

**Moving Equality Forward**

**Universal Periodic Review of Saint Kitts and Nevis**

**23rd Session**

**November 2015**

Joint submission by: United and Strong Inc(U&S), CariFLAGS, International Lesbian and Gay Association (ILGA) and Allied Rainbow Communities (ARC)

**United and Strong Inc. U&S**

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## 23rd Session of the Universal Periodic Review (UPR)

This report is submitted by United and Strong Inc<sup>1</sup>, CariFLAGS<sup>2</sup>, International Lesbian and Gay Association (ILGA)<sup>3</sup> and Allied Rainbow Communities International (ARC)<sup>4</sup>. The report was compiled in consultation with the local group Saint Kitts and Nevis Alliance for Equality SKNAFE), a developing grassroots organization, and other stakeholders. As at the date of submission, 23<sup>rd</sup> March 2015, this report reflects the experience of people working as activists, HIV/AIDS educators and human rights defenders on behalf of vulnerable minorities, with special focus on the rights of lesbian, gay, bisexual and transgender (LGBT) people, women and children in Saint Kitts and Nevis.

**Key Words:** Women, Youth, Disability, LGBT People - Sexual Orientation - Gender Identity and Expression- Discrimination based on SOGIE

As a British colony the Constitution of Saint Kitts and Nevis was modeled on British legal systems and laws.<sup>5</sup> This gives the country a similar parliamentary system of government as other Commonwealth States. Legislative provisions comprise a variety of statutes and conventions that are British based with some original laws drafted and implemented by Saint Kitts and Nevis post-independence. Notably, many of the laws have remained the same since independence in 1983. Saint Kitts and Nevis shares the same court structure as other counties within the OECS and cases that are appealed from the national High Courts proceed to the Eastern Caribbean Supreme Court or the Judicial Committee of the Privy Council in London for review and determination.

Chapter two (2) of The Constitution (1983) contains provisions relating to the “Protection of Fundamental Rights and Freedoms” of its citizens. The constitution entitles every person to the protection of fundamental rights and freedoms, that is to say, the rights on the basis of race, place of origin, birth, political opinions, colors, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest. The Constitution includes a Fundamental

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1 Formed in 2001 United and Strong Inc is based in Saint Lucia, became a registered Non-Governmental Organisation (NGO) in 2005. It is a member organization of the Caribbean HIV/AIDS Partnership — a network of groups focused on LGBT and other marginalized communities in the OECS islands, with the vision of equality and human rights for all, working to eliminate stigma, discrimination, reduce inequality, and protect human rights and lives.

2 Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS) a 17-year-old region-wide Caribbean LGBTI network steered by NGOs in Belize, the Dominican Republic, Grenada, Guyana, Jamaica, St. Lucia, Suriname and Trinidad & Tobago, committed to joint policy advocacy, strengthening movement infrastructure, casework and litigation that restore wholeness and justice, and shaping cultural imagination of sexual and gender diversity

3 ILGA - The International Lesbian and Gay Association (ILGA) is a worldwide federation of over 1000 local and national LGBTI organisations dedicated to achieving equal rights for LGBTI people and their liberation from all discrimination.

4 ARC International - Since 2003, ARC International has played a key role in promoting the application of international human rights law in relation to sexual orientation and gender identity as well as providing support to NGO's working in countries around the world.

<sup>5</sup> <http://pdba.georgetown.edu/Constitutions/Kitts/kitts83.html#constitution>

Rights section that specifies the rights that all citizens can enjoy. It includes inhuman treatment (section 7), discrimination on grounds of race etc (section 15), freedom of expression (section 12), freedom of movement (section 14), freedom of assembly and association (section 13).

### **International Obligations and Legislative Framework**

Saint Kitts and Nevis committed to consider recommendation 76:1-17 to ratify the two Optional Protocols to the Convention on the Rights of the Child (CRC) and to review its national legislation to comply with the principles and provisions of the CRC.

