - a. that expenses have been or will be incurred by or on behalf of the Crown in connection with the maintenance, medical treatment or removal from Barbados of a person against whom a deportation order is made; and
 - b. as to the amount or estimated amount of those expenses, the magistrate may issue a warrant for the levy of that amount or estimated amount by distress or sale of any moveable property of that person, and for the purposes of the recovery of that amount or estimated amount may order forfeiture of any moneys in the possession of that person.
2. A warrant issued under subsection (1) may be executed in the same manner as a writ of execution issued under the Magistrates Jurisdiction and Procedure Act for the levy of a sum of money adjudged to be paid by order of a magistrate's court.
3. The partial recovery of expenses under subsection (1) does not prejudice the liability of any surety for the balance, nor is the issue or execution of a warrant or the forfeiture of moneys under that subsection a condition precedent to the liability of any surety or to the enforcement of that liability.

Part VI - Miscellaneous

S.29 Offences.

1. A person who-
 - a. being the master of a vessel arriving in or departing from Barbados-
 - i. refuses to answer or wilfully gives an untrue answer to any question referred to in paragraph (a) of section 12 (1), or

- ii. fails or refuses to furnish an immigration officer with any list referred to in paragraph (b) of section 12 (1) or furnishes any such list which is false in a material particular;
 - b. being a person seeking to enter or entering Barbados-
 - i. wilfully gives an untrue answer to any question referred to in section 11 (2),
 - ii. wilfully makes a false statement in a declaration referred to in paragraph (a) of section 11 (2), or
 - iii. wilfully supplies any false information for the preparation of any list referred to in paragraph (b) of section 12 (1);
 - c. assaults, resists, obstructs or hinders or uses any threatening, insulting, indecent or abusive language to, an immigration officer, a member of the Police Force or any person acting under the authority of this Act in the execution of his duty under this Act or the regulations;
 - d. without lawful excuse knowingly harbours or conceals -
 - i. any other person who is in Barbados in contravention of this Act, or
 - ii. any other person who, having entered Barbados under the authority of a permit issued under section 13 (2), has contravened or failed to comply with any condition to which the permit is subject;
 - e. being a person lawfully detained under this Act, escapes or attempts to escape from such detention;
 - f. knowingly aids, assists or procures a person who has not been permitted to enter Barbados or against whom a deportation order is in force to enter Barbados;
 - g. with the intention of entering or remaining in Barbados or of assisting any other person to enter or remain in Barbados-
 - i. fabricates or falsifies any passport, permit or other document,
 - ii. uses, utters or attempts to use or utter-
 - 2. any passport, permit or other document which he is not entitled to use or utter, or
 - 3. any fabricated or falsified passport, permit or other document knowing the same to be fabricated or falsified,
- is guilty of an offence under this Act.

S.30 Penalties.

A person who is guilty of an offence under this Act is liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months or both.

FIRST SCHEDULE Prohibited Persons

1. Persons who are-
 - a. idiots, imbeciles, feeble-minded persons, epileptics, persons of unsound mind or mentally deficient, dumb, blind, or physically handicapped to the extent of being unable to earn a living (unless they conclusively establish that they will not have to earn a living) or persons likely to become charges n public funds; or
 - b. paupers, vagrants or professional beggars.
2. Persons suffering from communicable diseases within the meaning of any regulations relating to such diseases made under the Health Services Act.
3. Persons who-
 - a. are prostitutes or persons whose behaviour offends public morality; or
 - b. seek to enter Barbados to engage in immoral sexual acts.
4. Persons who-
 - a. are addicted to the use of any drug;
 - b. are or have been at any time engaged or reasonably suspected of being likely to engage in the unlawful giving or using, the offering or exposing for sale, or buying of, or the trading or trafficking in, any drug, or
 - c. have been convicted of an offence under any enactment relating to dangerous or narcotic drugs.
5. Persons who-
 - a. have been convicted of, or admit to having committed, a criminal offence which, if committed in Barbados, is punishable with imprisonment for a term of one year or longer;
 - b. knowingly or for profit, aid, encourage or procure other persons who are not citizens of Barbados to enter Barbados illegally.
 - c. (c) are stowaways or seek to enter Barbados illegally.
6. Persons who are or have been at any time before or after the commencement of this Act advocates of-
 - a. the overthrow by force or violence of the Government of Barbados or any other country or of all forms of law;
 - b. the abolition of organised government;
 - c. the assassination of any person or the unlawful destruction of property.

7. Persons who are or have been members of or affiliated to any organization which entertains or teaches any doctrine or practice specified in subparagraphs (a) to (c) of paragraph 6.
8. Persons in respect of whom there are reasonable grounds for believing that they are likely to engage in espionage, sabotage or other subversive activity directed against or detrimental to the security of Barbados.
9. Persons against whom deportation orders have been made.
10. Persons seeking to enter Barbados who are not in possession of a passport.
11. Any dependant accompanying a person who has been prohibited from entering, refused entry into, or deported from, Barbados.

Guyana

Statute: Chapter 10.02

Relevant Provisions:

S.3 Prohibited Persons

1. Except as otherwise provided in this section, every persons who-
 - a. is an idiot, or an epileptic, or of unsound mind, or mentally deficient, or deaf and dumb, or deaf and blind; or
 - b. is suffering from a variety of leprosy, or from a communicable disease, as certified by a Government Medical Officer;
 - c. is a prostitute; or
 - d. lives on receives, or has lived on, or has received the proceeds of prostitution; or
 - e. is a member of a class of persons, or a person, specified in an order made by the Minister under subsection (3); or
 - f. is not in possession of sufficient means to support himself and such of his dependants as he shall bring with him to Guyana;
 - g. is likely if he entered Guyana to become a charge on public funds by reason of infirmity of body or mind, or ill health, or for any other reason; or
 - h. is a dependent of a prohibited immigrant,

shall be a prohibited immigrant for the purposes of the Act, and every person who is deemed under this Act to be a prohibited immigrant may be dealt with as such.

S.5 Person entering Guyana to have a passport

- a. Except as otherwise provided in this section, every person entering Guyana without a passport shall be deemed to be a prohibited immigrant unless he explains why he has no passport and establishes to the satisfaction of the immigration officer his identity and nation status.....

S.7 Entry of persons into Guyana

1. No persons shall enter Guyana by sea or by air except at a port of entry under this Act.....
2. Every immigration officer shall have the power to board and search any vessel at any time and at all places in Guyana.

S.13 Immigrant to be deemed prohibited if he fails to leave Guyana on or before the expiration of permit granted under Section 12.

If an immigrant to whom a permit has been granted under section 12 fails to leave Guyana on or before the expiration of the period for which the permit has been granted, he shall, unless such period has been extended is provided in subsection (3) of that section, be deemed to be a prohibited immigrant.

S.20 Detention in custody under the Act

1. An immigration officer may cause any immigrant (not being an immigrant as to whom an immigration officer has decided that he is not a prohibited immigrant), unless a permit has been granted to him under this Act, to be arrested and brought before a magistrate, and the magistrate shall, if satisfied that this section applies to the immigrant, order that he be detained in custody under this Act, and if not so satisfied he shall order his release.

S.25 Where immigrant not discovered to be prohibited immigrant until after he enters Guyana.

Subject to section 28, where a person enters Guyana without a permit under this Act and at the time he so enters is a prohibited immigrant, he shall not be exempt from the provisions of this Act or be deemed to have acquired a right to remain in Guyana or a domicile therein, by reason only -

- a. that he had not been informed that he could not enter or remain in Guyana; or
- b. that he had been allowed to enter or remain in Guyana -
 - i. through the oversight of, or any misrepresentation made to, an immigration officer; or
 - ii. owing to the decision of an immigration officer that he is not a prohibited immigrant, where such decision was given by mistake or in ignorance of material facts; or

S.26 Immigration officer to cause prohibited immigrants entering or found in Guyana to be removed there from

Except as otherwise provided in this Act, an immigration officer shall cause to be removed from Guyana every prohibited immigrant and every person deemed to be a prohibited immigrant and dealt with as such

- a. who enters Guyana; or
- b. who having entered Guyana after the commencement of this Act is thereafter found within Guyana.

S.28 Orders for the removal of prohibited immigrants from Guyana

1. If any immigrant is a prohibited immigrant, then, subject to the provisions of this Act, and the terms of any permit granted there under, any magistrate may, on the application of an immigration officer or of any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant to be removed from Guyana and in the meantime be detained in custody.
2. Where an order is made under this section for the removal of an immigrant from Guyana, he shall be removed there from at such time and in such manner as the Chief Immigration Officer may direct, and in giving such directions the Chief Immigration Officer shall have regard to the place from which he is a subject or citizen, the place therein to which he is alleged to belong, the country which is willing to receive him, and the wishes and means of the immigrant.
3. Where an order is made under this section for the removal of an immigrant from Guyana and the immigrant is at the time of the making of the order serving a sentence of imprisonment, the minister may give directions as to whether the whole or what part of the sentence is to be served before such removal and in default of such directions the immigrant shall be removed after the completion of his sentence.

S.31 Detention in custody and places of detention

1. Where a person is detained in custody under this Act, he may be so detained in a prison or in any place from time to time appointed by the minister for the purpose of detention in custody:

Provided that where any such person is detained in a prison he shall be treated in the same manner as if he were a person awaiting trial.

S.34 Offences

1. Any person who
 - a. enters Guyana by sea or by air, except at a port of entry under this Act; or
 - b. having entered Guyana by crossing a land frontier of Guyana, does forthwith present himself in person to the nearest immigration officer; or
 - c. having arrived in Guyana, by sea or by air, disembarks without the consent of an immigration officer; or

- d. being the master of a vessel arriving in Guyana by sea, or air, allows any person who arrives in such vessel to disembark there from without the consent of an immigration officer; or
- e. being the master of a vessel arriving from any place outside Guyana or departing from Guyana
 - i. refuses to answer any of the questions referred to in section 8(1)(a); or
 - ii. knowingly and wilfully gives an untrue answer to any such question; or
 - iii. refuses to furnish the immigration officer with the list referred to in section 8(1)(b); or
- f. being a passenger intending to enter or entering Guyana, or a member of the crew of a vessel arriving from any place outside Guyana or departing from Guyana
 - i. knowingly and wilfully supplies any false information for the preparation of the list referred to in section 8(1)(b)
 - ii. knowingly wilfully gives an untrue answer to any of the questions referred to in section 9(1)(b)(i); or
 - iii. knowingly and wilfully makes any false statement in the declaration referred to in section 9(1)(b)(i); or
- g. not being a person as to whom an immigration officer has decided that he is not a prohibited immigrant, disembarks in Guyana or otherwise enters Guyana without previously obtaining a permit under this Act; or
- h. aids, assists or procures a prohibited immigrant who has not obtained a permit under this Act to enter Guyana, or otherwise to enter Guyana; or
- i. assaults, resists, obstruct, or hinders any immigration officer or member of the police force in the execution of his duty under this Act; or
- j. without lawful excuse knowingly harbours or conceals
 - i. any other person who is within Guyana in contravention of this Act; or
 - ii. any other person who having entered Guyana under the authority of a permit issued under this Act has contravened, or failed to comply with, any of condition, subject to which the permit is granted; or
- k. contravenes, or fails to comply with, any of the provisions of sections 19 or 22; or
- l. contravenes or fails to comply with, any of the conditions subject to which any permit has been granted under this Act, shall be liable

on summary convictions to a fine of not less than thirty thousand dollars and to imprisonment for twelve months.

