IMPACT Justice

Report on CARICOM Model Protection Against Sexual Harassment Bill and Recommendations for a New Bill

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REPORT ON
CARICOM MODEL PROTECTION AGAINST SEXUAL HARASSMENT BILL, 1996

SECTION 1

NATURE OF SERVICES AND METHODOLOGY

1.1 The specific objective of this consultancy is for the Consultant to undertake the activities listed in paragraph 1.2 of this Report; for the guidance of the Project Implementation Unit of the Improved Access to Justice in the Caribbean Project (IMPACT), which is headquartered at the Caribbean Law Institute Centre (CLIC) of the Faculty of Law at the Cave Hill Campus, University of the West Indies. IMPACT is a civil society project, which is being implemented under a Contribution Agreement between DFATD and the Cave Hill Campus, University of the West Indies to, amongst other things, assist the CARICOM Member States\(^1\) in drafting new or amending existing laws at the national level.

1.2 The Consultant is required under the Terms of Reference (TOR) to:

1. Provide an overview of the CARICOM Model Protection against Sexual Harassment Bill;


3. Provide an overview of legislation recently passed in other Commonwealth countries: main provisions, similarities and differences, and the source of the provisions to determine recent thinking on the subject.

\(^1\) To which IMPACT applies, namely: Antigua and Barbuda, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago.
4. Provide an analysis of requests by gender specialists and other groups in CARICOM Member States for new legislation or amendments to existing legislation having regard to changed circumstances since the CARICOM Model Bill was passed.

5. Make recommendations for drafting a new Model Bill for adoption by CARICOM Member States.

1.3 In addressing the TOR, the Consultant –

(1) undertook a desk review to confirm, for each CARICOM Member State and Associate Member (Member States), where practicable and relevant, the state of the domestic or national law in relation to sexual harassment; and the relevant law of countries like Australia, Canada, India, South Africa and the United Kingdom, developments in the law and otherwise in relation to sexual harassment, since the preparation of the draft CARICOM Model Bill; to make recommendations to facilitate the drafting of new or amending existing laws relating to sexual harassment at the national level;

(2) conducted research at the UWI, Cave Hill Campus, Barbados, to confirm all the relevant existing laws of the Member States on sexual harassment. As far as possible, an attempt was made to source and identify the most current provisions of the law of the Member States. However, the citation of the respective laws would assist Member States in confirming whether the updated version of the law has been identified and commented upon and what changes have been made in the updated versions of the laws;²

(3) noted the obligations of some Member States under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) in particular CEDAW Recommendation 19:18 of 1992 which refers to and defines “sexual harassment” in relation to employment and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) which refers to and defines “sexual harassment” in relation to domestic violence, which may have informed the drafting of the Model Bill of 1996;

² The latest version of the Barbados Draft Bill, if any, and the Draft Bill on the subject for Jamaica were not available for review.
to avoid repetition, as far as practicable, presented an overview of the
CARICOM Model Protection against Sexual Harassment Bill and of
current legislation in force in CARICOM Member States and a
comparative analysis of the same on first examination of a provision of
the CARICOM Model Bill, but not separately or in the manner listed
in paragraph 1.2;

was guided by the comments of the Gender Specialist who reviewed
the first draft of this Report, in addressing the requests by gender
specialists and other groups in CARICOM Member States for new
legislation or amendments to existing legislation, having regard to
changed circumstances since the CARICOM Model Bill was prepared
in 1996; and

was guided by the recommendations in the Handbook for Legislation on
Violence against Women, prepared by the Department of Economic and
Social Affairs/Division for the Advancement of Women
(DESA/DAW) UN Women; and the Handbook on Effective Prosecution
Responses to Violence Against Women and Girls.

1.4 Appendix 1, Part A, list the laws examined of the CARICOM Member States,
to confirm main provisions, similarities and differences with the draft Model
Protection against Sexual Harassment Bill. Appendix 1 Part AA lists other relevant
Model laws of the CARICOM Community which relate to discrimination
on the grounds of sex or gender. Appendix 1, Part B, contains the relevant
provisions of the laws examined.

1.5 Appendix 1 Part C contains the definition of “sexual harassment” in the laws
of India, the Cayman Islands, Canada and South Africa and as
recommended in 1992 in the implementation of the CEDAW. Appendix 1,
Part D, provides an extract of a provision regarding the policy statement to
be issued by an employer.

1.6 Appendix 2, lists the laws of the other Commonwealth Countries that were
examined to confirm main provisions, similarities and differences with the
draft Model Protection against Sexual Harassment Bill. An overview of the

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3 Lisa Fancott, IMPACT Justice Gender Specialist.
4 Criminal Justice Handbook Series
relevant provisions of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013* of India and a summary of the state of the relevant law on sexual harassment in Australia, Canada, South Africa and the United Kingdom is provided in Section 6 of the Report.

1.7 Appendix 3 lists the status of some of the Member States in relation to international conventions that recognise sexual harassment as a form of violence against women.

1.8 The Bibliography is set out in Appendix 4.

\[\text{No. 14 of 2013 which came into effect on 22 April 2013}\]
BACKGROUND: DRAFTING OF SEXUAL HARASSMENT LEGISLATION

2.1 The CARICOM Model *Protection against Sexual Harassment Bill* was drafted in 1996. It appears that this Bill has been enacted or considered for adoption, with modifications, by some CARICOM Member States\(^6\) and an Associate Member\(^7\). Provisions relating to sexual harassment have also been included, indirectly, in other legislation\(^8\) in some of the Member States, some prior to 1996.

2.2 However, the drafting of sexual harassment legislation was approved by 4 Member States which have not yet enacted that legislation, at a meeting of Attorneys General and Chief Parliamentary Counsel sponsored by the IMPACT Project in May 2014. Following that meeting, other Member States, which have sought to adopt the CARICOM Model *Protection against Sexual Harassment Bill* drafted in 1996, have expressed an interest in considering legislation which takes into account recent thinking on sexual harassment by scholars, gender specialists and NGO’s.

International obligations

2.3. The drafting of the Model Bill of 1996 may have been influenced by an acknowledgment of Member States obligations under various international agreements which address violence against women, in particular the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (1979) in particular *CEDAW Recommendation 19:18 of 1992* which refers to and defines “sexual harassment” in employment and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994)*\(^9\) which refers to and defines “sexual harassment” in domestic relationships. *(See Appendix 3)*

2.4 The *United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women* defines violence against women to include sexual harassment, which is prohibited at work, in educational

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\(^6\) Like Belize, *See Protection Against Sexual Harassment Act; Barbados draft Protection Against Sexual Harassment in the Workplace Bill 2005.*

\(^7\) Like the Cayman Islands, Sexual Harassment Bill, 2013.

\(^8\) Such as the labour law, criminal law or tort law of a Member State.

\(^9\) *See Appendix 3, for the status of some of the Member States in relation to those agreements.*
institutions, and elsewhere,\textsuperscript{10} and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women. \textsuperscript{11}

2.5 It is notable that CEDAW as signed by the Member States does not define or expressly refer to sexual harassment. However, since the CEDAW focuses on all forms of discrimination against women certain general recommendations regarding sexual harassment in employment exist to assist in the implementation of CEDAW.

2.6 Under Article 11 of the CEDAW States Parties (i.e Member States that have acceded to the CEDAW) have agreed to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; and

(d) the right to protection of health and to safety in working conditions.

2.7 The CEDAW Committee has noted that the full implementation of Article 11 of the CEDAW requires States Parties to take positive measures to eliminate all forms of violence against women and noted that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. (Recommendation 17) and in 1992 (Recommendation 18) defined “sexual harassment” to include such unwelcome sexually determined behaviour as physical contact and advances, sexually

\textsuperscript{10} Art. 2(b)

\textsuperscript{11} Art. 4(d-f).
coloured remarks, showing pornography and sexual demand, whether by words or actions. The recommendation noted that “such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment”.

2.8 This “definition” (as expressed in the first sentence of the recommendation) is inclusive and is evolving and differs in all the recent legislation examined. However, there are a few common elements in the definition of sexual harassment, as proposed in the recommendation 19:18 of 1992, in relation to the implementation of the CEDAW that continue to exist in the definition of “sexual harassment” in its more general application to different areas in recent legislation on the subject.

2.9 It is also notable that the United Nations has provided guidance on good practices in drafting sexual harassment legislation in its Handbook for Legislation on Violence against Women of 2010; which focuses predominantly on domestic violence and sexual violence, such as, rape and sexual assault (inflicted both by strangers and non-strangers); and relevant information is also provided in the United Nations Handbook on effective prosecution responses to Violence against women and girls, 2014.

What is sexual harassment?

2.10 The term “sexual harassment” has no precise legal meaning; and behaviour which may amount to sexual harassment in the Member States may be prohibited under a specific enactment on sexual harassment or under different laws such as labour, tort, criminal, equal opportunity and anti-discrimination laws. These laws may expressly refer to “sexual harassment” or to “harassment”, the latter, which contains some elements of “sexual harassment”.

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12 See paragraph 2.12
13 Handbook on effective prosecution responses to Violence against Women and girls, UN Women, Criminal Justice Handbook Series.
2.11 Sexual harassment has been defined in legislation and in recommendations in international conventions\(^\text{15}\) and EU Directives\(^\text{16}\) to include many elements, but the essential ingredient is that it is “unwanted behaviour of a sexual nature”. However, it has been noted that social interaction such as “social invitations or flattering comments” that is sexual by nature between men and women, e.g. at work, may not normally constitute sexual harassment. Moreover, behaviour becomes actionable as sexual harassment when it is unwanted by the recipient\(^\text{17}\). It has been stated that the real question for employment law is not whether the conduct is offensive, but whether it is welcome from a given individual.\(^\text{18}\) Hence the reason why the word “unwelcome” in generally included in the definition of sexual harassment.