While the State has not yet taken any action to implement the Optional Protocols under the CRC, Saint Kitts and Nevis is to be commended for informative consultations leading to the drafting, formalizing and implementation of the Children and Marginalized Youth policies including The Guardianship Act (2012), Maintenance of Children Act (2012) and The Child Justice Bill (2013) in keeping with recommendation 76:48 which expands the areas of protection and rights of children in Saint Kitts and Nevis. Unfortunately however these laws do not address the eradication of corporal punishment of children within schools, the home and penal or alternative care institutions. Corporal punishment is lawful in schools under the Education Act (2005), the Corporal Punishment Act (1967), within alternative care settings, and under the common law disciplinary power of teachers. Additionally, the Children (Care and Adoption) Bill (2007) does not prohibit corporal punishment.

We recognize the efforts of Saint Kitts and Nevis in signing and committing to the following Conventions and international obligations:

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- The Inter-American Convention on the Granting of Civil Rights to Women and the Inter-American Convention on the Granting of Political Rights to Women
- The Declaration on the Elimination of Violence against Women
- The Beijing Platform for Action
- The United Nations Millennium Declaration
- The Security Council resolution 1325 (2000) on women, peace and security.

We encourage the government of Saint Kitts and Nevis to make a greater effort to collaborate with civil society to empower, sensitize and educate the general public and to facilitate the country's accession, ratification and compliance with core human rights obligations.

### **Recommendations**

The State of Saint Kitts should:

- Implement domestic legislation for all of the international instruments to which Saint Kitts is party, so citizens can have direct access to provisions under these instruments.

- Enact domestic legislation to incorporate fully all the principles of the Convention on the Rights of the Child.
- Ratify as soon as possible the Optional Protocols to the Convention on the Rights of the Child.
- Prohibit all forms of corporal punishment and especially invoke Section 50 of the Education Act 2005 which allows the Minister for Education to abolish corporal punishment in schools.
- Immediately enforce Section 49 subsection 4 of the Education Act 2005 so that unauthorized teachers who unlawfully administer corporal punishment are prosecuted on every occasion.
- Ratify and implement key international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.

### **Sexual Orientation**

During the 2011 review, despite several recommendations made at 76:49-56 to decriminalize consensual same sex relations, Saint Kitts and Nevis stated that a popular “mandate” was necessary for state protection of the rights of sexual minorities, and that continued criminalization of consensual sex under sections 56 and 57 of the Offences against the Person Act was justified because of “strong opposition” by citizens to repeal these laws.<sup>6</sup>

During the period 2011 - 2013 former Prime Minister of St. Kitts and Nevis Denzil Douglas repeated calls for a review of archaic anti-sodomy laws in the Caribbean and called for greater tolerance towards gays.<sup>7</sup> Mr. Douglas argued that the fundamental rights of persons living with HIV and of vulnerable populations such as men who have sex with men must be issues that Caribbean countries discuss and develop a way forward to improve on the way Caribbean countries guarantee equality and justice for all citizens. Prime Minister Douglas expressed his determination that St. Kitts and Nevis will move to expedite the abolition of punitive laws which continue to foster stigma and discrimination especially against LGBT community. He further stated that the legislative changes had already been completed and expected that, together

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<sup>6</sup> The Offences against the Person Act in Saint Kitts and Nevis provides: Section 56 —The “abominable crime of buggery” is punishable by up to 10 years imprisonment, with or without hard labor. Section 57 —Whosoever attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, is guilty of misdemeanor, and being convicted thereof shall be liable to be imprisoned for any term not exceeding four (4) years with or without hard labor.

<sup>7</sup> <http://www.care2.com/causes/end-anti-gay-stigma-and-we-can-tackle-hiv-says-st-kitts-leader.html>

with UNAIDS and the Ministry of Health, the proposed national consultation on “rights for all” would have been completed in time for World AIDS Day 2012.”<sup>8</sup>

Notwithstanding these comments the former prime minister failed to take any action in this regard domestically. Instead, on the election hustings, he participated in ridicule, name calling of his opponents with innuendo about their sexual orientation.<sup>9</sup>