2. Any person who for the purpose of entering Guyana or of remaining therein or of assisting any other person to enter Guyana or to remain therein, in contravention of the provisions of this Act
 - a. fabricates or falsifies any passport, permit, certificate or other document; or
 - b. uses, utters or attempts to use or utter
 - i. any passport, permit, certificate or other document which has not been issued by lawful authority or which he is not entitled to use or utter;
 - ii. any fabricated or falsified passport, permit, certificate or other document, knowing the same to have been fabricated or falsified,shall be liable on summary conviction to imprisonment for twelve months.
3. Any person who makes a statement, which is to his knowledge untrue for the purposes of procuring a re-entry permit under section 36, shall be liable on summary conviction to imprisonment for twelve months.

Statute: Aliens (Immigration and Registration) Act

An Act to regulate the entry of Aliens into Guyana to make provision for the registration of Aliens and for purposes connected with the matters aforesaid.

S.4 Entry of aliens into Guyana

1. The Minister may in this absolute discretion prohibit the entry of any alien into Guyana.
2. Subject to this Act, no alien shall enter Guyana except with the leave of an immigration officer and such leave shall not be given where the Minister has prohibited the entry therein of the alien.

S.5 Duty of aliens to register

1. Subject to and save as otherwise provided in this Act, every alien in Guyana shall register with a registration officer under this Act as an alien.

Jamaica

Statutes: Aliens Act 1946

Relevant Provisions:

Part II - Admission of Aliens

S.7 Power to impose and vary conditions to grant of leave to alien to land

1. An Immigration Officer, in accordance with general or special directions of the Minister, may attach such conditions as he may think fit to the grant of leave to an alien to land in the Island, and the Minister or the Chief Immigration Officer acting under the directions of the Minister may at any time vary such conditions in such manner as he thinks fit and the alien shall comply with the conditions so attached or varied.
2. An immigration officer may require an alien, as a condition of granting him leave to land, to give the prescribed security, and the Chief Immigration Officer may require an alien, as a condition of granting a variation of a condition attached to the leave to land, to give the prescribed security.
3. An alien who fails to comply with any condition attached to the grant of leave to land or imposed by way of variation of any condition so attached, or an alien who is found in the Island at any time after the expiration of the period limited by any such condition, shall for the purpose of this Act be deemed to be an alien to whom leave to land has been refused.

Part III -Supervision and Deportation of Aliens

S.15 Deportation orders

1. The Minister may, if he thinks fit, in any of the cases mentioned in subsection (6) make an order (in this Act referred to as a deportation order) requiring an alien to leave and to remain thereafter out of the Island.
2. A deportation order may be made subject to any condition which the Minister may think proper.
3. An alien with respect to whom a deportation order is made shall leave the Island in accordance with the order and shall thereafter so long as the order is in force remain out of the Island.
4. An alien, with respect to whom a deportation order is made or a certificate is given by a court with a view to the making of a deportation order, may be detained in such manner as may be directed by the Minister and may be placed on board a vessel about to leave the Island, and shall be deemed to be in legal custody whilst so detained and until the vessel leaves the Island.
5. The master of a vessel about to call at any port outside the Island shall, if so required by the Minister or by an immigration officer, receive an alien

against whom a deportation order has been made and his dependants, if any, on board the vessel, and afford him and them a passage to that port and proper accommodation and maintenance during the passage.

6. A deportation order may be made in any of the following cases -
 - a. if any court certifies to the Minister that the alien has been convicted, either by that court or by any inferior court from which the case of the alien has been brought by way of appeal, of any of the offences specified in the Second Schedule and that the court recommends that a deportation order should be made in his case either in addition to or in lieu of sentence;
 - b. if a court certifies to the Minister that the alien has been convicted by that court of an offence under this Act;
 - c. if the alien has become a charge on public or parochial funds or if the Mayor of the Kingston and St. Andrew Corporation or the Chairman of a Parish Council or the Commissioner of Police certifies to the Minister that the alien has been found wandering without ostensible means of subsistence or has been living in unsanitary conditions due to overcrowding;
 - d. if the Minister deems it to be conducive to the public good to make a deportation order against the alien.
7. Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before a higher court and the court certifies to the Minister that it does not concur in the recommendation, such recommendation shall be of no effect but without prejudice to the power of the Minister to make an order of deportation under paragraph (d) of subsection (6).

SECOND SCHEDULE - OFFENCES IN RESPECT OF WHICH A COURT MAY RECOMMEND A DEPORTATION ORDER

1. Any offence for which the Court has power to impose imprisonment without the option of a fine.
2. Any offence -
 - a. under the Seditious Meetings Act;
 - b. under the Riot Act;
 - c. under any law for the time being in force relating to sedition or to seditious publications.
3. Any offence under the Libel and Slander Act;
4. Any offence under, or other breach of, the provisions of the Bankruptcy Act;
5. Any offence under section 38 or 44 of the Betting, Gaming and Lotteries Act;

6. Any offence under the Vagrancy Act in conviction whereof the person convicted is deemed to be a vagrant, an idle or disorderly person, a rogue and vagabond or an incorrigible rogue;
7. Any offence under any enactment for the time being in force relating to the sale of drugs and poisons or relating to ganja or other dangerous drugs.

Statute: Immigration Restriction (Commonwealth Citizens) Act 1945

S.4. Prohibited immigrants

The following Commonwealth citizens (not being persons deemed to belong to the Island as defined by subsection (2) of section (2)) are prohibited immigrants -

- a. any person who is likely if he entered the Island to become a charge on public funds by reason of infirmity of body or mind or of ill-health or who is not in possession of sufficient means to support himself and such of his dependants as he shall bring with him to the Island;
- b. the children under the age of sixteen years being dependants of a prohibited immigrant;
- c. any member of a class of persons deemed by the Minister on economic grounds or on account of standard or habit of life to be undesirable immigrants and so declared by order published in the Gazette;
- d. any person who, from information or advice which in the opinion of the Minister is reliable information or advice, is deemed by the Minister to be an undesirable inhabitant of or visitor to the Island;
- e. any person who is the subject of a deportation order in force under the Deportation (Commonwealth Citizens) Act.

S.26. Removal orders

1. If any Commonwealth citizen is considered by an immigration officer to be a prohibited immigrant, then, subject to the provisions of this Act and the conditions attached to any leave granted there under, any Resident Magistrate may, on the application of an immigration officer or of any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant to be removed from the Island and in the meantime to be detained in custody: Provided that no application for such order shall be entertained in the case of a Commonwealth citizen (not being a person who entered the Island in contravention of subsection (1) of section (8)) unless the application is made -
 - a. if he entered the Island in accordance with leave granted under section 10, 11, 12, 13 or 14, within six months of the expiry of

- the period limited by any condition attached to the grant of such leave;
- b. in other cases, within six months of his arrival in the Island.
2. The Minister may by order declare a Commonwealth citizen who is not a citizen of Jamaica to be an undesirable person where -
- a. he is satisfied that such person is or has been conducting himself so as to be dangerous to the peace, order and good government of Jamaica; or
 - b. on other grounds, he considers it in the public interest that an order should be made in relation to such person; and notwithstanding anything to the contrary in this or any other enactment such person shall thereupon be a prohibited immigrant and the Minister may in the order aforesaid or, as the case may require, a subsequent order direct that he be removed from the Island and in the meantime be detained in custody: Provided that where an order has been made pursuant to paragraph (b) and the Commonwealth citizen declared an undesirable person has been ordinarily resident in the Island continuously for a period of five years or more immediately prior to the making of the order -
 - i. such person shall have a right to make objection to the advisory tribunal established under section 27 against any direction aforesaid that he be removed from the Island; but such objection, if any, shall be made in writing within two weeks of the notification referred to in paragraph (ii) and shall specify the grounds of objection and a copy thereof shall be delivered to the Minister within the period aforesaid;
 - ii. the Minister shall so soon as may be practicable after directing the removal of such person from the Island notify him in writing accordingly and inform him as to the grounds on which the order was made and of his right to make objection against the direction to the advisory tribunal; and
 - iii. if pursuant to paragraph (1) objection has been made by a person to the advisory tribunal, the order directing the removal of such person from the Island shall not be executed until the Minister has received and considered the report of the advisory tribunal in the matter.
3. The question of the validity of any order made by the Minister under subsection (2) shall not be enquired into in any court.

4. An immigrant who is ordered to be removed from the Island shall, with the approval of the Minister, be removed -
 - a. to the place whence he came, or to any place to which he consents to be removed; or
 - b. to a place in some part of the Commonwealth to which he belongs.
5. Where an immigrant who is ordered to be removed is serving a sentence of imprisonment, the Minister may give directions as to whether the whole or what part of the sentence is to be served before removal. In default of such directions, the immigrant shall be removed after completion of the sentence.
6. An immigrant ordered to be removed may be placed on board a suitable vessel by any constable or immigration officer, and may be lawfully detained in custody on board until the vessel finally leaves the Island.

Statute: Foreign Nationals and Commonwealth (Employment) Act

S.3. Control of employment of foreign nationals and Commonwealth citizens

1. Subject to the provisions of this Act, a foreign national or a Commonwealth citizen shall not-
 - a. engage in any occupation in Jamaica for reward or profit; or
 - b. be employed in Jamaica,

unless there is in force in relation to him a valid work permit and he so engages or is so employed in accordance with the terms and conditions that may be specified in the permit.

2. Subject to the provisions of this Act, no person shall have in his employment in Jamaica a foreign national or a Commonwealth citizen without there being in force a valid work permit in relation to that employment.
3. Subject to the provisions of this Act-
 - a. any foreign national or Commonwealth citizen who engages in any occupation in Jamaica or is employed in Jamaica in contravention of the provisions of subsection (1); and
 - b. any person who has in his employment in Jamaica a foreign national or a Commonwealth citizen in contravention of the provisions of subsection (2),

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or to imprisonment with or without hard labour for a term not exceeding six months or to both such fine and imprisonment; and in the case of a continuing offence to a further fine not exceeding fifty dollars for each day upon which the offence continues after conviction.

4. It shall be presumed, upon the trial of any person for a contravention of subsection (1), that the accused, and, upon the trial of any person for a contravention of subsection (2), that the person alleged to have been in

employment in contravention of the said subsection (2), is not a citizen of Jamaica unless the contrary is proved.

5. A prosecution in respect of a contravention of subsection (2) shall not be instituted without the sanction of the Director of Public Prosecutions.
6. A Commonwealth citizen who is ordinarily resident in Jamaica at the date of the passing of this Act and who-
 - a. resided in Jamaica for not less than nine months (whether continuously or not) in each of the ten years immediately prior to that date; and
 - b. was employed in Jamaica for not less than nine months (whether continuously or not) in each of the ten years aforesaid, may, notwithstanding subsection (I), engage in any occupation for reward or profit or be employed without a work permit so long as he continues ordinarily to reside in Jamaica.

In paragraph (b) of this subsection “employed” includes to engage in any occupation for reward or profit.