2.12 Sexual harassment may include:

(1) physical conduct, such as touching, patting, or brushing up against someone;

(2) verbal conduct, such as offensive comments, lewd remarks, or sexual propositions; and

(3) nonverbal conduct, such as pornographic displays, sexual gestures, or leers and stares.\(^\text{19}\)

This is not an exhaustive definition of the term but this definition includes common elements that are also in the definition of sexual harassment in Recommendation 19:18 of 1992 in relation to the implementation of the CEDAW.\(^\text{20}\) (See Appendix 1 Part C)

2.13 Sexual harassment has been advocated by a number of international organisations such as the United Nations\(^\text{21}\) and some women groups,

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\(^\text{15}\) CEDAW Recommendation 19:18 of 1992, see paragraph 2.7 of this Report.

\(^\text{16}\) See paragraph 6.6 of this Report.


\(^\text{18}\) Robert Husbands ibid, p 537.

\(^\text{19}\) Victoria A. Carter, ibid, page 4.

\(^\text{20}\) see paragraph 2.7 of this Report

\(^\text{21}\) With respect to the United Nations, in 1989 the Committee on the Elimination of All Forms of Discrimination against Women, which monitors the implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, expressed concern that violence against women
including the UN Women, as part of a campaign to combat violence against women but sexual harassment may still be considered to be a lesser form of aggression and qualitatively different from rape, incest and violent sexual assault, and domestic violence.

2.14 It is arguable that rape, incest and violent sexual assault are not categorised as sexual harassment since they constitute qualitatively different types of sexual offence which may involve violence against the victim; also in terms of the consequences to the unwilling victim; which may include loss of tangible job benefits. The word "violence" is sometimes used by commentators in a broader sense than simple physical violence. For example, it has been defined by one expert to include language (or more specifically "symbolic" language) that is used to enforce or impose a power relationship.

2.15 In the Trinidad and Tobago case of Bank Employees' Union V. Republic Bank Limited, the worker was an auditing assistant employed by Republic Bank (the company) for some twenty five years. He was dismissed by the company by letter dated 1st July 1994 following an investigation of allegations made against him by certain female employees of the company. These allegations related to his conduct toward three such employees involving in each case physical contact and in two cases accompanying verbal comment. The worker sought to explain that his actions were innocent in both intent and nature. The Industrial Court held that it is not relevant what motivated the accused worker's conduct or what intention accompanied it. What is relevant is whether the conduct is voluntary on his or her part, whether it is unwelcome on the part of the victim and whether it is unwelcome by that victim. Present those elements, sexually oriented conduct could amount to sexual harassment. According to the Court, the term "sexual harassment" does not define a precise "offence." Sexual harassment is not an offence sui generis.

may hamper progress towards the elimination of discrimination, and sexual harassment was discussed in the context of violence against women. Robert Husbands ibid, p 543.

22 UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls - See more at: http://caribbean.unwomen.org/en/about-us#sthash.kK3nRqH1.dpuf

23 Robert Husbands ibid, p542-543.
24 Robert Husbands ibid, p 537, p 542-543.
25 See A. Garcia: Sexual violence against women: Contribution to a strategy for countering the various forms of such violence in the Council of Europe States (Strasbourg, European Committee for Equality between Men and Women, 1991), pp. 4-6. Robert Husbands ibid, p 537, p 542-543.
27 Judge C. Bernard | F. Regis for the Court.
It is merely an aspect of sexual misconduct which has attracted popular attention and this non neutral and somewhat emotive nomenclature. So that when we speak of sexual harassment we are using the term as a way of expressing an idea which has come into public consciousness and not as signifying a well-defined workplace "offence." Therefore, when we speak of sexual harassment or any derivative thereof, we mean no more than sexual misconduct, directed, in the workplace, at an unwilling victim to whom that misconduct is offensive, unsettling, upsetting, psychologically damaging or otherwise stressful.

2.16 In their analysis of the elements of the definition of sexual harassment in the *Sex Discrimination Act* of the Commonwealth of Australia (SDA), Mason and Chapman\(^{28}\) concluded that “the task of drafting the 'perfect' definition of sexual harassment is endless. Each new development appears to bring with it both progressive and regressive interpretations. The history of the Commonwealth SDA exemplifies these contradictions and ambiguities well. Here, legislative reforms have sought to overcome limitations in case law definitions, only to find that fresh problematic elements are introduced in the process. As further developments have been made to this definition, through both judicial and tribunal decision-making and legislative tinkering, it has become increasingly apparent that the nature, context and harm of sexual harassment continues to defy simplistic definition. Each time we attempt to improve and refine our legislative understanding of sexual harassment, we run the risk of trivialising or excluding experiences that do not fit the new model.”

2.17 This analysis which was done in 2003 of the sex discrimination law of Australia seeks to indicate that it is difficult to declare any one definition of the term “sexual harassment” to be the perfect and definitive definition; as acts that may constitute sexual harassment may be numerous and evolving. For example the CEDAW Recommendation 19:18 of 1992 which defines sexual harassment in relation to employment has also been enhanced in recent legislation in some countries, as well as in the Model Bill, to address sexual harassment in many other areas including education and accommodation.

2.18 Many international organisations, national legislation and courts have prohibited or addressed the issue of sexual harassment but have not agreed

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on a universal definition of the term. The term as defined in Recommendation 19:18 of 1992 for the implementation of the CEDAW has also been updated and changed by recent legislation on the subject.

See Appendix 1, Part C for the definition of “sexual harassment” in the laws of India the Cayman Islands, Canada and South Africa and under recommendation 19:18 of CEDAW 1992, for further consideration.

Protection Against Sexual Harassment Laws in the CARICOM Member States

2.19 The CARICOM Member States have either –

1. specific and direct legislation for the prevention of “sexual harassment”: (Belize);
2. proposed specific and direct draft Bills for the prevention of “sexual harassment”: (Barbados, Cayman Islands and Jamaica);
3. legislative provisions that specifically define or mention the term “sexual harassment”: (Anguilla, the Bahamas, Barbados, Belize, Cayman Islands, Guyana, Saint Lucia, Trinidad and Tobago and the Virgin Islands).

2.20 Whilst some of the Member States, have enacted (Belize) or in the process of enacting specific Acts of Parliament which contain provisions to make sexual harassment unlawful (Barbados, the Cayman Islands and Jamaica) all the Member States have in various enactments incorporated provisions either criminalising sexual harassment or providing indirect protection

Belize: Protection Against Sexual Harassment Act, Chapter 107
Barbados draft Protection Against Sexual Harassment in the workplace Bill, 2005; Cayman Islands: draft Sexual Harassment Bill 2013; the Jamaica draft Bill was not available for review.
Anguilla Criminal Code, Chapter C140, section 158, in relation to a minor.
Bahamas: Sexual Offences Act, Chapter 99, section 26; Domestic Violence Act, section 2.
Barbados: draft Protection Against Sexual Harassment in the Workplace Bill 2005.
Belize: Protection Against Sexual Harassment Act, Chapter 107; Education Act, the Minister of Education is empowered to make regulations to prevent sexual harassment of students Chapter 36; Labour Act, Chapter 297 in so far as it relates to unfair dismissal; Revised Law as at December 2000.
Cayman Islands: draft Sexual Harassment Bill 2013.
St Lucia Labour Code, section 272.
Trinidad and Tobago, Equal Opportunity Act, Chapter 22:03; Offences Against the Person (Amendment) (Harassment) Act 2005
against “sexual harassment”, or “harassment” with elements of “sexual harassment”. Such provisions may be found in either their employment or labour law\(^{41}\), criminal law\(^{42}\), (including law relating to sexual offences\(^{43}\) and offences against the person),\(^{44}\) tort law, education law;\(^{45}\) equality of opportunity law, anti- discrimination law\(^{46}\) or domestic violence law\(^{47}\) that may be interpreted to relate to or include elements of “sexual harassment”.

**Tort Law**

2.21 The tort law of some Member States\(^{48}\) seeks to prohibit sexual harassment of a person. A tort is a legal infringement of a person’s right for which the person aggrieved may be provided a remedy in the form of damages or compensation.\(^{49}\) Tort law governs a person’s responsibility to exercise due care towards another person. It includes intentional as well as significant

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\(^{42}\) Anguilla: Criminal Code, Chapter C140; Antigua and Barbuda: Criminal Law (Amendment) Act, Cap. 116; Belize: Crime Control and Criminal Justices Act, Cap. 102, Criminal Code, Cap. 101; Grenada: Criminal Code, Chapter 72A; Guyana: Criminal Law (Offences) Act, Chapter 8:01; Montserrat: Penal Code, Chapter 4:02; Saint Lucia: Criminal Code, Chapter 3:01; Saint Vincent and the Grenadines: Criminal Code, Cap. 171; Trinidad and Tobago: TBC.


\(^{44}\) Antigua and Barbuda: Offences Against the Person Act, Chapter 300; Commonwealth of Dominica: Offences Against the Person Act, Chapter 10:31; Guyana: Offences Against the Person Act 1864, Chapter 268; Trinidad and Tobago: Offences Against the Person Act, Chapter 11:08.


\(^{47}\) Antigua and Barbuda: Domestic Violence (Summary Proceedings) Act 1999, No. 3 of 1999; Bahamas: Domestic Violence (Protection) Orders, Chapter 99A; Barbados: Domestic Violence (Protection Orders), Chapter 130A, 1992; Belize: Domestic Violence Act, Chapter 178; Grenada: Domestic Violence Act, 2010, Act No. 19 of 2010; Guyana: Domestic Violence Act, Chapter 11:09; St. Christopher and Nevis: Domestic Violence Act, Chapter, 12:04; Trinidad and Tobago: Domestic Violence Act, Chapter 45:56.

