The development of this legal literacy manual by Caribbean Vulnerable Communities Coalition (CVC) in partnership with The Faculty of Law, University of the West Indies Rights Advocacy Project (U-RAP) is funded by the Robert Carr Civil Society Network Fund (RCNF)
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INTRODUCTION

Development and Purpose of Manual

In an effort to fulfil its mandate of improving the legal literacy of Inadequately Served Populations (“ISP”), the Caribbean Vulnerable Communities Coalition (“CVC”) in partnership with Faculty of Law University of the West Indies Rights Advocacy Project (“U-RAP”) developed this legal literacy manual. Inadequately Served Populations (“ISP”) are groups or persons that face a higher HIV risk, mortality and/or morbidity when compared to the general population, and have, at the same time, less access to information and services. ISP include people living with HIV, gay men and other men who have sex with men, people who use drugs, prisoners, sex workers and transgender people. In a number of localities, women and girls, youth, migrants and people living in rural areas could also be considered ISP.
This legal literacy manual is specifically designed for training ISP and organizations working with ISP with the aim of improving the legal literacy of ISP and strengthening their advocacy efforts. It can be used as a toolkit for organizing and leading training on law, human rights and issues of specific concern to ISP.

**Objectives and Intended Outcomes**

The legal literacy manual aims to broaden the knowledge of ISP on law and human rights. It aims to provide information on the legal tools and human rights mechanisms that can be used to secure access to justice, and equality in public and private life. This manual also aims to raise awareness of the limitations and discriminatory nature of laws relevant to ISP and to build the capacity of ISP to effectively advocate for change. On completion of training, it is expected that ISP should:

1. Be confident in their understanding of the concept of law and how law functions
2. Be knowledgeable of the laws which are specifically applicable to them and how they relate to human rights and vulnerability to HIV
3. Be aware of the purpose of human rights and how they are protected domestically and internationally
4. Be able to identify the legal mechanisms and institutions in Jamaica which can be used to help protect human rights
5. Be able to identify situations in which their human rights may be affected and the steps which they can take to protect their rights
6. Be aware of legal tools which can be used to protect rights in relation to housing, employment and health
7. Be knowledgeable about the powers and duties of law enforcement officials and rights which are particularly important when one interacts with the criminal justice system
8. Be sufficiently informed so as to be confident in sharing their own recommendations on how to address certain issues
PART 01

GENERAL LEGAL LITERACY FOR ALL INADEQUATELY SERVED POPULATIONS
MODULE 0 - TIPS FOR TRAINERS

BEFORE YOU START

- Read the legal literacy manual and be aware of the main issues, objectives and learning outcomes
- If there is any concept, law or case study that you do not think you have sufficiently grasped, make early contact with your organization or support team and seek assistance.
- Have before the day of the training, all the training materials that are needed for the session.

INTRODUCTIONS AND GROUND RULES

INTRODUCE YOURSELF

- A good introduction can make for a smooth start to the training session. Tell the participants who you are, the organization that you work for, the reason you decided to participate in this initiative as a trainer and what you are looking forward to during the training.

INTRODUCE THE PLAN FOR THE TRAINING PERIOD

- Ensure that your plan is introduced in a manner that does not overwhelm the participants.
- Be sure to let the participants know that they will be learning about the law, looking at interesting cases, discussing some local events and sharing experiences.
- Convey to the participants that this is a shared learning experience and that all participants will have the opportunity to share, ask questions and provide recommendations. Encourage participants to speak in the way they are most comfortable, whether this includes speaking Patois, English or both!
- Inform the participants of the topics that will be covered in the training. Inform the participants of the time and duration of breaks for coffee and lunch.
- Provide participants with the respective training materials in a timely manner and encourage participants to also take notes.
Some of the material and case studies will make reference to instances of violence or acts of discrimination. Reassure participants that if at any time during the training, the description of events makes them feel uncomfortable or overwhelmed that they should calmly get the attention of the trainer and let the trainer know whether they would like to be excused from a particular session or activity.

**ESTABLISH TRAINING RULES**

After introducing the plan for the training period, establish training rules which should include:

- **Respect.** Respect to each person, respect for each person’s right to express an opinion, respect for each other’s time
- **Punctuality** in attending all sessions
- **Confidentiality.** Where participants share personal stories or experiences, it is expected that participants will keep this information confidential.
- **Limited use of mobile phones** during the training sessions

**INTRODUCTION OF PARTICIPANTS**

- Trainers should ensure that participants are seated in a manner that is conducive to an interactive session.
- Ask participants to share with the group:
  - Their names
  - Why they decided to attend the training or their main expectation from the training
  - A fun fact about themselves or a moment they consider to be one of their happiest
- Let participants know that they do not have to answer any question that they feel uncomfortable answering
**MODULE 1 - KEY DEFINITIONS**

For the purposes of this legal literacy manual:

- **INADEQUATELY SERVED POPULATIONS** are groups or persons that face a higher HIV risk, mortality and/or morbidity when compared to the general population, and have, at the same time, less access to information and services. ISP include people living with HIV, gay men and other men who have sex with men, people who use drugs, prisoners, sex workers and transgender people. In a number of localities, certain women and girls, youth, migrants and people living in rural areas are be considered ISP.

- **MARGINALIZED YOUTH** refers to young people between the ages of 10 to 25 who are members of populations such as: persons living with HIV; persons who identify as lesbian, gay, bisexual or transgender; people who use drugs; migrant populations, persons living or working on the street; persons being held in detention by the state or in the care of the state.

- **MEN WHO HAVE SEX WITH MEN** describes males who have sex with males, regardless of whether or not they also have sex with women or who identify as gay or bisexual.

- **PEOPLE WHO USE DRUGS** refers to persons who allow drugs legally classified as dangerous, prohibited or illicit, to enter their bodies. The ways in which the drugs enter the body includes but is not limited to swallowing, injecting, smoking, or using suppositories.

- **TRANS PERSON** refers to a person whose gender identity and expression do not conform to the norms and expectations traditionally associated with their assigned sex at birth. Trans persons include individuals who have received gender reassignment surgery, individuals who have received gender-related medical interventions other than surgery (e.g. hormone therapy), individuals who identify as trans and have had no gender-related medical interventions, and individuals who identify as having no gender, multiple genders or alternative genders.

- **SEX WORKERS** refer to adults over the age of 18 years who regularly or occasionally receive money or goods in exchange for sexual services and consent to doing so. Persons under 18 years involved in sex work are considered to be victims of sexual exploitation, not sex workers.

- **MIGRANT POPULATIONS** refer to persons who have left their home country or habitual place of residence and have moved to another country.

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1Some definitions are from the 2015 UNAIDS Terminology Guidelines
MODULE 2 - INTRODUCTION TO LAW

OBJECTIVE AND INTENDED OUTCOMES
This module aims to introduce participants to the concept of law. On completion of this module, participants should be able to:

1. Provide a clear explanation as to meaning and purpose of law
2. Identify the sources of law and explain the relationship between the sources of law
3. State the role that each arm of government has as regards the law

BRIEF CONTENT OF MODULE
A. Meaning and purpose of law
B. Relationship between law and justice
C. Sources of Law
D. Relationship between different sources of law
E. The Government and the law
F. Training Exercise

GLEANING EXISTING KNOWLEDGE
Trainers should start this module by asking participants a few questions about law. The purpose of asking these questions is to get some idea of the knowledge they have about the concept of law and how law works.

Suggested questions:
1. What words do you think of when you hear the word ‘law’?
2. If you had to tell a friend, what the ‘law’ means to you, what would you say?
A. MEANING AND PURPOSE OF LAW

WHAT DOES ‘LAW’ MEAN AND WHAT IS THE PURPOSE OF THE LAW?

When we think of the meaning of law, we think about the set of rules and principles which govern behaviour or regulate human conduct. These rules and principles are law because they are backed by the authority of the state. So for example, where the law is that a person driving a motor vehicle on the road should wear a seat belt while the car is being driven, it means that if the driver fails to wear the seat belt he or she is violating the law and he or she can be made to pay a penalty.

Suggested Question: Can you think of the law in Jamaica that requires drivers to wear seat belt?
Answer: Road Traffic Act

Law not only governs the behaviour of individuals towards each other, for example like fighting, killing etc, it also speaks to the actions of the state towards its citizens. So for example, the government is not allowed to randomly and without legal authorization enter your home, remove you from your home and place you in jail. There are rules governing entry into your home and rules governing detaining someone. The government is expected to abide by these rules.

B. RELATIONSHIP BETWEEN LAW AND JUSTICE

WHAT IS THE RELATIONSHIP BETWEEN LAW AND JUSTICE?

At this point, some of you may be questioning whether the state abide by these rules and what happens if they do not. Law is meant to operate as a framework for justice. When we think about justice we think about fairness: fairness in the treatment of each person, fairness in how the law is applied and implemented. We also think about there being a ‘just’ result.

This brings us to a discussion about law as being imperfect. We will see however that this framework is not perfect. Sometimes, it is the content of the law itself that is problematic because it is unfair, unjust or inadequate. In other cases, it is the way in which the law is implemented or applied that brings unjust or unfair results.
It is important to note that the law is always being developed. Laws are questioned, challenged and changed. One of the bases on which laws are challenged is whether they meet certain standards: human rights standards. Human rights is the focus of this training so you will have the opportunity to determine in your own assessment whether certain laws in Jamaica meet human rights standards.

C. SOURCES OF LAW

HOW DOES LAW COME ABOUT? HOW ARE LAWS MADE?

Based on the legal system we have in the English-speaking Caribbean, we rely on several sources of law. The main ones on which we rely are: (1) the Constitution; (2) legislation, which is also referred to as 'statute' or 'Act of Parliament'; (3) case-law, which is sometimes referred to as 'common law' or 'judge-made' law; and (4) international law.

- THE CONSTITUTION OF JAMAICA, 1962

The Constitution of Jamaica is the supreme law. This means that every law in Jamaica must conform or be consistent with it. It tells us about the different arms of government, what their functions are, and the power that each arm has. It sets out the rights that persons in Jamaica have and what can be done if those rights are breached.

The Constitution of Jamaica came into effect in 1962 at independence and has been amended a few times, including in 2011 when new human rights provisions were introduced.

- LEGISLATION

Legislation refers to law which is made by Parliament. It is law which is written. You can get copies of these laws at the Parliamentary Library, law libraries and even from the Ministry of Justice’s website at http://moj.gov.jm. In listening the news and reading the local newspapers, you will often hear discussions of new laws being ‘passed’ or ‘enacted’ by Parliament. You will also hear of laws being ‘amended’ or changed by Parliament. For example, in response to violence against children, there has been mention of improving the laws to better protect children from violence and to provide for stronger penalties.
• **CASE LAW**

Case Law refers to the law which is established by decisions made by judges. It is also referred to as judge-made law.

The primary function of judges is to apply and interpret law. Their interpretation of law becomes a source of law.

• **INTERNATIONAL LAW**

International Law refers to the body of rules which govern the relationship between states at the international level. States agree that each State will abide by the rules and each State has a legal obligation to abide by the rules. These rules are largely set out in treaties which are agreements which countries across the world have signed and have agreed to abide by.

**D. RELATIONSHIP BETWEEN DIFFERENT SOURCES OF LAW**

**WHAT IS THE RELATIONSHIP BETWEEN THE DIFFERENT SOURCES OF LAW?**

All the sources of law are important. In many instances, the different sources of law influence each other. Let us take for example the issue of violence against women. Under international law, there are standards for the treatment of women and the protection of women from violence. There are also standards regarding the protection of children. These standards are set out in treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. These conventions (which are also called “treaties”) have influenced Jamaica’s laws on domestic violence, child protection and child rights. Jamaica has legislation which aims to protect women from violence. These are primarily the Domestic Violence Act and the Sexual Offences Act. Regarding the protection of children, there is the Child Care and Protection Act and also the Child Pornography (Prevention Act).

Sometimes the local law does not meet the required standards set by the international law. For example, on the issue of violence against women,

Jamaica’s law does not fully protect married women if they are forced to have sexual intercourse with their husbands even though under international law such act is recognized as an act of sexual violence from which women should be protected. Some of you may have heard discussions on the radio and on the television where some members of the society are calling
on the Parliament to change the law so that married women are fully protected from sexual violence. These members of society rely on the international law standards and also on the positive developments in other countries to show why the local law needs to be improved. Local advocates can also rely on the provisions of the Constitution to show how a law violate the rights which women have under the Constitution.

As regards HIV, there are international human rights bodies which have pointed out the need for new laws or improvement in local laws to better protect people living with HIV and groups vulnerable to HIV. These international human rights bodies highlight the importance of having laws which provide protection from discrimination and violence, laws which guarantee confidentiality in health care settings and laws which protect property and inheritance rights. They also make the link between sexual violence and HIV, discrimination and access to health care services, criminalization of same sex intimacy, criminalization of sex work and how such criminalization can increase people’s vulnerability to HIV. Additionally, in 2010 the Global Commission on HIV and the Law was established. The Commission has emphasized that good laws can “widen access to prevention and health care services, improve the quality of treatment, enhance social support for people affected by the epidemic, protect human rights that are vital to survival and save the public money.”

E. THE GOVERNMENT AND THE LAW
WHAT DOES THE GOVERNMENT HAVE TO DO WITH THE LAW?

When we think of government, we think of the governance of the country. The Constitution of Jamaica tells us about the different arms of government and what their functions are. These three arms are: the Executive, the Legislature which is also called ‘Parliament’ and the Judiciary.

Each arm must act in accordance with the Constitution and each arm has a unique relationship with the law. The Parliament is responsible for making laws for the ‘peace, order and good government’ of Jamaica. The Parliament of Jamaica consists of Her Majesty, the Senate and the House of Representatives. The Executive is responsible for carrying out and enforcing the laws made by Parliament while the Judiciary is responsible for applying and interpreting the law, including those made by Parliament.

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2The Global Commission on HIV and the Law was an independent body convened by the United Nations Development Programme (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Global Commission on HIV and the Law: Risks, Rights and Health, UNDP, July 2012 at 11
F. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

• This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
• Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. PARTICIPANTS' ACTIVITY

The aim of this activity is to encourage discussion among the participants about the purpose of law and the sources of law.

1. Divide participants into groups of 3 – 5 persons depending on the size of the group. Have a box with cards or sheets of paper already labelled with the following words: law, justice, constitution, legislation, international law, judge-made law, international law, Executive, Judiciary, Parliament.

2. Have a member of each group select a card/sheet of paper (more than one, depending on the overall participant size). Each group should share with the overall group what they have learnt about the word on the card(s).
MODULE 3 - INTRODUCTION TO HUMAN RIGHTS

OBJECTIVE AND INTENDED OUTCOMES
This module aims to introduce participants to the concept of ‘human rights’. On completion of this module, participants should be able to:

1. Define human rights
2. Explain differences and similarities between the domestic and international human rights frameworks
3. Identify some of the rights which are in the Constitution of Jamaica

BRIEF CONTENT OF MODULE
A. Definition, Purpose and Protection of Human Rights
B. Human Rights Principles
C. Multiple and Overlapping Discrimination
D. The Domestic Human Rights Framework
   • Key laws and institutions
   • The role of institutions in protecting human rights
   • Rights protected by the Constitution of Jamaica
   • Link between law and policy
E. The International Human Rights Framework
   • The United Nations
   • Regional human rights mechanisms
F. Case Study: Caleb Orozco v The Attorney General of Belize
G. Training Exercise
**GLEANING EXISTING KNOWLEDGE:**

Trainers should start this module by asking participants a few questions about human rights. The purpose of asking these questions is to get some idea of the knowledge they have about the meaning of human rights.

Suggested questions:

1. What words do you think of when someone says ‘human rights’?
2. Are there any examples of rights which you think would qualify as a human right?
A. DEFINITION AND PURPOSE OF HUMAN RIGHTS

WHAT ARE HUMAN RIGHTS?

Human rights are rights which belong to each human being by virtue of being human. It does not matter one’s nationality, class, sex, gender, sexual orientation, race, religion, health status or any other distinguishing characteristic. Once you are a human being, you have human rights.

A human being cannot lose his or her human rights. However her human rights can be restricted. For example, when a person is imprisoned because he or she has been found guilty of murder, his or her right to freedom of movement is restricted.

WHAT IS THE PURPOSE OF HUMAN RIGHTS?

Human rights are grounded in the recognition of the value and dignity of a human being and the equal worth of each person. The purpose of human rights is tied to the need to protect this value, dignity and equal worth.

Many persons start a discussion on human rights by mentioning an international instrument known as the Universal Declaration on Human Rights 1948. The Universal Declaration came about after the Second World War and represents the first time that countries all across the globe came together to present a unified statement on the rights that all persons are entitled to. The Declaration has influenced the content of written constitutions and international treaties. It is said to be ‘at the root of the development of human rights at international, regional, and national levels’. The first article of the Universal Declaration on Human Rights states:

All human beings are free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

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WHO HAS RESPONSIBILITY FOR PROTECTING HUMAN RIGHTS?

The responsibility to protect human rights falls on the state and it also falls on each person. The Constitution of Jamaica in section 13 (1) expressly states that “all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter”. Human rights are about not only rights but also obligations. The Jamaican government for example, has a legal responsibility to respect, protect and fulfil human rights. As individuals we are all entitled to this protection. We also have a responsibility to respect the human rights of others.⁴

B. HUMAN RIGHTS PRINCIPLES

WHAT ARE THE BASIC HUMAN RIGHTS PRINCIPLES?

There are some key principles related to human rights.⁵ Human rights:

1. ARE UNIVERSAL AND INALIENABLE
   • Universal because every person by virtue of being human is born with and possesses the same rights irrespective of differences such as race, religion, sex, political beliefs etc.
   • Inalienable because the rights of human beings cannot or should not be arbitrarily taken away or restricted.

2. ARE INTERDEPENDENT AND INDIVISIBLE
   • Interdependent because the fulfilment of one right often depends on the fulfilment of other rights
   • Indivisible because all rights are inherent to the dignity of every person. Protection of one right positively influences the recognition of other rights. Likewise, deprivation of one right negatively affects others. The understanding is that ideally rights should have equal status and one right should not be compromised at the expense of others

3. ARE TO BE ENJOYED WITH EQUALITY AND NON-DISCRIMINATION
   • Equality and non-discrimination are principles which apply to all issues and in every circumstance. All human beings are equal and should not suffer discrimination. Every person should equally enjoy all human rights.

4. **INVOKE BOTH RIGHTS AND OBLIGATIONS**

- Human rights entail both rights and obligations. States have a legal obligation to promote, respect and fulfil human rights. This requires that they refrain from interfering with person's rights, for example rights to privacy, rights to freedom of movement etc. It also requires that they take steps to protect human rights. So if for example, citizens are being abused because of their religion, class, sex, the state has a legal obligation to take steps to protect these person from abuse.
- While individuals are entitled to have their rights respected, they also have a responsibility to respect the rights of other individuals.