7. In any proceedings under this Act against a Commonwealth citizen the proof that he satisfies the requirements of paragraphs (a) and (b) of subsection (6) shall lie upon him and as prima facie evidence he may produce a certificate from the Minister (which certificate the Minister may in writing at any time cancel if he shall think fit) that he satisfies those requirements.

S.4. Application for work permit

1. An application for the grant of a work permit shall be addressed to the Minister, who may in his absolute discretion grant the permit either conditionally or without conditions or may refuse to grant it.
2. A work permit shall be in such form as the Minister may think fit and different forms of work permit may be issued as respects different classes of persons and as the circumstances require.

S.6. Production of work permit

1. Every work permit shall be kept by the person to whom it is issued, who shall at all times produce the permit to an authorized person or a constable on demand, or within three days after such demand at such police station as may be specified by the person first-mentioned at the time of the demand.
2. A person having in his possession a work permit appearing to have been issued under this Act shall answer all questions put to him by an authorized person or a constable for the purpose of establishing his identity and shall, if so required by the authorized person or constable, submit to his fingerprints being taken for the purpose.
3. Every person who-

- a. fails without reasonable excuse or refuses to produce a permit as required by subsection (1); or
- b. refuses to answer any question put to him, or to submit to his fingerprints being taken, contrary to subsection (2), shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty dollars or to imprisonment with or without hard labour for a term not exceeding three months.

S.7. Power of Minister to vary or cancel a work permit

The Minister may in writing at any time vary or cancel a work permit.

S.8. Power to grant exemptions

The Minister may prescribe that any person or class of persons shall be exempt either unconditionally or subject to such conditions as may be prescribed from all or any of the provisions of this Act.

S.9. Offences and penalties

Any person who-

- a. makes any statement which he knows to be false for the purpose of procuring whether for himself or any other person the grant of a permit under this Act; or
- b. unlawfully uses or permits to be so used any permit issued under this Act; or
- c. obstructs, hinders or opposes any authorized person or constable in the execution of his duty under this Act; or
- d. being a person exempt, subject to conditions imposed by the Minister, from all or any of the provisions of this Act, contravenes any such condition,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or to imprisonment with or without hard labour for a term not exceeding six months, or to both such fine and imprisonment.

Netherlands Antilles

No immigration legal texts found.

St Lucia

No immigration legal texts found.

Suriname

Statute: Aliens Act 1991

Provisions:

S.8

Officers in charge of frontier control shall not, save on special instructions of the Minister, refuse entry to Suriname to aliens claiming that, as a consequence of such refusal, they would be forced to proceed forthwith to a country where they have well-rounded reasons to fear persecution on account of their religious or political persuasion, or their nationality, or their belonging to a certain race or a certain social group.

S. 10

1. Aliens shall be allowed to reside in Suriname for an indefinite period of time:
 - a. if they hold a permanent residence permit;
 - b. if they have been admitted as refugees by the Minister.
2. Aliens other than those referred to in subsection i may be granted permission to reside in Suriname for an indefinite period by or in virtue of a State decree.

S.12

An alien's residence permit may be withdrawn:

- a. if he has given false information and if the facts on which this information is based - had they be known at the time- would have led to refusal of the granting or of the extension of validity of the permit;
- b. if he no longer has adequate means of support;
- c. if he has committed an offence against public order and peace, or constitutes a threat to national security or public health;
- d. if he has transgressed a restriction subject to which the permit was granted, or because of an infringement of a condition attached to it.

S.16

1. Aliens coming from a country in which they have well-rounded reasons to fear persecution on account of their religious or political persuasion, or their nationality, or their belonging to a certain race or a certain social group in their country of origin, may be admitted as refugees and granted a residence permit in conformity with article 10.
2. Entry can only be refused for weighty considerations relating to the public interest if such refusal would force the alien to proceed forthwith to a country as referred to in subsection 1.
3. The permit may be withdrawn in accordance with the provisions of article 12 sub a, c and d, and also in cases where, as a result of changed circumstances, the alien has the opportunity of taking up residence outside Suriname without risk of persecution, unless he has compelling reasons arising out of earlier persecution, not to take that opportunity.

4. In the interest of foreign relations, the Ministry charged with foreign affairs may be consulted before a decision is taken by virtue of this article.

S.17

If an alien who is not a refugee in the sense of article 16 subsection 1, does not qualify for the issuance of a residence permit in application of the provisions of, or by virtue of this law, he may nonetheless be granted such permit provided he cannot in the light of the social and political situation in his country of origin and his personal circumstances reasonably be required to return to that country.

S.24

1. Aliens who are not permitted to reside in Suriname by virtue of any of the articles 6, 9 and 10, may be expelled.
2. Aliens claiming that removal from Suriname would force them to proceed forthwith to a country where they have well-founded reasons to fear persecution on account of their religious or political persuasion, or their nationality, or their belonging to a certain race or a certain social group, shall not be expelled save on instruction of the Minister.
3. With regard to the aliens referred to in article 17, subsection 2 above applies.
4. No expulsion shall be effected:
 - (a) if and as long as an alien is required to be at the disposal of the Public Prosecution for a penal inquiry;
 - (b) pending an extradition procedure;
 - (c) while an alien is undergoing punishment or another measure in connection with an offence committed in Suriname.

S.32

1. Applications may be addressed to the President of the Republic Suriname for the review of orders concerning:
 - a. the refusal of a residence permit or of admission as a refugee, or the refusal to renew a residence permit;
 - b. the issue or renewal of a residence permit for a period shorter than the one applied for, or subject to certain restrictions or conditions;
 - c. the modification, other than in conformity with an application made to that effect, of the restrictions or conditions subject to which a residence permit was issued;
 - d. the withdrawal of a residence permit or of admission as a refugee;
 - e. the expulsion of an alien who, on the date his expulsion was ordered, had had his principal residence in Suriname for three months without permission to reside there in virtue of any of the provisions of articles 6, 9 and 10, provided he complied during that

- period with any obligations to report to and notify the authorities in accordance with the provisions of this Act.
2. Applications may equally be addressed to the President for the review of Orders concerning:
 - a. the refusal of a permanent residence permit;
 - b. the withdrawal of a permanent residence permit;
 - c. the imposition of an obligation as contained in article 19, subsection 31;
 - d. the declaration of undesirability of aliens;
 - e. the expulsion of an alien whose residence in Suriname is no longer permitted because he has ceased to belong to a category to which the provision of subsection 2 of article 10 applies.
 3. For the purpose of the opening sentences and the provisions under a of subsections 1 and 2, a permit or admission as a refugee shall be deemed to have been refused if the competent authority has not given a decision on the application within six months.
 4. No review of Orders concerning an application for a residence permit is allowed if the alien resided in Suriname at the time of the application while he was not permitted to do so at that time.

Trinidad and Tobago

Statute: Immigration Act: Chapter 18.01,

S.8 Prohibited Classes

1. Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely -
 - a. persons who have been convicted of or admit having committed any crime, which if committed in Trinidad and Tobago would be punishable with imprisonment for one or more years;
 - b. prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes;
 - c. persons who are reasonably suspected of attempting to bring into Trinidad and Tobago or of procuring prostitutes or other persons for the purpose of prostitution or homosexual or other immoral purposes;
 - d. habitual beggars or vagrants;
 - e. persons who are likely to become charges on public funds;
 - f. persons who are chronic alcoholics;

- g. persons who are addicted to the use of any drug;
- h. persons who are engaged or at any time have been engaged or are suspected on reasonable grounds of being likely to engage in any unlawful giving, using, inducing other persons to use, distributing, selling, offering or exposing for sale, buying, trading or trafficking in any drug...

Statute: Immigration Act: Chapter 18.01,

S.9 - Permitted Entrants

Where a permitted entrant is in the opinion of the Minister a person described in section 8(1) (k), (l), (m), or (n), or a person who -

- a. practises, assists in the practice of or shares in the avails of prostitution or homosexuality;
- b. has been convicted of an offence and sentenced to a term of imprisonment for one or more years;
- c. has become an inmate of any prison or reformatory;
- d. was a member of a prohibited class at the time of his admission to Trinidad and Tobago;
- e. has, since his admission to Trinidad and Tobago, become a person who would, if he were applying for admission to Trinidad and Tobago, be refused admission by reason of his being a member of a prohibited class other than the prohibited classes described in section 8(1) (a), (b), (c) and (p);
- f. was admitted or deemed to have been admitted to Trinidad and Tobago under subsection (1) and remains therein after the expiration of the certificate issued to him under subsection (2) or under section 50(2);
- g. has escaped from lawful custody and detention under this Act;
- h. came into Trinidad and Tobago or remains therein with a false or improperly issued passport, visa or other document pertaining to his admission or by reason of any false or misleading information, force, stealth, or fraudulent or improper means, whether exercised by himself or by any other person;
- i. returns to or remains in Trinidad and Tobago contrary to the provisions of this Act after a deportation order has been made against him or otherwise;...

the Minister may at any time declare that such persons has ceased to be a permitted entrant and such person shall thereupon cease to be a permitted entrant.

1. The Minister may make a deportation order against any person referred to in subsection (4) or section 50(5)...and such person shall have no right of appeal and shall be deported as soon as possible.

S.14 - Arrest and Detention

The Minister may issue a warrant for the arrest of any person in respect of whom an examination or inquiry is to be held or a deportation order has been made under this Act, and may order the release of any such person.

S.16 - Detention pending inquiry, examination, appeal or deportation

Any person in respect of whom an inquiry is to be held, or an examination under section 18 have been deferred under section 20, or a deportation or rejection order has been made may be detained pending inquiry, examination, appeal or deportation at an immigration station or other place satisfactory to the Minister.

S.17 - Conditional Release

Subject to any order or direction to the contrary by the Minister, a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions, respecting the time and place at which he will report for examination, inquiry, appeal or deportation or rejection on payment of a security deposit or other conditions, as may be satisfactory, to the Chief Immigration Officer.

S.40 - Offences and Penalties

Any person who -

- a. comes into Trinidad and Tobago at anyplace other than a port of entry and fails to report to an immigration officer for examination;
- b. comes into, remains in attempts to leave Trinidad and Tobago by means of -
 - i. a passport that has been tampered with, or a false or improperly issued passport, visa, medical certificate or other document; or
 - ii. any other false, misleading or fraudulent method, knowing it to be false, misleading, fraudulent or otherwise improper;
- c. escapes or attempts to escape from lawful custody or detention under this Act;
- d. eludes examination or inquiry under this Act or, having received a summons issued by a Special Inquiry Officer, fails without valid excuse to attend an inquiry or, where required by such summons, to

- produce any document, book or paper that he has in his possession or under his control relating to the subject matter of the inquiry;
- e. refuses to be sworn, or to affirm or declare, as the case may be, or to answer a question put to him or does not truthfully answer all questions put to him at an examination or inquiry under this Act;
 - f. knowingly and wilfully makes any false or misleading statement -
 - i. in a declaration required to be made by an applicant for the issue of a passport or other travel document; or
 - ii. at an examination or inquiry under this Act or in connection with the admission or application for admission of any person to Trinidad and Tobago.
 - g. makes a false promise of employment or any false representation by reason of which a person is induced to seek admission to Trinidad or Tobago or is assisted in any attempt to seek admission to Trinidad and Tobago or is assisted in any attempt to seek admission unlawfully to Trinidad and Tobago or by reason of which his admission is procured;
 - h. makes any charge to or receives any fee, recompense or reward from any person to secure or assist in securing the admission to Trinidad or Tobago of any person;
 - i. induces, aids or abets or attempts to induce, aid or abet any person to violate a provision of this Act or the regulations or to commit any offence under this Act or the regulations; or
 - j. comes into, remains in or attempts to leave Trinidad and Tobago by means of a passport or has in his possession a passport that -
 - i. has been tampered with;
 - ii. is fraudulent; or
 - iii. has been fraudulently or improperly issued, whether or not it has been issued to him,

is liable on summary conviction for a first offence to a fine of fifty thousand dollars and to imprisonment for three years, and on any subsequent conviction to a fine of one hundred thousand dollars and to imprisonment for five years.