\(^{48}\) The common law which is codified in some Member States e.g. the law on domestic violence.

\(^{49}\) In the U.S., the Courts have held that the tort of false imprisonment was applicable when a restaurant woman was trapped by a cocktail worker between his legs whilst he fondled her. Robert Husbands ibid, p 548.
acts which have caused harm on another. Sexual harassment is a tort and may be viewed as “deliberate conduct directed at the claimant resulting in damage; the damage being anxiety and distress, short of physical harm or a recognised psychiatric illness.”\textsuperscript{50}

2.22 The tort law in this respect is addressed in the labour law of some Member States. In Saint Lucia, which has a hybrid legal system which include both common and civil law, the tort law is incorporated in the \textit{Civil Code} and referred to as “delicts and quasi delicts, which provides that every person capable of discerning right from wrong is responsible for damage caused either by his or her act or imprudence, and he or she is not relievable from obligations arising from such act or imprudence\textsuperscript{51} and for the vicarious liability of a person for the acts of another under his or her control. Under article 986 of the \textit{Civil Code} masters and employers are responsible for damage caused by their servants and workmen in the performance of the work for which they are employed.

2.23 The tort law, or the tort of harassment, is also incorporated in the domestic violence law of some Member States. The domestic violence law generally seeks to provide protection to persons who are or were married to each other, to a man and woman who is living or has lived together as husband and wife although not married to each other, persons in an intimate relationship although not living together as husband and wife (non-cohabiting relationships)\textsuperscript{52} and to persons in “dating” and/or “visiting” relationships.\textsuperscript{53} Some territories also authorise a person who is not directly affected by the domestic violence (such as a social worker, police officer or a person with sufficient interest (e.g. Bermuda) to apply for a protection order on behalf of a person on whom the domestic violence is being perpetuated. All the listed categories are not present in the domestic violence law of all the CARICOM Member States.

\textsuperscript{50} \textit{Needham v Senior JM} 2006 SC 28 (24 March 2006); Tracy Robinson, Sexual Harassment in the Workplace: Let the Conversation Begin! Page 3. Jambar/GLC CLE Seminar.
\textsuperscript{51} Article 985.
\textsuperscript{52} E.g Bermuda, Guyana, Jamaica, The Bahamas and Trinidad and Tobago; See more at: http://caribbean.unwomen.org/en/caribbean-gbv-law-portal/developments-in-the-law#sthash.e9TwwVJv.dpuf
\textsuperscript{53} In some of the OECS Member States that have passed the OECS Model Domestic Violence Bill. See more at: http://caribbean.unwomen.org/en/caribbean-gbv-law-portal/developments-in-the-law#sthash.e9TwwVJv.dpuf
However, the Domestic Violence (Protection Orders) Act of Barbados\textsuperscript{54}, the Domestic Violence Act of Belize\textsuperscript{55}, and the Domestic Violence Act of Grenada\textsuperscript{56} provide for the granting of protection orders in circumstances surrounding domestic violence. The respective Acts relate to “harassment” in domestic relationship and provisions would be relevant if the focus of the Domestic Violence Act was on “sexual harassment” within the meaning of the proposed Model Bill. However, the Domestic Violence Act of Guyana\textsuperscript{57} seeks to afford protection in cases involving domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs. The Domestic Violence Act of Guyana provides for the offence of sexual harassment in domestic relationships but does not expressly provide for sexual harassment in other areas and within the meaning of the proposed Model Bill.

The Domestic Violence Act\textsuperscript{58} of Saint Christopher and Nevis provides for the protection of any person subjected to domestic violence. Unlike the legislation of other Member States and like the Domestic Violence (Summary Proceedings) Act\textsuperscript{59} of Antigua and Barbuda, the Domestic Violence Act of Saint Christopher and Nevis, the Domestic Violence Act\textsuperscript{60} of Trinidad and Tobago and the Domestic Violence (Summary Proceedings) Act\textsuperscript{61} of the Virgin Islands do not make express reference to “harassment” or “sexual harassment”.

The Domestic Violence (Protection) Orders\textsuperscript{62} of the Bahamas provides for the granting of protection orders in circumstances surrounding domestic violence. “Domestic violence” has been defined in the Bahamas to include physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, and any other person who is a

\textsuperscript{54} Domestic Violence (Protection Orders) Cap. 130A (1992)
\textsuperscript{55} Cap 178
\textsuperscript{56} Chapter 84
\textsuperscript{57} Domestic Violence Act, Chapter 11:09, (No. 18 of 1996)
\textsuperscript{58} Chapter 12:04
\textsuperscript{59} Domestic Violence (Summary Proceedings) Act 1999, No. 3 of 1999 provides for protection by means of summary proceedings in cases involving domestic violence.
\textsuperscript{60} Domestic Violence Act, Chapter 45:56
\textsuperscript{61} The Domestic Violence (Summary Proceedings) Act provides protection by means of summary proceedings in cases involving domestic violence.
\textsuperscript{62} Chapter 99A. Chapter 12:04
member of the household or dependant. The law applies to “harassment” in domestic relationships. However paragraph 1 (iv) of the interpretation of the word “harassment” contains elements of “sexual harassment” which is also an offence under the Sexual Offences Act of the Bahamas.

Criminal Law

2.25 The criminal law of all the Member States contain indirect provisions which may be applicable in the absence of expressed provisions in the law relating to sexual harassment of a woman. However, the law is generally silent as it relates to sexual harassment of a man in most of the Member States and should be addressed to ensure equality of treatment of persons irrespective of their gender. As noted in the Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW), legislation should be gender-sensitive, not gender-blind. The Handbook also notes that where gender-specific legislation on violence against women do not allow for the prosecution of violence against men and boys the legislation may be challenged as unconstitutional in some countries where protection is provided for non-discrimination on the grounds of sex. The provisions of the criminal law of the Member States relating to sexual assault, battery, indecent assault, not related to rape or aggression, are applicable in complaints relating to sexual harassment. (See specific reference to the relevant provisions of the criminal law of the Member States in paragraphs 5.1 to 5.15.)

Labour law

2.26 An employer may also be held liable under the doctrine of vicarious liability which imposes liability on the employer for the wrongful acts of its employees in certain circumstances e.g. where the employer knew or should have known of the harassment and failed to prevent it or take prompt and appropriate corrective action. Such liability would generally attach under the labour law, not the criminal law. Where employer's liability is established the complainant may be in a better position to obtain compensation or monetary damages.

Bahamas section 2
2.27 As regards the varying areas in which sexual harassment is addressed legislation should provide for the amendment and/or removal of provisions contained in other areas of law, such as employment law that may contradict any proposed Model legislation, so as to ensure a consistent legal framework that protects a person from sexual harassment, irrespective of gender.

(See Sections 3, 4 and 5 of this Report and the relevant provisions of the labour law of each Member State in Appendix 1, Part B).
SECTION 3

THE CARICOM MODEL PROTECTION AGAINST SEXUAL HARASSMENT BILL

Main Provisions, Similarities and Differences with regard to other Current Legislation in Force in CARICOM Member States and the Source of the Provisions

3.1 In 1996 the Member States sought to harmonize the provisions of the law through the proposal of a specific Model legislation: the CARICOM Model Protection against Sexual Harassment Bill, (Model Bill) to prevent sexual harassment in the workplace, in education and in accommodation.

3.2 To date, 4 Member States have either enacted similar legislation: (Belize), or have proposed draft legislation with a similar objective: (Barbados, Cayman Islands and Jamaica).

Long Title of Model Bill

Objectives of the Model Bill

3.3 The supporting Explanatory Memorandum to the Model Bill states that the Model Bill seeks to provide civil remedies in respect of acts of discrimination involving sexual harassment and to provide protection to persons who suffer discrimination arising from acts of sexual harassment. Notwithstanding the fact that sexual harassment has been named as a form of actionable wrong under anti-discrimination legislation and that a single act of sexual harassment can potentially constitute unlawful sex discrimination it is arguable that the word discrimination appears to be used here in a loose or general sense; as discrimination does not appear as an element of sexual harassment in the provisions of the draft Model Bill, which focuses on unwelcome sexual advances. Suffice it to say that a victim of sexual harassment may be discriminated against and sexual harassment can be discriminatory in

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64 In 2005
65 In 2013
66 On going
nature.\textsuperscript{68} Nevertheless, clause 6 (1) (c) of the Model Bill authorizes the Tribunal, on its own initiative or when requested by the Minister, to make recommendations regarding action to be taken on matters relating to discrimination involving sexual harassment. The treatment of sexual harassment as discrimination on the grounds of sex seems limiting.

3.4 The Explanatory Memorandum also indicates that the Model Bill addresses the problem of sexual harassment as a labour relations matter. However some provisions of the Bill relate to sexual harassment in education and accommodation, which appear to go beyond the labour relations.

The objectives of the Model Bill as stipulated in its Long Title should be reviewed by the legal drafter to ensure consistency with the main provisions of any proposed new Bill.

\textit{Scope of the Model Bill}

3.5 The Explanatory Memorandum of the Model Bill notes that protection against sexual harassment was perceived most important in “accommodation”, “an educational institution”, and “employment” and these three areas are addressed in the Model Bill.