5. **DEMAND PARTICIPATION AND INCLUSION**

- All persons irrespective of their level of education, religion, health status etc. have a right to participate in the decision-making processes, which affect their lives. In making decisions on behalf of its people, the State should facilitate and encourage participation from the citizens.

C. **MULTIPLE AND OVERLAPPING DISCRIMINATION**

From the basic human rights principles previously discussed, it is clear that human rights are all related to each other. Protection of one right helps with the recognition and protection of others. Likewise, violation of a right has a negative impact on other rights.

In the study of human rights, one soon realizes that it is not only rights which are interrelated; issues are interrelated as well. It is also realized that the violation of right may not impact all persons or groups in the same way. The way in which persons and different groups experience violation of their rights is influenced by how their different social identities and characteristics interact. Characteristics such as age, income level, sexual orientation, occupation for example, influence how a person or a group experiences the violation of a right. It also influences the impact that the violation has.

Within the context of HIV, some groups may experience multiple forms of discrimination. For example, a woman who is dependent on drugs and who is a sex worker experiences multiple forms of discrimination due to her occupation as a sex worker and due to her status as a drug user. She is at greater risk of experiencing violence because she is a woman. As a sex worker and a drug user this likelihood of experiencing violence increases. Multiple and overlapping discrimination has
been recognized in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Article 9 of this treaty calls on States in taking measures to eliminate violence against women to:

"take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom."

D. THE DOMESTIC HUMAN RIGHTS FRAMEWORK

KEY LAWS AND INSTITUTIONS

Jamaica has a human rights framework. It has laws in place that recognize and protect human rights. The most important of these laws is the Constitution of Jamaica. You will recall earlier that we spoke about sources of law and we identified the constitution as the supreme source of law. The Constitution of Jamaica is that document which came into force in 1962 when Jamaica became independent from the United Kingdom. It sets out how the society is to be governed, it has rules about citizenship and it sets out the rights that persons in Jamaica have.⁶

There are other laws which are part of Jamaica’s human rights framework. These include laws governing domestic violence, sexual violence, protection of children, and laws governing persons with disabilities. These laws were made by Parliament and are called the Domestic Violence Act, the Sexual Offences Act, the Child Care and Protection Act, and the Disabilities Act respectively. These laws are referred to as ordinary laws and they must conform to the Constitution of Jamaica.

⁶Trainers should have a copy of the Constitution of Jamaica to show participants. The Constitution is available on the website of Ministry of Justice at http://moj.gov.jm/sites/default/files/laws/Ja%20Constitution%20Order%20in%20Council%201962_1.pdf
WHAT ROLE DO INSTITUTIONS PLAY IN PROTECTING HUMAN RIGHTS?

Laws governing human rights do not operate in isolation. For a law to have effect and for citizens to have the benefit of the law, there are institutions which help to give effect to the law. These institutions include the courts, commissions and offices of Parliament.

The Constitution makes it clear that if the rights of any person are being violated or are likely to be violated, that person may apply to the Supreme Court for redress or a remedy. There is the Family Court which deals with matters relating to family life such as adoption, custody and testamentary guardianship of children, declaration of paternity, domestic violence, maintenance, property rights of spouses. It does not deal with divorce proceedings. There is also a Children’s Court which deals with children who have been charged with a crime and children who are brought before the court because they are in need of care and protection.

With respect to offices and commissions of Parliament, there is the The Public Defender, the Children’s Advocate and INDECOM.

- The **PUBLIC DEFENDER** is a commission of Parliament established for the purpose of protecting and enforcing the rights of citizens. You may recall the involvement of the Public Defender in the investigations concerned with the 2010 ‘Tivoli Gardens Incursion’ and the Public Defender’s report on the matter.

- The **CHILDREN’S ADVOCATE** is a commission of Parliament established for the purpose of protecting and enforcing the rights of children. The Children’s Advocate pursued the matter in the Supreme Court on behalf of the wards of the Armadale Juvenile Correction Centre. The court awarded compensation for breach of the girls’ constitutional rights.

- The **INDEPENDENT COMMISSION OF INVESTIGATIONS (‘INDECOM’)** is a Commission of Parliament established in 2010 to ‘undertake investigations concerning actions by members of the Security Forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons’. INDECOM investigated the circumstances under which Mario Dean died and thereafter arrested and charged three police officers in connection

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with his death. How many of you recall the death of Mario Deane? We will explore the circumstances surrounding Mario Deane’s death later in this training.

All of these institutions and commissions help to protect the human rights of persons in Jamaica and also help in getting access to justice where violations of rights occur.

RIGHTS PROTECTED BY THE CONSTITUTION OF JAMAICA

The Constitution sets out specific rights that persons have under the domestic law. All persons in Jamaica have these rights. These are in Chapter Three of the Constitution which is usually referred to as the “Charter of Fundamental Rights and Freedoms” or the “Charter of Rights”. The rights guaranteed and secured by the Charter of Rights are as follows:

1. Right to life, liberty and security of the person
2. Right to freedom of thought, conscience, belief and observance of political doctrines
3. Right to freedom of expression
4. Right to seek, receive, distribute or disseminate information, opinions and ideas through any media
5. Right to freedom of peaceful assembly and association
6. Right to freedom of movement
7. Right to equality before the law;
8. Right to equitable and humane treatment by any public authority in the exercise of any function
9. Right to freedom from discrimination on certain grounds. These grounds are: being male or female; race, place of origin, social class, colour, religion or political opinions
10. Right to privacy
11. Right of every child to protection as a minor and to free tuition at the pre-primary and primacy levels
12. Right to enjoy a healthy and productive environment
13. Right to be registered as an elector and the right to vote
14. Right to be granted a passport

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15. Right to protection from torture, or inhuman or degrading punishment or other treatment

16. Right to freedom of the person (you should not be deprived of your liberty except in accordance with the law)

17. Right to protection of property rights

18. Right to due process (if you are charged with a criminal offence, you should be afforded a fair hearing within a reasonable time by an independent and impartial court)

19. Right to freedom of religion (freedom to choose and practice your religion, and if you are attending a place of education, you are not be forced to take part in any religious ceremony or observance which relates to a religion or religious body or denomination other than his own)

**LINK BETWEEN LAW AND POLICY**

The domestic human rights framework is also influenced by policies of the state. Policies do not have the same effect as laws. They do not have the force of law. While laws are authoritative and are backed by sanctions, policies are meant as a guide for action. Policies are the general principles by which a government is guided on a particular issue. Within the context of HIV and AIDS, The National HIV Policy is relevant. This policy will be discussed in more detailed in Module 5: Access to Health Care Services.

**E. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK**

1. **INTRODUCING THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK**

   The international human rights framework consists of certain legal norms and certain institutions. Legal norms relate to rules and standards governing international human rights. These are derived from treaties or agreements, declarations and statements.

   Institutions at the universal and regional levels help to protect and enforce human rights. The United Nations operates at the universal and global levels. As regards the Caribbean region, the Inter-American Human Rights System governs the protection of human rights at the regional level.
2. THE UNITED NATIONS AND MECHANISMS TO PROTECT HUMAN RIGHTS

The United Nations is an international organization established in 1945. At present it is made up of 193 Member States which include Jamaica. The work of the United Nations is guided by a document called the United Nations Charter. The Charter explains that the United Nations’ purpose is to maintain international peace and security, develop friendly relations among nations and promote human rights.

HOW DOES THE UN HELP TO PROTECT HUMAN RIGHTS?

The Human Rights Council

The United Nations has various mechanisms which it uses to help promote and protect human rights. There is a Human Rights Council which carries out peer review known as the Universal Periodic Review (UPR) whereby the human rights record of all UN member states are assessed. This human rights assessment is based on the legal norms contained in the UN Charter, Universal Declaration of Human Rights, human rights instruments to which the state is a party, voluntary state commitments, and international humanitarian law. Local civil society groups and NGOs can participate in the UPR process by contributing to national state reports if the state holds national consultations. Also after completion of the review process, local civil society groups can monitor state action to see if the state is implementing the recommendations from the review.

Special Procedures

There are also Special Procedures. The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.

These experts are also called ‘special rapporteurs’. These experts sometimes undertake country visits in which they assess the specific human rights situations and they also act on individual cases of abuse which are brought to their attention. Special procedures report annually to the Human Rights Council; the majority of the mandates also reports to the General Assembly.

Some examples are the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Special Rapporteur on violence against women, its causes and consequences visited the Caribbean in 2015 or a study visit along with the Rapporteur for the Rights of Women in the Inter-American Commission on Human Rights. In 2016, the UN Human Rights Council created a new special procedure, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

**Human Rights Treaties**

There are agreements, we will refer to as international treaties or international conventions. These are agreements which countries across the world have come together and ratified. When a state ratifies a treaty, it signifies that the state has agreed to abide by the terms of the treaty. The state upon ratification has a legal obligation to fulfil the terms of the treaty. There are nine major human rights treaties. These are:

1. **International Covenant on Civil and Political Rights (‘ICCPR’) 1976** which was ratified by Jamaica in 1975. It sets out the scope of civil and political rights that each person has and the obligation of each state to respect, protect and fulfil these rights. The Optional Protocol and Second Optional Protocol to the ICCPR have not been ratified by Jamaica.

2. **International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) 1976** which was ratified by Jamaica in 1975. This treaty sets out the economic, social and cultural rights which each person has and the obligation of the state to respect, protect and fulfil these rights. The Optional Protocol to the ICESCR has not been ratified by Jamaica.

3. **Convention on the Elimination of All Forms of Racial Discrimination (‘CERD’) 1969** which was ratified by Jamaica in 1971. This treaty emphasizes the equal worth of each human being making it clear that there is no justification for racial discrimination. States are obligated to take all appropriate measures to eliminate racial discrimination.

4. **Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’) 1981** which was ratified by Jamaica in 1984. It affirms the equal rights of women and requires that states take measures to eliminate discrimination against women. The Optional Protocol to CEDAW has not been ratified by Jamaica.

5. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987** has not been ratified by Jamaica. This treaty prohibits torture and other cruel, inhuman and degrading treatment and requires that each state take measures to protect against such treatment.

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12Treaties are described herein by their names and year of entry into force.
6. **Convention on the Rights of the Child (‘CRC’) 1990** which was ratified by Jamaica in 1990. It sets out the range of rights that children have as members of the human family and the measures that states should take in respecting, protecting and fulfilling these rights. Jamaica has not ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure 2002. It has ratified or acceded to the other two Optional Protocols to the CRC.\(^{13}\)

7. **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2003** which was ratified by Jamaica in 2008. This treaty recognizes the importance of the work done by migrant workers and their families, their vulnerabilities in connection with their status as migrant workers and sets out that the scope of rights which are guaranteed to all migrant workers and their families.

8. **Convention on the Rights of Persons with Disabilities 2008** which was ratified by Jamaica in 2007. This treaty reinforces that persons with disabilities are persons with rights and are entitled to enjoy all the human rights and fundamental freedoms. It sets out the measures that states should take in order to allow persons with disabilities to effectively exercise these rights. The Optional Protocol to this treaty has not yet been ratified by Jamaica.

9. **International Convention for the Protection of All Persons from Enforced Disappearances 2010** which aims to prevent and protect against enforced disappearances. This treaty has not been ratified by Jamaica.

### Treaty-monitoring bodies

These conventions place certain positive legal obligations on states to respect and protect human rights. There are mechanisms such as treaty bodies in place to monitor whether states are complying with these obligations. These include for e.g., the Human Rights Committee (for the ICCPR), the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women (‘the CEDAW Committee) and the Committee on the Rights of the Child. These treaty-monitoring bodies provide explanations as to the meaning of the rights in the respective treaties and clarify the measures that States should take to promote, respect and fulfil the rights. They do this by issuing what is called ‘General Comments’ or ‘General Recommendations’. These treaty-monitoring bodies primarily monitor the progress that States are making in fulfilling their legal obligations under the treaties and in ensuring that their citizens are

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able to adequately access and rely on these rights in their own countries. States are required to submit periodic reports on their progress in implementing the rights and upon consideration of the country reports, the treaty-monitoring bodies issues ‘Concluding Observations’. These Concluding Observations highlight the positive aspects of the State’s efforts and point out the areas where improvements are needed and what laws and policies need to improved upon.

Some treaties also have an Optional Protocol which provides a mechanism which allows citizens to make claims directly to the treaty monitoring body. Jamaica has not ratified any of the Optional Protocols which allow for this save and except the Optional Protocol to the ICCPR which it then denounced in 1998. Jamaica has ratified or acceded to all of these treaties save and except for the Torture Convention and the Convention dealing with enforced disappearances

### 3. REGIONAL HUMAN RIGHTS MECHANISMS

There are also regional human rights treaties, bodies and courts. For the American region, of which Jamaica is a part, there is the Inter-American Human Rights System. This system applies to Member States of the Organization of American States (“the OAS”).

**Human Rights Instruments:**

The key declarations and conventions governing human rights in this regional system are:

1. **The American declaration of the Rights and Duties of Man (“the American Declaration”) 1948** which recognizes the dignity of each individual, the protection of individual rights, and the corresponding duties of each individual in the respect and protection of individual rights. The Inter-American human rights system is said to have been born with the adoption of this Declaration in 1948.

2. **The American Convention on Human Rights 1978** identifies the range of rights and freedoms to which each person is entitled. It also mandates that states respect, protect and fulfil these rights. The American Convention on Human Rights also identifies the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as competent organs to deal with matters relating to states’ fulfillment of their legal obligations under the Convention. Jamaica ratified the American Convention on Human Rights; it has not accepted the jurisdiction of the Inter-American Court on Human Rights.

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14 Treaty identified by name and year of entry into force
3. There are also other human rights treaties dealing with torture; economic, social and cultural rights, the death penalty, violence against women, forced disappearances of persons, and discrimination against persons with disabilities.

**Human Rights Organs:**

*The Inter-American Commission on Human Rights*

The Commission’s mandate is to promote respect for and defense of human rights in the region. The Commission is based in Washington D.C., United States of America. The Commission is comprised of seven members who serve in their personal capacity. The work of the Commission centres on “three main pillars”. These are:

- The individual petition system
- Monitoring of the human rights situation in the Member States, and
- The attention devoted to priority thematic areas.

Throughout this training you will explore individual petitions that were made before the Commission. You will also discuss findings of the Commission’s 2012 report on the human rights situation in Jamaica and will explore some references in its 2015 thematic report on violence against LGBTI persons.

*The Inter-American Court of Human Rights*

The Inter-American Court of Human Rights is the other organ, which is concerned with the promotion and protection of human rights in the region. The Court hears matters concerned with the violation of a right or freedom which is protected under the American Convention on Human Rights. Individuals cannot directly submit matters to the Court. Only the Inter-American Commission on Human Rights and State Parties have the right to submit a case to the Court. Of note is the fact that Jamaica has not accepted the jurisdiction of the Court. The Court is based in Costa Rica.

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Did you know that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are together referred to as the International Bill of Rights? The Universal Declaration of Human Rights is not legally binding but has influenced the development of human rights both internationally and domestically.

F. CASE STUDY: CALEB OROZCO v THE ATTORNEY GENERAL OF BELIZE

The Criminal Code in Belize is the main source of criminal law in that country. That law said in section 53 that ‘carnal intercourse against the order of nature’ was a crime. That law in Belize had the effect of criminalizing consensual anal intercourse between males. Mr. Caleb Orozco, an LGBT human rights defender, challenged this law in the Supreme Court of Belize. He claimed that as a gay man, the following rights under the Constitution were violated:

• His right to privacy and dignity
• His right to equality before the law
• His right to equal protection of the law without discrimination

The Supreme Court found that:

• His right to dignity was violated
• His rights to privacy were violated
• His rights to equality before the law and equal protection of the law without discrimination were violated
• The law discriminated against him on the basis of his sex

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16 Caleb Orozco v Attorney General of Belize Claim no. 688 of 2010 Supreme Court of Belize decided 10 August 2016
G. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. PARTICIPANTS’ ACTIVITY

The aim of this activity is to actively engage participants on the importance of human rights. They should get a clear sense of how Caleb Orozco was able to use the law to get justice. This will be accomplished by two sets of activities:

1. Firstly, instruct each group to speak briefly about the meaning of human rights and to share one key principle that resonates with them. Participants should explain why they chose that principle.

2. Secondly, advise participants to remain in the groups which they were assigned and to complete the following:
   a. List any five rights which are protected in the Constitution of Jamaica. Why did you select these rights?
   b. Give two examples of how the United Nations tries to protect human rights.
   c. List the two main organs of the Inter-American human rights system which are concerned with the promotion and protection of human rights.
   d. Mr. Caleb Orozo claimed that his constitutional rights were being violated by a certain law. List some of the rights which he says were being violated.
   e. In the case concerned with Caleb Orozco, what law did Caleb Orozco challenge and in which court did he challenge the law.
   f. Did the Supreme Court of Belize agree with Caleb Orozco?
MODULE 4 - HIV AND HUMAN RIGHTS: INTERNATIONAL HUMAN RIGHTS STANDARDS

OBJECTIVE AND INTENDED OUTCOMES
This module aims to increase participants' awareness and understanding of the link between HIV and human rights. On completion of this module, participants should be able to:
1. Provide examples of human rights that are protected under international human rights law
2. Explain why these rights are particularly relevant to ISP
3. Identify some examples of legal issues that may be related to HIV

BRIEF CONTENT OF MODULE
A. Relationship between Human Rights and HIV
B. Rights relevant to HIV under International Law
C. Examples of Legal Issues that are related to HIV
D. Training Exercise

GLEANING EXISTING KNOWLEDGE:
Trainers should start this module by asking participants a few questions as suggested below. The purpose of asking these questions is to have participants reflect on what has been learnt thus far and to share their thoughts as to whether HIV is related to human rights.

Suggested Questions:
1. Based on the discussion thus far, do you think that HIV is in any way related to the concept of law or to the concept of human rights?
2. Why/Why not?
A. RELATIONSHIP BETWEEN HUMAN RIGHTS AND HIV

IS THERE ANY RELATIONSHIP BETWEEN HUMAN RIGHTS AND HIV?

Yes! Human rights are relevant to HIV. The respect, promotion and protection of human rights can help to fight the HIV epidemic and can help to better protect and provide a better quality of life for persons living with HIV and those vulnerable to HIV. The importance of human rights in the areas of prevention, treatment, care and support is consistently acknowledged. It is also central in reducing stigma, discrimination and violence related to HIV. This important relationship between HIV and human rights has been expressly recognized in international instruments such as:

- The 2001 Declaration of Commitment on HIV/AIDS
- The 2006 Political Declaration on HIV/AIDS
- The 2011 Political Declaration on HIV and AIDS

These declarations are consensus documents in which countries from all over the world agree on certain key principles and goals in relation to addressing HIV. These declarations are not binding and as such states do not have a legal obligation to follow them. However the declarations are very important because they have value in helping to develop standards and norms. In the 2011 Political Declaration on HIV and AIDS, the Caribbean region was recognized as having the highest prevalence of HIV and AIDS outside of sub-Saharan Africa. Also of relevance is Sustainable Development Goal Number 3 which centers on ensuring healthy lives and promoting well-being for all at all stages. Goal number 3 is one of 17 development goals adopted by world leaders in September 2017. These goals are not legally binding but countries are expected to use their best efforts to achieve them.\(^\text{17}\)

ARE THERE ANY INTERNATIONAL HUMAN RIGHTS TREATIES SPECIFICALLY DEALING WITH HIV?

