



Submission to the Universal Periodic Review of Saint Kitts and Nevis

Human Rights Watch

July 2020

Introduction

1. Human Rights Watch (HRW) respectfully presents this submission for Saint Kitts and Nevis' third Universal Periodic Review (UPR). The submission addresses the rights of lesbian, gay, bisexual, and transgender (LGBT) people in the country and focuses on the two issues that predominated State recommendations during Saint Kitts and Nevis' second UPR in November 2015:

- I. Decriminalization of same-sex conduct; and
- II. Adoption of comprehensive anti-discrimination legislation protecting LGBT people

2. Saint Kitts and Nevis rejected both recommendations in the past UPR cycle. The present submission aims to remind Saint Kitts and Nevis that its inaction on these recommendations places it in violation of its international human rights obligations.¹ In addition, to illustrate the impact of the country's current legal defects, the submission will draw from HRW's 2017 report "*I Have to Leave to Be Me*": *Discriminatory Laws against LGBT People in the Eastern Caribbean*,² featuring interviews with impacted LGBT Kittitians and Nevisians.

Decriminalization of Same-Sex Conduct

3. Saint Kitts and Nevis' Offences Against the Person Act 1986, Chapter 4.21, Section 56 criminalizes "sodomy and bestiality" and defines the terms by referencing "the abominable crime of buggery, committed either with mankind or with any animal." Section 57 of the same Chapter allows courts to add "hard labor" to a criminal sentence.

4. During the second cycle of Saint Kitts and Nevis' UPR in November 2015, Brazil, Chile, France, Ireland, and the United States of America recommended that Saint Kitts and Nevis decriminalize consensual sexual relations between consenting adults of the same sex.³ Australia recommended that Saint Kitts and Nevis repeal legislation that discriminates against LGBT and intersex people.⁴ Saint Kitts and Nevis rejected these recommendations.⁵

5. International human rights law establishes that matters of sexual orientation and gender identity, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one's private and family life and one's reputation or dignity. Criminalizing same-sex intimacy violates these international obligations, which has been affirmed by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.⁶

6. While buggery and gross indecency laws in Saint Kitts and Nevis are seldom enforced against consenting persons, their impact is pernicious. Laws criminalizing same-sex conduct reinforce already-existing societal

¹ For authoritative guidance on the protection afforded by international human rights law against discrimination based on sexual orientation and gender identity, see "Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity" (2006), <http://yogyakartaprinciples.org/principles-en/>.

² Human Rights Watch, "*I Have to Leave to Be Me*": *Discriminatory Laws against LGBT People in the Eastern Caribbean* (Human Rights Watch, 2017), <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/31/16 (December 15, 2015), paras. 92.49, 92.51, 92.52, 92.53, 92.55.

⁴ *Ibid.*, para. 92.56.

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/31/16/Add.1 (February 23, 2016).

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Articles 2 and 26 of the ICCPR affirm the equality of all people before the law and the right to freedom from discrimination. Article 17 protects the right to privacy. See also Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, U.N. Doc. A/72/172 (July 19, 2017), paras. 32-35; *Toonen v. Australia*, 50th Sess., Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992, April, 14, 1994, sec. 8.7; ACHR, art. 11; Inter-American Commission on Human Rights, "Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas" (Inter-American Commission on Human Rights, 2015), pp. 85, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

prejudices, effectively giving social and legal sanction for discrimination, violence, stigma, and prejudice against LGBT individuals.⁷

7. Since Saint Kitts and Nevis' last UPR, Human Rights Watch conducted in-country research that evidences the discrimination, violence, stigma, and prejudice that beset LGBT people's enjoyment of basic rights. For example, Nicholas, a 20-year-old gay man from St. Kitts and Nevis, expressed his feeling of constant fear and uncertainty: "you are not safe... you have to hide who you are. Otherwise they will get physical, shouting things."⁸ Nicholas said "I was threatened by my own mother, [she told her sons that] if any of us is "anti-man" she would kill us."⁹ When Nicholas and his boyfriend were outed on social media when they were both high school students, Nicholas was taunted and aggressively harassed for the remainder of his school days.¹⁰ Nicholas experienced suicidal thoughts and even once tried to commit suicide due to social exclusion."¹¹

8. Arthur, an 18-year-old gay man, described his feelings of isolation and loneliness as a result of being bullied in school, where his academic performance suffered. Arthur noted that in daily life, "[When I am] strolling down the street people start yelling out 'anti-man.' Suddenly, they [begin to] throw bottles at me."¹² Arthur's perception of the violence and his fear of being caught up in it "never stops and it happens almost daily."¹³ He voluntarily submitted to an exorcism ritual conducted by his church pastor in the hope that it would make him straight and he could stay in the church. His pastor promised to help him "banish the devils" of homosexual desire, which did not work, but Arthur pretended that it did as he was afraid of being outed as gay.¹⁴ Arthur engaged in self-harm, including cutting, and attempted suicide.¹⁵

9. *Saint Kitts and Nevis should:*

- Repeal Sections 56 and 57 of Chapter 4.21 of the Offences Against the Person Act, which criminalize consensual same-sex conduct.