3.6 In Barbados\textsuperscript{69} and in some other CARICOM Member States\textsuperscript{70} the focus appears to be on sexual harassment in employment. However, in Belize\textsuperscript{71} the law is applicable to sexual harassment in “accommodation”, in “institutions”, (which is not limited to educational institutions as in the Model Bill) and to “employment”. The scope of the law would be the widest in the Cayman Islands where the draft \textit{Sexual Harassment Bill}\textsuperscript{72} seeks to extend protection from sexual harassment in vocational training schools, qualifying bodies, associations, employment agencies, goods, services and facilities, accommodation and real or personal property; to cover situations

\textsuperscript{68} Mason and Chapman, ibid.206.\textsuperscript{69} Protection Against Sexual Harassment in the Workplace Bill, 2005\textsuperscript{70} Where reference is made to sexual harassment in the law\textsuperscript{71} Protection Against Sexual Harassment Act, Ch 107.\textsuperscript{72} The Sexual Harassment Bill, 2013, which are informed by several legislative precedents including the Australian Sex Discrimination Act, 1984, the Bahamian Sexual Offences and Domestic Violence Act, 2006, the CARICOM Model Law on Sexual Harassment, the Belizean Sexual Harassment Act, 2000, the California Civil Code, the Canadian Labour Code and the Sex Discrimination Act, 1975 of the United Kingdom. See final Report on Sexual Harassment Bill, Cayman Islands Law Reform Commission, 1 May 2013.
or different environments within which a person may interact with another and be subjected to sexual harassment.

3.7 It has been recommended[^73] that sexual harassment should be defined as unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions. Moreover, sexual harassment occurs in many areas or places where there is social interaction of persons.

Consideration should therefore be given by the legal drafter to the re-examination of the scope of the Model Bill with a view to increasing the areas and relationships where protection is required from sexual harassment, to extend protection from sexual harassment in vocational training schools, qualifying bodies, associations, employment agencies, goods, services and facilities, accommodation and real or personal property; to cover situations or different environments within which a person may interact with another and be subjected to sexual harassment.

**Clause 2 of the Model Bill**

**Role of Minister/Administration of the Act**

3.8 The person responsible for the administration of the law is generally identified in the definition of Minister in the interpretation section. In Belize responsibility for the administration of the law is vested in the Minister with responsibility for Human Resources. **The relevant Minister responsible for the administration of the proposed law is absent in the Model Bill and it is recommended that the responsible Minister be identified and inserted.**[^74]

However, it is notable that if the provision applies to the Government, as in Belize, disciplinary matters in relation to public officers would fall within the jurisdiction of the relevant Service Commission.

[^73]: Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women;
[^74]: Note that the Interpretation Act of some Member States may not require that the Minister be specified since under that Act the Minister is the person or Member of Cabinet/Executive Council responsible for the subject matter of the enactment.
Clause 3 of the Model Bill

Unlawful sexual harassment in employment

The overriding concern is the extent of an employer's obligation to provide a safe and healthy working environment for an employee, the penalties to be imposed on an offending employee and the remedies available to a victim.

3.9 Clause 3 of the Model Bill would make it unlawful for an employer or supervisor, to make it reasonably appear to an employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance of sexual advances; and for a prospective employer to make it reasonably appear to a person that an offer of employment to that person; or the terms on which employment is offered, is or are also contingent on that person's acceptance of sexual advances.

3.10 Clause 3 would also make it unlawful for an employee to harass sexually a fellow worker where the fellow worker has reasonable grounds for believing that a rejection of the advance, or refusal of the request or the taking of objection to the conduct would cause the fellow worker to suffer disadvantage in any way in connection with the fellow worker's employment or work or possible employment or possible work.

3.11 It appears that the onus would be placed on the victim to prove that the unwelcome sexual conduct had caused the victim to suffer actual disadvantage in connection with his or her employment (or possible employment) or, alternatively, that he or she had reasonable grounds for believing that such refusal, rejection or objection would disadvantage him or her in connection with his or her employment (or possible employment). This seems a heavy burden on the victim where there is evidence of sexual harassment. Consideration should be given to the removal of the need for a victim to demonstrate actual or reasonably anticipated employment disadvantage in a claim of sexual harassment.

3.12 This need was replaced in the Australian Sex Discrimination Act with a provision that requires that where a reasonable person, having regard to all
the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. The concern was that too much emphasis would be placed by tribunals and courts on the reasonableness or otherwise of the fear of disadvantage. Moreover the question is how broadly the terms “reasonably appear” and “suffer disadvantage” would be defined and its association with the term “hostile work environment”, or in relation to sexual harassment claims; that is, in situations ‘where the workplace is so imbued with sexuality that it is recognised as, in itself, a discriminatory environment, regardless of any direct or tangible job detriment to an individual’. The general public in Australia regarded unwanted sexual advances as ‘serious offences in themselves’ and so there was no need for it to be linked to some sort of additional disadvantage or detriment.

3.13 The onus should be on the victim or complainant to satisfy the Tribunal that he or she was sexually harassed. The Tribunal would examine the facts, the offending conduct and determine whether it was reasonable for the victim to conclude that the conduct was directed towards the victim or complainant and caused the victim or complainant to suffer disadvantage in connection with his or her employment.

3.14 However, it has been recommended that the sexual harassment be criminalised and suggested that the burden can shift towards the defendant or an employer who is proving that a claim is wrong and should not be placed solely or at all on the victim. This is due to the high attrition rates of claims and the reluctance of claimants to come forward, the alleged high level of "re-victimization" occurring during trials and in the work environment, despite policies in both places to the contrary. In this regard it is notable that Clause 22, of the CARICOM Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation, which does not

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76 Morgan and Chapman ibid, page 209.
77 Mason and Chapman ibid. page 209.
79 Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women.
80 Gender Specialist, Lisa Hancott.
provide for the criminalisation of sexual harassment but treats sexual harassment as discrimination on the grounds of sex, provides that except where otherwise provided in the Act, the person alleging a violation of this Act shall bear the burden of presenting a prima facie case of discrimination or of an offence related to discrimination under this Act. Upon a prima facie showing of discrimination, the burden or persuasion shall shift to the respondent to disprove the allegations. It is arguable that the shifting of the burden is not generally applicable in criminal cases.

If sexual harassment is criminalised the relevant Constitutional provisions must be upheld. Under the Constitutions in the Member States provisions exist to secure protection under the law and a person who is charged with a criminal offence is presumed to be innocent until he or she is proved or has pleaded guilty. A person who is tried for a criminal offence is not compelled to give evidence at the trial. However an enactment may impose upon any person charged with a criminal offence the burden of proving particular facts.

3.15 The Belize Protection Against Sexual Harassment Act (Belize Act) (the only sexual harassment legislation with the force of law in the Member States) provides for sexual harassment in employment. Under the Belize Act, an employer is required to take immediate and appropriate action to correct any act of sexual harassment and if the employer fails to do so the aggrieved person may lodge a complaint against the employer. This is a relevant provision which is not in the Model Bill and should be considered for incorporation. Moreover the employer is required in Belize to have a policy on sexual harassment. This requirement may be inserted in the Labour Code of a Member State to engender a healthy industrial relations practice for the work place. Under the Belize Act the employer may also be held liable where the employer grants benefits as a result of the sexual harassment. Section 6 of the Belize Act stipulates that where a person alleges that he or she has been sexually assaulted that person should not be discriminated against. A provision similar to section 6 of the

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81 See e.g. Constitution of Saint Lucia, section 8(2) (a), 1(7) 12(a). (12).
82 Section 4
83 Belize: section 6
Belize Act should be considered for incorporation in the draft Model Bill, which is silent on that issue.

3.16 The proposed Bill for Barbados focuses on sexual harassment in the workplace and falls under the administration of the Minister for Labour and is more limiting in that respect since the Model Bill includes harassment in educational institutions and for the purposes of accommodation. \textit{Workplace is extended under the proposed Bill for Barbados to include any place to receive training or attend a conference on the employer's behalf}\textsuperscript{84}. This suggests applicability to any sexual harassment by another employee which occurs whilst the person is in the course of employment. Like in the Belize Act, under the proposed Bill for Barbados an employer is required to issue a policy statement concerning sexual harassment but in Barbados this statement is issued after consulting with the employees or their representatives.

3.17 The proposed Bill for the Cayman Islands prohibits employers and employees from committing acts of sexual harassment in employment\textsuperscript{85}. Under Clause 5 an employer would be required to take appropriate action on becoming aware, reasonably suspicious or informed of an act of sexual harassment which is directed to an employee or any person with whom the employer has contracted to facilitate the operations of the place of employment; and occurs during the course of employment. Clause 6 would make an employer liable for an act of sexual harassment committed by the employer's agents, supervisors and employees if it is proven that the conduct occurred during the course of employment; and the employer knew, ought reasonably to have known or was informed of the commission of such conduct and on becoming aware, suspicious or informed, failed to take reasonable steps to prevent the continuation of the conduct. Under Clause 7 an employer would be obligated to formulate a policy statement concerning sexual harassment in the workplace. That policy statement should include a definition of sexual harassment that is in accordance with the legislation and a statement with the relevant information:

\(a\) that every employee is entitled to employment free from sexual harassment;

\textsuperscript{84} Barbados, section 2.

\textsuperscript{85} Clause 4.
(b) that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer’s direction who subjects any employee or third party to sexual harassment;

(c) explaining how complaints of sexual harassment may be brought to the attention of the employer;

(d) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures; and

(e) on how the employer will deal with the sexual harassment of his or her employee where it is directed towards a fellow employee or a third party;

The Belize Act and the proposed laws examined, except the Model Bill, provide for employer’s liability and require an employer to issue a policy statement on sexual harassment in the workplace. These requirements seem consistent with the need for an employer to provide a safe and healthy working environment for an employee.

3.18 Sexual harassment in employment is said to have a negative impact on a victim’s health and may also infringe on the victim's right to work since the victim may be forced to resign from the employment because of the unwelcomed sexual advances of a co-worker. 86 As stated in paragraph 2.19, indirect or less specific legislation exists on sexual harassment in employment or labour laws. For example, the labour law of 4 Member States examined expressly prohibit sexual harassment: (Belize, Montserrat, Saint Lucia and the Virgin Islands).