NO. There are no international human rights treaties which specifically address HIV. Nonetheless, international human rights treaties set out certain standards and principles that are especially important for persons living with HIV and those vulnerable to HIV. There are no ‘special’ HIV rights or ‘special rights’ for persons living with HIV and those vulnerable to HIV. All human beings are entitled to respect and protection of all of their human rights.

\(^\text{17}\)http://www.un.org/sustainabledevelopment/development-agenda/
B. RIGHTS RELEVANT TO HIV UNDER INTERNATIONAL LAW

UNDER INTERNATIONAL LAW, WHICH RIGHTS ARE MOST RELEVANT IN THE CONTEXT OF HIV?

Within the context of HIV, the following rights and their meanings are especially important:18

1. Right to the highest attainable standard of health
2. Non-discrimination and Equality before the Law
3. Sexual and reproductive rights
4. Rights of children
5. Right to marry and found a family
6. Right to privacy
7. Right to education
8. Freedom of expression and information
9. Freedom of assembly and association
10. Right to work
11. Right to enjoy the benefits of scientific progress and its applications
12. Right to freedom of movement
13. Right to an adequate standard of living and social security
14. Right to participation in political and cultural life
15. Right to seek and enjoy asylum
16. Right to liberty and security of the person
17. Freedom from cruel, inhuman or degrading treatment or punishment

These rights in the context of HIV, have been explained by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (‘UNAIDS’) in the 2007 Handbook on HIV and Human Rights for National Human Rights Institutions. The Handbook is influenced by and should be read together with the International

Guidelines on HIV/AIDS and Human Rights. The norms identified and adapted from the Handbook on HIV and Human Rights are as follows:

1. **The right to the highest attainable standard of health.**

   The International Covenant on Economic, Social and Cultural Rights (art. 12) recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In fulfilment of this obligation, States must take steps to prevent, treat and control epidemic diseases. This “requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS...”.

   *Module 5: Access to Health Care Services will look in-depth on the right to health.*

2. **Non-discrimination and equality before the law.**

   The right to equal protection before the law and freedom from discrimination is protected under international human rights law. Such protection is secured for example in articles 14 and 26 of the International Covenant on Civil and Political Rights.

3. **Human rights of women.**

   Protecting the rights of women and girls— including sexual and reproductive rights—is crucial in preventing HIV transmission and lessening the impact of the epidemic on women. The Convention on the Elimination of All Forms of Discrimination against Women obliges States parties to address all aspects of gender-based discrimination in law, policy and practice. In the most heavily affected countries, women and girls represent the majority of those infected and those with the fastest rates of infection. They also disproportionately experience the impoverishment of AIDS and the burden of caregiving. Many women are infected by their husbands or long term partners. The vulnerability of women and girls to HIV and AIDS stems from gender inequality which:

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21Ibid at 6; General Comment No. 14 on the right to the highest attainable standard of health, Adopted by the Committee on Economic, Social and Cultural Rights on 11 May 2000.

a. prevents them from being able to decide when and under what circumstances to have sexual relations;
b. results in many forms of sexual violence inside and outside marriage;
c. results in lower access to HIV prevention, education and health services; and
d. deprives them of the economic independence that would enable them to avoid relationships that threaten them with infection and to withstand the impact of AIDS on themselves and their families. 23


According to the Convention on the Rights of the Child and its optional protocols, children have many of the rights of adults in addition to particular rights for children that are relevant in relation to HIV and AIDS. Children have the right to freedom from trafficking, prostitution, sexual exploitation and sexual abuse; the right to seek, receive and impart information on HIV; and the right to special protection and assistance if deprived of their family environment. They also have the right to education, the right to health and the right to inherit property. The right to special protection and assistance if deprived of their family environment protects children if they are orphaned by AIDS. And the right of children to be actors in their own development and to express their opinions empowers them to be involved in the design and implementation of HIV-related programmes for children. However, many children and young people have very little access to HIV prevention information, education and services, and little access to paediatric treatment if infected with HIV. 24

5. Right to marry and found a family.

Article 23 of the International Covenant on Civil and Political Rights recognizes the right of men and women to marry and found a family. Mandatory premarital testing as a precondition for marriage, or forced abortions or sterilization of women living with HIV would violate these (and other) rights. 25

6. Right to privacy.

This right, as set out in article 17 of the International Covenant on Civil and Political Rights, encompasses obligations to respect physical privacy (for example, the obligation to seek informed consent to HIV testing) and the need to respect the confidentiality of personal information (for example, information relating to a person’s HIV status). 26

23 Ibid at 7
24 Ibid at 7
25 Ibid at 8
26 Ibid at 8
7. **Right to education.**

This right, set out in article 13 of the International Covenant on Economic, Social and Cultural Rights, guarantees that those living with HIV are not discriminatorily denied access to education on the basis of their HIV status. By virtue of the then Commission on Human Rights resolution 2003/19 of 22 April 2003, the right to education also encompasses the obligation of States to promote understanding, respect, tolerance and non-discrimination in relation to people living with HIV. Furthermore, it provides that individuals have the right to receive HIV-related education.\(^{27}\)

8. **Freedom of expression and information.**

Article 19 of the International Covenant on Civil and Political Rights provides for the right to seek, receive and impart information related to HIV prevention, treatment, care and support. States are obliged to ensure that appropriate and effective information on methods to prevent HIV transmission is developed and disseminated without obstacles to access.\(^{28}\)

9. **Freedom of assembly and association.**

The right of peaceful assembly and association, provided by article 22 of the International Covenant on Civil and Political Rights, has frequently been denied to civil society organizations working in human rights and HIV-related matters. Civil society organizations should enjoy the rights and freedoms recognized in human rights instruments and the protection of national law. Also, HIV-positive individuals should be protected against discrimination based on their HIV status in their admission to trade unions and other organizations.\(^{29}\)

10. **Right to work.**

This right, enshrined in articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, entails the right of every person to access employment without any precondition except the necessary occupational conditions. This right is violated when an applicant or employee is required to undergo mandatory testing for HIV and is dismissed or refused employment on the grounds of a positive result. The right to work further guarantees the right to safe and healthy working conditions. Where a possibility of HIV transmission exists, e.g., in the health sector, States should take measures to minimize these risks, for instance through training and implementation of “universal precaution” procedures against all infections, including HIV.\(^{30}\)
11. The right to enjoy the benefits of scientific progress and its applications.

This right, set forth in article 15 of the International Covenant on Economic, Social and Cultural Rights, is important in relation to HIV in view of the advances made in diagnosis and treatment, as well as in the development of a vaccine and new prevention tools such as microbicides. This right also obliges the State to ensure that treatment and participation in clinical trials are made equally available to women and children, as well as to marginalized and vulnerable populations.\footnote{Ibid at 9}

12. The right to freedom of movement.

This right, found in article 12 of the International Covenant on Civil and Political Rights encompasses the right of everyone to freely choose his or her place of residence, as well as the rights of nationals to enter and leave their own country. As there is no public health rationale for restricting the liberty of movement or the choice of residence for people living with HIV, such restrictions would be discriminatory.\footnote{Ibid at 9}

13. Right to an adequate standard of living and social security.

The enjoyment of this right, found in articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights, is essential to reducing the impact of AIDS on people living with HIV, families impoverished by AIDS and children orphaned or otherwise made vulnerable by HIV. States should ensure that people living with HIV are not discriminatorily denied an adequate standard of living and/or social security services; families, caregivers and children affected by HIV are protected from food insecurity and impoverishment by AIDS; and the property of women widowed by AIDS is not grabbed by family or the community, nor the inheritance of children taken.\footnote{Ibid at 9}

14. The right to participation in political and cultural life.

This right, found in article 25 of the International Covenant on Civil and Political Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, is essential for ensuring the participation of the most affected by HIV in the development, implementation and evaluation of HIV-related policies and programmes.\footnote{Ibid at 9}
15. The right to seek and enjoy asylum.

Everyone has the right to seek and enjoy asylum from persecution in other countries. Under the 1951 Convention relating to the Status of Refugees and under customary international law, States cannot return a refugee to a country where he or she faces persecution or torture. Thus, States may not return a refugee to persecution on the basis of his or her HIV status. Furthermore, they cannot undertake special measures, such as mandatory HIV testing, to exclude HIV-positive individuals from being considered for, or granted, asylum.35

16. The right to liberty and security of person.

This right, found in article 9 of the International Covenant on Civil and Political Rights, means that the right to liberty and security should not be arbitrarily interfered with merely on the basis of a person’s HIV status, e.g., placing an HIV-positive individual in quarantine or isolation. Also, compulsory HIV testing can constitute a deprivation of liberty and a violation of the right to security of person. Respect for the right to physical integrity requires that testing be voluntary and undertaken with the informed consent of the person.36

17. Freedom from cruel, inhuman or degrading treatment or punishment.

In relation to HIV, this right, found in article 7 of the International Covenant on Civil and Political Rights, provides for the State to ensure that prisoners have access to HIV-related information, education and means of protection, e.g., condoms, bleach and clean injection equipment as well as voluntary counselling and testing and treatment. This right also comprises the duty to combat prison rape and other kinds of sexual victimization in prison.37

ARE THESE RIGHTS ONLY FOR PERSONS LIVING WITH HIV OR VULNERABLE TO HIV?

No. Every human being is entitled to these rights. They are particularly important within the context of HIV because of the way in which discrimination and prejudice against persons living with HIV or vulnerable to HIV tend to overwhelmingly affect the enjoyment of these rights.

35Ibid at 10
36Ibid at 10
37Ibid at 10
C. LEGAL ISSUES WHICH RELATE TO HIV

WHAT ARE SOME EXAMPLES OF LEGAL ISSUES THAT MAY BE RELATED TO HIV?38

The United Nations has provided useful examples of legal issues that may be related to HIV. These include:

a. Discrimination based on HIV status, sexual orientation, gender, including transgender status, HIV-related disability, illicit drug use or sex work
b. Problems in accessing treatment, care and support services
c. Problems involving breaches of privacy and confidentiality
d. Violence against women, people living with HIV, men who have sex with men, transgender people, sex workers and other key populations
e. Domestic disputes where one party is living with HIV or is affected by HIV (e.g. child custody, maintenance and property division laws)
f. Guardianship and identifying caregivers for orphaned children
g. Forced sterilization or forced abortion
h. Criminal laws concerning HIV transmission
i. Criminal laws that affect sex workers, men who have sex with men, transgender people and people who use illicit drugs
j. Illegal police practices, including harassment, rape, violence, arbitrary arrest and extortion.
k. Sentencing and prisoners’ rights (including access to condoms, prevention education and HIV treatment)
l. Partner notification and contact tracing
m. Employment issues, including discrimination and sick leave entitlements
n. Land tenure rights, tenancy and housing.
o. Property and inheritance
p. Right to education and regulation of educational curricula
q. Public health laws and right to informed consent for testing and treatment
r. Censorship and media standards
s. Identification papers, birth and death registration, drug user registration
t. Drug patents and right to access affordable medicines

38Toolkit: Scaling up HIV-related Legal Services (UNAIDS.UNDP, IDLO 2009) pages 12 - 13
u. Children’s rights, for example to consent, confidentiality, care and treatment
v. Asylum, refugee status, migration laws and freedom to travel
w. Forced ‘treatment’ under substandard conditions
x. Rights of research subjects

D. TRAINING EXERCISE
A. GUIDE FOR TRAINERS
   • This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
   • Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants, supporting materials

B. PARTICIPANTS’ ACTIVITY
   There are two main activities for this module.

   ACTIVITY #1
   The aim of this activity is for the participants to see and read first-hand how an international consensus document makes the link between HIV and human rights.
   • Trainers should provide each group with copies of the excerpts (set out below) from 2011 Political Declaration on HIV and AIDS. Have each group read one or more of the paragraphs which specifically mention the link between HIV and human rights. There are 11 key paragraphs, 38, 39, 77, 78, 79, 80, 81, 82, 83, 84, and 85 which does this. These are set out below.
   • Thereafter ask group volunteers to explain in their own words, what the paragraph says or what the paragraph means to them.
Excerpts from the 2011 Political Declaration on HIV and AIDS

“We, Heads of State and Government and representatives of States and Governments assembled at the United Nations……

Paragraph 38

“38. Reaffirm the commitment to fulfil obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter, the Universal Declaration of Human Rights6 and other instruments relating to human rights and international law; and emphasize the importance of cultural, ethical and religious values, the vital role of the family and the community and, in particular, of people living with and affected by HIV, including their families, and the need to take into account the particularities of each country in sustaining national HIV and AIDS responses, reaching all people living with HIV, delivering HIV prevention, treatment, care and support and strengthening health systems, in particular primary health care;”

Paragraph 39

“39. Reaffirm that the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support, recognize that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recognize also the need, as appropriate, to strengthen national policies and legislation to address such stigma and discrimination;”

Paragraph 77

“77. Commit to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms, with particular attention to all people vulnerable to and affected by HIV;”
Paragraph 78

“78. Commit to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV and to consider their review in accordance with relevant national review frameworks and time frames;”

Paragraph 79

“79. Encourage Member States to consider identifying and reviewing any remaining HIV-related restrictions on entry, stay and residence in order to eliminate them;”

Paragraph 80

“80. Commit to national HIV and AIDS strategies that promote and protect human rights, including programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including by sensitizing the police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support;”

Paragraph 81

“81. Commit to ensuring that national responses to HIV and AIDS meet the specific needs of women and girls, including those living with and affected by HIV, across their lifespan, by strengthening legal, policy, administrative and other measures for the promotion and protection of women’s full enjoyment of all human rights and the reduction of their vulnerability to HIV through the elimination of all forms of discrimination, as well as all types of sexual exploitation of women, girls and boys, including for commercial reasons, and all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls;”
Paragraph 82
“82. Commit to strengthen national social and child protection systems and care and support programmes for children, in particular for the girl child, and adolescents affected by and vulnerable to HIV, as well as their families and caregivers, including through the provision of equal opportunities to support the development to their full potential of orphans and other children affected by and living with HIV, especially through equal access to education, the creation of safe and non-discriminatory learning environments, supportive legal systems and protections, including civil registration systems, and the provision of comprehensive information and support to children and their families and caregivers, especially age-appropriate HIV information, to assist children living with HIV as they transition through adolescence, consistent with their evolving capacities;”

Paragraph 83
“83. Commit to promoting laws and policies that ensure the full realization of all human rights and fundamental freedoms for young people, particularly those living with HIV and those at higher risk of HIV infection, so as to eliminate the stigma and discrimination they face;”

Paragraph 84
“84. Commit to address, according to national legislation, the vulnerabilities to HIV experienced by migrant and mobile populations and support their access to HIV prevention, treatment, care and support;”

Paragraph 85
“85. Commit to mitigate the impact of the epidemic on workers, their families, their dependants, workplaces and economies, including by taking into account all relevant conventions of the International Labour Organization, as well as the guidance provided by the relevant International Labour Organization recommendations, including the Recommendation on HIV and AIDS and the World of Work, 2010 (No. 200), and call upon employers, trade and labour unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support;”
ACTIVITY #2

The task is for participants to refer to the list of rights under international human rights law which are especially relevant to HIV (as provided in this manual) and to the list of rights under the Constitution of Jamaica (also listed in the manual). If those listed under international human rights law are present in the Constitution of Jamaica, participants should indicate this in the space provided by writing out the right. The rights as expressed in the Constitution do not have to use the same words as that which is used under international human rights law. If it is similar, participants should make a note of it.

This task may first be completed as individual exercise. Candidates should be provided with a copy of the table below to complete the exercise. Thereafter, it may be completed as a group activity using the flip charts.

COMPARING RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW AND DOMESTIC LAW

<table>
<thead>
<tr>
<th>Rights Under International Law</th>
<th>Rights in the Constitution of Jamaica (Actual or Similar)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to the highest attainable standard of health</td>
<td></td>
</tr>
<tr>
<td>Right to non-discrimination and Equality before the law</td>
<td></td>
</tr>
<tr>
<td>Rights of women (including sexual and reproductive rights) - protection from discrimination on the basis of sex or gender etc, right to determine the number and spacing of children etc.</td>
<td></td>
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<tr>
<td>Human rights of children</td>
<td>The rights in the Constitution apply equally to adults and children. Are there any child specific rights in the Constitution? Can you list them here:</td>
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<td>(Note that many of the rights for adults also apply to children for example, the right to seek, receive and impart information, the right to health, etc.) Child specific rights include: the right to special protection and assistance if deprived of their family environment)</td>
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<td>Right to marry and found a family</td>
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<td>Right to privacy</td>
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<td>Right to education</td>
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<td>Freedom of expression and information</td>
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<td>Freedom of assembly and association</td>
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<td>Right to work</td>
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<td>Right to enjoy the benefits of scientific progress and its applications</td>
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<td>Right to freedom of movement</td>
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<td>Right to an adeqaute standard of living and social security</td>
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<td>The right to participation in political and cultural life</td>
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<td>The right to seek and enjoy asylum</td>
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<td>The right to liberty and security of person</td>
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<tr>
<td>Freedom from cruel, inhuman or degrading treatment or punishment</td>
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MODULE 5 - ACCESS TO HEALTH CARE SERVICES

OBJECTIVE AND INTENDED OUTCOMES

This module aims to increase participants' awareness of how access to health care services relate to human rights. On completion of this module, participants should be able to:

1. Provide examples of what the right to health entail
2. List the four main features that should characterise health systems in order for States to fulfil their legal obligations on the right to health
3. List instances in health care settings which may violate human rights
4. Provide examples of issues regarding health care and health services that are particularly relevant to persons living with HIV in Jamaica and to those vulnerable to HIV.

BRIEF CONTENT OF MODULE

A. Exploring the Right to Health
   a. Is there a human right to health?
   b. What does the right to health entail?
   c. What obligations do States have regarding the right to health?

B. Issues Relevant for Persons living with HIV/Vulnerable to HIV
   a. Discrimination
   b. Informed Consent
   c. Confidentiality
   d. Mandatory HIV Testing
   e. Health Insurance

C. Case Study: Diau v Botswana Building Society

D. Training Exercise
GLEANING EXISTING KNOWLEDGE:

Trainers should start this module by asking participants a few questions (suggested below). The purpose of asking these questions is to get some idea of the knowledge they have about the health and its relationship to law and human rights.

Suggested questions:

1. What do you think of when you hear the words ‘health’, ‘health care’?
2. What words come to mind when you think about health care services in Jamaica?
3. Do you think health and health care services are important for persons living with HIV or for persons who are vulnerable to HIV?
A. EXPLORING THE RIGHT TO HEALTH

IS THERE A HUMAN RIGHT TO HEALTH?