Immigration offences and penalties

	Assists Illegal Entry	Procures
The Bahamas	Fine/2 yrs S.43 1967 Act	NA
Barbados	Fine/12 months S.29 1975 Act	Fine/12 months S.29 1975 Act
Guyana	Fine/12 months S.34 Ch.14.02	Fine/12 months S.34 Ch.14.02
Jamaica	Fine/3 yrs S.20	NA
Netherlands Antilles	2 yrs	NA
St Lucia	NA	NA
Suriname	NA	NA
Trinidad and Tobago	NA	NA

Figure C1.

Appendix D: Relevant government and non-governmental organizations¹⁵²

The Bahamas

Government departments

Ministry of Social Services and Community Development

Bureau of Women's Affairs

Department of Social Services

Care Facilities

Office of the Attorney-General

Administration of Justice

Law Reports

Department of Legal Affairs

International Legal Cooperation

Law Reform and Revision Commission

Ministry of Foreign Affairs and Public Services

CARICOM Affairs

Law of the Sea

Treaty Succession

Ministry of Labour and Immigration

Department of Immigration

Department of Labour

Ministry of National Security

Royal Bahamas Defence Force

Royal Bahamas Police Force

Non-governmental organisations

The Bahamas Crisis Centre - Formerly known as the Women's Crisis Centre, this is a registered non-profit organisation that provides services to people who are victims of physical, sexual and emotional abuse.

The Bahamas Children's Emergency Hostel - A non-profit charitable organisation formed to provide emergency temporary care for children.

¹⁵² The names of ministries, departments and organisations are subject to change, often frequently. Consult local listings for current information.

Barbados

Government departments

Ministry of Social Transformation
Bureau for Gender Affairs
Child Care Board
Welfare Services
Ministry of Foreign Affairs and Foreign Trade
CARICOM Affairs
Human Rights
Ministry of Home Affairs
Department of Immigration
Penal System

Non-governmental organisations

Business and Professional Women's Club - This organisation runs a crisis centre for battered women, as just one part of its work to promote gender rights.

Guyana

Government departments

Ministry of Labour, Human Services and Social Security
Women's Affairs Bureau
National Commission on Women
Inter-Ministry Committee on Women
National Commission on the Rights of the Child
Probation and Family Welfare Services
Child Services Department
Ministry of Foreign Affairs
Ministry of Home Affairs
Ministry of Legal Affairs

Non-governmental organisations

Red Thread - One of the largest civil society organisations promoting women's issues through development and advocacy.

Help and Shelter - As well as offering counselling training, advocacy and public education programmes, Help and Shelter has a shelter for women and children who are victims of domestic violence.

AEA Women's Outreach Programme - Offers counselling to victims of violence.

Lethen Women for Development - Offers counselling for battered women.

Hope Children's Home - A shelter for up to 40 abused, abandoned and neglected children.

Joshua House Children's Home - A shelter for up to 60 street children aged 5-11 years old.

Mahaica Home - Offers housing for children aged 11-17 years old.

Red Cross Convalescent Home - A shelter for 30 abandoned children aged 1-5 years old.

Shadeed's Boys/Girls Orphanage - A shelter for children/orphans.

Jamaica

Government departments

Ministry of Labour

Bureau for Women's Affairs

Ministry of Health

Child Development Agency¹⁵³

Ministry of Foreign Affairs and Foreign Trade

CARICOM Affairs

Commonwealth Relations

International Relations

Ministry of Justice

Department of Public Prosecutions

Attorney General's Department

Legal Reform

Office of the Parliamentary Counsel

Supreme Court

Ministry of National Security

Jamaica Defence Force

Jamaica Special Constabulary Force

Department of Immigration

Non-governmental organisations

Woman Inc. Crisis Centre for Women - As well as running a public education programme, the organisation manages a crisis centre, which provides counselling

¹⁵³ Created April 2003 through the Child Care and Protection Act, amalgamating Child Care and Protection Services, the Adoption Board, and the Child Support Unit.

to victims of violence, a crisis shelter and a hostel and training centre to provide more long-term assistance to women aged between 18 and 25 years old. In addition, the Centre offers legal services and training to new recruits in the police force on gender violence.

Association of Women's Organisations in Jamaica (AWOJA) - This umbrella organisation brings together a myriad of women's rights NGOs and service providers to develop a common voice on gender issues. As well as public education programmes and lobbying activities, AWOJA coordinates the activities of its member organisations.

Netherlands Antilles

Government departments

Ministry of Labour and Social Affairs

Bureau for Women's Affairs

Child Welfare Council (Raad voor Kinderbescherming)

Surrogate Family Institutions

Non-governmental organisations

Safe Haven - Based on the Island of St Maarten, this organisation offers shelter to women who have been victims of domestic violence. In addition to accommodation, the hostel offers legal advice, health care, counselling and help from social workers.

Zuster Maria Hoppner Foundation - This organisation's mission is to provide shelter, care and foster home services to neglected children on the island of Bonaire.

St Lucia

Government departments

Ministry of Health, Human Services, Family Affairs and Gender Relations

Division of Human Services and Family Affairs

Department of Gender Relations

Ministry of Justice

Attorney General's Chambers

Legislative Department (Draft civil code 2003)

Ministry of External Affairs, International Trade, and Civil Aviation

Women's Support Centre - This centre is a government-run shelter for abused persons, which was established in 2001 as part of a partnership with Health Canada to improve support services for violence against women.

Non-governmental organisations

Saint Lucia Crisis Centre - This organisation provides a range of services to female victims of violence and raises awareness on the plight of battered women in the country.

St Lucia Save the Children Fund (LUSAVE) - This organisation provides support services to abused and neglected children.

Suriname

Government departments

Ministry of Internal Affairs

Bureau for Gender Development

Commission on Gender Legislation

Ministry of Social Affairs

Bureau for the Rights of the Child

Ministry of Justice

Youth Police

Ministry of Foreign Affairs

Non-governmental organisations

Stop Geweld Tegen Vrouwen (Stop Violence against Women) - As well as offering counselling and assistance to women and their families, this organisation organises training for service providers and public education programmes.

Stichting Maxi Linder Associatie - The group offers counselling, social support, legal advice, and human rights advocacy to sex workers.

Foundation for the Human Development of Children - The group opened a home for abused children in 1994, for those aged between 6 and 16 years old; in addition, they run public awareness programmes and training for social workers and the police in child abuse issues.

Koela - This group operates a crisis centre for boys.

Emmaus - This group operates a crisis centre for neglected children.

Trinidad and Tobago

Government departments

Ministry of Social Development

Ministry of National Security (Immigration Department; International Affairs Unit)

Ministry of Foreign Affairs

Non-governmental organizations

ChildLine - this organisation aims to ensure that children in Trinidad and Tobago live in an environment free from physical, emotional, sexual and psychological violence. The organisation also operates a hotline number.

Caribbean Umbrella Body For Restorative Behaviour (CURB) - this group has an extensive referral network and can provide or facilitate services to victims of human trafficking.

Living Waters Community - a faith-based organisation that offers a range of services to persons in need on a case-by-case basis.

RED Initiatives - was established to serve the needs of the public, social minority groups, fellow organizations and advocates involved in HIV/AIDS, STIs, Sexual Health, Reproductive Health, and Rights initiatives and other social causes in the public in Trinidad and Tobago and beyond.

Appendix E: Chart of the Caribbean community (CARICOM)

FUNCTIONAL RELATIONSHIP OF THE ORGANS AND BODIES OF THE CARIBBEAN COMMUNITY

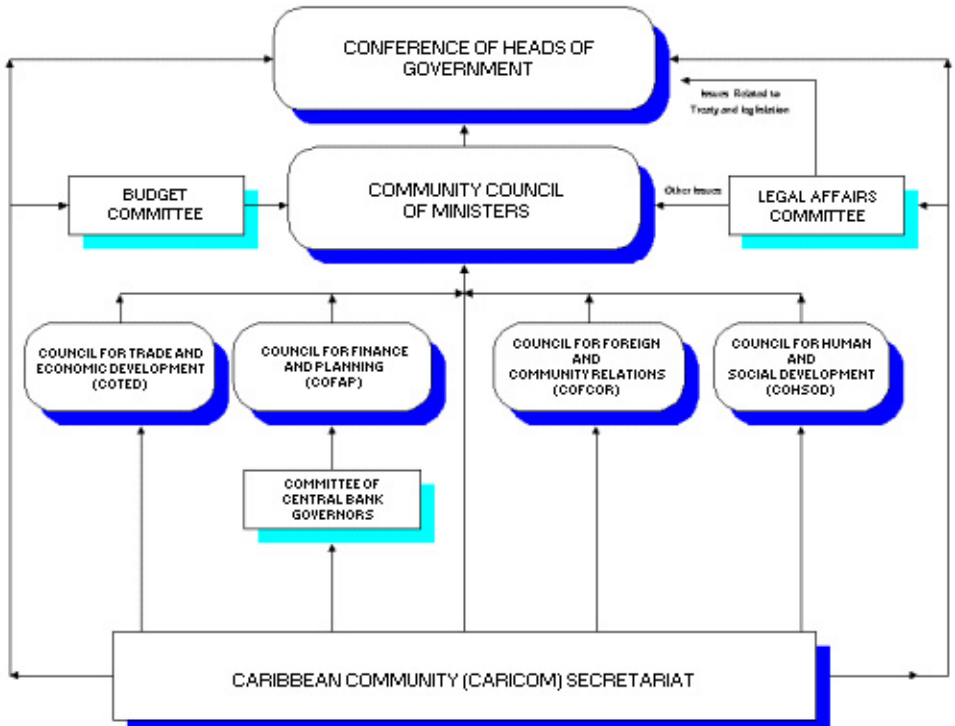


Figure D.1

Appendix F: CARICOM model legislation on sexual offences and explanatory memorandum on model legislation on sexual offences

Arrangement of sections

1. Short title.

Part I - Preliminary

2. Interpretation.

Part II - Sexual offences

3. Rape.
4. Unlawful sexual connection.
5. Matters that do not constitute consent to sexual intercourse or sexual connection.
6. Inducing sexual intercourse or sexual connection by force, duress etc.
7. Incest.
8. Sexual intercourse with female under fourteen.
9. Sexual intercourse with a person between fourteen and sixteen.
10. Sexual intercourse with adopted minor, etc.
11. Sexual intercourse with minor employee.
12. Sexual intercourse with mentally incapacitated person.
13. Indecency with person under fourteen.
14. Indecent assault on person.
15. Gross indecency.
16. Indecency between woman and girl.
17. Sodomy.