Action is generally taken to enforce the employer’s obligation to provide a safe and healthy working environment for a worker. However, in the absence of specific legislation on sexual harassment, the employment legislation is generally enforced in cases where there is an action for compensation for unfair or constructive dismissal on the grounds of “sexual harassment” in employment. In response, the courts have acknowledged the existence of sexual harassment in the workplace and treated it as

86 Morgan and Chapman ibid.
conduct for which an offending employee may be dismissed and a victim who has been constructively dismissed should be entitled to compensation.

3.19 **Under the Labour Code of Saint Lucia** \(^{87}\) an employer is obligated to ensure that “a safe sound, healthy and secure working environment is provided and maintained, as far as practicable”. The **Labour Code** provides protection from “sexual harassment” which is defined in the **Labour Code** as any unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee\(^{88}\) and contains provisions relating to discrimination on the grounds of sex. The **Labour Code** also imposes an obligation on the employer not to discriminate against an employee\(^{89}\) who seeks to enforce the provisions of the **Labour Code**. Under section 272 of the **Labour Code** of Saint Lucia, any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee also constitutes unlawful discrimination based on sex within the meaning of section 267 of the **Labour Code** and the employee is entitled to compensation in accordance with the **Labour Code**. It appears that in the absence of specific legislation on sexual harassment, the act of sexual harassment is linked with discrimination on the grounds of sex and unfair dismissal of the employee.

The **Labour Code 2006** is a consolidation and reform of legislation applicable to labour and industrial relations in Saint Lucia, which includes existing local standards and international labour law standards. Complaints relating to sexual harassment in employment under the **Labour Code** are made to the Labour Tribunal.

3.20 **The Equality of Opportunity and Freedom in Employment and Occupation Act, of Saint Lucia**, \(^{90}\) and the **Prevention of Discrimination Act of Guyana**\(^{91}\) modelled on the CARICOM Bill by the same name, (see Section 4 of this Report) also contains provisions governing sexual harassment. Under section 8 of both Acts *any act of sexual harassment against an employee*

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\(^{87}\) section 257(1)(a); Part V, Division 1 of the **Labour Code** appears to be a consolidated of the provisions of the Equality of Opportunity in Employment Act which it repealed.

\(^{88}\) Section 2

\(^{89}\) Section 265

\(^{90}\) Chapter 16:14

\(^{91}\) Chapter 99:09 of 1997
committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex. In Saint Lucia such an act constitutes an offence.

Both Acts focus on discrimination on grounds of sex. **Sexual harassment is defined in section 2 to mean unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee. Under section 21 of the Saint Lucia Act and under section 23 of the Guyana Act, the person alleging a violation of the Act shall bear the burden of presenting a prima facie case of discrimination or of an offence related to discrimination under the Act. Upon a prima facie showing of discrimination, the burden of proof shall shift to the respondent to disprove the allegations.**

The Act focuses on sexual discrimination in the workplace. The provisions governing sexual harassment may need to be further elaborated for effective implementation. Such elaboration may be made in a separate Act which addresses sexual harassment.

Consideration may be given by a Member State to the use of an existing Tribunal with persons experienced and qualified in human rights matters to determine claims of sexual harassment arising from employment or otherwise. Of course, if sexual harassment is criminalised the matter will be determined by a court of law.

3.21 The **Criminal Code** of Saint Lucia provides for criminal offences and procedures relating to such offences. The Criminal Code of Saint Lucia also seeks to criminalize the act of sexual harassment and soliciting sexual favours in the office. Under section 139 of the Criminal Code of Saint Lucia it is an offence for an employer or a supervisor of an employee to make it reasonably appear to the employee that the prospects or working conditions of the employee are dependent upon the acceptance or tolerance by the employee of sexual advances or persistent sexual suggestions from the employer or supervisor. It is also an offence for a prospective employer to make it reasonably appear to a person that an offer of employment to that

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92 Criminal Code, Chapter 3.01

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person; the terms on which employment is so offered, is or are dependent on that person’s acceptance or tolerance of sexual advances or tolerance of persistent sexual suggestions from the prospective employer. A person who solicits sexual favours in the office commits an offence and is liable on summary conviction to imprisonment for 12 months. A person who displays any writing, sign or other visible representations which is threatening, abusive or insulting, within the hearing or sight of a person likely to be harassed, alarmed or distressed by such threatening, abusive or insulting words or writing or sign or other visible representation or disorderly behaviour commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

However, like in Saint Lucia, sexual harassment in the workplace is a criminal offence by virtue of section 26 of the Sexual Offences Act,93 of the Bahamas. A person who is convicted of “sexual harassment” in the Bahamas may be required to attend a psychiatrist for psychiatric assistance by virtue of section 27(2) of the Sexual Offences Act. The law may be held to provide protection for both sexes. In the Bahamas the consent of the Attorney General must be obtained for a person to be prosecuted for sexual harassment.

3.22 It has been noted in relation to the enforcement of the domestic violence law that, “with the exception of Saint Lucia, that law in the English speaking Caribbean does not expressly criminalize domestic violence. It provides what is called quasi – criminal relief. It is only where there is a breach of an order of the court which was made in the domestic violence proceedings that criminal sanctions apply. The distinction between criminal and civil proceedings reinforces the fact that the domestic violence legislation is geared at protection of the victim and the criminal codes or other criminal law statutes underscore the objective of holding abusive offenders accountable for their unlawful conduct. It is expected that the two legal interventions will be used together to provide a comprehensive legal response to domestic violence.”.94

3.23 It has also been noted that there are significant challenges in addressing gender-based violence in the Caribbean and that despite the positive

development in the laws governing gender-based violence in the English-speaking Caribbean, there are challenges which restrict victims’ access to justice. Moreover there is a disparity between law and its implementation as it has been observed that there are wide and persistent gaps between the ‘law on the books’ and the ‘law in action’. The practices of the courts, police and other law enforcement personnel often operate to dissuade people from executing their rights and achieving the protections which the law affords them.\(^9\)  

3.24 It should therefore be expected that the two legal interventions would also be used together to provide a comprehensive legal response to sexual harassment. Criminalisation should be on a case by case basis and depend on the gravity of the matter. The parties should have the option to settle the matter outside the criminal court depending on the nature and extent of the harassment. If an employee or street walker says to another: “Hey baby you look good I would like to have sex with you” that can be sexual harassment and offensive to one’s dignity, but can that give rise to a criminal offence of sexual harassment? 

Notwithstanding recommendations to the contrary, consideration may need to be given to the decriminalisation of sexual harassment and the adoption of provisions to ensure enforceability of sexual harassment claims and for adequate protection to be provided against sexual harassment in the workplace and in social relations generally, through the implementation of a sexual harassment policy. This is to address the wide gap between law on the books and law in action. There is also need for public education and policy on sexual harassment to design the minds of the population in a certain way, before criminal sanctions could be imposed. The law may be amended subsequently to include criminal sanctions for certain things. Criminal sanctions already exist for sexual assault.

It has been noted that to date, many laws on violence against women have focused primarily on criminalisation. It is important that legal frameworks move beyond this limited approach to make effective use of a range of areas of the law, including civil, criminal, administrative and constitutional law, and address prevention of violence, and protection and support of survivors.96

3.25 The Fair Labour Standards Act of Anguilla97 prohibits discrimination in employment on the grounds of sex but does not expressly provide for sexual harassment. However, the Labour Code of Antigua and Barbuda 98 makes it an offence for an employer to discriminate against an employee on the grounds of sex. If convicted, the employer is liable to a fine of $3000 and to imprisonment for 12 months. The Labour Code of Antigua and Barbuda also makes it an offence for an employer to provide unequal terms or conditions of employment for male and female workers. If convicted for so doing, the employer would be liable to a fine of $1000. The Employment Act99 of the Bahamas and the Labour Law of the Cayman Islands100 prohibit discrimination in employment on the grounds of sex but do not expressly provide for “sexual harassment”.

3.26 Section 42 of the Labour Act101 of Belize prohibits the unfair dismissal of, or the imposition of disciplinary action against, a worker on the grounds of the worker’s sex, or a worker that was subjected to sexual harassment at the workplace or by the employer or another worker of the same employer. The term “unfair dismissal” includes any distinction, execution or preferences made on the basis of nullifying or impairing equality of opportunity or treatment in employment or occupation. Sexual harassment would be interpreted in accordance with the Protection Against Sexual Harassment Act. However section 42 is limited and does not apply to workers engaged under a contract of employment for a specified period of time or for a specified task, serving a period of probation or engaged in employment of a casual nature.

97 Chapter, C140
98 Cap. 27
99 Chapter 321A
100 Law 30 of 1987
101 Cap. 297
3.27 In Dominica, the *Protection of Employment Act* \(^{102}\) does not expressly provide for protection from sexual harassment, but in the absence of specific law on the subject, the acts of the employee, which amounts to sexual harassment may be deemed to be serious misconduct. Provision exists for complaints to be made to the Minister with responsibility for industrial relations or the Labour Commissioner and for matters to be settled by a Tribunal established under the *Industrial Relations Act*, by way of conciliation.

**There is a need for the harmonisation of the law at the national level as it relates to sexual harassment. A policy and specific law on sexual harassment is required in Dominica.**

3.28 In Grenada the *Employment Act* \(^{103}\) provides remedies for unfair and constructive dismissal of an employee but does not expressly provide for sexual harassment. There is need to confirm whether an employee’s conduct could be attributed to the employer under the law in Grenada.