Adoption of Comprehensive Anti-Discrimination Legislation Protecting LGBT People

10. Saint Kitts and Nevis currently does not have any comprehensive laws that prohibit discrimination on grounds of gender identity and sexual orientation, including in the employment, housing, access to education, and health care contexts.

11. During the second cycle of Saint Kitts and Nevis' UPR in November 2015, Argentina, Canada, Chile, and the United States of America recommended that Saint Kitts and Nevis adopt legislation prohibiting discrimination on the basis of sexual orientation and gender identity.¹⁶ Argentina, France, Ireland, and Spain recommended that Saint Kitts and Nevis take all necessary steps to ensure the enjoyment of their rights by all persons without discrimination on grounds of sexual orientation or gender identity, including through awareness-raising.¹⁷ Saint Kitts and Nevis rejected these recommendations.¹⁸

12. The OAS has adopted several resolutions condemning "acts of violence and human rights violations perpetrated against individuals because of their sexual orientation and gender identity," and has urged states "to adopt the necessary measures to prevent, punish, and eradicate" discrimination.¹⁹ Core treaties like the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the American Convention on Human Rights (ACHR)—which Saint Kitts and

⁷ Inter-American Commission on Human Rights, "Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas," pp. 60-62. See also Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (Human Rights Watch, 2008), <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>.

⁸ Human Rights Watch, "*I Have to Leave to Be Me*", p. 24.

⁹ *Ibid.*, p. 30.

¹⁰ *Ibid.*, p. 38.

¹¹ *Ibid.*, p. 51.

¹² *Ibid.*, p. 40.

¹³ *Ibid.*, p. 39.

¹⁴ *Ibid.*, p. 35.

¹⁵ *Ibid.*, pp. 51-52.

¹⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/31/16 (December 15, 2015), paras. 92.47, 92.50, 92.51, 92.55.

¹⁷ *Ibid.*, paras. 92.47, 92.52, 92.53, 92.54.

¹⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/31/16/Add.1 (February 23, 2016).

¹⁹ Organization of America States, General Assembly, "Human Rights, Sexual Orientation, and Gender Identity," AG/RES. 2435 (XXXVIII- O/08), resolution adopted at the fourth plenary session, June 3, 2008. See also OAS resolutions entitled "Human Rights, Sexual Orientation and Gender Identity," adopted in 2009 (AG/RES. 2504), 2010 (AG/RES. 2600), 2011 (AG/RES. 2653), and 2012 (AG/RES. 2721); OAS resolutions entitled "Human Rights, Sexual Orientation, and Gender Identity and Expression," adopted in 2013 (AG/RES. 2807) and 2014 (AG/RES. 2863).

Nevis should ratify, as recommended by many States during the country's last UPR—have been interpreted by courts and authoritative treaty bodies to ban such discrimination, as have a variety of other international instruments and sources of law.²⁰

13. In this lacking legal context, discrimination against LGBT people seeps into everyday activities, whether it be availing of services such as health care, school, or riding a bus, or social activities such as going to the movies or shopping. Discrimination in the workplace can also occur, as Nicholas, a 20-year-old gay man, told Human Rights Watch: “I don’t come out because my work would be jeopardized. There is a lack of visibility.”²¹ Notably, LGBT persons who face discrimination in any sector lack any legal avenue to seek redress for themselves or accountability for perpetrators.

14. *Saint Kitts and Nevis should:*

- Pass comprehensive anti-discrimination legislation that prohibits discrimination on grounds of gender identity and sexual orientation—including in the employment, housing, access to education, and health care sectors—and specifies effective measures to identify, prevent, and respond to such discrimination.

²⁰ 140 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Nondiscrimination and economic, social and cultural rights (Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20 (2009), <http://www.refworld.org/docid/4a60961f2.html> (accessed May 10, 2014), para. 32 (“‘Other status’ as recognized in article 2, paragraph 2, includes sexual orientation”). Inter-American Court Of Human Rights, *Atala Riffo And Daughters v. Chile*, Judgment of February 24, 2012, Inter-Am. Ct.H.R., (Ser. C) No. 239 (2012), para 91 (“Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1)of the American Convention, ... the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.”).

²¹ Human Rights Watch, “*I Have to Leave to Be Me*”, p. 28.