Yes. There is a right to health. This right is provided for under international human rights law. Particular human rights treaties such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights recognize the right to health. The right to health which is most referred to is the right in article 12 International Covenant on Economic, Social and Cultural Rights. Article 12 says that everyone has a right to the enjoyment of the highest attainable standard of physical and mental health.

WHAT DOES THE RIGHT TO HEALTH ENTAIL?

The Committee on Economic Cultural and Social Rights has provided very useful guidance about what the right to health entails. The right to health is about certain freedoms and entitlements. The freedoms include:

• the right to control one’s health and body, including sexual and reproductive freedom; and
• the right to be free from interference, such as medical treatment and experimentation to which you have not consented.

The entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. In summary, the right to health is best understood as a right to enjoy certain facilities, goods, services and conditions which are necessary for you to realize the highest attainable standard of health. Sexual and reproductive health is an important part of the right to health. This was made clear by the same committee in its General Comment No. 22.

WHAT OBLIGATIONS DO STATES HAVE REGARDING THE RIGHT TO HEALTH?

States have a legal obligation to ensure that its citizens can enjoy the right to health. There are certain measures that the States should take to ensure this. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights explain that the right to health is an important right which is indispensable to other rights. It is closely related to and also
dependent on other human rights, such as the right to housing, the right to food, the right to non-discrimination, the right to equality, the right to privacy and the right to access information.

States have a legal obligation to ensure that their health systems have four main have certain features and standards. These are: (1) availability; (2) accessibility; (3) acceptability; and (4) quality. The extent to which each of these features and standards will depend on the socio-economic and legal conditions which are present in that country.

1. **Availability**
   This requires that functioning public health and health-care facilities, goods and services, and programmes should be available in sufficient quantity. There should also be adequate trained medical professionals and medicines.

2. **Accessibility**
   Accessibility means that health facilities, goods and services have to be accessible to everyone without discrimination. For there to be accessibility, four important dimensions must be present. There must be non-discrimination in access (everyone should be able to access), physical accessibility (the facilities and services etc. should not be too far or remote; there should not be physical barriers which would for example prevent some persons who are disabled from accessing the building of hospitals or clinics etc.), economic accessibility (affordability), and information accessibility (meaning that person should be able to seek, receive and impart information regarding health issues)

3. **Acceptability**
   Acceptability means that all health facilities, goods and services must be respectful of medical ethics and culturally appropriate. They must also be designed to respect confidentiality and improve people’s health status.

4. **Quality**
   The health facilities, goods and services must also be scientifically and medically appropriate and of good quality.
B. RELEVANT ISSUES FOR PERSONS LIVING WITH OR VULNERABLE TO HIV

WHAT ISSUES ARE RELEVANT FOR PERSONS IN JAMAICA WHO ARE HIV POSITIVE OR WHO ARE VULNERABLE TO HIV?

Discrimination

Although discrimination in access to and provision of health care is prohibited under international human rights law and also under our national law, persons with HIV and persons who are vulnerable to HIV experience discrimination. The discrimination experienced may be because of a person's HIV status, the kind of work they are engaged in, the fact that they appear to be poor, because they are or are suspected to be gay, lesbian or transgender or for other reasons.

Although the Constitution of Jamaica does not provide for a 'right to health', it has a provision which states that everyone has the right to equitable and humane treatment by any public authority in the exercise of any function. This means that health care providers who act on behalf of the State have a legal responsibility not to treat persons with HIV and persons vulnerable to HIV in a discriminatory or unfair or unjust manner.

Informed Consent

Informed consent means that when agreeing to any medical testing, treatment or procedure that you should be sufficiently informed of what you are consenting to, you should be informed in a language and manner that you can understand the purpose, risk, and benefits of whatever medical testing, treatment or procedure that you are asked to do. Along with informed consent, you should not be pressured by anyone to make the decision and you must have the capacity to give consent. Having the capacity to give consent means that you are of sound mind and you understand what it is that you are doing and you are able to use the information provided to you, to come to a decision. Informed consent is tied to the constitutional right to personal liberty.

Confidentiality

In accessing health care services, all persons have the right to confidentiality. This is protected through the right to privacy. As you may recall, the right to privacy is a right which is protected both under international human rights law and also under section 13 (3) (j) of the Constitution of Jamaica. The right to privacy within the health care setting means...
that the health care providers must seek your informed consent to HIV testing for example. It also means that your health information should be kept confidential; it should only be available to you and the health care professionals who are involved with your care. The media or your employer for example, should not be able to contact the hospital and get your health information.

**Mandatory HIV Testing**

Mandatory HIV Testing as a condition for employment is prohibited. Although there is no law in Jamaica which explicitly prohibits this, there is a national HIV policy in which the government has communicated its support of the ten key principles of the ILO Code of Practice on HIV/AIDS and the world of work. Principle # 6 in particular states that “HIV/AIDS screening should not be required of job applicants or persons in employment.” The National HIV Policy and the ILO Code of Practice on HIV/AIDS are not legally binding; they do not have the force of law. The ILO Code of Practice on HIV/AIDS is meant as a guide to “policy-makers, employers’ and workers’ organizations and other social partners for formulating and implementing appropriate workplace policy, prevention and care programmes, and for establishing strategies to address workers in the informal sector.”

Jamaica’s National HIV Policy makes it clear that any HIV testing that one does should be voluntary, there should be informed consent and it should be performed only by persons who are suitable and qualified to conduct the testing. The testing itself and the results of the testing should be kept confidential.

**Health Insurance**

A person should not be required to take an HIV test in order to be eligible for health insurance. While there is no law in Jamaica prohibiting this, there is a policy in place, which indicates that companies should not require HIV testing before agreeing to provide coverage for a given workplace. Also, the policy indicates that insurance companies should not require HIV testing before agreeing to provide coverage for a given workplace. Employers should not facilitate any testing for insurance purposes and all information that they already have should remain confidential. While the policy does not have the force of law and is only meant as a guide, it is nonetheless quite important in helping to protect the rights of persons living with HIV and those vulnerable to HIV.

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40 Jamaica National HIV Policy: Factsheet on HIV screening for employment and work purposes
C. CASE STUDY: DIAU v BOTSWANA BUILDING SOCIETY

Diau was offered a position as a security assistant in February 2002 on a probationary basis. Her employer, Botswana Building Society informed her that the offer was conditional on her passing a medical examination. In August 2002, the employer informed her that she was also required to provide certified documentation of her HIV status. On 7 October 2002, Diau informed her employer that she was not willing to undergo an HIV test. On 19 October 2002, the applicant received a letter from her employer stating that her employment was terminated.

QUESTIONS FOR DISCUSSION

Trainers should facilitate a discussion among participants by asking the following questions:

1. Based on what we have discussed so far, do you think the employer has a right to ask Diau to take an HIV test?
2. Should Diau have done the HIV test, especially since she was on probation?
3. Why was Diau’s employment terminated?
4. Do you think Diau can successfully challenge the employer’s decision in Court?

Thereafter trainers should resume the presentation by sharing what happened when Diau brought the matter to court.

The Court’s Decision

Diau brought the matter to court. The employer argued that the complainant was still on probation at the time of her dismissal and that it was therefore entitled to dismiss her without having to provide a valid reason. The Court found, however, that the probationary period had expired before the written request was made for certification of the applicant’s HIV status. In the circumstances, the Court found that the applicant had been terminated due to her refusal to undergo an HIV test. Given the Court’s conclusion that the applicant had completed her probationary period at the time of the dismissal, the Court considered the legality of requiring an employee to undergo post-employment mandatory HIV testing.

The Court ruled in favour of Diau. The Court concluded that terminating her employment solely because she refused to undergo an HIV test was unlawful and inconsistent with human dignity. The Court emphasized that the ultimate decision to undergo an HIV test belonged to Diau, not to her employer or to a medical doctor and that requiring mandatory HIV
testing constituted inhuman and degrading treatment amounting to an assault on her right to liberty and dignity under the Constitution.

The Court also made it clear that requiring Diau to take the HIV test was irrational as it was not related to the inherent requirements of the applicant’s job as a security assistant. The Court therefore ordered that the applicant be reinstated to her position. Diau was also awarded compensatory damages in the amount of four month’s salary for wrongful termination.\footnote{Diau v Botswana Building Society, Industrial Court, Gaborone, Industrial Court No. 50 of 2003 - http://www.ilo.org/aids/legislation/WCMS_241367/lang--en/index.htm}
D. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants.

B. PARTICIPANTS’ ACTIVITY

ROLE PLAY: A role play of the events taking place in the Diau case can provide a good learning experience for participants.

- Have participants volunteer to play different characters. Encourage participants to be creative in the settings or scenes that they choose. For example, they can include a scene from work, a scene from Diau’s home, a scene from the court as well as others. However, participants should not change key facts in the story. For example, the fact that Diau employer offered her the job, the fact that she started working, the fact that her employer asked her to take an HIV test are all facts which cannot be changed.

- At the end of the role play, ask participants to answer the following questions:
  1. Please identify the rights which the Court said were violated by Diau’s employer?
  2. Please explain why the Court said those rights were violated?
  3. If you had to tell someone one thing about this case or one lesson from this case. What would that be?
MODULE 6 - SECURING EQUALITY IN PUBLIC AND PRIVATE LIFE

OBJECTIVE AND INTENDED OUTCOMES

This module focuses on the ways in which participant can actively take steps to protect their rights to equality in their everyday interactions. It also introduces participants to legal and policy provisions which are aimed at securing equality.

Upon completing this module, participants should be able to:

1. Explain the importance of having a workplace policy on HIV/AIDS
2. Provide examples of the guidelines set out in the ILO Code of Practice on HIV/AIDS and the World of Work
3. List the ways in which some countries restrict entry to persons living with HIV or persons vulnerable to HIV
4. Be better informed of how they can use the law to protect themselves in matters concerned with property, business and health care decisions.

BRIEF CONTENT OF MODULE

A. HIV and the Workplace
   a. Key Principles from the ILO Code of Practice on HIV/AIDS and the World of Work
   b. Discussion Questions

B. Visiting Other Countries
   a. Restrictions on Entry
   b. Discussion Questions
   c. Case Study: Tomlinson v State of Belize, Tomlinson v State of Trinidad and Tobago
   d. Discussion Questions

C. Property, Business and Health Care Decisions: Rights, Responsibilities and Options
   a. Scenarios for Role Play on issues concerned with rental of property, purchasing property, responsibility for business decisions, responsibility for health care decisions
   b. Using the Law to Protect: Rights and Options
GLEANING EXISTING KNOWLEDGE:

Trainers should start this module by asking participants a few questions as suggested below. The purpose of asking these questions is to have participants think aspects of everyday life such as work, housing etc. and make the link with law and also with human rights.

Suggested questions:

1. Do employers have any rules to abide by when it comes to how they treat workers with HIV?
2. Do you know if persons living with HIV are restricted from entering certain countries?
3. Can a landlord evict a tenant because the landlord discovers or suspects that the tenant is living with HIV?
4. If a person is very ill and believes that very soon he will not be able to make decisions for himself because of his illness, do you think he could decide beforehand who should make business and health care decisions on his behalf?
A. HIV AND THE WORKPLACE

The International Labour Organization has provided guidelines on HIV/AIDS and the world of work. These guidelines set out in the ILO Code of Practice on HIV/AIDS and the World of Work are not legally binding; they do not have the force of law. However, they are very important as they provide some direction on how employers can deal with the issue of HIV and AIDS in the workplace. Where these guidelines are followed, they can help to better protect the rights of persons living with HIV and AIDS and those vulnerable to HIV. The guidelines address HIV/AIDS in the workplace by setting guidelines and recommendations on:

a. prevention of HIV/AIDS;

b. management and mitigation of the impact of HIV/AIDS on the world of work;

c. care and support of workers infected and affected by HIV/AIDS; and

d. elimination of stigma and discrimination on the basis of real or perceived HIV status.

It covers key principles, such as the recognition of HIV/AIDS as a workplace issue, non-discrimination in employment, gender equality, screening and confidentiality, social dialogue, prevention, and care and support. These guidelines and principles have guided Jamaica’s National Workplace Policy on HIV and AIDS and are included in it.

There are ten key principles, summarised as follows:

1. **Recognition of HIV/AIDS as a workplace issue**

   HIV/AIDS is a workplace issue, and should be treated like any other serious illness/condition in the workplace. HIV/AIDS affects the workforce and the workforce as part of the local community, has a role to play in helping to limit its spread and its effects.

2. **Non-discrimination**

   In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.
3. **Gender equality**

   The gender dimensions of HIV/AIDS should be recognized. Women are more likely to become infected and are more often adversely affected by the HIV/AIDS epidemic than men due to biological, socio-cultural and economic reasons. The greater the gender discrimination in societies and the lower the position of women, the more negatively they are affected by HIV. Therefore, more equal gender relations and the empowerment of women are vital to successfully prevent the spread of HIV infection and enable women to cope with HIV/AIDS.

4. **Healthy work environment**

   The work environment should be healthy and safe, so far as is practicable, in order to prevent transmission of HIV. A healthy work environment facilitates optimal physical and mental health in relation to work and adaptation of work to the capabilities of workers in light of their state of physical and mental health.

5. **Social dialogue**

   The successful implementation of an HIV/AIDS policy and programme requires cooperation and trust between employers, workers and their representatives and government, where appropriate, with the active involvement of workers infected and affected by HIV/AIDS.

6. **Screening for purposes of exclusion from employment or work processes**

   HIV/AIDS screening should not be required of job applicants or persons in employment.

7. **Confidentiality**

   Job applicants or workers should not be asked to disclose HIV-related personal information. Co-workers should also not be asked to reveal such information about fellow workers. Access to personal data relating to a worker’s HIV status should be kept confidential.

8. **Continuation of employment relationship**

   Persons infected with HIV should not be terminated from their employment because of their HIV status. They should be able to continue working for as long as medically fit to work.
9. Prevention

HIV infection is preventable. Prevention of transmission can be facilitated through appropriate strategies, through changes in behaviour, knowledge, treatment and the creation of a non-discriminatory environment.

10. Care and support

Solidarity, care and support should guide the response to HIV/AIDS in the world of work. All workers, including workers with HIV, are entitled to affordable health services. There should be no discrimination against them and their dependants in access to and receipt of benefits from statutory social security programmes and occupational schemes.

B. VISITING OTHER COUNTRIES

ARE THERE ANY RESTRICTIONS ON ENTRY TO OTHER COUNTRIES BASED ON ONE’S HIV STATUS OR OTHER STATUS?

It is important to know if the country one intends to visit places any restrictions on entry for persons living with HIV. Most countries have no restrictions on entry for persons living with HIV, however others have varying levels of restrictions. Data from the UNAIDS indicate that:

- 5 countries that have complete ban on the entry and stay of people living with HIV
- 4 countries that have requirements that a person must be able to show that they are HIV negative to be allowed to stay for even short periods
- 17 countries that deport individuals once a positive HIV status is discovered
- 35 countries that impose some sort of restriction on the entry, stay and residence of persons living with HIV based on their HIV status
- 14 countries which have recently lifted travel restrictions for persons living with HIV. This list includes the United States of America
- 142 countries that have no HIV-specific restriction on entry, stay or residence

Within the Caribbean, the immigration laws do not expressly restrict entry of persons who are living with HIV or AIDS. Several countries across the Caribbean including Belize, Dominica, Guyana, Trinidad and Tobago have within its immigration

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42 For country listing please see UNAIDS Data at http://www.unaids.org/en/resources/infographics/20120514_travel accessed on 29 October 2016
laws, a class of persons referred to as ‘prohibited immigrants’ or ‘undesirables’. These persons include any: ‘prostitute,’ those living off the earnings of prostitution, ‘homosexual,’ those living off the earnings of any ‘homosexual,’ and those who have a communicable, contagious or infectious disease. The class of persons vary depending on country.

**CASE STUDY: MAURICE TOMLINSON V STATE OF BELIZE, MAURICE TOMLINSON V STATE OF TRINIDAD AND TOBAGO**

Belize and Trinidad and Tobago each have immigration laws, which classify ‘homosexuals’ as a class of person, which are prohibited from entering the country. Mr. Tomlinson challenged these laws in the Caribbean Court of Justice on the basis that they violate his right to freedom of movement as a CARICOM National. Mr. Tomlinson applied to the Caribbean Court of Justice because the court has the jurisdiction to hear matters concerned with the interpretation and application of a regional treaty called the Revised Treaty of Chaguaramas. This treaty established the Caribbean Community, which is usually referred to as CARICOM. CARICOM is concerned with regional cooperation and integration so as to improve people’s standard of living and strengthen the region’s economic competitiveness.

Under the Revised Treaty of Chaguaramas, CARICOM Member States have an obligation to allow free movement of CARICOM nationals in their territories. The Court reiterated that there is a binding obligation on all Member States to allow all CARICOM nationals hassle free entry and an automatic stay of six months unless they ‘present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’. The Court highlighted that homosexuals as such do not present such a threat and made it clear that homosexual CARICOM nationals have a right to freedom of movement on the same terms as any other CARICOM national. As regards Mr. Tomlinson’s specific challenge of the immigration laws, the Court agreed with Belize and Trinidad Tobago that as a matter of practice, the restriction was not applied to CARICOM Nationals who were homosexuals and so Mr. Tomlinson was not at risk of being denied entry.

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43Belize Immigration Act, Chapter 156, section 5 (e); Dominica Immigration and Passport Act, Chapter 18:01 section 5(e); Guyana Immigration Act Chapter 14:02 section 3 (c); Trinidad and Tobago Immigration Act Chapter 18:01 section 8 (1) (e)
44Belize Immigration Act, Chapter 156, section 5 (e); Dominica Immigration and Passport Act, Chapter 18:01 section 5(e); Guyana Immigration Act Chapter 14:02 section 3 (d); Trinidad and Tobago Immigration Act Chapter 18:01 section 8 (1) (e)
45Belize Immigration Act, Chapter 156, section 5 (e); Trinidad and Tobago Immigration Act Chapter 18:01 section 8 (1) (e)
46Trinidad and Tobago Immigration Act Chapter 18:01 section 8 (1) (e)
47Belize Immigration Act, Chapter 156, section 5 (c); Guyana Immigration Act Chapter 18:01 section 3 (b)
48Dominica Immigration and Passport Act, Chapter 18:01 section 5(c); Trinidad and Tobago Immigration Act Chapter 18:01 section 8 (1) (b)
49[2016] CCJ 1 (OJ)
C. PROPERTY, BUSINESS AND HEALTH CARE DECISIONS: Rights, Responsibilities and Options

Consider the following scenarios:

1. **JOHN THE TENANT**
   
   John, a 30 year old barber rents a one bedroom house from David. John is a transgender person. He has not publicly transitioned and prefers to be identified as John. The rental agreement requires that John pays $15,000 per month to occupy the house. It also states that David can terminate the rental agreement if John does not pay rent on time. John pays the rent on time and has been doing so for the last two years. One day, David came to the house to collect the rent and knocked on the front door. He knocked for about a minute but there was no answer. He could hear music coming from inside so he thought that John was home and was probably not hearing the knocking due to the loud music. He turned the knob, opened the door and went inside. There he saw John wearing a dress. David told John that if he wanted to live he should leave the house by midnight and that he could keep the rent money.