Part III - Procuring, abduction, etc

18. Procurement of minor.
19. Procuring.
20. Abduction, etc.

Part IV - General

21. Hearings *in camera*.
22. Court may divest parent or guardian of authority over minor.
23. Evidence concerning sexual activity.
24. Recent complaint.
25. Court may forbid publication of report.
26. Anonymity of complainant and accused.

Model legislation on sexual offences

AN ACT to Repeal and replace the Laws of [] in relation to sexual offences and for related matters.

1. This Act may be cited as the Sexual Offences Act.

Part I - Preliminary

2. (1) In this Act -
 - “*adult*” means a person eighteen years of age or more;
 - “*brothel*” means a place resorted to by a person of either sex for the purpose of prostitution;
 - “*minor*” means a person under the age of eighteen years.
- (2) For the purposes of this Act sexual intercourse is complete upon penetration.

Part II - Sexual offences

3. (1) A male person commits rape when he has sexual intercourse with a female person who is not his wife -
 - a. without her consent; or
 - b. without believing that she consents to such intercourse or is reckless as to whether she consents or not;
 - c. with her consent if the consent -
 - i. is extorted by threats or fear of bodily harm to her or to another, or by threats or fear of the application of force to her or to another;
 - ii. is obtained by impersonating her husband; or
 - iii. is obtained by false and fraudulent representations as to the nature and quality of the act.
 - (2) Every male person who commits rape is guilty of an offence and is liable on conviction to imprisonment for [life].
 - (3) A male person under the age of fourteen years is incapable of committing rape
4. (1) A person has unlawful sexual connection with another person if that person has sexual connection with that other person -
 - a. without the consent of the other person;
 - b. without believing that the other person consents to that sexual connection;
 - c. with the consent of the other person if the consent is -
 - i. extorted by threats or fear of bodily harm to that other person or any other person, or by threats or fear of the application of force to that other person or any other person;
 - ii. obtained by impersonating the spouse of that other person;

- iii. by false and fraudulent representations as to the nature and quality of the act.
 - (2) In subsection (1) “sexual connection” means -
 - a. a penetration of the vagina or the anus of any person by -
 - i. any part of the body of any other person; or
 - ii. any object held or manipulated by any other person, otherwise than for bona fide medical purposes;
 - b. connection between the mouth or tongue of any person and any part of the genitalia of any other person;
 - c. the continuation of sexual connection as described in paragraph (a) or (b).
 - (3) A person who is convicted of unlawful sexual connection is liable to imprisonment for a term not exceeding [fourteen] years, unless the court is of the opinion that, having regard to the particular circumstances of the offence or of the offender, including the nature of the conduct constituting the offence, the offender should not be sentenced to imprisonment.
 - (4) A husband commits the offence of unlawful sexual connection if he has sexual connection with his wife without her consent where there is in existence in relation to them -
 - a. a **decree nisi** or divorce;
 - b. a decree of judicial separation;
 - c. a separation agreement; or
 - d. an order for the husband not to molest his wife or have sexual intercourse with her.
5. (1) The fact that a person does not protest or offer physical resistance to sexual intercourse or sexual connection does not by itself constitute consent to sexual intercourse or sexual connection for the purposes of section 3 or 4.
- (2) Nothing in section 3(1)(c) or section 4(1)(c) shall limit the circumstances in which there is no consent to sexual intercourse or sexual connection.
6. (1) A person commits an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person -
 - a. by force or duress;
 - b. by false or fraudulent representation; or
 - c. by administering to that other person or by duress etc. causing that other person to take any drug matter or thing with intent to stupefy or overpower that person.
- (2) A person who is convicted of an offence described in subsection (1) is liable to imprisonment for a term not exceeding [14] years.

7. (1) Incest is sexual intercourse between -
 - a. parent and child;
 - b. brother and sister, whether of the whole blood or the half blood, and whether the relationship is traced through lawful wedlock or not; or
 - c. grandparent and grandchild, where the person charged knows of the relationship between the parties.
 - (2) Every person who is convicted of incest is liable to imprisonment for a term not exceeding [ten] years.
 - (3) It is a defence to a person charged with incest to prove that the offence was committed by reason only that the person charged was under restraint, duress or fear of the person with whom the person charged had sexual intercourse.
-
8. (1) Every person who has sexual intercourse with another person who -
 - a. is not the husband or wife of the first mentioned person; and
 - b. is under the age of fourteen years, whether or not the other person consented and whether or not the first mentioned person believes that the other person is fourteen years of age or more,is guilty of an offence and is liable on conviction to imprisonment for [life].
 - (2) Where a marriage is invalid under the laws relating to marriages the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with the husband or wife of that person, if the person believes the other person to be the husband or wife of the first mentioned person and has reasonable cause for the belief.
-
9. (1) Every person who has sexual intercourse with another person who -
 - a. is not the wife or husband of the first mentioned person;
 - b. is fourteen years of age or more but has not attained the age of sixteen years;is guilty of an offence and is liable on conviction to imprisonment for [5] years.
 - (2) It is a defence to a charge under this section if the person charged proved that -
 - a. the other person consented; or
 - b. the person charged -
 - i. was under the age of eighteen years at the time of the commission of the offence; and
 - ii. had reasonable cause to believe and did believe that the other person was sixteen years of age or more.
 - (3) Subsection (2) shall not apply if it is proved that the consent was obtained by false or fraudulent representations as to the nature and quality of the act.

- (4) Except as provided in subsection (2), it is no defence to a charge under this section that the person consented or that the person charged believed that the person was sixteen years of age or more.
10. (1) A male adult person commits an offence if he has sexual intercourse with a female minor who -
- a. is his adopted daughter, step-daughter, foster daughter or ward and is, at the time of the intercourse, living with him as a member of his family;
 - b. not being his adopted daughter, step-daughter, foster-daughter or ward and not being a person living with him as his wife, is at the time of the intercourse, living with him as a member of his family and is under his care or protection.
- (2) A person who commits an offence under subsection (1) is liable on conviction -
- a. if the minor is under the age of fourteen years to imprisonment for [life]; or
 - b. if the minor is fourteen years of age or more to imprisonment for a term not exceeding [ten years].
- (3) An adult shall not be guilty of an offence under subsection (1) if the minor is the spouse of such adult.
11. (1) Every adult who has sexual intercourse with a minor who -
- a. is employed by the adult;
 - b. is in a common but not necessarily similar, employment with the adult and is, in respect of the minor's employment or work under or in any way subject to the adult's control or direction; or
 - c. receives wages or salary directly or indirectly from the adult,
 - d. is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [two] years.
- (2) Except in any case where the minor is under the age of fourteen years, in any proceedings for an offence under subsection (1), it is a defence for the adult to prove that the minor consented to the sexual intercourse.
- (3) An adult shall not be guilty of an offence under subsection (1) if the minor is the spouse of such adult.
12. A person who, under circumstances that do not amount to rape, has sexual intercourse with another person -
- a. who is not the wife or husband of the first mentioned person; and
 - b. who is and who the first mentioned person knows or has good reason to believe is mentally incapacitated,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.

13. Every person who -

- a. indecently assaults any person under the age of fourteen years;
- b. induces or permits any person under that age to do any indecent act with or upon the first mentioned person, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.

14. Every person who -

- a. indecently assaults any other person who is fourteen years of age or more; or
- b. does anything to any other person who is fourteen years or more with the consent of that other person which, but for such consent would have been indecent assault, such consent being obtained by a false or fraudulent representation as to the nature and quality of the act,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [seven] years.

15. (1) Every person who commits an act of gross indecency with another person is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [five] years.

(2) Subsection (1) does not apply to an act of gross indecency committed in private between -

- a. a husband and wife;
- b. between an adult male person and an adult female person, both of whom consent to the commission of the act.

(3) For the purposes of subsection (2) -

- a. an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and
- b. a person shall be deemed not to consent to the commission if such an act -
 - i. if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature and quality of the act; or
 - ii. the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person;

- iii. if that person is, and the other party to the act knows or has good reason to believe that the person is mentally incapacitated or insane.
- (4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organ for the purpose of gratifying sexual desire.
16. (1) Every adult woman who -
- a. does any indecent act with or upon any girl under the age of sixteen years; or
 - b. induces or permits any girl under the age of sixteen years to commit any indecent act with or upon such adult woman,
- is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [five] years.
- (2) The girl shall not be charged as a party to any offence under this section.
- (3) It is no defence to a charge under this section that the girl consented.
17. (1) Every male person who commits sodomy on a female person is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.
- (2) The act of sodomy is complete upon penetration.
- (3) It is no defence to a charge under this section that the female person consented.

Part III - Procuring, abduction, etc.

18. (1) Any person who -
- a. procures or induces a minor to have sexual intercourse with any person in [] or elsewhere; or
 - b. conspires with any other person to effect the procurement of a minor as aforesaid, is guilty of an offence and is liable on conviction -
 - i. if the minor is under the age of fourteen years, to imprisonment for a term not exceeding [ten] years; or
 - ii. if the minor is fourteen years or more to imprisonment for a term not exceeding [five] years.
19. Any person who -
- a. by threats or intimidation procures another person to have sexual intercourse with any person in [] or elsewhere;

- b. by deception procures another person to have sexual intercourse with any person in [] or elsewhere; or
- c. applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person in order to enable any other person to have sexual intercourse with that person,

is guilty of an offence and is liable in conviction to imprisonment for [fifteen] years.

20. (1) Any person who, with intent to commit or abet the commission of an offence under this Act -
- a. detains another person against that other person's will in or upon any premises or in any brothel;
 - b. takes or causes any other person to be taken away against that other person's will,
- is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [] years.
- (2) A Justice who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorising any constable or other person named in the warrant to enter (if need be by force) and search any place specified in the warrant and to remove any person so detained and apprehend any person accused of unlawful detention.

Part IV - General

21. (1) This section applies to the following offences -
- a. rape;
 - b. unlawful sexual connection;
 - c. incest;
 - d. sexual intercourse with person under fourteen;
 - e. sexual intercourse with adopted minor, etc.;
 - f. indecency with person under fourteen;
 - g. indecent assault;
 - h. gross indecency;
 - i. sodomy.
- (2) At any proceedings in relation to an offence to which this section applies, the public shall, be excluded during the hearing but the Judge may permit the presence of any person whose presence is requested by the complainant or the accused.
- (3) The passing of sentence in relation to any offence to which this section applies shall take place in public.

