



MEMORANDUM

To: Nancy Nicol, Principle Investigator, York University, Envisioning Global LGBT Human Rights (funded by the Social Science and Humanities Research Council of Canada)*
From: Atrisha Lewis (3L) & Zahra Ahmed (LL.M.), International Human Rights Clinic
Date: January 2nd, 2012
Re: St. Lucia's Interactions with the UN System on the Issue of LGBT Rights

This document was prepared by law students and highlights publicly-accessible information available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

Overview of the UN System

There are two major human rights systems at the United Nations (the "UN"): the Treaty based system and the Charter based system. The treaty-based human rights system consists of nine treaty bodies that monitor state compliance with the obligations under their respective conventions. Each treaty body is comprised of a committee of independent experts that interpret and apply the convention in reviewing and commenting on periodic state reports and individual complaints. The treaty bodies are not judicial institutions and there is debate as to the nature of the body of law that the treaty bodies produce.¹ Regardless of whether these normative findings are actually law, they have legal significance as they are referenced in international and domestic decisions.²

The Charter based human rights system derives its authority from the UN Charter itself. The UN Human Rights Council, the successor to the Human Rights Commission is the main organ in this Charter based system. The mandate of the Human Rights Council is to make recommendations on situations of human rights violation, while being guided by principles of "universality, impartiality, objectivity, and non-selectivity."³ This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council oversees the Universal Periodic Review (UPR), which is a process that involves a review of the human rights records of all 192 UN Member States once every four years.

While not a human rights system, the General Assembly also deals with human rights issues through its broad mandate. Established in 1945 under the Charter of the United Nations, the General Assembly is the chief deliberative, policymaking and representative organ of the United

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¹ Burgenthal, *The Evolving International Human Rights System* 100 A.J.I.L. 788, 787-791

² *Ibid*

³ G.A. Res. 60/251 (March 15, 2006)



Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.

Saint Lucia

1. Summary

- Saint Lucia has not ratified all human rights treaties that are germane to SOGI issues. However, it does express a willingness to do so in the future.
- Saint Lucia’s UN voting record on SOGI issues reflects a strong opposition to the recognition of SOGI rights as an international Human Right, absent an explicitly definition of LGBT Human Rights. Saint Lucia does not support SOGI issues at the United Nations as Saint Lucia will either oppose SOGI positive issues or abstain.
- Encouragingly, the government does expresses concern over the violence and harassment that LGBTI people in Saint Lucia face. However, the government remains unwilling to de-criminalize homosexuality.

2. Treaty/ Convention Status

The following chart highlights the international treaties that are germane to the protection of sexual orientation and gender identity rights. Saint Lucia has not ratified all relevant treaties. The chart highlights which relevant conventions Saint Lucia has signed or ratified. Saint Lucia, at its Universal Periodic Review indicated a willingness to ratify the ICCPR and the ICESCR.⁴

| Treaty | Date of Ratification |
|--|--|
| Convention on the Elimination of all forms of Racial Discrimination (“CERD”) | 14 Feb 1990d |
| International Covenant on Civil and Political Rights (“ICCPR”) | Signed 22 Sep 2011 Not yet ratified |
| Optional Protocol to the ICCPR | Not signed |
| International Covenant on Economic, Social and Cultural Rights (“ICESCR”) | Not signed |
| Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”) | 8 Oct 1982a |
| Convention against Torture (“CAT”) | Not signed |
| Convention on the Rights of the Child (“CRC”) | 16 Jun 1993 |

a=accession
d=succession

⁴ A/HRC/17/6/Add.1 at para 89.1



3. All Official State Positions on LGBT Rights as Reflected in Voting Patterns and Statements at the UN

General Assembly Resolutions

The votes on the draft resolutions relating to the *Special Rapporteur on Extra-judicial executions* are tracked in the following chart. The resolution relates to whether the scope of investigation should specifically include investigating extra-judicial killings on the basis of sexual orientation. The chart tracks draft resolutions because this is where the clear statements and votes relating to include or remove the explicit reference to “sexual orientation” actually occur. The final resolutions are typically passed without any discussion relating to the inclusion or removal of the words “sexual orientation.” Saint Lucia’s voting pattern on this issue is consistent as Saint Lucia abstains or votes against any resolutions favouring LGBT rights.