2. **DAISY THE SEX WORKER AND PROPERTY BUYER**
   
   Daisy is a 40 year old sex worker. Five years ago she met and fell in love with Joe. They have been living together ever since. Joe tells Daisy that he is saving some money to buy a piece of land for both of them and that Daisy should start saving as well for this purpose. Daisy gives some of her earnings to Joe to save for this purpose. She keeps a diary making a note of the money that she makes and that she gives to Joe to save. Daisy and Joe locate a piece of land that they can now afford and together they have all the money to pay for it. When the documents for purchase of the land arrive for signing, Daisy realizes that her name is not on the document. Joe explains to her that because she is a sex worker, he did not think she would want her name to be on the documents because the document and the land title will have to state the type of work that the buyer does.

3. **MARY THE BUSINESS WOMAN LIVING WITH HIV**
   
   Mary operates a small business. She is living with HIV. Due to a personal emergency, she will have to leave the country for at least 6 months. She is convinced that the emergency requires her undivided attention. During this time she would like her adult children to be able to make certain decisions regarding her business. However she does not want to give the business to them.
HOW CAN THE LAW HELP TO PROTECT JOHN, DAISY AND MARY?

1. JOHN

As a tenant John is legally entitled to remain at the property. Even if John was late in making his rent payment, the law of Jamaica is such that David cannot evict him unless he has obtained an order from the Court. Under the Rent Restriction Act, all tenants of residential premises in Jamaica are protected from eviction. They can only be evicted with the authority of the Court or if the Landlord received some exemption such that the premises are not governed by the Rent Restriction Act.

2. DAISY

Daisy’s occupation as a sex worker does not prevent her name from being on the land title as one of the owners of the property. There is no law which prohibits Daisy from being the legally recognized as the purchaser or owner of land. Daisy should insist that her name be on the signing documents as well as the land title. Whenever anyone is purchasing property, they should always ensure that their names are on all the land documents so that their legal rights are protected. Although Daisy could later go to the court and ask the Court to declare that she also co-owns the land, this process can be costly and can take a very long time to resolve.

3. MARY

The Power of Attorney is one legal tool that Mary can use to allow her children to make certain decisions on her behalf. A Power of Attorney, gives legal authorization for someone to act on another person’s behalf. The Power of Attorney allows Mary to give her children the legal authorization to make certain decisions on her behalf. This can include the signing of relevant documents, the selling or buying of property, the hiring or new employees, obtaining insurance for vehicles etc. Ideally, a lawyer should draft the Power of Attorney.
D. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. PARTICIPANTS’ ACTIVITY

**HIV and the Workplace**

Suggested Discussion Questions:

1. Look back at the ILO principles, which ones do you think are particularly important to you as an individual?
2. Do you think workplaces in Jamaica are aware of these guidelines?
3. How can you know if a workplace has or uses these guidelines?
4. What may discourage a worker from asking his employer whether the workplace uses these guidelines?
5. What suggestions would you make to that worker who wants to find out if his place of employment has or uses these guidelines?

**Visiting other Countries**

Suggested Discussion Questions:

1. Do you think that laws which restrict entry based on one’s occupation, sexual orientation or HIV status are discriminatory?
2. What did the Caribbean Court of Justice say about the free movement of CARICOM nationals who are ‘homosexuals’? Are they also entitled to hassle free entry and an automatic stay of six months in the territories of CARICOM Member States?
3. Do you agree with the decision of the Caribbean Court of Justice in *Maurice Tomlinson v State of Belize*, *Maurice Tomlinson v State of Trinidad and Tobago*? Give reasons for your answer.
Property, Business Decisions

ROLE PLAY: Role play of the scenarios involving John, Daisy and Mary may help bring to life, how the law can protect and assist citizens in their everyday situations and with major life decisions.

1. Have participants volunteer to play different characters. Encourage participants to be creative in the settings or scenes that they choose. However, participants should not change key facts in the scenarios.

2. Participants should then answer the following questions:
   - What human rights issues if any arise in the scenarios? Key answers will include: Discrimination, violation of privacy
   - Are all the scenarios primarily concerned with human rights? No. Some may touch upon human rights and others may not. It is important however that persons with HIV and those vulnerable with HIV also know about other laws which can help protect them in their everyday interactions and in their business and property decisions.

3. Thereafter, the trainer should provide participants with information on how the law can help to protect, John, Daisy and Mary.
MODULE 7 - INTERACTIONS WITH LAW ENFORCEMENT OFFICIALS

OBJECTIVE AND INTENDED OUTCOMES

This module introduces participants to the laws which govern individuals’ interactions with law enforcement officials.

Upon completing this module, participants should:
1. Be aware of police officers’ powers of search, arrest and detention
2. Be able to list and explain some of the rights which are particularly relevant when a person is searched, arrested or detained by a law enforcement official
3. Be able to provide examples of actions by law enforcement officials that would amount to a violation of human rights

BRIEF CONTENT OF MODULE

A. Police Powers of Arrest, Search and Detention
B. Rights upon Arrest and Detention under Domestic Law
C. Availability of Legal Aid Services
D. Standards and Rights Under International Law
   a. Police Conduct
   b. Treatment while Detained
E. Case Study: The Arrest, Detention and Death of Mario Deane
F. Training Exercise
A. POLICE POWERS OF ARREST, SEARCH AND DETENTION

There are laws governing the basis on which a person can be searched and arrested. There are also laws governing how one is to treated if they are detained by law enforcement officials. These are provided for in the Constitution of Jamaica and laws such as the Constabulary Force Act.

POWER OF SEARCH

Without a warrant the police is legally authorized to:

1. search any vehicle and its occupants, where the police suspects or has reasonable suspicion that a vehicle is carrying stolen goods, good which are unlawfully obtained or dangerous drugs
2. search your premises while in pursuit of a felon or when the police have reason to believe that an offence is being committed on your premises, or is about to be committed
3. search any vehicle where the police has reasonable suspicion that firearms and/or ammunition is being unlawfully conveyed therein\(^50\)
4. search any person or vehicle suspected to be carrying stolen agricultural goods, livestock or fish\(^51\), and any person in possession of an article of agricultural produce which the police officer reasonably suspects was stolen or unlawfully obtained\(^52\)
5. Under the Customs Act, to examine any carriage or container where an officer has reasonable suspicion that the carriage contains prohibited or uncustomed goods\(^53\)
6. search any vehicle and its occupants where the police has reasonable cause to suspect that the driver or passengers are in possession of an offensive weapon or if the vehicle is conveying same\(^54\)

POWER OF ARREST

The police can make arrests with and without a warrant. They can make an arrest without a warrant under the following circumstances:

\(^50\) Firearms Act, section 42
\(^51\) Praedial Larceny (Prevention) Act, section 11(3)
\(^52\) Unlawful Possession of Property act sections 6, 7
\(^53\) Customs Act, section 204
\(^54\) Offensive Weapons (Prohibition) Act, section 5
1. If a person is found committing an offence or the police have reasonable grounds to suspect that a person has or is about to commit a felony
2. If a person is found committing any offence punishable upon indictment or summary conviction
3. Where they know or suspect that a person is in unlawful possession of certain dangerous drugs such as opium, morphine, cocaine or where a person has committed or attempted to commit an offence under the Dangerous Drugs Act
4. Where in pursuant of a search, it appears that an offence of carrying an offensive weapon in a public place has been committed
5. Where persons have committed certain minor offences in their view or in the view of some other credible person
6. Where a person is loitering between 7PM and 6AM and the police has good case to suspect that this person has committed or is about to commit an felony
7. Where a person is a drunk, loose or disorderly person who is disturbing the public peace or who loiter at certain times and are unable to give a satisfactory account of himself

B. KNOWING YOUR RIGHTS UNDER DOMESTIC LAW: Rights upon Arrest and Detention

RIGHTS UPON ARREST OR DETENTION

All persons in Jamaica have the right not to be arbitrarily arrested and deprived of their liberty. This is provided for in section 14 of the Constitution of Jamaica. If you are arrested or detained, you have certain rights, which are expressly set out in section 14 (2) of the Constitution:

1. You have the right to communicate with and be visited by your spouse, partner or family member, religious counsellor and a medical practitioner of his choice
2. You have the right to be informed of the reasons for your arrest or detention, as soon as is reasonable practicable. The information should to you in a language which you understand

55 Constabulary Force Act, section 15
56 Constabulary Force Act, section 18
57 Dangerous Drugs Act, section 23
58 Offensive Weapons (Prohibition) Act, section 5
59 Towns and Communities Act, section 4
60 Offences Against the Person Act, section 80
61 Towns and Communities Act, section 7
3. If you are charged with an offence, you should be informed of the nature of the change in a language which you understand.

4. You have the right to communicate with and retain an attorney-at-law. Legal aid services are available.

5. You are entitled to bail and should be brought before the Court within a reasonable time.

6. You should be treated humanely and with respect for the inherent dignity of the person.

**USEFUL TIPS**

- If you are being searched by the police, do not resist.
- Remain calm and ask the police officer to inform you of the reason for the search.
- If the police officer refuses to provide an answer, remain calm.
- If you are being arrested or taken into custody by the police, do not resist.
- If you are asked any questions which you do not wish to answer, inform the police officer that you prefer to answer questions in the presence of a lawyer.
- Upon arrest inform the police officer that you would like to have the services of a Duty Counsel or if you have a personal lawyer, your lawyer.
C. AVAILABILITY OF LEGAL AID SERVICES

Jamaica has a legal aid scheme whereby attorneys-at-law referred to as ‘Duty Counsel’ provide free legal assistance to persons who have been taken into police custody. Under the Legal Aid Act, legal assistance is available to any person who is detained at the police station or in a lock up or correctional institution. A person who is receiving assistance from the Duty Counsel does not have to pay the Duty Counsel for services rendered up to the first court date. Once you are in custody and need assistance regarding facing an identification parade, being questioned by the police, or making an application for bail, the Duty Counsel can assist. The police should inform you that you can ask for a Duty Counsel. If they do not inform you, you may still let the police know whether you would like the assistance of a Duty Counsel. Each police station has a list of the names of lawyers who are willing to act as Duty Counsel and there is no specific application form that you have to complete to get the assistance of the Duty Counsel.

Legal aid services are also available when the matter is brought before the courts. However at this stage, one has to make an application for legal aid and persons may be asked to contribute to the cost of the legal services. A determination is made as to whether the person has inadequate means to get the services of a private attorney and whether and how much the person will be able to contribute to the cost of the legal aid provided by the State. Once the matter is before the court, legal aid is not available for certain offences such as those concerned with money laundering, drug offences and offences which are not punishable by imprisonment.62

D. STANDARDS AND RIGHTS UNDER INTERNATIONAL LAW

POLICE CONDUCT

We have examined the powers of the police under our local laws and the rights to which persons have under the Constitution. Do you think that there are any standards at the international level, which deals with police conduct? YES there are!

At the international level, there are treaties, declarations, principles and guidelines, which speak to the treatment of persons, deprived of liberty and which speak to the conduct of the police. One of the most important source for our

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62 Legal Aid Act; http://moj.gov.jm/sites/default/files/brochures/Legal%20Aid%20at%20The%20Court.pdf
purposes is the Code of Conduct for Law Enforcement Officials. This Code was adopted in December 1979 by the United Nations General Assembly. The overarching principle of this Code is the duty on law enforcement officials, especially those who have powers of arrest and detention, is to treat those deprived of their liberty with respect and dignity; to respect their human rights. This Code of Conduct is applicable to law enforcement officials in Jamaica. In summary, the Code of Conduct for Law Enforcement Officials requires that law enforcement officials:

1. Fulfil their duty with the high degree of responsibility required by their professions
2. In the performance of their duty, respect and protect human dignity and maintain and uphold the human rights of all persons.
3. Only use force when strictly necessary and to the extent required for the performance of their duty
4. Keep confidential, all matters of a confidential matter unless otherwise required in the performance of their duty or in the needs of justice
5. In all circumstances, refrain from inflicting, instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment
6. Ensure the full protection of the health of persons in their custody and take immediate action to secure medical attention whenever required
7. Should not commit any act of corruption
8. Should respect the law and this Code, should prevent and oppose any violations of them and where there is a reason to believe that a violation has occurred, the law enforcement official should report the violation to superior authorities

TREATMENT WHILE BEING DETAINED

Persons who are detained by or in the custody of law enforcement officials are vulnerable to violation of their human rights. They have limited access to the outside world and rely on these officials to respect their human rights. Although there are local and international laws and standards which prohibit cruel, inhumane and degrading treatment, there are instances when persons deprived of their liberty are subjected to such punishment. Human rights organs such as the Inter-American Commission on Human Rights have examined some of these violations and the UN Office of the High Commissioner for Human Rights has highlighted some extreme cases of torture, inhuman and degrading treatment while being detained by law enforcement officials. The examples are set out below.

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63 Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979
The Atenco Case: This concerns the sexual assault of women in police custody in Mexico. The Inter-American Commission on Human Rights recently filed an application with the Inter-American Court on Human Rights in respect of the sexual assault and arbitrary detention of eleven women in Mexico. In its consideration of the matter, the Inter-American Commission on Human Rights established that the detention of eleven women were illegal and arbitrary. The women were subjected to severe acts of physical, sexual and psychological violence. In light of the failure of the state of Mexico to comply with the Commission's recommendations for providing redress to the victims, punish the perpetrators and to make systemic changes to ensure that such violations were not repeated, the Commission referred the matter to the Inter-American Court on Human Rights.64

The Michael Gayle Case: Michael Gayle died after being beaten by the police in Jamaica. The Inter-American Commission on Human Rights found that the state violated Mr. Gayle's, right to life, right not to be subjected to torture and other inhumane treatment, rights to personal liberty, rights to a fair trial and to judicial protection under the American Convention on Human Rights.

Examples of some of the most extreme manifestation of inhuman and degrading treatment and torture while being detained (as highlighted in the UN Office of the High Commissioner for Human Rights’ Manual for Judges, Prosecutors and Lawyers)65 include instances where detainees were ‘beaten with fists, sticks and boots; subjected to reduction in diet and denied access to sanitary facilities, water and food; subjected to the combined use of five interrogation techniques consisting of wall standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink; also included is police interrogation lasting for 40 hours during which the person detained was subjected to physical violence.

It is important to know that a violation of the right to protection from inhuman, degrading or inhumane treatment does not have to take the form of the examples highlighted.

E. CASE STUDY: THE ARREST, DETENTION AND DEATH OF MARIO DEANE

On August 3, 2014, Mario Deane was arrested for possession of a ganja spliff and was being detained at the Barnett Street Police Station in Montego Bay, in the parish of Saint James. On August 4, 2014 he died from injuries he received while detained at the police station. The reports are that he suffered multiple brain injuries and was bruised all over his body.

It is also reported that upon being arrested, he contacted his family and informed them of his arrest and requested that his friend visit the police station to secure his bail. A friend got all the relevant paperwork together and visited the police station to secure his bail. Upon arrival, the friend saw and spoke with Mario but was told by a police officer to return at a later time to secure his bail. The friend returned earlier than was advised but was informed that Mario was taken to the hospital.

INDECOM launched an investigation into the matter and subsequently arrested and charged three police officers all of whom were attached to the Barnett Street Police Station. All three police officers were charged with manslaughter, attempting to pervert the course of justice, and misconduct in a public office. INDECOM’s investigation revealed that Mario was beaten by cellmates and succumbed to his injuries. The misconduct in public office charge was brought because the police:

1. Failed to complete the bail process for Mario
2. Failed to assess and monitor the risk of harm to Mario while he was in custody
3. Failed to preserve the conditions of the cell where Mario suffered his injuries

The charge on attempting to pervert the course of justice was brought because the police officer caused the cell where Mario was beaten to be cleaned prior to the arrival of the investigators from the Jamaica Constabulary Force or INDECOM. The case concerning prosecution for Mario Deane's death has not yet been concluded.

Subsequent to Mario Deane’s death, a cabinet sub-committee was convened to review the detention system. A new policy ‘Administration Policy for Persons Deprived of their Liberty’ was developed and presented to both Houses of Parliament.
Recommendations under this policy include:

1. Making bail mandatory in cases concerned with possession of (8) eight ounces or less of ganja
2. Pre-charge detention and monitoring: introducing a limit on the time that a person can be detained without charge and mandating that police officers to check on persons in custody who are being detained without charge.

F. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants, supporting materials

B. PARTICIPANTS' ACTIVITY

The aim of this activity is to bring together some of the information that participants have learnt thus far and apply it to a situation that most of them would have heard of. By considering the death of Mario Deane and making the link between law, justice, rights, and institutions, it is hoped that participants will better understand and remember the concepts explored.

It is recommended that this be an activity completed in groups consisting of 2 persons only. Participants will need to revisit topics covered in previous modules and should be given sufficient time to complete this activity. Thereafter, group discussions should be facilitated.

Suggested Questions:

1. Did Mario Deane have a right to bail?
2. Does Jamaica have any laws that govern how a person should be treated when they are arrested, detained or locked up by the police?
3. If your answer, is yes. Can you name the law or the source of law which gives us this information?
4. What authority does this law have? Should it be followed?

5. Are there any laws or standards at the international level that tells us how police should carry out their duties or how police should treat detained persons?

6. Who do you think should bear responsibility for Mario’s death?

7. Has the State violated any of Mario’s rights?

8. How has Mario Deane’s death influenced the way in which detained persons are treated? What policy changes if any, have been made or suggested?
MODULE 8 - ACCESS TO JUSTICE AND HUMAN RIGHTS OFFICIALS

OBJECTIVE AND INTENDED OUTCOMES

This module focuses on access to justice and human rights. It draws on the information provided in Module 3: Introduction to Human Rights and provides information on the mechanisms which are available to get redress when there is a breach of one's human rights. Upon completing this module, participants should be able to:

1. Identify the role of the Supreme Court in relation to human rights
2. List commissions of parliaments which help to protect human rights
3. Provide one example of how citizens can access justice at the international level if their governments violate their rights

BRIEF CONTENT OF MODULE

A. Access to Justice at the Domestic Level
   a. Supreme Court
   b. Commissions of Parliament

B. Access to Justice at the international level

C. Case Studies
   a. Case Study: Toonen v Australia (Heard by the Human Rights Committee)
   b. Case Study: Jorge Odir Miranda Cortez et al (Heard by the Inter-American Commission on Human Rights)

D. Training Exercise
A. ACCESS TO JUSTICE AT THE DOMESTIC LEVEL

SUPREME COURT

There are mechanisms in Jamaica that a person can use to get relief if their rights are being infringed. The most important mechanism for redress is that which is provided by the Supreme Court of Jamaica. Anyone who believes that his right is being violated or is likely to be violated may make an application to the Supreme Court. If the Supreme Court decides that a person’s right has been violated, it can provide redress which may include a declaration that rights were breached and compensation for the breach. It is also very important to know that as of 2011, civil society groups and Non-governmental organizations can also make an application on behalf of the person whose rights is being violated. Within the context of HIV, this is a very welcomed development.