3.29 The *Labour Code* \(^{104}\) of Montserrat provides for the law governing labour. Under *section 83(1)* any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, would constitute unlawful discrimination based on sex. “Sexual harassment” is defined under *section 83 (2)* to mean unwanted conduct of a sexual nature in the workplace or in connection with the performance of work, which is threatened or imposed as a condition of employment on the employee; or which creates a hostile working environment for the employee. The *Labour Code* prohibits discrimination on the grounds of sexual orientation but does not expressly prohibit sexual harassment as a result of a person’s sexual orientation. \(^{105}\) The *Labour Code* also makes it an offence for a person to induce, or attempt to induce, another person to do any act by providing, or offering to provide, the person with any benefit; or subjecting, or threatening to subject, the person to any detriment.

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\(^{102}\) Chapter 89:02
\(^{104}\) Labour Code, 2012 No. 20 of 2012
\(^{105}\) See section 79 (2) (a) (b) regarding the difference between sexual harassment and discrimination on the grounds of sex and sexual orientation.
3.30 The *Labour Code* of the Virgin Islands provides for the improvement of the administration of labour, taking into account applicable international standards, prescribing minimum conditions of employment, a system for labour administration, settlement of disputes and observance of labour laws generally. The *Labour Code* expressly prohibits sexual harassment and discrimination on the grounds of sex. Sexual harassment constitutes unlawful discrimination based on sex.

3.31 Judicial decisions of some courts in some of the Member States have also recognised sexual harassment in employment as a conduct which is prohibited by the law and have urged employers and trade unions to honour their duty by seeking to eliminate that conduct and promoting the right of an employee to perform in a safe and healthy working environment.

In the Trinidad and Tobago case of *Bank Employees' Union V. Republic Bank Limited*, the court noted that it is agreed on all sides that sexual harassment is a serious transgression of the right of workers to enjoy a safe working environment and to be protected against sexually offensive conduct at the hands of fellow employees. *The company has a duty to its workers to protect them in the enjoyment of that right. It is clear, in this case, that the company's decision to dismiss the worker has to do with sending a message throughout its workforce that sexual harassment will not be tolerated and that it will uphold its duty to its employees in that regard. The Court noted that the unions, too, have an obligation to their members to work towards elimination of these problems. It is to be hoped that until Parliament enacts legislation, the parties would find it possible to co-operate in the formulation of an appropriate policy on the subject.*

In the Antigua and Barbuda case of *Titus V. Sandals (Antigua) Limited*, a guest accused an employee of an hotel of trying to kiss her while they were alone. The employee was suspended pending an investigation and later dismissed. The guest did not appear to give evidence or to be cross-examined but submitted a hand-written report. The report was not notarized, witnessed by anyone or given under oath. There was no corroboration to

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107 Section 119.

108 Antigua case, AG 2002 Industrial Court, 1
substantiate the allegation of sexual harassment. The industrial court held that the employee was wrongfully dismissed and ordered the hotel to pay compensation to the employee. It is arguable that the elements of sexual harassment were not evident in this case and this was a case of alleged sexual assault.

In the Barbados case of *Wharton Bank V the Bank of Nova Scotia* 109, in an action for damages as a result of a claim for constructive dismissal, the plaintiff claimed that she was harassed by a senior officer who repeatedly used offensive and abusive language towards her, threatened to pull down her zip and that the working environment was stressful. She was provided with an option to relocate to undertake a lower position at the same salary but the plaintiff opted to resign. The issue was whether the plaintiff was constructively dismissed. The High Court held that the senior manager’s conduct amounted to sexual harassment and was a serious breach of the employment contract. The Court also held that the plaintiff was constructively dismissed.

**Definition of “employee”**

3.32 **Clause 2** of the Model Bill, the existing law (Belize) and the proposed law in 2 Member States examined (Barbados and the Cayman Islands) define the word “employee” each in a different manner. The definition of “employee” in the Belize Act expressly includes apprentices, commission agents, persons on probation and full and part time employees whilst the definition in the draft Model Bill only includes “commission agents”. In the Cayman Islands Bill an “employee” includes –

(a) any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract be oral or written, express or implied, full or part-time;

(b) a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off;

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109 Bb 2013 Hc33, Barbados, High Court
(c) an apprentice; or

(d) a person on employment probation.

3.33 The definition of “employee” is wider in the draft Bill of Barbados than it is in the draft Model Bill and includes “an apprentice, a person on probation, a person employed full or part-time, a person remunerated by way of a commission, a prospective employee and a “former employee”, which is commendable. The draft Bill of Barbados also defines “affiliate”, “associate”, “client” and “co-worker”. The distinction between these terms or persons is not clear since they could all refer to the same person. ” Part time and full time employment falls within the definition of “employment” in the Model Bill; so an expressed inclusion of part time or full time employee in the definition of “employee” would be consistent. Consideration should also be given to the inclusion of a prospective employee and a former employee in the definition of “employee”.

**Definition of “employer”**

3.34 The word “employer” is not defined in the Model Bill but is defined in the Belize Act and the proposed law of 2 of the Member States examined: (Barbados, and the Cayman Islands). In the Belize Act “employer” is defined to include the Government, statutory authorities and quasi Government bodies. In Barbados “employer” would also include the Government, a statutory authority, a quasi-government body, heirs, successors and assigns of an employer, a prospective employer and a former employer. In the Cayman Islands “employer” would include any person who has entered into or stands ready to enter into a contract of employment with an employee. There is an expressed provision in the Cayman Islands Bill that the Law would bind the Crown.\(^{110}\)

\(^{110}\) Clause 32
3.35 Generally if an issue arises with regard to discrimination in a public office the anti-discrimination provision in the Constitution is deemed to apply to Government employees. However the legislation governing sexual harassment may be made applicable to all employers and employees since such an application would not be inconsistent with the provisions of the Constitution, which prohibits discrimination on the grounds of sex.

Member States may be guided by the definition of “employee” and “employer” in their employment legislation. However, the definition should include a prospective employer and a former employer. The law should also bind the State and be made applicable to the Government, a statutory authority, a quasi-government body, heirs, successors and assigns of an employer. (See relevant provisions of the labour laws in Appendix 1, Part B.

**Definition of “sexual harassment”**

3.36 Since the circumstances leading to sexual harassment differs in the respective areas where it is prohibited e.g. in the workplace, at an institution or in relation to residential or business accommodation a general definition is not provided in the interpretation of the term in the relevant sections but can be gleaned from the context. This approach was adopted in the Model Bill and in the Belize Act. However the term “unwelcome sexual advances” is more general and is defined in the general interpretation section in the Belize Act and omitted in the Model Bill. In the Cayman Islands Bill a specific and general definition is provided of “sexual harassment”; and this is a recommended approach.

(See Appendix 1 Part C for the definition of “sexual harassment” in the laws of India, Cayman Islands, Canada and South Africa.)

**Clause 4 of the Model Bill**

**Sexual harassment in education**

3.37 Clause 4 of the Model Bill makes it unlawful for a member of staff of an educational institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution
as a student. It is notable that sexual harassment of other persons at the educational institution may be covered by sexual harassment in employment.

3.38 *The Model Bill, the existing sexual harassment law (Belize) and the proposed law of the Cayman Islands, provides for sexual harassment in education. However, protection from sexual harassment or discrimination on the grounds of sex is also provided under the Education Act of Belize and 6 other Member States examined (Anguilla, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat and Saint Lucia)¹¹¹ and the Prevention of Discrimination and Equal Opportunity laws of 2 Member States examined (Guyana and Trinidad and Tobago respectively).¹¹²*

3.39 The proposed Bill for Barbados does not expressly provide for the protection of students from sexual harassment at an educational institution.

3.40 The Model Bill makes specific reference to an educational institution whilst the Belize Act seeks to apply to all institutions including a mental institution and a prison. The fact that the employer is defined in the Belize Act to include the Government is evidence of the wide scope of that Act. Moreover, the *Education Act* of Belize contains provisions to ensure equality of treatment in schools and to require co-educational schools to be free of gender and other biases and to urge schools to maintain a culture free from intimidation¹¹³. The Ministry of Education in Belize is empowered under the *Education Act* to develop regulations to prevent sexual harassment of students. These Regulations are to be enforced by the Managing Authorities, Principals and Vice Principals of the Schools.¹¹⁴

3.41 Under *Clause 8* of the Cayman Islands Bill a person who is in charge of an institution¹¹⁵ would be required to *formulate a policy in accordance with the law*.

¹¹² See Section 4 of this Report.
¹¹³ Section 114
¹¹⁴ Section 115
¹¹⁵ Which is defined to include places of custody and medical and mental accommodation.
against sexual harassment of inmates, wards or patients of that institution. Moreover, Clause 9 of the Cayman Islands Bill provides that a person who is in charge of an adult educational institution or the relevant educational authority would be required to formulate a policy in accordance with the law against sexual harassment. Under Clauses 8 and 9 the person in charge of the institution or authority would also be required to bring the policy statement to the attention of all employees by publishing it in a manner which would reasonably allow the employees to become aware of the policy. Clause 10 would prohibit a person who or an employee of an educational authority which provides facilities for vocational training in order to assist another person to become fit for employment from subjecting that person to sexual harassment. Clause 11 would provide that a member of a body which is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practise of a profession, the carrying on of a trade or the engaging in an occupation, shall not subject to sexual harassment a person who applies for such an authorisation or qualification.