| Final Resolution | Draft Resolution | Vote/ Comments |
|------------------|--|--|
| 57/214 | 2002 Draft Resolution ⁵ | |
| | New reference to "sexual orientation" | In Favour |
| 59/197 | 2004 Draft resolution ⁶ | |
| | Retain words "sexual orientation" | Abstain |
| 63/182 | 2009 Amendment ⁷ to Draft Resolution ⁸ | |
| | Remove words "sexual orientation" | In Favour |
| | Comments | St. Lucia signed on to Syria’s statement: “...the statement delves into matters which fall essentially within the domestic jurisdiction of States, counter to the commitment in the Charter of the United Nations to respect the sovereignty of States and the principle of non-intervention... The notion of orientation spans a wide range of personal choices that expand far beyond the individual sexual interest in a copulatory behaviour between normal consenting adult human beings, thereby ushering in the social normalization and possibly the legitimization of many deplorable acts, including paedophilia. The second notion is often suggested to attribute particular sexual interests or behaviours to genetic factors, a matter that has repeatedly been scientifically rebuffed.” ⁹ |

⁵ A/C.3/57/L.56/Rev.1

⁶ A/C.3/59/L.57/Rev.1

⁷ A/C.3/63/L.75

⁸ A/C.3/63/L.35/Rev.1

⁹ A/63/PV.70



| | | |
|--------|--|--|
| 65/208 | 2010 Amendment ¹⁰ to Draft Resolution ¹¹ | |
| | Remove words "sexual orientation" | In Favour |
| | Comments | Ms. Flood-Beaubrun said that "her country was committed to carrying out prompt and impartial investigations of killings and was striving to ensure that all persons enjoyed equal rights and protection under the law. Specific groups should not be listed: lists were not exhaustive, risked being misinterpreted and could be manipulated to undermine justice. It was, moreover, imperative that the terms used in the draft resolution were clear and unequivocal so as to ensure that it guaranteed equality before the law and could not be manipulated to provide justification for discrimination or violence. Saint Lucia would vote in favour of the proposed amendment because it would make the draft resolution more comprehensive and ensure that it offered protection to all groups and individual" |
| | 2010 Amendment ¹² to Draft Resolution ¹³ | |
| | Re-include "sexual orientation" | Against |

The Economic and Social Council (ECOSOC)

The Economic and Social Council (ECOSOC) is a Charter based UN organ that serves as the central forum for discussing international economic and social issues. States are elected to serve three year terms and seats are allocated based on geographical areas. There are 54 member Governments at any time. In 2006, ECOSOC granted consultative status to the first LGBT NGO. The following chart outlines the voting patterns of Saint Lucia with respect to granting consultative status to LGBT NGOs. Saint Lucia was a member of ECOSOC between 2008 and 2010.

| Date | Organization | Vote | Comments |
|-----------|---|-----------------------|---|
| 19-Jul-10 | International Gay and Lesbian Human Rights Commission | Abstain ¹⁴ | "Mr. St. Aimee said that his delegation did not believe that IGLHRC met the criteria set forth for consultative status with the Council. The name of the NGO indicated that it had no role to play in the Council. The Council did not have before it the information necessary for his |

¹⁰ A/C.3/65/L.65

¹¹ A/C.3/L.29/Rev.1

¹² A/65/L.53

¹³ A/C.3/L.29/Rev.1

¹⁴ E/2010/SR.39



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|------------------|---|-----------------------|---|
| | | | delegation to participate in the process" ¹⁵ |
| 27-Jul-09 | Associação Brasileira de Gays, Lésbicas e Transgêneros | Abstain ¹⁶ | |
| 21-Jul-08 | COC Netherlands; Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales | Abstain ¹⁷ | |

Third Committee

The General Assembly allocates to the "Third Committee" items relating to social, humanitarian affairs and human rights. The Committee also considers reports of the special procedures of the Human Rights Council. The following chart highlights St. Lucia's concern with respect to the scope of the mandates of one of the Special Rapporteurs:

| Report | St. Lucia's Comments |
|--|---|
| Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ¹⁸ | <p>"Ms. Flood-Beaubrun said that her delegation opposed the Special Rapporteur's incorporation of his personal ideas concerning a gender perspective into his report. Incorporating a gender perspective required analysing the reality of the social order in terms of the differences between men and women, and did not include sexual orientation or gender identity. Such had always been the understanding among Member States and the entire United Nations system, as evidenced by the Human Rights Council's annual discussion on the integration of a gender perspective.</p> <p>The reference to the Yogyakarta Principles, which had not been recognized by the Member States, violated article 8 of the Code of Conduct. The Special Rapporteur had therefore exceeded his mandate by attempting to change the definition of a universally recognized term on the basis of premises that did not exist in international human rights law, at the expense of other relevant subjects within his mandate. The right of lesbian, gay, bisexual,</p> |