COMMISSIONS OF PARLIAMENT

As regards investigations into human rights violations, persons can also contact the Public Defender, which has the power to investigate claims of human rights violations. If the matter concerns a person under 18 years of age, one can also contact the Children’s Advocate.

B. ACCESS TO JUSTICE AT THE INTERNATIONAL LEVEL

You will recall the discussion in Module 3 about the international human rights framework and the mechanisms and institutions which are used to promote and monitor human rights protection. The cases presented below demonstrate how citizens can use human rights mechanisms at the regional and international levels to obtain justice.
C. CASE STUDIES

CASE STUDY #1: TOONEN V AUSTRALIA\textsuperscript{66} - \textit{Heard by the Human Rights Committee monitoring the ICCPR}

Mr. Toonen challenged sections of the Tasmanian Criminal Code which criminalized various forms of sexual acts between men. Tasmania is a state of Australia. He claimed that the laws were discriminatory against him as a homosexual man and that they infringed his right to privacy. Australia acknowledged that the laws arbitrarily interfered with Mr. Toonen’s privacy but the Tasmanian authorities justified the law on the basis that it was to protect Tasmania against the spread of HIV/AIDS and that the laws are justified on public health and moral grounds. The Human Rights Committee expressed that the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV. The Australian Government was of the view that that statutes criminalizing homosexual activity tend to impede public health programmes “by driving underground many of the people at the risk of infection”. The Human Rights Committee stated that criminalization of homosexual activity would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention. It also stated that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus. The Human Rights Committee decided that the laws infringed Mr. Toonen’s right to privacy under the ICCPR and that the interference with his right to privacy did not meet the test of reasonableness. The appropriate way for this infringement to be remedied was for the laws to be repealed. The Human Rights Committee did not consider it necessary to decide whether his equality rights were infringed.

CASE STUDY #2: JORGE ODIR MIRANDA CORTEZ ET AL\textsuperscript{67}

COUNTRY: EL SALVADOR - \textit{Heard by the Inter-American Commission on Human Rights}

In this matter, Cortez and others all of whom were living with HIV, petitioned the Inter-American Commission on Human Rights. They claimed that El Salvador, which was a party to the American Convention on Human Rights had violated rights to which they were entitled under the American Convention on Human Rights, namely, the right to life (Article 4); humane treatment (Article 5); equal protection of the law (Article 24); judicial protection (Article 25); and economic, social, and cultural rights (Article 26). They claimed that the State failed to provide them with the triple therapy medication needed to prevent them from dying and to improve their quality of life. Their health situation was made worse by the negligence of

\textsuperscript{67} Report No. 27/09 Case 12.249, Merits (Publication), Jorge Odir Miranda Cortez et al, El Salvador, March 20, 2009
the State and this amounted to cruel, inhumane, and degrading treatment. They also claimed that Cortez and the others were discriminated against because of the HIV status. Cortez also alleged that the local courts had delayed in dealing with the claim he had in the Supreme Court and this delay their right to a fair trial and to judicial protection.

Upon hearing all the submissions and taking into account the efforts of the State in providing medical care, Cortez' claims alleging violating of the right to life, to humane treatment and to economic, social and cultural rights were not successful. Cortez was however successful in his claim for violation of his rights to judicial protection and to the equal protection of the law. The IACHR thought that the way in which Cortez's matter was handled by the Supreme Court did not meet the required conditions of simplicity and effectiveness.

D. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants, supporting materials

B. PARTICIPANTS' ACTIVITY

Participants should revisit the information in Module 3: Introduction to Human Rights.

Suggested Questions:

1. Please identify the convention or treaty which is monitored by the Human Rights Committee?
2. Why did Mr. Toonen submit his claim to the Human Rights Committee?
3. Can Jamaicans make a claim directly to the Human Rights Committee? Why / Why not? [Refer to discussion in Module 3 about Jamaica’s renunciation of the Optional Protocol to the ICCPR]
4. Has Jamaica ratified the American Convention on Human Rights?
5. Can Jamaicans make petitions to the Inter-American Commission on Human Rights? Why / Why not?
Part Two of this manual provides information that is specific for each group within the ISP. Part Two aims to:

- Build on the knowledge learned in Part One
- Provide relevant ISP-specific legal information
- Explicitly set out the laws which govern ISP-specific groups
- Reinforce the rights to which persons are entitled
MODULE 9 - SEX WORKERS AND THE LAW

OBJECTIVE AND INTENDED OUTCOMES
This module builds on the information in Part One of the Legal Literacy Manual. It introduces participants to the laws which govern sex work and explores the impact of these laws on the rights of persons engaging in sex work. On completion of this module, participants should:
1. Be aware of the laws governing sex work
2. Be aware of how these laws impact the rights of those engaging in sex work
3. Be aware of the standards which govern the police’s interaction with sex workers

BRIEF CONTENT OF MODULE
A. Laws governing sex work
B. Impact of Laws on sex workers
C. Standards guiding police’s interaction with sex workers
D. Know My Rights!
E. Training Exercise
A. LAWS GOVERNING SEX WORK

WHAT LAWS GOVERN SEX WORK IN JAMAICA?

There are laws in Jamaica which specifically govern sex work. The act of selling sex is not in itself illegal or criminalized. Sex work is criminalized by what is called ‘de facto’ criminalization. This is achieved by criminalizing several activities surrounding sex work. The laws which are govern sex work in Jamaica are set out in three pieces of legislation. These are the Sexual Offences Act, the Towns and Communities Act and the Offences Against the Person Act.

Under the Sexual Offences Act

Procuration: Under section 18, procuring a person to become a prostitute carries a maximum penalty of 10 years imprisonment and a possible fine

Under section 23 (a) knowingly living off the earnings of prostitution carries a maximum penalty 3 years imprisonment or a fine of $500,000 if convicted in the Resident Magistrate’s Court but imprisonment for 10 years if convicted in the Circuit Court

Under section 23 (b) soliciting for immoral purposes carries a maximum penalty 3 years imprisonment or a fine of $500,000 if convicted in the Resident Magistrate’s Court but imprisonment for 10 years if convicted in the Circuit Court

Under the Town and Communities Act

Loitering and Solicitation under section 3 (r): it is an offence for a person to loiter in any public place and solicit any person for the purpose of prostitution

Under section 7, Where a person is a drunk, loose or disorderly person who is disturbing the public peace or who loiter at certain times and are unable to give a satisfactory account of him or herself
B. IMPACT OF LAWS ON SEX WORKERS

HOW DO THESE LAWS IMPACT PERSONS ENGAGING IN SEX WORK?

These laws negatively impact the rights of sex workers. The Global Commission on HIV and the Law has expressed that laws that criminalize sex work make sex workers more vulnerable to HIV, and drive them away from HIV, harm reduction and health services. Local civil society groups have called on the Parliament of Jamaica to decriminalize sex work. In a submission to the Joint Select Committee of Parliament in 2014, they pointed out that whatever objectives existed at the time that the laws were made are now outweighed by their negative impacts. The current laws were said to heighten the risk that sex workers face and negatively impact on their rights to liberty, right to due process and the right to security of the person.

Of concern is the fact that offences such as solicitation has the effect of preventing sex workers from negotiating with their clients important issues such as safe sex and other terms of the transaction. The suppression of brothels prevents sex workers from working in an environment in which they are better able to put measures in place to protect their physical and sexual health. Additionally loitering and vagrancy laws authorize the police to arrest persons without a warrant. Given the nature of sex work and where this type of work tends to take place, sex workers are at an increased risk for arrest and also harassment by the police. The scope and meaning of these offences also tend to be uncertain. Also of note is that since the activities surrounding sex work are criminalized, sex workers who are subjected to violence by their clients and by the police may fear reporting the acts of violence to law enforcement officials. This is because of the fear and threat of prosecution for engaging in activities surrounding sex work.

Global Commission on HIV and the Law, HIV and the Law: Risks, Rights and Health, (Report 2012 and also Factsheet)
OTHER LEGAL ISSUES FOR CONSIDERATION

- A person under 16 years of age cannot in law give consent to sexual intercourse. Consequently selling sex or having sexual intercourse with a person under the age of sixteen years is an offence. The maximum penalty for this offence is life imprisonment.

- Engaging in anal intercourse or penile penetration per anum is known as the offence of buggery. Under the Offences against the Person Act, this offence carries a maximum penalty of ten years imprisonment at hard labour. An attempt to commit the offence carries a penalty of seven years imprisonment at hard labour.

- There is also the offence of gross indecency which carries a penalty of up to two years imprisonment. Gross indecency captures sexual acts between males which do not include penile-anal penetration.

- Trafficking in Persons: - Trafficking in persons is an offence. It is understood as where for the purpose of exploitation a person recruits, transports or facilitates transportation of another person within Jamaica, or from Jamaica to another country, or from another country to Jamaica. It also considered trafficking if one harbours or receives such person. For there to be an offence of trafficking in persons, the act must have been done via threats, force, forms of coercion, abduction or deception or through one’s abuse of power. It is an offence to engage in trafficking anyone for the purposes of engaging in sex work. The penalty for the offence of trafficking in persons is a fine or imprisonment of up to ten years or both such fine and imprisonment. Facilitating the offence by hiding or withholding travel documents of the victim also carry a maximum penalty of ten years imprisonment or a fine or to both such fine and imprisonment. Receiving any benefit from the offence of trafficking carries a similar penalty.

- Disclosure of HIV status to clients: - There is no law, which mandates disclosure of one’s HIV status to clients. However, a 2016 Jamaican case suggests that if one is aware that one has HIV and proceeds to engage in sexual intercourse with another person without disclosing one’s status and obtaining the consent of that person, then this could amount to an offence under Jamaican law. While the law in this area is not settled, it was suggested that such actions would amount to
the offence of grievous bodily harm under section 22 of the Offences against the Person Act.69

- Client’s failure to pay: Where the client of a sex worker refuses to pay for services, it will be challenge for the sex worker to rely on the law in insisting on payment since the activities surrounding sex work are illegal.

- Mandatory Testing: Although there is no law in Jamaica which explicitly prohibits this, there is a national HIV policy in which the government has communicated its support of the ten key principles of the ILO Code of Practice on HIV/AIDS and the world of work. Principle # 6 in particular states that “HIV/AIDS screening should not be required of job applicants or persons in employment.” The National HIV Policy and the ILO Code of Practice on HIV/AIDS are not legally binding; they do not have the force of law.70

C. STANDARDS GUIDING POLICE’S INTERACTION WITH SEX WORKERS

Police awareness and respect of the rights of sex workers can help to protect sex workers. The Global Commission on HIV and the Law points out that police education and empowerment of sex workers can lead to decreased risk of HIV infection among sex workers. The Commission indicates that in Kolkata, India, such interventions helped reduce HIV prevalence among sex workers from 11% in 2001 to less than 4% in 2004.

ARE THERE ANY FORMAL STANDARDS OR POLICY WHICH GUIDE THE POLICE’S INTERACTION WITH SEX WORKERS?

In August 2011, the Jamaica Constabulary Force (“JCF”) issued a Force Order which sets out the JCF’s Policy on Diversity.71

The JCF affirmed its belief that all persons in Jamaica ‘have a right to be treated with dignity and respect, irrespective of who they are or the particular grouping to which they belong.’ The Diversity Policy is meant to aid in fulfilling the mandate

69 George Flowers v Director of Public Prosecutions et al, Claim No. 2014 HCV 04232, Supreme Court of Jamaica decided on 30 June 2016 available at http://supremecourt.gov.jm/sites/default/files/judgments/Flowers,%20George%20v%20The%20Director%20of%20Public%20Prosecutions%20for%20and%20on%20behalf%20of%20the%20Government%20of%20Canada,%20The%20Commissioner%20of%20Correctional%20Services%20and%20the%20Attorney%20General%20of%20Jamaica_0.pdf


71 Force Orders No. 3351 Part I Sub. No. 1 dated 2011-08-25
of the Constitution’s Charter of Rights, section 13(3)(h) which requires fair and equitable treatment of everyone by public bodies. The Diversity Policy:

- Speaks to the imperative of fair treatment in its service delivery and that all reports from any individual or group be handled in a manner which reflects the highest level of professionalism and respect for human rights and dignity
- Affirms the acceptance of persons without prejudice and discrimination, irrespective of their religion, ethnicity, sexual orientation, class, colour, creed or political ideology and expressly recognizes that diverse communities are made up of groups of persons of various ethnicity, religion, sexual orientation, class, colour, political ideology, physical or mental challenges and any other feature that adds variety to mainstream society.

**CISOCA**

The JCF also has the Centre for the Investigation of Sexual Offences and Child Abuse (“CISOCA”). CISOCA is concerned with the helping victims to report instances of sexual offence and child abuse. They also concerned with investigation of sexual offences and rehabilitation of victims. They also arrange for victims of sexual violence to be medically examined and treated.
I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.

I have the right not to be arbitrarily arrested and deprived of my liberty.

If I am detained or arrested:

• I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of his choice

• I have the right to be informed within a timely manner of the reasons for your arrest or detention, as soon as is reasonable practicable.

• I have the right to be informed of the nature of any charge against me and in a language which I understand

• I have the right to communicate with and retain an attorney-at-law.

• I am entitled to request legal assistance from the Duty Counsel.

• I am entitled to bail and should be brought before the Court within a reasonable time

• I should be treated humanely and with respect for the inherent dignity of the person
E. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. PARTICIPANTS' ACTIVITY

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

QUESTIONS:

1. How is sex work defined? Who is a sex worker?
2. Is the act of selling sex criminalized in Jamaica? If no, then why is it said that the law criminalizes sex work in Jamaica?
3. Can you share some of the ways in which the law criminalizes sex work in Jamaica?
4. Should the activities surrounding sex work be decriminalized? Please give your opinion.
5. What are some of the human rights issues affecting sex workers?
6. Why is the JCF’s Diversity Policy important for sex workers?

Share your opinions.
MODULE 10 - PEOPLE WHO USE DRUGS

OBJECTIVE AND INTENDED OUTCOMES

This module builds on the information in Part One of the Legal Literacy Manual. It introduces participants to the laws which govern drug use in Jamaica and explores how these laws impact drug users. On completion of this module, participants should:

1. Be aware of the laws governing drug use
2. Be knowledgeable about the opportunities for treatment and rehabilitation

BRIEF CONTENT OF MODULE

A. Laws governing drug use
B. Drug Use and Multiple Forms of Disadvantage
C. Treatment and Rehabilitation
D. Other Relevant Laws
E. I Know My Rights!
F. Training Exercise
A. LAWS GOVERNING DRUG USE

WHAT ARE THE MAIN LAWS GOVERNING OR RELATED TO DRUG USE IN JAMAICA?

- The Dangerous Drugs Act
- The Drug Court (Treatment and Rehabilitation of Offenders Act) National Council on Drug Abuse Act
- The Criminal Records (Rehabilitation of Offenders) Act

THE DANGEROUS DRUGS ACT

The Dangerous Drugs Act is the primary law governing dangerous drugs in Jamaica. The Act does not provide a definition for ‘dangerous drugs’ but defines and has provisions governing cocaine, ganja, opium, morphine and also coca leaves. Some of the provisions relating to ganja have been changed in 2015 by virtue of the Dangerous Drugs (Amendment) Act. Changes have been made in relation to the possession and smoking of ganja, the use of ganja by persons of rastafarian faith, and the use of ganja for medical, therapeutic and scientific purposes. Some aspects of the law will not be operational until the regulations are put in place. Contrary to what many persons believe, the use, possession, selling or cultivation of ganja is not legal in Jamaica.

DECRIMINALIZATION OF GANJA

The 2015 amendment to the Dangerous Drugs Act decriminalized certain aspects relating to ganja. These are set out below:

Possession

Possession of 2 ounces or less of ganja is no longer an offence for which one can be arrested, charged and have to go to court, and it will not result in a criminal record. It becomes a ticketable offence. However, the police may issue a ticket to a person in possession of 2 ounces or less of ganja. This is similar to a traffic ticket and the person has 30 days to pay the sum of J$500 at any Tax Office.

If a person is in possession of over 2 ounces of ganja, that person can be arrested and if found guilty when tried can be imprisoned, fined or both. The conviction will also be recorded on the person’s criminal record.
Smoking

Smoking in a public place is prohibited but a person who smokes in public should not be arrested or detained for doing so. The law is that the police may issue a ticket to the person. The person will have 30 days to pay $500 at any Tax Office. Smoking ganja in privately occupied residences such as one's home is not an offence but the laws regarding possession of ganja still apply.

Failure to pay ticket

If one gets a ticket for possession or for smoking in public and does not pay it or pays it late, then the person has to attend the Petty Sessions Court. At this court, the person may be ordered to do community service or they may be fined $2,000. It is very important to know that if a person is convicted for failing to pay a ticket, the person will have a criminal record.

Growing ganja at home

Each household is allowed to legally grow no more than five ganja plants on their premises. If there is more than one household on any premises, each household may grow five ganja plants.

Impact of Changes

In 2015, the Minister of Justice explained that in eliminating the power of arrest and prosecution for small quantities of ganja for personal use, the 2015 amendment removed what has been ‘a longstanding source of friction and abuse between the security forces and young men in communities across Jamaica’.

USE, POSSESSION, TRAFFICKING, MANUFACTURING, SELLING OR DEALING OF CERTAIN DANGEROUS DRUGS

The Dangerous Drugs Act also sets out the penalties for offences in relation to drugs such as cocaine (including synthetic cocaine), medical opium, morphine. For offences concerned with these drugs, the penalty tends to be a fine or imprisonment up to 35 years or both if heard in the Circuit Court. On summary conviction in the Resident Magistrate’s Court, the penalty tends to be a fine in the amount of $500,000 or imprisonment of up to 5 years or both. For drug related offences for which the penalty is not expressly stated in the Dangerous Drugs Act, the penalty is deemed to be a maximum fine of $15,000 or to imprisonment for up to two years or to both such fine and imprisonment.

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73 Dangerous Drugs Act section 8A and 8B
74 Dangerous Drugs Act section 22 (5)
EXPUNGEMENT OF CONVICTIONS FOR MINOR OFFENCES

In 2014, the Criminal Records (Rehabilitation of Offenders) Act was also amended to allow for automatic expungement for minor offences involving the personal use of ganja.