22. If at the trial for an offence under section 18 (which relates to the procurement of a minor) the parent or guardian of a minor is convicted of the offence the court may divest the person convicted of all authority over the minor or to be the guardian of the minor until the minor becomes an adult and the court may, from time to time, vary or rescind the order.
23. In proceedings in respect of an offence under this Act, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant.
24. The common law rules relating to recent complaint in complaint. sexual offence cases are hereby abolished.
25. (1) Where in a case involving rape, unlawful sexual connection, indecent assault or sodomy the court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.
 - (2) The breach of an order made under subsection (1) or any evasion or attempted evasion of it, may be dealt with as contempt of court.
26. (1) After a person is charged with an offence under this Act, no matter which is likely to lead members of the public to identify a person as the complainant or as the accused in relation to that charge shall either be published in a written publication or be broadcast in [] except -
 - a. where, on the application of the complainant or the accused, the court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the applicant; or
 - b. in the case of the accused, after the person has been tried and convicted of the offence.(2) A person who publishes or broadcasts any matter in contravention of subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding [fifty thousand] dollars or to imprisonment for a term not exceeding [three] years.
 - (3) The person referred to in subsection (2) is -
 - a. in the case of a publication in a newspaper or periodical, any proprietor, editor or publisher of such newspaper or periodical;

- b. in the case of any other publication, the person who published;
 - c. in the case of a broadcast by a body corporate which transmits or provides the programme in which the broadcast is made, the person having functions in relation to the programme corresponding to those of an editor of a newspaper.
- (4) In subsection (1) -
- “*accused*” means -
- a. a person named in an information alleging that the person has committed the offence;
 - b. a person who appears before the court charged with the offence.
- “*complainant*” in relation to a person accused of an offence includes the person against whom the offence is alleged to have been committed.

Explanatory memorandum on model legislation on sexual offences

Almost all of the CARICOM States recognise that the trial process of sexual offence cases is often very difficult for the victims and therefore many are reluctant to report the offence or to attend court to give evidence.

The provisions of the model law are intended to provide some solution to the problems concerning the prosecution of sexual offences by including:

- a. a provision for *in camera* trials, which may encourage more victims to attend court for trial of offenders;
- b. restrictions regarding the adducing of evidence as to the sexual history of the complainant;
- c. provisions empowering the court to forbid the publication of reports of certain details of the alleged act;
- d. restrictions on reports as to the identity of both the accused and complainant in certain circumstances.

On the question of consent as regards sexual offences, provision is made whereby the offence is committed where consent is obtained by force or by means of threats or intimidation, fear of bodily harm, fraudulent misrepresentations as to the nature and quality of the act or, in the case of a married woman, by impersonating her husband.

Following the workshop held in Trinidad and Tobago, 9-12 April 1991, it was agreed that the general approach would be gender neutral and that provisions dealing with prostitution would be admitted.

The Long Title indicates the scope of the legislation which is to repeal and replace existing laws relating to sexual offences. Almost all CARICOM States include these offences in the general law relating to offences against the person.

Subsection (3) provides that no offence is committed when the minor is the spouse of the male adult.

Clause 11 provides for an offence when an adult has sexual intercourse with a minor who is in the adult's employment, or who, by virtue of the employment is subject to the adult's direction or control or receives salary or wages directly or indirectly from the adult.

Clause 12 provides for an offence where under circumstances that do not amount to rape, a person has sexual intercourse with a mentally incapacitated person who is not the wife or husband of the person charged and who that person knows or has good reason to believe is mentally incapacitated. A maximum penalty of 10 years is provided.

Clause 13 provides for an offence of indecent assault upon a person who is under 14 years old. A maximum penalty of 10 years is provided.

Clause 14 provides for an offence of indecent assault on a person aged 14 years and older. A maximum penalty of seven years is provided.

Clause 15 provides for the offence of gross indecency with a maximum penalty of five years.

Subsection (2) makes an exception when the act is committed in private between a husband and wife and between an adult female and adult male both of whom consent.

Subsection (3) provides

- a. that an act is deemed not to have been committed in private if more than two persons take part or are present;
- b. consent is vitiated; by fraud or threats of bodily harm or the mental incapacity of a person with whom the act is committed.

Subsection (4) defines gross indecency.

Clause 16 deals with an offence of indecency committed by an adult woman with a girl less than 16 years old.

Subsection (2) provides that the girl shall not be charged as a party to the offence.

Subsection (3) states that the girl's consent is no defence to such a charge.

Clause 17 deals with the offence of sodomy committed by a male person upon a female. A maximum penalty of 10 years is provided in subsection (1).

Subsection (2) states that the act is complete upon penetration.

Subsection (3) states that the female's consent is no defence.

Clause 18 deals with the offence of procuring the defilement of a minor by a parent or guardian.

The offence is given a maximum penalty of 10 years if the minor is less than 14 years old and a maximum of five years if the minor is aged 14 years or older.

Clause 19 applies to the offence of abduction of a person against that person's will. A maximum penalty of 10 years is provided.

Clause 20 deals with the offence of abduction of a person against that person's will. A maximum penalty of 10 years is provided.

Clause 21 provides for the holding of *in camera* trials for rape, unlawful sexual connection, incest, sexual intercourse with person less than 14 years old or with an adopted minor, indecency with a person less than 14 years old, indecent assault, gross indecency, indecency between an adult female and a female minor, and sodomy.

An exception can be made to permit the presence of any member of the public on the complainant's request.

Subsection (2) provides for the passing of a sentence in public.

Clause 22 provides that when a parent or guardian is convicted of the offence of procuring the defilement of a minor, the court may divest that parent or guardian of legal authority over the minor.

Clause 23 provides that evidence of the sexual activity of the complainant shall not be adduced.

Clause 24 abolishes the common-law rule relating to recent complaint.

Clause 25 provides for the court to prohibit a report of certain details of criminal acts in proceedings in respect of rape, unlawful sexual connection, indecent assault or sodomy if the court is of the opinion that such prohibition is required in the interest of the complainant.

Breach of an order prohibiting such a report may be treated as contempt of court.

Clause 26 restricts the reporting of the identity of an accused or complainant after a person has been charged with an offence except on the application of the

complainant or accused to the court to permit such publication or after an accused has been tried and convicted.

Appendix G: Caribbean counter-trafficking model legislation¹⁵⁴

Arrangement of sections

Part I - Preliminary

1. Short title
2. Interpretation
3. Object of the act

Part II - Criminal offences and related provisions

4. Offence of trafficking in persons
5. Offence of unlawful withholding of identification papers
6. Offence of transporting a person for the purpose of exploiting such a person's prostitution
7. Restitution
8. Forfeiture
9. Aggravated circumstances
10. Consent or past sexual behaviour of a victim is irrelevant
11. Legal age of consent to sex not a defence to trafficking in persons
12. Victim to be immune from prosecution
13. Offences of bodies corporate
14. Receiving financial or other benefit knowing that it as a result of trafficking in persons
15. Entry, search and seizure
16. Offence of threatening, obstructing, etc., a constable
17. Jurisdiction

Part III - Assistance and protection of victims of trafficking

18. Protection for the safety of victims, including identification of victims
19. Witness protection
20. Protection of the privacy of victims, including proceedings held in camera
21. Information of victims
22. Opportunity for the presentation of the victim's views and concerns
23. Assistance to victims
24. Immigration status of victims
25. Assistance for citizen/permanent resident victims abroad
26. Verification of nationality/age of victims
27. Return of victims to country of citizenship or lawful residence

¹⁵⁴ Appendix G has been excerpted from "Caribbean counter-trafficking model legislation and Explanatory Guidelines: A Booklet" published by IOM in 2008.

28. Assistance to victims that are unable to prove their nationality status through normal means
29. Services for returned victims of trafficking
30. Special considerations to be given to child victims

Part IV - Misuse of [commercial] transportation

31. Responsibilities of [international commercial] transportation companies [or individuals]

Part V - Prevention of trafficking in persons

32. National task force [for prevention of trafficking]
33. Exclusion of persons implicated in trafficking

Part VI - General

34. Regulations
35. Order to increase fines
36. Protocol to be part of the laws of [Country X]
37. Commencement

AN ACT to give effect to and to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and to provide for matters connected therewith or incidental thereto.

TO BE ENACTED by [...].

Part I - Preliminary

1. Short title

This Act may be cited as [...].

2. Interpretation

In this Act, unless the content otherwise requires -

1. “abuse of a position of vulnerability” means:
 - a. such abuse that the person believes [he] has no reasonable alternative but to submit to the labour or service demanded of the person, and
 - b. includes, but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy, and physical or mental

disease or disability of the person, including addiction to the use of any substance, or reduce capacity to form judgments by virtue of being a child.

2. “child” means a person below the age of eighteen years.
3. “child pornography” means
 - a. audio or visual depiction of any kind, whether -
 - i. made or produced by electronic, mechanical or other means, or
 - ii. embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable or being retrieved or reproduced therefrom, of sexually explicit conduct involving a child; or
 - iii. any representation of the genitalia or a child, where such audio or visual depiction or representation lack genuine literary, artistic, or scientific value.
4. “coercion” includes violent as well as some forms of non-violent or psychological coercion, including -
 - a. threats of serious harm to or physical restraint against any person;
 - b. any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - c. the abuse or threatened abuse of the legal process.
5. “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of [his] personal services or those of the persons under [his] control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
6. “exploitation” means [at a minimum] -
 - a. keeping a person in a state of slavery;
 - b. subjecting a person to practices similar to slavery;
 - c. compelling or causing a person to provide forced labour or services;
 - d. keeping a person in a state of servitude, including sexual servitude;
 - e. the exploitation of the prostitution of another;
 - f. engaging in any form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;

g. illicit removal of human organs.

7. “exploitation of the prostitution of others” means the deriving by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person.
8. “forced labour” means labour or services obtained or maintained through force, threat of force, or other means of coercion of physical restraint.
9. “illicit removal of human organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to such removal and is not a legitimate medical procedure for which proper consent has been obtained.
10. “minister” means the government minister responsible for implementing this Act.
11. “organized criminal group” means a structured group of three or more persons, existing for period of time and acting in concert with the aim of committing one or more offences established in this law in order to obtain, directly or indirectly, a financial or other material benefit;
12. “practices similar to slavery” includes, in general, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation.
13. “restitution” means financial or other compensation for the victim for damages suffered during the process of being trafficked.
14. “servitude” means a condition of dependency in which labour or services of a person are provided or obtained by threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm.
15. “sexual exploitation” means compelling the participation of a person in -
 - a. prostitution;
 - b. the production of child pornography or other pornographic material;
 - c. any other sexual activity,
 - d. as a result of being subjected to threat, coercion, abduction, the effects of narcotic drugs, force, abuse of authority or fraud.

16. “sexually explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse.
17. “slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.
18. “trafficking in children” means the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, irrespective of whether any of the means described in the definition of “trafficking in persons” have been established.
19. “trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or a position of vulnerability, or by the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
20. “travel documents” means any document that can be used for travel between States such as -
 - a. a passport;
 - b. a visa;
 - c. a tourist card;
 - d. an airline ticket; and
 - e. any other document used under the laws of a state to establish identity in that State.
21. “victim” means any person against whom the offence of trafficking in persons has been committed.

3. Object of the act

The object of this Act is to prescribe measures to prevent and combat trafficking in persons with particular regard to victims who are women and children, by -

- a. protecting and assisting victims of trafficking, having due regard to their human rights;
- b. facilitating the efficient investigation of cases of trafficking in persons;
- c. facilitating the just and effective punishment of individuals and organizations involved in trafficking in persons;

- d. promoting cooperation between [Country X] and other States in order to prevent and suppress trafficking in persons and to punish offenders.