Post UPR 2011 there continues to be acts of violence committed against persons because of their sexual orientation or gender identity, and persons who defend the rights of these individuals are often subjected to verbal attacks. Shakeem Walter was the subject of a violent attack on 20<sup>th</sup> January 2012 attributed to his sexuality and gender expression. The story of Shakeem Walter better known as “Hotness” indicates that the 16-year-old was found lying on Park Street in a pool of blood with gunshot wounds to the head and chest. He is currently blind and paralyzed. A suspect by the name of “Nyon Dasent” was arrested and charged with attempted murder. Nyon pleaded guilty was sentenced to 10 years for attempted murder.<sup>10</sup> This act speaks to societal and cultural stigma and discrimination. Online media coverage of this incident demonstrates that persons familiar with the crime expressed strong opinions that violent and criminal attacks on the victim were justified because of his sexuality. The following comments are captured beneath the online article titled: “Man Charged with Murder of Hotness” : *“Batty Man Fi Dead.” “He needs to change his gay ways and things like this won't happen to him.” “This is nastiness here.” “It was bound to happen to it any ways.” “Have you ever heard of Sodom and Ghomorro????” “Look at him in the pic looking like a woman.”*<sup>11</sup> Having suffered this extreme act of violence the victim has experienced difficulties coming to terms with this unwarranted attack but seeks to maintain positive spirits.<sup>12</sup>

The constitution of Saint Kitts and Nevis does not protect persons of different sexual orientation or gender identity from discrimination but reserves this protection for persons only on the basis of traditional grounds as: race, sex, religion, etc.

The fact that sexual acts between consenting same sex adults are criminalized, discussions with the members of Saint Kitts and Nevis Alliance For Equality (SKNAFE) indicate this serves as an impediment in accessing necessary healthcare; and LGBT persons continue to confront unacceptable levels of discrimination and stigma on the streets and when visiting health clinics.<sup>13</sup>

### **Recommendations:**

The State of Saint Kitts should:

- Decriminalize same-sex consensual relations in all provisions of Saint Kitts and Nevis’ legislation especially Sections 56 and 57 of The Offences against the Person Act, and

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<sup>8</sup> <http://www.pancap.org/PANCAP%20J4A%20BkGrnd%20Report.docx>

<sup>9</sup> <https://www.youtube.com/watch?v=gBICzw6omIc>

<sup>10</sup> <http://m.sknvibes.com/news/newsdetails.cfm/75286>

<sup>11</sup> <http://www.sknvibes.com/news/newsdetails.cfm/52452>

<sup>12</sup> Discussion with Shakeem “Hotness” Walter on February 26th, 2015

<sup>13</sup> Meeting with members of the (SKNAFE) LGBT community on February 25th, 2015

bring its legislation into conformity with its commitment to equality and non-discrimination.

- Review the Sex and Sexuality theme in the Health and Family Life Education curriculum, and incorporate objective information on sexual orientation and gender identity.
- Raise public awareness regarding non-discrimination of LGBT persons and include sexual orientation as part of the curriculum in HFLE for schools.
- Ensure all state-run healthcare facilities adopt policies which unequivocally prohibit discrimination of all of persons accessing healthcare and have measures in place to sanction persons who violate these regulations.
- Implement a policy moratorium on prosecutions which criminalize same sex consensual relations.
- Amend Saint Kitts and Nevis' constitution to include sexual orientation and gender identity as part of the classification of persons who must be protected from discrimination.

### **Women and Gender**

The law prohibits rape<sup>14</sup>, but it does not provide redress against marital rape. Despite last year's re-establishment of a Special Victims Unit within the Police Force, rape was often underreported due to survivors' fear of stigma, retribution, further violence, or lack of confidence in the authorities. Penalties for rape range from two years' imprisonment for incest between minors, to life imprisonment for statutory rape or incest with someone under sixteen years. Indecent assault has a maximum penalty of seven years' imprisonment.

Saint Kitts and Nevis has made remarkable strides in empowering women through awareness campaigns, programs and policy development. This work is executed largely by the Department of Gender Affairs and includes training for police, nurses and counsellors, with implementation of an intervention program to educate those who batter. Another program that prepares women for job interviews and provides assistance with the operation of their own business is facilitated by the Women in Small Enterprises (W.I.S.E) organization. Women in Construction Trades pursues a mandate which provides training for women in the various aspects of the construction trade.