B. MULTIPLE VULNERABILITIES OF PERSONS WHO USE DRUGS

Persons who use drugs are subjected to multiple vulnerabilities. You may recall the section on multiple and overlapping discrimination in Module 3: Introduction to Human Rights. In that section, it was explained that the way in which persons and different groups experience violation of their rights is influenced by how their different social identities and characteristics interact. Characteristics such as age, income level, sexual orientation, occupation for example, influence how a person or a group experiences the violation of a right. It also influences the impact that the violation has. Of importance is the fact that persons who use drugs may experience multiple forms of disadvantage because they may be homeless, they may be engaged in sex work, and they may not conform to the dominant social norms regarding sexual orientation and gender identity. The findings on drug use and HIV in the Caribbean region indicate that there is a link between use of crack cocaine, unsafe sexual practices and increased risk for sexually transmitted infections including HIV. The Caribbean Vulnerable Communities Coalition has also pointed to research showing a high rate of HIV status/prevalence among homeless substance abusers in the parish of Kingston. A link has also been made between young gay or bisexual men who become homeless and resort to sex work. There is also indication that some drug users support their habit by engaging in petty theft. Homeless drug users are also at risk for violence.75

C. TREATMENT AND REHABILITATION

THE DRUG COURT

Some persons who use drugs are able to enter into a rehabilitation programme to get treatment for drug dependency. This is because of a law called the the provisions of The Drug Court (Treatment and Rehabilitation of Offenders) Act. This law aims to reduce drug use and dependence, reduce level of criminal activity resulting from drug abuse and help persons

75 PAHO 2011; CVC 2013 Showcase on outreach programme for homeless drug users accessed online at http://www.cvccoalition.org/sites/default/files/CCSS_NCDA.pdf
to abide by the law. If a person successfully completes the programme, the conviction for the offence does not form part of the person’s criminal record provided that the person was not convicted for certain offences on more than two occasions. This programme is only available for certain offences under the Dangerous Drugs Act and where the person appears to be dependent on the use of drugs. These offences are are:

a. Possession of not more than -  
   i. one ounce of prepared opium;  
   ii. eight ounces of ganja;  
   iii. one-tenth of an ounce of cocaine, heroin or morphine, as  

b. Possession of any pipes or other utensils for use in connection with the smoking of opium or ganja, or for preparation of opium for smoking;  

c. Smoking or using ganja or prepared opium  

d. Frequenting any place used for the purpose of smoking opium.

The programme was piloted in the parishes of Kington and Saint James but has since been extended to some other parishes. The Drug Court is set up in the Corporate Area Criminal Resident Magistrates Court and the Saint James Resident Magistrates Court. The Resident Magistrates declares a sitting of the Resident Magistrate's Court to be a Drug Court. The Drug Court constitutes of one Resident Magistrate and two Justices of the Peace.

This Drug Court programme is said to be provide a “second chance” and helping to restore the lives of those affected.76

**NATIONAL COUNCIL ON DRUG ABUSE**

Also of importance is the National Council on Drug Abuse is the main agency responsible for research on and monitoring the use of drugs in Jamaica. The Council looks closely at the harmful effects of drug use which may pose a social problem. This Council was established by the National Council on Drug Abuse Act.

The Council is responsible for educating the general public about the dangers of drug use and making recommendations regarding research on drug abuse, prevention programmes. It also helps in securing the provision for proper facilities and services for the treatment, rehabilitation and after-care of persons who use drugs.

D. OTHER RELEVANT LAWS

Laws dealing with vagrancy, loitering and petty theft are also relevant to persons using drugs. The guidelines provided in Part One regarding rights upon arrest and detention are especially relevant to persons using drugs.

Without a warrant the police is legally authorized to:

a. Search any vehicle and its occupants, where the police suspects or has reasonable suspicion that a vehicle is carrying stolen goods, good which are unlawfully obtained or dangerous drugs
b. Search your premises while in pursuit of a felon or when the police have reason to believe that an offence is being committed on your premises, or is about to be committed
c. Search any vehicle where the police has reasonable suspicion that firearms and/or ammunition is being unlawfully conveyed therein\(^{77}\)
d. Search any person or vehicle suspected to be carrying stolen agricultural goods, livestock or fish\(^{78}\), and any person in possession of an article of agricultural produce which the police officer reasonably suspects was stolen or unlawfully obtained\(^{79}\)
e. Under the Customs Act, to examine any carriage or container where an officer has reasonable suspicion that the carriage contains prohibited or uncustomed goods\(^{80}\)
f. Search any vehicle and its occupants where the police has reasonable cause to suspect that the driver or passengers are in possession of an offensive weapon or if the vehicle is conveying same\(^{81}\)

The police can make arrests with and without a warrant. They can make an arrest without a warrant under the following circumstances:

a. If a person is found committing an offence or the police have reasonable grounds to suspect that a person has or is about to commit a felony
b. If a person is found committing any offence punishable upon indictment or summary conviction\(^{82}\)

\(^{77}\) Firearms Act, section 42
\(^{78}\) Praedial Larceny (Prevention) Act, section 11(3)
\(^{79}\) Unlawful Possession of Property act sections 6, 7
\(^{80}\) Customs Act, section 204
\(^{81}\) Offensive Weapons (Prohibition) Act, section 5
\(^{82}\) Constabulary Force Act, section 15
c. Where they know or suspect that a person is in unlawful possession of certain dangerous drugs such as opium, morphine, cocaine\(^{83}\) or where a person has committed or attempted to commit an offence under the Dangerous Drugs Act\(^{84}\)

d. Where in pursuant of a search, it appears that an offence of carrying an offensive weapon in a public place has been committed\(^{85}\)

e. Where persons have committed certain minor offences in their view or in the view of some other credible person\(^{86}\)

f. Where a person is loitering between 7PM and 6AM and the police has good case to suspect that this person has committed or is about to commit an felony\(^{87}\)

g. Where a person is a drunk, loose or disorderly person who is disturbing the public peace or who loiter at certain times and are unable to give a satisfactory account of himself\(^{88}\)

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\(^{83}\)Constabulary Force Act, section 18

\(^{84}\)Dangerous Drugs Act, section 23

\(^{85}\)Offensive Weapons (Prohibition) Act, section 5

\(^{86}\)Towns and Communities Act, section 4

\(^{87}\)Offences Against the Person Act, section 80

\(^{88}\)Towns and Communities Act, section 7
I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.

I have the right not to be arbitrarily arrested and deprived of my liberty.

If I am detained or arrested:

• I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of his choice

• I have the right to be informed within a timely manner of the reasons for your arrest or detention, as soon as is reasonable practicable.

• I have the right to be informed of the nature of any charge against me and in a language which I understand

• I have the right to communicate with and retain an attorney-at-law.

• I am entitled to request legal assistance from the Duty Counsel.

• I am entitled to bail and should be brought before the Court within a reasonable time

• I should be treated humanely and with respect for the inherent dignity of the person
F. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. PARTICIPANTS’ ACTIVITY

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

Suggested Questions

1. Calls have been made for the State to decriminalize small quantities of drugs, including cocaine, for personal use. Do you think this is a good idea? Why/Why not?
2. If a 20-year-old woman is caught with a ganja spliff, should she be arrested for being in possession of the ganja spliff?
3. What is the purpose of rehabilitative programs for drug users?
4. How can rehabilitative programs for drug users help to reduce their vulnerability to HIV?
MODULE 11 - MARGINALIZED YOUTH

OBJECTIVE AND INTENDED OUTCOMES

This module builds on the information in Part One of the Legal Literacy Manual. It introduces participants to the laws which govern drug use in Jamaica and explores how these laws impact drug users. On completion of this module, participants should:

1. Be able to identify some of the laws which govern marginalized youth
2. Be knowledgeable about the state’s obligation to youth in state care

BRIEF CONTENT OF MODULE

A. Marginalized Youth and Multiple Vulnerabilities
B. Laws governing marginalized youth
C. Protection of Youth in State Care
   a. The Armadale Case
   b. Standards governing the treatment of children in state care
D. I Know My Rights!
E. Training Exercise
A. MARGINALIZED YOUTH AND MULTIPLE VULNERABILITIES

Marginalized youth may be defined as young people between the ages of 10 to 25 who are members of populations such as: persons living with HIV; persons who identify as lesbian, gay, bisexual or transgender; people who use drugs; migrant populations, persons living or working on the street; persons being held in detention by the state or in the care of the state. Of key importance to marginalized youth is access to education (including sexual and reproductive health education); access to health care services and information; access to housing; protection from sexual violence and abuse and opportunities to participate in decisions and policies affecting them.

Marginalized youth are subjected to multiple vulnerabilities. You may recall the section on multiple and overlapping discrimination in Module 3: Introduction to Human Rights. In that section, it was explained that the way in which persons and different groups experience violation of their rights is influenced by how their different social identities and characteristics interact. Characteristics such as age, income level, sexual orientation, occupation for example, influence how a person or a groups experience the violation of a right.

B. LAWS GOVERNING MARGINALIZED YOUTH

Marginalized youth are governed by a wide range of laws. Due to the various types of youth which may be categorized as marginalized, the local laws which are applicable to them may include:

- Laws protecting from sexual violence: The Sexual Offences Act
- Laws criminalizing consensual anal intercourse between adults: Offences against the Person Act
- Laws governing vagrancy, loitering and petty theft
- Laws governing drug use such as The Dangerous Drugs Act
- Laws governing sex work, such as the Town and Communities Act
- Laws dealing with child care and protection, such as: the Child Care and Protection Act which places a legal responsibility on persons in positions of authority to children, to report actual or suspected instances of child abuse and neglect; and the Child Pornography (Prevention Act) which protects children from use in and exploitation as regards pornography
At the international level, there are treaties, principles and minimum standards such as the Convention on the Rights of the Child and its Optional Protocols that govern the treatment of persons under the age of 18 years. The rights, standards and principles in all human rights treaties also apply to marginalized youth.

C. PROTECTION OF YOUTH IN STATE CARE

Youth in state care consists of those who are in need of care and protection and those who are in conflict with the law. Institutions such as the Child Development Agency, the Office of the Children’s Registry and the Office of the Children’s Advocate are especially important as they each have a mandate which centers on protecting the rights of persons under the age of 18 years. The Child Development Agency provides support to children who are in need of care and protection, investigates reports of abuse against children and provides legal and policy advice to the government on matters concerned with children. The Children’s Registry primarily receive reports of children who have or who are likely to be abandoned, abused or otherwise in need of care and protection. While the Office of the Children’s Advocate’s role is to enforce and protect the rights of children.39

THE ARMADALE CASE

In 2009, seven girls who were wards of the state being housed at the Armadale Juvenile Correctional Centre in Alexandria (‘Armadale’) died when the facility became engulfed in fire. The circumstances surrounding their death brought to national attention the treatment of children in state care. Civil society groups also brought this to the attention of several human rights bodies.

A Commission of Enquiry was convened. It was led by retired President of the Court of Appeal of Jamaica, Mr. Justice Paul Harrison. The report of this enquiry found among others, that there was negligence on the part of the State and dereliction of duty. Several recommendations were made for the treatment of youth in state care and the management of juvenile facilities. Subsequent to receiving the Commission’s findings, the then Prime Minister of Jamaica outlined a range of measures to address the issues concerned with the treatment of children in state care.39

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Observation of the Inter-American Commission of Human Rights

In its 2012 Report on the Situation of Human Rights in Jamaica, the Inter-American Commission of Human Rights stated that the Armadale tragedy underlined the desperate need for further and more decisive State action to address the grave structural deficiencies of the juvenile detention system. It specifically called on Jamaica to ‘address the lack of attention to the psychological health of children in detention, the failure to provide a proper education to detained children, the failure to treat HIV-positive children, and the lack of separation between the juvenile detention system and the child protection system’ The Commission made several recommendations on initiatives to be taken by the State to better protect children.91.

Observations of the Human Rights Committee

The UN Human Rights Committee monitors state compliance with the International Covenant on Civil and Political Rights. In its 2011 review of Jamaica’s compliance, the Committee made it clear that Jamaica should take all necessary measures, including by seeking international support, in order to fully implement all the recommendations of the 2003 Keating Report.92 This report entitled ‘A review of Children’s Homes and Places of Safety’, made 46 recommendations to be implemented by the Government of Jamaica.93 The Committee also expressed concern that although the State party accepted liability for the negligence of public officials that caused the fire at the Armadale Juvenile Correctional Centre, the state has not yet provided compensation to the families of the victims and called on the state to promptly provide compensation.

Office of the Children’s Advocate

In 2016 the Office of the Children’s Advocate was successful in its claim against the Government of Jamaica for breach of the constitutional rights of the girls who were affected by the fire. The Office of the Children’s Advocate won compensation for the estate of the girls who died and also on behalf of other girls who were injured.94

92Concluding Observations, ICCPR Human Rights Committee 2011 at para 25
STANDARDS GOVERNING THE TREATMENT OF CHILDREN IN STATE CARE

There are rules that govern the treatment of children in state care and there are specific rights that such children have when they are in state care. These rights are in addition to the rights, which they have under the Constitution of Jamaica.

Under the Child Care and Protection Act, children in state care have the right:

- To be fed, clothed and nurtured according to prescribed minimum standards and to be given the same quality of care as other children in the placement
- To be consulted and, according to the child’s abilities, to express his views about significant decisions affecting that child
- To reasonable privacy and to possession of the child’s personal belongings
- To be free from corporal punishment
- To be informed of the standard of behaviour expected by the caregivers and of the consequences of not meeting that standard
- To receive medical and dental care (including psychological care) when required
- To participate in social and recreational activities appropriate to the child’s abilities and interests
- To receive the religious instruction, and, as far as may be reasonably practicable, to participate in the religious activities, of the child’s choice
- To be provided with an interpreter if language or disability is a barrier to consulting with the child on decisions affecting the child’s custody or care;
- To privacy during discussions with a family member or a legal representative
- To be informed about and to be assisted if the child so wishes, in contacting the Children’s Advocate
- To be informed of the child’s rights under this Act and the procedures available for enforcing those rights.95

At the international level there are relevant rules and standards regarding the treatment of children in state care and the treatment of children deprived of their liberty.
I am entitled to all the rights, which are set out in the Constitution of Jamaica.

As a minor, I am also entitled to all the rights and means of protection, which are set out in the Child Care and Protection Act

- I have the right to be consulted about decisions which affect me
- I have the right to privacy
- I have the right to protection from all forms of violence
- I have the right to receive legal assistance from the Office of the Children’s Advocate
E. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. Participants' Activity

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

Suggested Questions:

1. Who are considered to be marginalized youth?
2. List some of the laws, which relevant to marginalized youth.
3. Are there specific rules in Jamaica, which govern the treatment of children in state care? Discuss by providing examples.
4. Why are these rules are important?
MODULE 12 - MEN WHO HAVE SEX WITH MEN

OBJECTIVE AND INTENDED OUTCOMES

This module builds on the information in Part One of the Legal Literacy Manual. It introduces participants to the laws governing men who have sex with men, and explores how these laws impact the human rights of men who have sex with men. On completion of this module, participants should:

1. Be knowledgeable about the laws which govern men who have sex with men
2. Be able to explain how these laws impact the human rights of men who have sex with men
3. Be aware of how these laws are viewed by international human rights bodies
4. Be comfortable in providing their own recommendations for improving the human rights situation of men who have sex with men

BRIEF CONTENT OF MODULE

A. Laws governing men who have sex with men
B. Legal Challenge to the Offences against the Person Act
C. Position of International human rights bodies
D. I Know My Rights!
E. Training Exercise
A. LAWS GOVERNING MEN WHO HAVE SEX WITH MEN

WHAT LAWS SPECIFICALLY APPLY TO MEN WHO HAVE SEX WITH MEN?

1. Offences Against the Person Act
2. Laws governing vagrancy and loitering, and sex work
3. Laws protecting against violence

The Offences against the Person Act

The Offences against the Person Act criminalizes buggery. This is generally understood to mean anal intercourse or penile penetration per anum. The offence carries a maximum penalty of ten years imprisonment at hard labour. An attempt to commit the offence carries a penalty of seven years imprisonment at hard labour.

There is also the offence of gross indecency which carries a penalty of up to two years imprisonment. Gross indecency captures sexual acts between males which do not include penile-anal penetration.

Laws governing Vagrancy and loitering

The content of these laws which authorise the police to arrest without a warrant was explored in the Module 7: Interactions with Law Enforcement Officials. These laws are specifically important to men who have sex with men because of the wide discretion which the police has in arresting men who have sex with men, especially those who are homeless, who engage in sex work or who fall in the category of marginalized youth. Also of relevance are the laws governing sex work wherein there are offences such as solicitation, procuration and loitering. The wide discretion of the police to arrest without warrant for vagrancy and loitering offences make men who have sex with men in particular those who are homeless, those who use drugs or those who engage in sex work vulnerable to detention. Within this context, they may be subjected to violence and deprived of their due process rights. The vagrancy and loitering offences are set out in the Towns and Communities Act and the Offences against the Offences Act and include:

a. Where persons have committed certain minor offences in their view or in the view of some other credible person
b. Where a person is loitering between 7pm and 6am and the police has good case to suspect that this person has committed or is about to commit an felony

96 Towns and Communities Act, section 4
97 Offences Against the Person Act, section 80
c. Where a person is a drunk, loose or disorderly person who is disturbing the public peace or who loiter at certain times and are unable to give a satisfactory account of himself\textsuperscript{98}. Where a person loiters in any public place and solicit any person for the purpose of prostitution\textsuperscript{99}

**Laws protecting against violence**

As regards protection from violence within the home, men who have sex with men are protected by the usual criminal laws governing assault, wounding, threats of violence etc. It is to be noted however that as regards the law that specifically govern domestic violence i.e. The Domestic Violence Act allows for persons who are being abused or threatened in a domestic setting to obtain a protection and occupation orders. If a male person is being abused by his male sexual partner, he cannot apply for protection as a spouse. It is only if he is a member of the household in which the perpetrator resides, that he can apply for protection ‘a member of the household’.

As regards, violence and threats of violence in the public setting, the usual criminal laws as set out in the Offences against the Person Act governing assault, wounding and threats would apply. The JCF now has a Diversity Policy which affirms the acceptance of all persons irrespective of characteristics such as sexual orientation and which affirms the legal obligation on the police force to equally protect all persons and to treat them in a fair and equitable manner. The Diversity Policy is meant to aid in fulfilling the mandate of the Constitution’s Charter of Rights, section 13(3)(h) which requires fair and equitable treatment of everyone by public bodies.

**B. LEGAL CHALLENGE TO THE OFFENCES AGAINST THE PERSON ACT**

The Offences against the Person Act has been challenged in Jamaica’s local courts and also at the international level. At present there is a matter before the Supreme Court in which Maurice Tomlinson, who identifies as homosexual is alleging that the criminalization of buggery between consenting individuals over age 16 violates certain rights under the Constitution.\textsuperscript{100} The rights which he identified are:

- Right to liberty and security of the person
• Right to freedom of expression
• Right to equality before the law
• Right to freedom from discrimination on the ground of being male or female in respect of the offence of gross indecency
• the right to respect for and protection of private and family life, and of privacy of the home, guaranteed by section
• the right to protection from torture, or inhuman or degrading punishment or other treatment

It is recognized that such laws violate international human rights law. In the neighbouring Caribbean country of Belize, the Supreme Court recently found that a similar law violated Mr Caleb Orozco’s constitutional rights. Mr. Tomlinson’s case however has a unique obstacle. By virtue of 13 (12) of the Constitution of Jamaica, the Courts are prevented from declaring that certain laws governing sexual offences are inconsistent with the Constitution. The law being challenged by Mr. Tomlinson is one such law. This Maurice Tomlinson case is still before the courts. It is important to know that.