Part II - Criminal offences and related provisions

4. Offence of trafficking in persons

1. A person who engages in, conspires to engage in, attempts to engage in, assists another person to engage in, or organizes or directs another person to engage in trafficking in persons commits, an offence and is liable on [summary conviction / indictment] to imprisonment for a period of [...] years, or to a fine of [...].
2. The recruitment, transportation, harbouring, or receipt of a child, or giving of payment or benefits to obtain the consent of a person having control of a child, for the purpose of exploitation, constitutes trafficking in persons irrespective of whether any of the means described in the definition of “trafficking in persons” have been established.

5. Offence of unlawful withholding of identification papers

Any person [who for the purposes of trafficking in persons], and acting or purporting to act as another person’s employer, manager, supervisor, contactor, employment agent, or solicitor or clients such as a pimp, knowingly procures, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, or other government identification document, whether actual or purported, belonging to another person commits an offence and shall on [summary conviction / indictment] be fined [...] together with imprisonment for [...] years.

6. Offence of transporting a person for the purpose of exploiting such a person’s prostitution

1. Whoever knowingly transports or conspires to transport or attempts to transport or assists another person engaged in transporting any person in [Country X] or across an international border for the purposes of exploiting that person’s prostitution commits an offence and shall be liable on [summary conviction / indictment] to be punished in accordance with subsection (2).
2. Persons convicted of the crime of transporting a person for the purpose of exploiting that person’s prostitution shall be liable to a fine of [...] and shall be imprisoned for [...] years, but the presence of any one of the

following aggravating factors resulting from acts of the defendant can permit a longer sentence up to [...] years, [together with forfeiture of the conveyance used for transporting the victim] -

- a. transporting two or more persons at the same time;
- b. permanent or life-threatening bodily injury to the person transported;
- c. transportation of one or more children;
- d. transporting as part of the activity of an organized criminal group.

7. Restitution

1. Where a person is convicted of the offence of trafficking in persons the court may order that person to pay restitution to the victim.
2. Restitution shall compensate, where applicable, for any of the following -
 - a. costs of medical and psychological treatment;
 - b. costs of physical and occupational therapy and rehabilitation;
 - c. costs of necessary transportation, temporary housing and child care;
 - d. lost income;
 - e. attorney's fees and other legal costs;
 - f. compensation for emotional distress, pain and suffering; and
 - g. any other losses suffered by the victim that the court considers applicable.
3. Restitution shall be paid to the victim -
 - a. upon the conviction of the accused; and
 - b. as far as possible, from any property forfeited under section 8 or the proceeds thereof.
4. The absence of the victim from the proceedings shall not prejudice the victim's rights to receive restitution.

8. Forfeiture

1. All property, including but not limited to money, valuables and other movable and immovable property, of persons convicted of the crime of trafficking in persons under this Act that was used or intended to be used, or was obtained in the course of the crime, or benefits gained from the proceeds of the crime, shall be forfeited to the State.

2. Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent that they can be retrieved by the Government.

9. Aggravated circumstances

1. As factually appropriate, the following adjustments to the sentence of a person convicted [on indictment] of the crime of trafficking in persons may apply -
 - a. If the convicted person used, threatened to use, or caused another to use or threaten to use a dangerous weapon, [two] years may be added to the sentence;
 - b. If a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against the trafficked person, [five] years may be added to the sentence;
 - c. If the trafficked person had not attained the age of eighteen years of age, [five] years may be added to the sentence;
 - d. If, in the course of trafficking, or subsequent exploitation, the convicted person recklessly caused the trafficked person to be exposed to a life threatening illness, or if the convicted person intentionally caused a trafficked person to become addicted to any drug or medication, [five] years may be added to the sentence;
 - e. If a trafficked person suffers a permanent or life threatening injury, [ten] years may be added to the sentence;
 - f. If the trafficking was part of the activity of an organized criminal group, [three] years may be added to the sentence; or
 - g. If the trafficking was part of the activity of an organized criminal group and the convicted person organized the group or directed its activities, [five] years may be added to the sentence;
 - h. If the trafficking occurred as the result of abuse of power or position of authority, including but not limited to a parent or guardian, teacher, children's club leader, or any other person who has been entrusted with the care or supervision of the child, [four] years may be added to the sentence.

2. In this section -

- a. “dangerous weapon” means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) is used in such a way that it creates the impression that the object is an instrument capable of inflicting death or serious bodily injury;
- b. “life-threatening illness” means any illness that involves a substantial risk of death, and includes Human Immuno Deficiency Virus Infection (HIV/AIDS) and tuberculosis;
- c. “permanent or life-threatening bodily injury” means injury involving a substantial risk of death, loss or substantial impairment of the function of a bodily member, organ or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. Maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function, constitutes life-threatening bodily injury;
- d. “serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or requiring medical intervention such as surgery, hospitalisation, or physical rehabilitation;
- e. “sexual assault” means causing another to engage in a sexual act by using force against that person, threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, and engaging in a sexual act with an incapacitated person, or a person who cannot express consent or with a minor that constitutes statutory rape.

10. Consent or past sexual behaviour of a victim is irrelevant

1. In any prosecution for an offence of trafficking in persons under section [3], the alleged consent of the victim to the intended or realized exploitation is irrelevant once any of the means or circumstances set forth in the definition of “trafficking in persons” is established.
2. In a prosecution for trafficking in persons under section [3], the evidence of a victim’s past sexual behaviour is irrelevant and inadmissible for the

purpose of proving that the victim engaged in other sexual behaviour, or to prove the victim's sexual predisposition.

11. Legal age of consent to sex not a defence to trafficking in persons

The legal age of consent to sex or to marriage is not a defence to the offence of trafficking in persons.

12. Victim to be immune from prosecution

A victim of trafficking in persons is not criminally liable for any immigration-related offence, [or any other criminal offence] that is a direct result of being trafficked.

13. Offences of bodies corporate

1. Subject to subsection (2), where a body corporate commits an offence under this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction [on indictment] before a [Circuit Court] to a fine of [...] or to imprisonment for a term not exceeding [...] years or to both such fine and imprisonment.
2. A director, manager, secretary or other similar officer concerned with the management of a body corporate shall not be liable for an offence under this Act unless the court is satisfied -
 - a. that the offence was committed with the person's connivance; or
 - b. the person had not exercised all such diligence to prevent the commission,

having regard to the nature of functions in that capacity and to all the circumstances.
3. A body corporate which commits an offence against this Act is liable [on conviction on indictment] before a [Circuit Court] to a fine of [...].
4. In this section "director," in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

14. Receiving financial or other benefit knowing that it is as a result of trafficking in persons

Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable

[on conviction on indictment] before a [Circuit Court] to a fine of [...] or to imprisonment for [...] years or to both such fine and imprisonment.

15. Entry, search and seizure

1. Subject to subsection (3), where a [Judge/Magistrate] is satisfied by information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found on any premises specified in the information, a [Judge/Magistrate] may issue a warrant in accordance with subsection (2).
2. A warrant issued under subsection (1) may authorize a [constable] named therein to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to -
 - a. enter upon the premises;
 - b. search the premises for evidence of or relating to an offence under this Act; and
 - c. seize any article, vehicle or property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.
3. A warrant shall not be issued under this section unless the informant or some other person has given the [Judge/Magistrate], on oath, such further information as the [Judge/Magistrate] may require concerning the grounds on which the issue of the warrant is sought.
4. A warrant issued under this section shall include -
 - a. a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking;
 - b. a description of the kind of article, vehicle or property to be seized;
 - c. the time, not being later than [fourteen days], upon the expiration of which the warrant ceases to have effect; and
 - d. a statement as to whether entry is authorized to be made at any time of the day or night, or during specified hours of the day or night.
5. For the purpose of this section “an offence under this Act” refers to an offence which has been committed or is about to be committed.

16. Offence of threatening, obstructing, etc., a constable

Any person who threatens, assaults, or obstructs a [constable] acting in the execution of [his] duty under this Act commits an offence and is liable [on

summary conviction] to a fine of [...] or to imprisonment for a period of [...] months.

17. Jurisdiction

A court in [Country X] shall have the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out -

- a. wholly or partly in [Country X];
- b. by a citizen of [Country X] anywhere;
- c. by a person on board a vessel or aircraft registered in [Country X].

Part III- Assistance and protection of victims of trafficking

18. Protection for the safety of victims, including identification of victims

1. In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles shall apply -

- a. all steps necessary to identify the victims of the trafficking shall be taken;
- b. reasonable protection to a victim of the trafficking shall be taken to prevent recapture, secure the victim from threats, reprisals and intimidation by the traffickers and their associates;
- c. reasonable protection shall be taken to secure the victim's family, if it resides in [Country X], from threats, reprisals or intimidation by the traffickers or their associates; and
- d. ensure the victim has an opportunity to consult with a victim's advocate or other appropriate person to develop a safety plan.

2. The [Country X's] law enforcement officials [Police, Immigration], and other investigative officers shall follow the guidelines specified in subsection (1).

19. Witness protection

Victims of trafficking who are witnesses or potential witnesses may be eligible for applicable witness relocation and protection programmes for victims of organized criminal activity or other serious offences, if it is determined that an offence involving a crime of violence directed at the witness or potential witness is likely to be committed. The programmes may include -

- a. relocation;
- b. new identity, documents establishing identity;
- c. new residence;
- d. employment work permits; and
- e. protection of confidentiality of identity and location.

20. Protection of the privacy of victims, including proceedings held in camera

1. In a prosecution for trafficking in persons under this Act [or unlawful use of documents under section 4], the identity of the victim and the victim's family should be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to the press or the public, including by the defendant.
2. A hearing under this section shall be held in camera if the court so orders.
3. A person who commits a breach of the confidentiality enjoined by this section shall be guilty of an offence and shall [on summary conviction] be fined [...].

21. Information for victims

The Minister shall inform victims of trafficking, in a language that they can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including but not limited to proceedings of the criminal offenders, proceedings for the return of the victims to their country of citizenship or lawful residence, and procedures for seeking legal immigration status under section [24].

22. Opportunity for the presentation of the victim's views and concerns

The court shall provide an opportunity to the victim of trafficking, if the victim desires it, to present the [his] views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant. An interpreter who speaks a language the victim understands shall be made available to the victim during the course of legal proceedings.

23. Assistance to victims

1. The Minister [in conjunction with other relevant Ministries] shall develop a plan, in consultation with non-governmental organizations and other representatives of civil society, for the provision of appropriate services, from governmental and non-governmental sources, for victims of trafficking and dependent children accompanying the victims, including -

- a. Appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, food and personal hygiene;
 - b. Psychological counselling in a language the victim can understand;
 - c. Medical assistance in a language the victim can understand;
 - d. Other medical assistance as appropriate;
 - e. Employment, educational, and training opportunities; and
 - f. Legal assistance or legal information in a language the victim understands.
2. Victims of trafficking may be eligible to work and to receive proof of work authorization.
 3. Victims of trafficking and their accompanying dependent children may be entitled to receive social benefits for the duration of their stay in [Country X] as may be determined by the Minister [responsible for social security].
 4. Residence in shelters or other facilities established under this section may be voluntary, and victims may decline to stay in shelters.
 5. Victims may have the option to communicate with and receive visits from family, friends and attorneys-at-law.
 6. In the absence of exigent circumstances, victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.
 7. The authorities mentioned under subsection (1) shall take into account the age, gender and special needs of the victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.
 8. Plans developed in accordance with subsection (1) shall be submitted for approval to the [Cabinet/National Assembly] and the said authorities shall

also undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights and dignity.