¹⁵ E/2010/SR.39 at para 77

¹⁶ E/2009/SR.37

¹⁷ E/2008/SR.38

¹⁸ A/64/211



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| | <p>transgender and intersex individuals not to be discriminated against was important. However, by equating their rights to those of women, the Special Rapporteur had departed from his mandate and deprived the Member States of important information concerning the harmful effects of counter-terrorism measures upon women. The mandate of the Special Rapporteur was extremely important to Saint Lucia, which was awaiting an objective report containing the guidance necessary to ensure the protection of men’s and women’s rights”¹⁹</p> |
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4. All UN Statements on the situation of LGBT rights in the countries of focus

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The Universal Periodic Review process began in 2006 and the first round will be completed by 2011. The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions. Following the State review, a report referred to as the “outcome report” is produced. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

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| <p>St. Lucia’s National Report</p> |
| <p>The Government acknowledges the contribution and concerns expressed by United and Strong, representing gay and lesbian interests. However deeply rooted religious, cultural and moral values and practices on the island create a formidable challenge towards mobilization and general acceptance of “gay rights” by society. Notwithstanding, gender neutral rights have been implemented in certain instances, as is reflected through legislation relating to sexual offences²⁰</p> |

| <p>Recommendations²¹</p> | <p>Response²²</p> |
|---|---|
| <p>89.35 Take the necessary measures to ensure that the Constitution guarantees the same protection to all inhabitants of the country, without distinction based on their sexual orientation or identity (Canada)</p> | <p>Saint Lucia is unable to fully accept this recommendation at this point in time, insofar as the term/language “sexual orientation” still requires standard international definition. Otherwise, the constitution of Saint Lucia guarantees the protection of fundamental rights and freedoms to all Saint Lucians, in a similar manner as contained in the Universal Declaration of Human Rights</p> |

¹⁹ A/C.3/64/SR.28 at para 56

²⁰ A/HRC/WG.6/10/LCA/1 at para 123

²¹ A/HRC/17/6

²² A/HRC/17/6/Add.1



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| 89.92 Repeal any legal provision that criminalizes consensual relations between adults of the same sex and combat the discrimination against LGBT persons through awareness-raising and education campaigns to begin at school (Spain) | Saint Lucia cannot accept these recommendations at this time, due to contrary legislative provisions, and deeply entrenched societal mores and values which are still to be overcome. Saint Lucia is currently in the process of constitutional reform and will continue to progressively amend its laws in keeping with the country's development and democratic processes. Saint Lucia will endeavor to raise public awareness, with regard to discrimination against any persons, where such discrimination occurs |
| 89.93 Decriminalize sexual relations between consenting adults of the same sex, and repeal any law discriminating against LGBT people (France) | |
| 89.94 Decriminalize sexual relations between consenting adults of the same sex (Canada); | |
| 89.95 Decriminalize same-sex activity between consenting adults (Slovenia); | |
| 89.96 Decriminalize homosexual conduct by reforming the penal code so that for the purposes of prosecution, gross indecency would not apply to private acts between consenting adults (United States); | |
| 89.89 Ensure that thorough investigations of allegations of acts of violence committed against individuals because of their sexual orientation or identity are promptly conducted (Canada) | Saint Lucia accepts the recommendation and submits that it is already being implemented to some extent |
| 89.97 Condemn acts of violence and human rights violations committed against persons because of their sexual orientation or gender identity and ensure adequate protection for human rights defenders who work on the rights of LGBT persons (United States) | Saint Lucia accepts the recommendation and notes that the Government condemns all forms of violence and human rights violations committed against all persons. Saint Lucia notes that there are no known cases in Saint Lucia, where violence has been perpetrated against any human rights defenders |

5. Individual Complaints

Saint Lucia has not accepted the competence of any UN agency to consider complaints from individuals.

6. Domestic Court Decisions

There are no domestic decisions relating to SOGI rights.