C. VIEWS OF INTERNATIONAL HUMAN RIGHTS BODIES

At the international level, the discriminatory nature and dehumanizing effect of the criminalization of sexual acts and intimacy between consenting adults has been firmly established. Treaty monitoring bodies in their explanation of the rights under treaties such as the International Covenant on Civil and Political Rights and the Inter-American Commission on Human Rights in respect of the American Convention on Human Rights have determined that the scope of protection under these treaties are such that they protect against discrimination on the basis of sexual orientation.

The Human Rights Committee which is the treaty monitoring body for the International Covenant on Civil And Political Rights expressed that provisions under the Offences against the Person Act which criminalises consensual same-sex relationships promotes discrimination against homosexuals and advised Jamaica to “decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality”

It is advised that the laws be amended with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity.  

Central to this finding by the Committee is the provision of article 26 of the ICCPR which provides that:

In 2011, the Human Rights Committee also took note of reported ‘stigmatisation against people with HIV/AIDS, which conflates HIV/AIDS with homosexuality. The Committee expressed concern that this stigmatisation, which is partly fuelled by the laws that criminalize consensual same-sex relationships, hampers access to treatment and medical care by persons living with HIV/AIDS, including homosexuals. The Human Rights Committee advised Jamaica to take concrete measures to raise awareness of HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, including homosexuals, have equal access to medical care and treatment.

The Inter-American Commission on Human Rights has also considered the treatment of persons in the LGBTI community in Jamaica. In 2012, the Inter-American Commission on Human Rights produced a report on Jamaica after conducting a country visit in 2008. The 2012 report highlighted how the fear of violence from the police inhibits the ability of members of the gay community to make reports to the police where they are subjected to violence or discrimination. The IACHR also highlighted how the exclusion of LGBT persons from the protection of the justice system made it more likely for such persons to remain in abusive relationships without seeking police protection. In its thematic report on violence against LGBT persons in the Americas, the IACHR indicated that criminalization of same-sex consensual intimacy negatively impact the rights to life, personal integrity, personal liberty, privacy, and access to health and other services.

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102 Human Rights Committee, Concluding Observations for Jamaica 2011 – para 8 - 9
103 Human Rights Committee, Concluding Observations for Jamaica 2011 – para 8 - 9
105 IACHR Violence Against LGBTI Persons in the Americas, 2015
✓ I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.

✓ I have the right not to be arbitrarily arrested and deprived of my liberty.

✓ If I am detained or arrested:
  
  • I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of his choice
  
  • I have the right to be informed within a timely manner of the reasons for your arrest or detention, as soon as is reasonable practicable.
  
  • I have the right to be informed of the nature of any charge against me and in a language which I understand
  
  • I have the right to communicate with and retain an attorney-at-law.
  
  • I am entitled to request legal assistance from the Duty Counsel.
  
  • I am entitled to bail and should be brought before the Court within a reasonable time
  
  • I should be treated humanely and with respect for the inherent dignity of the person
E. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants.

B. Participants' ACTIVITY

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

Suggested Questions:

1. List and discuss some of the laws, which specifically apply to men who have sex with men.
2. It has been recommended that Jamaica should repeal all of the laws which criminalize same sex intimacy between consenting adults. Do you agree with this recommendation?
3. If the laws were repealed, what impact do you think it will have on the LGBT community?
4. What impact do you think repeal of these laws will have on the prevalence of transmission of HIV?
MODULE 13 - TRANS PERSONS

OBJECTIVE AND INTENDED OUTCOMES

This module builds on the information in Part One of the Legal Literacy Manual. It provides information on the treatment of trans persons under the law and the way in which international human rights bodies have accordingly respond. On completion of this module, participants should:

1. Be able to explain some of the key human rights issues affecting trans persons
2. Be knowledgeable about laws which are of particular relevance to them
3. Be aware of the relevant views expressed by international human rights bodies

BRIEF CONTENT OF MODULE

A. Key legal issues affecting Trans persons in Jamaica
B. Laws governing Trans persons
C. Position of International human rights bodies
D. Training Exercise
A. KEY LEGAL ISSUES AFFECTING TRANS PERSONS IN JAMAICA

SOME KEY LEGAL ISSUES AFFECTING TRANS PERSONS IN JAMAICA

The gender identity of person who identify as transgender is not recognized under the laws of Jamaica. Consequently, a person born male who now identifies as female is not legally able to change her gender marker on her birth certificate or other identifying documents such as her passport.

Policies and national plans governing gender, violence, and health do not account for trans persons as a unique population. There is no constitutional or statutory protection from discrimination on the basis of gender identity, gender expression or sexual orientation. Within the education and state care systems, there is no formal recognition of youths who may identify as transgender and there is no policy or law which protects such youth from being discriminated against in their access to education and in the care they receive from the State.

B. LAWS WHICH SPECIFICALLY APPLY TO TRANS PERSONS

There are countries in which cross dressing is criminalized, for example in Guyana where cross dressing in public for an improper purpose is a crime. In Jamaica, there are no laws that criminalize gender expression or the expression of a trans gender identity. There are no laws, which prohibit cross dressing. However trans persons are disproportionately criminalized under other laws related to sex work and vagrancy.

LAWS GOVERNING SEX WORK, VAGRANCY AND LOITERING

Also of relevance are the laws governing sex work wherein there are offences such as solicitation, procuration and loitering. The wide discretion of the police to arrest without warrant for vagrancy and loitering offences make transgender persons in particular those who are homeless, those who use drugs or those who engage in sex work vulnerable to detention. Within this context, they may be subjected to violence and deprived of their due process rights. The content of these laws which authorise the police to arrest without a warrant was explored in the Module dealing with Interactions with Law Enforcement Officials. The vagrancy and loitering offences are set out in the Towns and Communities Act and the
Offences against the Offences Act and include:

a. Where persons have committed certain minor offences in their view or in the view of some other credible person\textsuperscript{106}

b. Where a person is loitering between 7pm and 6am and the police has good case to suspect that this person has committed or is about to commit an felony\textsuperscript{107}

c. Where a person is a drunk, loose or disorderly person who is disturbing the public peace or who loiter at certain times and are unable to give a satisfactory account of himself\textsuperscript{108}

d. Where a person loiters in any public place and solicit any person for the purpose of prostitution\textsuperscript{109}

These laws are specifically important to trans because of the wide discretion which the police has in arresting trans persons especially those who engage in sex work. The Inter-American Commission on Human Rights have noted that these laws which are also ‘used as a pretext by the police to detain men who do not conform to gender roles’. Taken together all of the laws which apply to trans persons help to create or support an environment which is discriminatory against trans persons and one in which violence against them may be facilitated. Also of importance is the finding that because of the high rates of homelessness and poor job opportunities and disenfranchisement, trans persons face high rates of criminalization under these laws.\textsuperscript{110}

**ANAL SEX AND GROSS INDECENCY UNDER THE OFFENCES AGAINST THE PERSON ACT**

The Offences against the Person Act criminalizes buggery which is anal intercourse or penile penetration of the anus. The offence carries a maximum penalty of ten years imprisonment at hard labour. An attempt to commit the offence carries a penalty of seven years imprisonment at hard labour. There is also the offence of gross indecency which carries a penalty of up to two years imprisonment. Gross indecency captures sexual acts between males which do not include penile-anal penetration. These laws which criminalize consensual anal intercourse and other forms of sexual intimacy between males may be applicable to trans women if their sexual partner is male.

\textsuperscript{106}Towns and Communities Act, section 4

\textsuperscript{107}Offences Against the Person Act, section 80

\textsuperscript{108}Towns and Communities Act, section 7

\textsuperscript{109}Towns and Communities Act, section 3 (r)

C. POSITION OF INTERNATIONAL HUMAN RIGHTS BODIES

At the international level, the discriminatory nature and dehumanizing effect of the criminalization of sexual acts and intimacy between consenting adults has been raised and the obligation of states to protect against discrimination on the grounds of gender identity has been affirmed. The Human Rights Committee which is the treaty monitoring body for the International Covenant on Civil And Political Rights expressed that Jamaica should amend its laws with a view to prohibiting discrimination on the basis of gender identity.

The treatment of transgender persons in Jamaica has been considered by the Inter-American Commission on Human Rights. In 2012, the Inter-American Commission on Human Rights produced a report on Jamaica after conducting a country visit in 2008. The 2012 report highlighted that widespread discrimination based on gender identity, and gender expression is widespread throughout Jamaica and pointed out that persons who do not identify as cisgender face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.


112 Human Rights Committee, Concluding Observations for Jamaica 2011
I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.

I have the right not to be arbitrarily arrested and deprived of my liberty.

If I am detained or arrested:

• I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of his choice.

• I have the right to be informed within a timely manner of the reasons for your arrest or detention, as soon as is reasonable practicable.

• I have the right to be informed of the nature of any charge against me and in a language which I understand.

• I have the right to communicate with and retain an attorney-at-law.

• I am entitled to request legal assistance from the Duty Counsel.

• I am entitled to bail and should be brought before the Court within a reasonable time.

• I should be treated humanely and with respect for the inherent dignity of the person.
D. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. Participants' ACTIVITY

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

Suggested Questions:

1. Why is protection from discrimination on the basis of gender identity, gender expression important for trans persons?
2. It has been recommended that Jamaica should repeal all of the laws which criminalize same sex intimacy between consenting adults. Do you agree with this recommendation?
3. If the laws were repealed, what impact do you think it will have on persons in the transgender community?
4. What impact do you think repeal of these laws will have on the prevalence of transmission of HIV?
MODULE 14 - MIGRANT POPULATIONS

OBJECTIVE AND INTENDED OUTCOMES

This module builds on the information in Part One of the Legal Literacy Manual. It explores the vulnerability of migrant populations to HIV and provides information on how law both restricts and protects the rights of migrant populations. On completion of this module, participants should:

1. Be able to explain why migrant populations are vulnerable to HIV
2. Be aware of immigration restrictions which may apply to groups vulnerable to HIV
3. Be knowledgeable about the standards under international law regarding persons who are seeking asylum

BRIEF CONTENT OF MODULE

A. Vulnerability of Migrant Populations to HIV
B. Immigration Restrictions
C. Seeking asylum
D. I Know My Rights!
E. Training Exercise
A. VULNERABILITY OF MIGRANT POPULATIONS TO HIV

Persons forming migrant populations are vulnerable to human rights violations. The IACHR has confirmed that this vulnerability is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or other social condition. It is to be observed that this population can consist of all other vulnerable populations and so there is an intersection of issues.

Within the Caribbean context, the Pan American Health Organization has recognized the challenge of undocumented migration and the way in which an uncertain legal status creates insecurity in everyday life and inhibit access to health information and services. As regards vulnerability to HIV/AIDS, it is noted that ‘female migrants are particularly vulnerable because they are more likely to experience sexual violence and engage in risk-associated sexual behaviours such as commercial sex.’ Persons who are trafficked also form part of migrant populations and their vulnerability to HIV is increased by their limited ability to negotiate safe sex and the risk of exploitation from police and customs officers. As regards men who have sex with men, it is thought that the movement to a new environment and consequent relative anonymity may encourage or influence sexual experimentation and a feeling of less accountability for their actions. Regarding youth, the information from PAHO is that where youths are part of a migrant population they have an increased risk of and vulnerability to HIV infection. This is due to risk-taking and sexual experimentation, inadequate knowledge about safe sexual practices and likelihood of being exploited and being less likely to seek and access appropriate health and support services.

B. IMMIGRATION RESTRICTIONS

Under the Revised Treaty of Chaguaramas, CARICOM Member States have an obligation to allow free movement of CARICOM nationals in their territories. This treaty established the Caribbean Community, which is usually referred to as CARICOM. CARICOM is concerned with regional cooperation and integration so as to improve people’s standard of living.

115 IACHR Violence Report page 161 para 285
and strengthen the region’s economic competitiveness. There is a binding obligation on all Member States including Jamaica, to allow all CARICOM nationals hassle free entry and an automatic stay of six months unless they ‘present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’.¹¹⁷

Jamaican’s immigration law includes in its class of prohibited immigrants, ‘prostitutes’, those living on the proceeds of prostitution, person suffering from a communicable disease which makes his or her entry into the island dangerous to the community.¹¹⁸

Trafficking in persons is an offence. It is understood as where for the purpose of exploitation a person recruits, transports or facilitates transportation of another person within Jamaica, or from Jamaica to another country, or from another country to Jamaica. It also considered trafficking if one harbours or receives such person. For there to be an offence of trafficking in persons, the act must have been done via threats, force, forms of coercion, abduction or deception or through one’s abuse of power. The penalty for the offence of trafficking in persons is a fine or imprisonment of up to ten years or both such fine and imprisonment. Facilitating the offence by hiding or withholding travel documents of the victim also carry a maximum penalty of ten years imprisonment or a fine or to both such fine and imprisonment. Receiving any benefit from the offence of trafficking carries a similar penalty.

C. SEEKING ASYLUM

For persons seeking asylum in Jamaica, there are laws at the international and local levels which apply. At the international level, it is understood that individuals have a right to seek protection within the territory of another country where they have a well-founded fear that they are or will be persecuted in their own countries because of their race, religion, or membership of a particular social group. Several Jamaicans have also successfully sought asylum in other countries on the basis of their sexual orientation or gender identity.

¹¹⁷Maurice Tomlinson v State of Belize, Maurice Tomlinson v State of Trinidad and Tobago [2016] CCJ (OJ). See full discussion of this case in Module 6: Securing Equality in Private and Public Life
¹¹⁸Immigration Restriction (Commonwealth Citizens) Act section 4
Under international law however, the asylum seekers should not generally be penalized for their illegal entry or stay in the country in which they are seeking asylum. There are also guidelines, which govern the detention of persons seeking asylum. Among others, the detention should not be arbitrary and the conditions under which an asylum seeker is being detained should be humane and dignified.
✓ I am entitled to fair and professional treatment by you and you are required to give full respect to my human rights and dignity both in the Constitution and echoed in the Diversity Policy.

✓ As a CARICOM national I am entitled hassle free entry and an automatic stay of six months

✓ I have the right not to be arbitrarily arrested and deprived of my liberty.

✓ If I am detained or arrested:

  • I have the right to communicate with my family, my partner, my religious counsellor and a medical practitioner of his choice

  • I have the right to be informed within a timely manner of the reasons for your arrest or detention, as soon as is reasonable practicable.

  • I have the right to be informed of the nature of any charge against me and in a language which I understand

  • I have the right to communicate with and retain an attorney-at-law.

  • I am entitled to request legal assistance from the Duty Counsel.

  • I am entitled to bail and should be brought before the Court within a reasonable time

  • I should be treated humanely and with respect for the inherent dignity of the person
E. TRAINING EXERCISE

A. GUIDE FOR TRAINERS

- Trainers should remind participants that this module builds on all the material that was explored in Part One. The objectives of this module should be made clear.
- This module can be delivered using a PowerPoint presentation and/or with the aid of flip charts.
- Materials needed: computer, projector, flip charts, handouts for participants, markers, blank sheets of paper, pens and booklets for participants

B. Participants' ACTIVITY

Participants should form groups consisting of 2 – 3 persons. They should discuss the following questions and take turns in sharing their answers with other groups.

Suggested Questions:

1. Why are migrant populations vulnerable to HIV? In answering this question, please list some of the human rights violations that migrant populations may experience.

2. David is attending a conference in a neighbouring Caribbean country. This country is a Member State of CARICOM. David had read a report, which stated that some countries restrict entry to certain persons, including homosexuals. Out of curiosity, he wondered whether the country in which the conference is being held restricts the entry of homosexuals. To his surprise, upon reading the immigration law of that country, he discovers that homosexuals, ‘prostitutes’ and persons with certain infectious diseases are restricted from entering the country. David refers to himself as a homosexual. He decides not to attend the conference for fear that upon entering the country he could be denied entry. He would be embarrassed if this should happen especially because he is well known and he is also a speaker at the conference. David also fears that even if he is allowed into the country he may be arrested if his orientation as a homosexual is discovered. David is a CARICOM national. Reflecting on the decision of the Caribbean Court of Justice in the Maurice Tomlinson case, what would your advice be to David?

3. According to standards under international law, how should asylum seekers be treated?
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- IACHR Violence Against LGBTI Persons in the Americas, 2015
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- WHO Consolidated Guidelines in HIV Prevention, Diagnosis, Treatment and Care for Key Populations, (2014 and 2016)

DOMESTIC LAWS AND POLICIES

- Constitution of Jamaica, 1962

- Child Care and Protection Act

- Child Pornography (Prevention) Act

- Constabulary Force Act

- Criminal Records (Rehabilitation of Offenders) Act

- Customs Act

- Dangerous Drugs Act

- Dangerous Drugs (Amendment) Act

- Domestic Violence Act

- Firearms Act
- Immigration Restriction (Commonwealth Citizens) Act
- Independent Commissions of Investigations Act
- Legal Aid Act
- National Council on Drug Abuse Act
- Offences against the Person Act
- Offensive Weapons (Prohibition) Act
- Praedial Larceny (Prevention) Act
- Public (Defender Interim) Act
- Rent Restriction Act
- Road Traffic Act
- Sexual Offences Act
- The Dangerous Drugs Act
- The Drug Court (Treatment and Rehabilitation of Offenders Act) Town and Communities Act
- Unlawful Possession of Property Act
- Jamaica National HIV/AIDS Policy 2005
- Jamaica National Workplace Policy on HIV and AIDS
CARIBBEAN AND REGIONAL LAWS

- Belize Immigration Act
- Dominica Immigration and Passport Act
- Guyana Immigration Act
- Trinidad and Tobago Immigration Act
- Revised Treaty of Chaguaramas
- Agreement Establishing the Caribbean Court of Justice

INTERNATIONAL INSTRUMENTS

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (‘ICCPR’)
- International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)
- Convention on the Elimination of All Forms of Racial Discrimination (‘CERD’)
- Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child (‘CRC’)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearances
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (‘Belem do Para Convention’)

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Convention and Protocol Relating to the Status of Refugees Respective General Comments

The 2001 Declaration of Commitment on HIV/AIDS

The 2006 Political Declaration on HIV/AIDS

The 2011 Political Declaration on HIV and AIDS


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**CASES**

- **Caleb Orozco v Attorney General of Belize** Claim no. 688 of 2010 Supreme Court of Belize decided 10 August 2016

- **Maurice Tomlinson v Attorney General of Jamaica** Claim No. 2015 HCV 05731

- **Tomlinson v State of Belize, Tomlinson v State of Trinidad and Tobago** [2016] CCJ 1 (OJ)

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