**Indirect protection in relation to sexual harassment in education**

3.42 The Education Act of some of the other Member States examined provides indirect protection in relation to sexual harassment in education. In Anguilla, Antigua and Barbuda, Grenada, and Montserrat the various Education Acts prohibit discrimination in education on the grounds of sex but do not expressly provide for “sexual harassment”. The non-discriminatory provision on the ground of sex applies to the eligibility for admission to a school, educational institution or to a public educational institution or an assisted private school. This is subject to the provisions of the respective Acts which may authorise the management of same sex schools. No sanction is imposed for the contravention of the relevant section in

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116 Education Act, Section, 114  
117 Education Act, Section, 115  
118 Chapter 86 Act No. 21 of 2002 Amended by Act No. 11 of 2003  
119 Education Act Chapter 16.01 (No. 1 of 2004) An Act to provide a regulatory system for the delivery of education services in Montserrat.  
120 in Antigua and Barbuda  
121 In Grenada  
122 In Montserrat
Antigua and Barbuda and Montserrat but a penalty of $5000 is imposed for the contravention of the relevant section in Grenada.

3.43 In Dominica the *Education Act* \(^{123}\) authorises the principal of any public school or assisted private school to suspend a student for a period of more than 2 days but not exceeding 10 school days for gross misconduct or for assaulting the principal, a member of staff or other employee of the school, a student or any other person lawfully present in the school. The law does not expressly provide for suspension for sexual assault or sexual harassment but that provision may be held to be applicable in respect of a complaint for sexual harassment, in the absence of a specific law on the subject.

3.44 The *Education Act* \(^{124}\) of Saint Lucia provides for a regulatory system for the delivery of educational services. Unlike in the other Member States but like in Grenada, where sex is addressed in the Act, the non-discriminatory provision of the *Education Act* of the Saint Lucia does not prohibit discrimination on the grounds of sex and does not expressly provide for sexual harassment.

*The Education Act was intended to be harmonised in the OECS Member States but the provision on discrimination and harassment is not consistent throughout the Member States.*

Perhaps a policy on sexual harassment should be developed by the relevant Ministries, in particular, the Ministry of Education of a Member State, for enforcement in the institutions to which the law applies.

As far as practicable the provisions of the law relating to sexual harassment in education should also be harmonised at the national level.

It is recommended that the provisions of the law should be as extensive as possible, since sexual harassment is evident in all places where persons are gathered for work or otherwise, for any period, such as in a prison and a mental institution, if there is a need to avert unwelcome sexual advances of vulnerable persons at institutions. The provision may therefore be extended to other institutions.

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\(^{123}\) *Education Act, No. 11 of 1997.*

\(^{124}\) *Education Act, Cap. 18.01*
(See relevant provisions of the Educational Acts in Appendix 1, Part B to this Report.)

Clause 5 of the Model Bill

Sexual harassment in relation to accommodation.

3.45 Clause 5 of the Model Bill prohibits a person from making it reasonably appear to another person that the term on which that person offers accommodation is contingent on sexual advances. A similar provision exists in section 9 of the Belize Act. However, the Model Bill makes reference to persistent sexual suggestions whilst the Belize Act does not include the requirement for the suggestions to be persistent.

In so far as it relates to accommodation, under the Cayman Islands Bill, a landlord shall not subject his or her tenant to sexual harassment and a tenant shall not subject his or her landlord to sexual harassment. The Model Bill is not clear on the persons who are engaged in relation to accommodation. A landlord and tenant relationship should be addressed in the law.

It is recommended that the word “persistent” be removed in clause 5 of the Model Bill and reference be made to a landlord and tenant, appropriately defined. The terms “landlord” and “tenant” should be defined in accordance with the relevant law on tenancy.

Administration Investigation of Complaints and Enforcement

3.46 All the relevant laws of the Member States provide a procedure for the settlement of a complaint of sexual harassment although there are slight differences in the procedures. The proposed Model Bill requires the complaint to be first examined by an authorised officer and then referred to a Tribunal established under the Act. Under the Model Bill the complainant or a trade union on behalf of the complainant makes the complaint. The authorised officer investigates the matter, if the claim has merit he or she attempts to resolve the matter by conciliation. If the conciliation

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125 as in Australia
fails the authorised officer refers the matter to the Tribunal established under the Act. The Tribunal conducts a public hearing and may summon persons other than parties to the dispute to appear and provide evidence and also to compel production of documents.

The Model Bill enables a person other than the victim to lodge a complaint, but that complaint may be lodged with a Tribunal established under the Model Bill or the Permanent Secretary in the Ministry of Labour. The Belize Act and the Cayman Islands Bill also provide for a complaint to be made, not only by the person aggrieved, but also by another person on behalf of an aggrieved person. The fact that someone other than the victim e.g. a trade union may lodge a complaint is a desirable provision. The role of a trade union in a sexual harassment case was also recognized by the Court in the Trinidad and Tobago case of Bank Employees' Union V. Republic Bank Limited.

On receipt of a complaint the Tribunal may carry out an investigation. Under the Model Bill the investigation is carried on by an authorised officer. The onus should be on the Tribunal to cause the investigation to be carried out even if it is done by an authorised officer. This would seem more administratively feasible.

**Clause 6 of the Model Bill**

**Establishment or appointment of a Tribunal**

3.47 **Clause 6** of the Model Bill outlines two options for the establishment of a Tribunal for the purpose of hearing complaints under the Act. **Option 1** provides for the establishment of a permanent Tribunal while **Option 2** allows the setting up of an ad hoc Tribunal. A Member State would decide which option is most suitable for its needs. Depending of the selected option, a complaint may be heard by one member of the Tribunal sitting alone if the

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126 Clause 8
parties to the complaint agree.\textsuperscript{128} If there is agreement for a hearing by one member, the decision of that member shall be final.\textsuperscript{129} The parties are to be notified as to appointment of the \textit{ad hoc} Tribunal in the prescribed form.\textsuperscript{130} The establishment of an ad hoc tribunal with a suitably qualified and experienced person may be a desirable provision in jurisdictions where complaints are minimal.

Under \textit{Clause 6 (4)} of the model Bill, the Tribunal shall consist of 3 persons, of whom one member shall be an \textit{attorney-at law who has practised law or has served in a judicial or legal office for not less than 10 years}, one member shall be a person who appears to the Minister to have \textit{sufficient knowledge of, or experience in relation to labour relations}, and one member shall be a person who, \textit{by training and experience is, in the opinion of the Minister, suitable for such appointment}.

3.48 The Model Bill provides for the establishment of a special Tribunal to address sexual harassment matters, whilst the Cayman Islands Bill provides for an existing Tribunal to address complaints relating to sexual harassment. In the Belize Act, the Court and not a Tribunal has jurisdiction in relation to complaints. \textit{This may be a policy decision for the Member State.}

\textit{Specialized courts}

The UN women has recommended that legislation should provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women; and ensure that officers assigned to specialized courts receive specialized training and that measures are in place to minimize stress and fatigue of such officers.

According to the framers of the \textit{Handbook for Legislation on Violence against Women} \textit{“Experiences of complainants/survivors with court personnel in regular courts suggests that such personnel frequently do not have the necessary gender-sensitivity or comprehensive understanding of the various laws that apply to

\begin{itemize}
\item \textsuperscript{128} clause 6 (4)
\item \textsuperscript{129} clause 6 (5)
\item \textsuperscript{130} clause 6 (6)
\end{itemize}
violence against women cases; may not be sensitive to women’s human rights; and may be overburdened with other cases, resulting in delays and increased costs to the complainant/survivor. Specialized courts exist in a number of countries, including Brazil, Spain, Uruguay, Venezuela, the United Kingdom, and a number of states in the United States. Such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialized and gender-sensitive regarding violence against women, and often include procedures to expedite cases of violence against women. The need for a specialized court is noted but such a court may not be required in the Member States.

The Equal Opportunity Act of Trinidad and Tobago seeks to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal. A Commissioner of the Equal Opportunity Commission is required to be a person with training and experience in the field of the law, industrial relations, sociology or administration and who has served in either of these fields for a period of not less than 10 years or who has served in a combination of these fields for a period which in the aggregate is not less than 10 years. There law also provides for the establishment of a panel of advisers to the Commission comprising representatives of every principal religion in Trinidad and Tobago. Like in the Cayman Islands, the Equal Opportunity Tribunal or the Equal Opportunity Commission may be used in Trinidad and Tobago to address sexual harassment matters because the members should have the relevant experience in the area of human rights etc. It is notable that the Antigua Industrial Tribunal has deliberated on sexual harassment matters arising in the work place. In the Cayman Islands it is proposed that a tribunal already set up to examine gender equality issues under another enactment should also deal with the sexual harassment cases.

Where provision is to be made for a tribunal to hear sexual harassment complaints (that are not criminalised) consideration should be given to the use of a Tribunal that is already in existence and has similar jurisdiction, qualification requirements for membership, for the better and
more effective use of resources, cost reduction and administrative convenience even if the membership of the Tribunal may have to be expanded to include an expert in a particular area, e.g. a psychologist. A Tribunal handling a sexual harassment case must comprise persons who have the required training and experience to hear the matter.

Clause 7 of the Model Bill

Designation of authorised officers and powers of entry and Investigation of Complaints

3.49 Under clause 7 of the Model Bill the Minister\textsuperscript{131} may designate authorised officers to investigate a complaint under the law. An authorised officer, who is subject to the Tribunal in the exercise of his or her duties\textsuperscript{132}, is empowered to enter premises to investigate a complaint.\textsuperscript{133} The authorised officer must seek to settle the matter by conciliation. The functions and powers of the authorised officer are scattered in the Model Bill\textsuperscript{134} and the role of the authorised officer under the Model Bill seems akin to that of an inspector i.e. enter premises, inspect documents and seek to effect a conciliation.

The authorised officer should seek as far as practicable to serve as a mediator before the matter is referred to the Labour Tribunal or other Tribunal or a Court.

There is a school of thought that mediation is a desirable option in addressing sexual harassment claims\textsuperscript{135} and is a preferred option to conciliation, which is provided for in the Model Bill.