Statistics provided by the minister responsible for Social Development and Gender Affairs indicate that between January and August 2014 there were 106 reported cases of abuse. Eighty seven of these reports were of physical abuse.<sup>15</sup> The minister has emphasized the need to but-

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<sup>14</sup> Offences against the Person Act Cap 4.21 "2002 Rev"

<sup>15</sup> <http://zizonline.com/new-domestic-violence-bill-bringing-relief-for-victims/>

dress the law with supporting infrastructure to facilitate easier implementation and better relief to victims. In August 2014 the government sought to amend the Domestic Act now retitled “The Domestic Violence Bill” (2014) which is still in draft form. One of the key provisions of this bill is the promotion of economic independence for victims in abusive relationships. The Bill introduces compensation for victims of domestic violence who are under a court protective order and includes monetary relief for loss of earnings, medical and dental expenses, moving, relocation, and accommodation expenses, or household necessities and other interim expenses. This Bill is gender neutral and caters to both women and men.<sup>16</sup>

The laws in Saint Kitts and Nevis do not provide for independent prosecution of perpetrators of domestic violence. It is vital that the state intervenes in prosecuting acts of domestic violence where there is sufficient evidence to charge the perpetrator, as the cycle of domestic violence is such that victims are either afraid of the perpetrators or too emotionally or financially invested in the relationship to pursue these violations.

Data collection on domestic and sexual violence is fragmented and impairs policy, planning and prosecution of perpetrators. It is therefore necessary for such data to be organized so that government can deliberately pursue appropriate and targeted policy development to effect necessary change.

### **Recommendations**

The State of Saint Kitts should:

- Amend the laws with respect to rape to include marital rape within the classification of rape.
- Swiftly implement the new Domestic Violence Bill (2014).
- Strengthen the Vulnerable Persons Unit with the Police Force by providing specialized training to officers and maintaining well-trained staff within the unit.
- Adopt laws that allow for state intervention and independent prosecution of perpetrators of domestic violence, without the victim lodging a complaint.
- Seek technical support to establish a centralized data register which captures information relating to domestic and sexual violence complaints and prosecutions within the Department of Gender Affairs.
- Implement temporary special measures in order to increase participation by women in public and political life.

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<sup>16</sup> <http://zizonline.com/new-domestic-violence-bill-bringing-relief-for-victims/>

- Collaborate with civil society, non-governmental organizations and other stakeholders to provide relevant support for victims of domestic violence.

## **Disability**

During the UPR 2011 the Government of Saints Kitts and Nevis reported that “Building codes catered to the needs of persons with disability”. However discussions with the Saint Kitts and Nevis Association of Persons with Disability (SKNAPD) report that these codes were not always complied with or enforced. To date the government has taken no action to build the necessary roads and sidewalks that facilitate the movement of persons with physical disability. Although the government held meetings and consultations on this matter, there has been no outcome or result.

Post UPR 2011 the Government of Saint Kitts and Nevis has promised<sup>17</sup> SKNAPD for the last two years to sign and ratify the convention on the Rights of Persons with Disabilities (CRPD), however this is still pending. In so doing the government has largely failed to adequately promote and protect the right of persons with disabilities as per recommendation 76:30 during UPR 2011.

The laws do not specifically prohibit discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, air travel, transportation, access to healthcare or the provision of others services but fails to also mention accommodation and education where persons with disabilities also experience discrimination.<sup>18</sup>

## **Recommendations**

The State of Saint Kitts should:

- Renew its effort to promote and protect the rights of persons with disabilities
- Sign and Ratify the Convention on the Rights of Persons with Disabilities (CRPD)
- Increase efforts to support and empower persons with disability

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<sup>17</sup>Discussion with President of SKNDAP Mr Anthony Mills February 26th, 2015

<sup>18</sup><http://www.refworld.org/docid/53284a7fb.html>