24. Immigration status of victims

1. The Minister [responsible for home affairs] may provide victims of trafficking and accompanying dependent children with appropriate visas or other required authorization to permit them to remain in [Country X] for the duration of the criminal prosecution against the traffickers, provided that the victim is willing to comply with reasonable requests, if any, to assist in the investigation or prosecution of the traffickers.
2. Victims of trafficking may be eligible for residence in [Country X] in the manner prescribed in the [law related to immigration], provided they have complied with reasonable requests, in any, for assistance in the investigation or prosecution of acts of trafficking. Dependent children accompanying the victim also shall be eligible for resident status in [Country X] in the manner prescribed in the said Act.
3. A victim's spouse and children, and in the case of child victims, the parents or guardian, and the victim's siblings, may be eligible to join the victim in [Country X] as part of the victim's application for residence under the preceding subsections.

25. Assistance for citizen/permanent resident victims abroad

1. The Minister [responsible for foreign affairs], through [Country X's] diplomatic mission and consular offices abroad, where practicable, shall offer assistance to citizens of or persons holding permanent residency in another country and who are victims of trafficking in persons located abroad, including but not limited -
 - a. Assistance in understanding the laws of the foreign country to which they have been trafficked, including their rights as victims, options for reporting the crime, and opportunities for seeking restitution or other benefits that are available under the laws of that country;
 - b. Assistance in obtaining emergency services, including but not limited to medical care and counselling;
 - c. At the request of either the victim or the appropriate authorities in the other country, replacement or provision of passports or other

travel documents necessary for the victim to return to [Country X] without undue or unreasonable delay;

- d. Material assistance in returning to their last place of residence in [Country X] in the same manner provided for other citizens or persons with right of permanent residency who become stranded abroad when the country to which the victim was trafficked does not provide such assistance.
2. The Minister [responsible for foreign affairs], through [Country X's] diplomatic missions and consular offices abroad, shall publish and disseminate information on the rights of victims of trafficking under the laws of [Country X] and the country or countries for which the diplomatic mission has responsibility both to the appropriate authorities in that country and to possible victims of trafficking who are citizens of [Country X]. In the case of diplomatic missions and consular offices of countries of destination of trafficking victims, such information shall be provided to appropriate authorities and to potential trafficking victims who are citizens or lawful residents of the country for which the mission or office has responsibility.
 3. Diplomatic missions of [Country X] abroad shall appoint an officer to be responsible for implementing and supervising plans, ensuring the provision of services required under this section.
 4. The Minister [responsible for foreign affairs] in cooperation with other appropriate authorities shall develop plans as are reasonably convenient for the safe, orderly return without undue or unreasonable delay of citizens or persons holding permanent residency in [Country X].

26. Verification of nationality/age of victims

1. Upon request by the appropriate authority representative of another State, the Minister [responsible for home affairs] shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is a citizen, or national of, or holds permanent residency in [Country X].
2. A request made under subsection (1) may include a request for the verification of -
 - a. The age and name of a person who is a victim of trafficking in persons and who is suspected of being a minor;

- b. Whether the victim is a citizen or permanent resident of the country making the request; or
 - c. Any other immigration status the victim may have in [Country X].
3. The Minister [responsible for home affairs] shall designate an officer to deal with requests made under this section.

27. Return of victims to country of citizenship or lawful residence

1. The Ministers [responsible for home affairs and foreign affairs] shall, in cooperation and after consultation with non-governmental organizations and international organizations, develop plans for the safe return of victims of trafficking in persons to their countries of citizenship or lawful residency.
2. Plans to develop under subsection (1) shall take due account that a victim of trafficking may elect to apply for citizenship or permanent residency of [Country X], or remain in [Country X] during the criminal proceedings against the traffickers.

28. Assistance to victims that are unable to prove their nationality status through normal means

1. Victims of trafficking abroad who claim to be citizens or persons holding permanent residency in [Country X], but whose identity cannot be verified through ordinary means, can establish their right to return to [Country X] by demonstrating significant connections to this country through such factors as -
 - a. Place of birth;
 - b. Presence of family members;
 - c. Presence of friends;
 - d. Significant knowledge of specific geographical areas and neighbourhoods;
 - e. Long-term residence in this country; or
 - f. Any other means.
2. This list of factors in subsection (1) is not exhaustive, and not every factor is required to make the determination. Determinations under this section are to be made with due concern for compassion and justice to victims. The fact that the victim would not be eligible for citizenship based on the showing made under this section shall not be a bar to re-entry.

3. Diplomatic missions abroad shall assign a specific diplomat to make determinations under this section. Victims may appeal an adverse determination to the [Minister responsible for legal affairs].
4. Where the [Minister responsible for legal affairs] determines an individual is eligible to re-enter [Country X] under this section, the diplomatic mission abroad shall issue a certificate of identity, permitting re-entry.

29. Services for returned victims of trafficking

Victims of trafficking who return from abroad shall have access to educational and training programmes provided by any governmental or private entity without being differentiated from other participants on the basis of having been trafficked.

30. Special consideration to be given to child victims

Assistance [in this Part] shall be provided to trafficking victims who are children in a manner that is in the child's best interest and appropriate to the child's situation. Child trafficked victims shall be provided with appropriate services, which may include understanding of their rights, privacy, housing, care and age-appropriate support and rights specified in this Part. Special programmes shall be developed to accommodate child witnesses including -

1. testimony of a minor conducted outside the court setting or by video;
2. all testimony and court proceedings take place with a parent, legal guardian, foster parent or social worker present;
3. whenever safe and possible, children shall be reunited with family members in [Country X] [or in their country of origin];
4. special mental and physical medical care tailored to children's needs;
5. upon return to [Country X], child victims of trafficking shall be guaranteed education which at least matches the general standard of education in [Country X].

Part IV - Misuse of [commercial] transportation

31. Responsibilities of [international commercial] transportation companies [or individuals]

1. A(n) [international commercial] transportation provider shall verify that each passenger to any destination into or outside [Country X] possesses

the necessary travel documents, including passport and visas, to enter the destination country and any transit countries.

2. Subsection (1) applies to the [international commercial] transportation provider, [his] agents, and any person selling or issuing tickets, boarding passes or similar documents allowing passengers to travel, and to persons collecting or checking such tickets, boarding passes or similar documents prior to or subsequent to boarding.
3. Any person referred to in subsection (2) who fails to comply with subsection (1) commits an offence and is liable on [summary conviction] to a fine of [...] or to imprisonment for a period of not more than [...] months.
4. Where an offence is committed under this section, the [international commercial] transportation provider shall bear the costs of returning the person to his initial point of embarkation.
5. Where a(n) [international commercial] transportation provider knowingly transports a victim of trafficking into or from [Country X], [he] shall be liable for costs associated with providing accommodation and meals for the victim and any accompanying children for the duration for the victim's stay outside or inside [Country X].

Part V - Prevention of trafficking in persons

32. National task force [for prevention of trafficking]

1. The Minister shall establish an inter agency task force to develop and implement a National Plan for the [Prevention of Trafficking in Persons]. Such a task force should include all aspects of trafficking including trafficking for sexual and labour exploitation.
2. The Minister shall appoint the members of the task force, which shall include representatives from the Ministries of [Legal Affairs, Foreign Affairs, Labour, Human Services and Social Security, Home Affairs], other appropriate high-level government officials with responsibility for law enforcement, immigration, and human and social services and appropriate non-governmental organizations.
3. The task force shall carry out the following activities either directly or via one or more of the constituent ministries as appropriate-

- a. Develop the National Plan for the [Prevention of Trafficking in Persons];
- b. Coordinate the implementation of the Plan;
- c. Coordinate the collection and sharing of trafficking data among government agencies. All data collected shall respect the privacy of victims of trafficking;
- d. Coordinate the sharing of information between agencies for the purpose of determining whether individuals crossing or attempting to cross the international border(s) of [Country X] with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; and detecting criminal groups engaged in trafficking;
- e. Identify and engage in efforts to facilitate cooperation with foreign countries, particularly those which are a significant source of victims, transit location, or destination of victims. This cooperation shall aim to strengthen bilateral, multilateral, local and regional capacities to assist trafficking victims, prevent trafficking, prosecute traffickers, and assist in the appropriate reintegration of victims of trafficking;
- f. Establish policies to enable [Country X's] Government to work with non-governmental organizations and other elements of civil society to prevent trafficking and provide assistance to victims.
- g. Coordinate and provide training for law enforcement, immigration and other relevant officials in addressing trafficking in persons.
- h. In coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare public awareness programmes designed to educate potential victims of trafficking and their families to the risk of victimization.
- i. In coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare, disseminate and publish awareness raising material to discourage the demand that fosters the exploitation of persons, especially women and children, that leads to trafficking.

33. Exclusion of persons implicated in trafficking

1. The Minister shall periodically identify, in a public report, every person who is a trafficker in persons, or who had knowingly assisted or conspired with another to traffic in persons.
2. Persons identified in reports under subsection (1), or whom an overseas consular official knows or has reason to believe is a trafficker of persons, or who had knowingly assisted or conspired with a trafficker to traffic in persons, shall not receive an entrance or transit visa.
3. The visas of persons identified in reports under subsection (1) shall be revoked.

Part VI - General**34. Regulations**

The Minister may make regulations for carrying into effect the objects and purposes of this Act either generally or in relation to any particular case.

35. Order to increase fines

1. The Minister may by Order published in the [*Gazette*] increase the fines provided under this Act.
2. An Order under subsection (1) shall be subject to [affirmative] resolution.

36. Protocol to be part of the laws of [Country X]

1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, [the text of which is set out in the Schedule of this Act], is hereby declared to form part of the laws of [Country X].
2. The Minister may make Regulations to give effect to the Protocol in [Country X].
3. Regulations made under subsection (2) shall be subject to [negative] resolution by the [Cabinet / National Assembly].

37. Commencement

This Act shall come into force on a day to be appointed by the Minister by Order published in the [*Gazette*].

Appendix H: Organization for American States (OAS) resolution and agreements: fighting the crime of trafficking in persons, especially women, adolescents and children

The Section against Trafficking in Persons was created in 2004 by Resolutions AG/RES. 1948 (XXXIII-O/03) y AG/RES. 2019 (XXXIV-O/04) and was previously under the mandate of the Inter-American Commission on Women (CIM).

The objective of the Section is to facilitate the exchange of information, provide training and promote policies against trafficking in persons as a means to assist the OAS Member States in their efforts to prevent and combat trafficking in persons, especially in women, adolescents and children.

The Section seeks to implement a comprehensive strategy to fight trafficking in persons by contemplating the different elements of this international challenge in relation to human rights, social policies and transnational crime.

See the OAS website to access the resolutions and agreements: http://www.oas.org/dsp/english/cpo_trata.asp

As of December 2010, the work plan is: AG/RES. 2551 (XL-O/10): WORK PLAN AGAINST TRAFFICKING IN PERSONS IN THE WESTERN HEMISPHERE (Adopted at the fourth plenary session, held on June 8, 2010)

http://scm.oas.org/doc_public/ENGLISH/HIST_10/AG05071E06.doc#_Toc263784000



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