In cases where the court is involved in the process, I must concur with the statement that “mediation can provide an ideal setting in which the complainant can accomplish the primary aim of stopping the unwanted behaviour”; and also for the following reasons: Mediation can often clarify

\textsuperscript{131} who is not defined
\textsuperscript{132} clause 7(4)
\textsuperscript{133} clause 7(2)
\textsuperscript{134} are provided for in clauses 7, 9, 10 and 11
\textsuperscript{135} See The Promise of Mediation in Sexual Harassment Cases” by Margaret L. Shaw Shaw who lists all the advantages of mediation and summed it by saying:” mediation with its sensitivity to emotional issues, flexibility and ability to foster creative solution is a process that promotes mutually agreeable resolutions in a very high percentage of sexual harassment cases.
disputed facts, accommodate the strong emotions of all involved parties including that of spouses. It helps to neutralize power imbalances and to promote a process that is perceived as, and is in fact, fair. Mediation includes both direct exchange between parties in joint sessions and individual caucuses where the mediator discusses the case with each party separately and confidentially.

However, it has been recommended\(^{136}\) that legislation should explicitly prohibit mediation in all cases of violence against women, (which should be criminalised) both before and during legal proceedings. Mediation is promoted or offered as an alternative to criminal justice and family law processes in several countries' laws on violence against women. However, according to the UN Women, a number of problems arise when mediation is utilized in cases of violence against women in some jurisdictions. It may remove cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability. The UN Women also notes that an increasing number of countries are prohibiting mediation in cases of violence against women. For example, the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) forbids mediation of any kind in cases of violence against women.

In the OECS mediation is facilitated by the Court in civil matters. The parties have to agree to mediate, if they do not agree to mediate the matter, they have access to the courts.

**Clause 8 of the Model Bill**

**Complaints**

\(^{136}\) Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women.
3.50 **Clause 8** of the Model Bill provides for a complaint in writing to be lodged with the Tribunal or the Permanent Secretary of the Ministry of Labour by the aggrieved person or by a trade union on behalf of the aggrieved person. However, under *section 10* of the Belize Act a person who considers that he or she has been sexually harassed may apply to the Court (in writing) alleging that he or she has been sexually harassed. The Court is required under *section 11* of the Belize Act to carry out an investigation and effect a settlement by conciliation. This is a policy decision for the Member States. In some jurisdictions, like Antigua and Barbuda, the Labour Tribunal has jurisdiction in matters relating to sexual harassment in employment. In the Cayman Islands it is proposed that a tribunal already set up to examine gender equality issues under another enactment should also deal with the sexual harassment cases.

Reference to “in writing” may be replaced by the appropriate procedure e.g. “file a complaint in the Court”. Perhaps the onus should not be on the Court to “investigate” the matter. Parties should seek to mediate the dispute before it goes to a Tribunal or Court. It is recommended that, where a Labour Commissioner, Labour Tribunal or other Tribunal, or a Labour Commissioner exists complaints arising from employment should be lodged by or on behalf of the aggrieved person with the Labour Commissioner or Chairman of the Labour Tribunal or other Tribunal, prior to its submission to the Court.

**Clause 9 of the Model Bill**

*Inquiries by authorised officer.*

**Clause 9** of the Model Bill provides for inquiries by an authorised officer who is obliged to endeavour to settle matters by conciliation, and may obtain information from such persons as the officer thinks fit (subsection (2)) or may decide not to carry out an investigation or to discontinue an investigation.

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138 Under *clause 2* of the Bill “Tribunal” is defined to mean the Gender Equality Tribunal established under section 23 of the *Gender Equality Law, 2011*. 
investigation in certain circumstances e.g., where the authorised officer is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

It has also been recommended\textsuperscript{139} that legislation should not include a provision criminalizing false accusations/allegations. Provisions of this kind may dissuade complainants/survivors from filing cases due to fear of not being believed, and there is a high risk that such provisions may be applied incorrectly and used by the defendant/offender for purposes of retaliation. Intentionally misleading the court is commonly dealt with in other areas of the law and should not be included in legislation on violence against women.

However, where the authorised officer or a tribunal or court is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance the matter should be discontinued. A provision of this nature should act as a deterrent, as it cannot be assumed that all claims would be legitimate claims.

\textit{Clause 10 of the Model Bill}

\textbf{Power of authorised officer to obtain information and documents.}

3.51 The responsibility and powers of an authorised officer under \textit{clause 10 of the Model Bill} i.e. on investigating a complaint are imposed on the Court under \textit{section 13} of the Belize Act. \textsuperscript{140} The claim is heard by the Tribunal under the proposed law of the Cayman Islands without an intervening authorised officer.

\textit{Clause 11 of the Model Bill}

\textbf{Report of and reference of matters to Tribunal by authorised officer}

3.52 \textit{Clause 11} of the Model Bill provides for an authorised officer to refer a sexual harassment matter to the Tribunal where the officer thinks the matter cannot be settled by conciliation or has not been successful in

\textsuperscript{139} Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women; paragraphs 3.9.6 and 3.9.7.2.

\textsuperscript{140} Power of the Court to obtain information and documents.
settling the matter or is of the opinion that the matter is such that it warrants inquiry by the Tribunal. *Subsection (2)* requires the authorised officer to submit a written report to the Tribunal of any investigations carried out by the authorised officer and of any resolution of the matter by conciliation.

*Clause 11* of the Model Bill is a desirable provision but consideration may be given to the omission of the authorised officer in the process and for the investigation to be conducted by the Tribunal or a person appointed by the Tribunal, as the situation requires.

*Clause 12 of the Model Bill*

*Inquiries by Tribunal.*

3.53 *Clause 12 of the Model Bill* provides for the conduct of inquiries by the Tribunal and empowers the Tribunal to endeavour to resolve a complaint by such means as it considers reasonable and the Tribunal is obliged to try for an amicable settlement. In this regard it has the power to adjourn the matter to allow the parties to negotiate amicable arrangements.

*Clause 11 is a desirable provision.*

*Clause 13 of the Model Bill*

*Evidence*

3.54 *Clause 13* of the Model Bill provides for receipt of evidence in hearings before the Tribunal, to assist in resolving the matter before the Tribunal. The law does not stipulate on whom the burden of proof is placed. However, the matter is treated as a civil matter and in civil proceedings the burden of proof is on the complainant as such acts may not be witnessed. 141 Under *Clause 30* of the Cayman Islands Bill a question of fact arising in any proceedings under the legislation, other than criminal proceedings, is decided on a balance of probabilities. Under the *Labour Code* of Saint Lucia

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141 I.e. preponderance of evidence in the U.S.; or balance of probability in the CARICOM Member States; Australia and United Kingdom.
in any claim arising out of the constructive dismissal the burden is on the employee to prove the reason which made the continuation of the employment relationship unreasonable. With regard to discrimination cases, upon showing *prima facie* evidence of discrimination, the burden of proof would shift to the respondent to disprove the allegations. Save for the reference to Court in section 12 of the Belize Act and to Tribunal in clause 13 of the Model Bill the provisions regarding the taking of evidence are similar in the Belize Act and the Model Bill.

However, it has been recommended that legislation should prevent introduction of the complainant’s sexual history in both civil and criminal proceedings as this may deflect attention away from the accused onto the complainant.

It has also been recommended that legislation should prohibit a court from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof. As such delays may be due to a number of reasons, including the complainant/survivor’s fear of stigmatization, humiliation, not being believed, and retaliation; financial or emotional dependence on the perpetrator; and distrust in, and lack of access to, responsible institutions, resulting from geographically inaccessible courts and lack of specialized criminal justice personnel.

If sexual harassment is treated as a criminal offence the court would no doubt be guided by the rules of evidence in the *Evidence Act* of a Member State.

**Clause 14 of the Model Bill**

**Attendance at inquiry**

3.55 *Clause 14* of the Model Bill empowers the Tribunal by written notice to direct the attendance of certain persons at an inquiry; it also provides for the

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142 section 158(2)
143 Labour Code 299(2)
144 Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women; paragraphs 3.9.6 and 3.9.7.2.
145 Handbook for Legislation on Violence against Women, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) UN Women; paragraphs 3.9.6 and 3.9.7.2.
production of documents at an enquiry\textsuperscript{146}, and \textsuperscript{147} requires the Tribunal to give each party at an inquiry reasonable opportunity to call, examine and cross-examine witnesses and to make submissions to the Tribunal.

Save for the reference to Court in section 14 of the Belize Act and to Tribunal in clause 14 of the Model Bill the provisions relating to attendance at an inquiry to hear a complaint are similar.

Under the Cayman Islands Bill complaints would be heard by the gender equality Tribunal which would provide written notice of the complaint with the date, time and place to the parties. Whilst it is expected that an authorised officer or Tribunal may do so, the Model Bill, by virtue of the fact that the Tribunal is empowered to regulate its own procedure,\textsuperscript{148} does not contain a similar provision. \textbf{It is recommended that consideration be given to the incorporation in the law of the minimum procedure to be adopted by the authorised officer or Tribunal prior to hearing a complaint, for the guidance of the complainant.}

\textbf{Clause 15 of the Model Bill}

\textbf{Right to representation at an inquiry}

3.56 Under the Belize Act and the Model Bill a party may be represented by an attorney-at-law or other person. However, unlike under the Model Bill under the Belize Act the \textit{Court is empowered to order a party to pay the attorney’s fees of the other party} where the Court believes that it is just and fair to do so.

\textbf{This requirement may be needed to avoid frivolous claims by parties and as part of the compensation to an aggrieved party, and it is recommended for inclusion in the Model Bill.}

\textbf{Clause 16 of the Model Bill}

\textbf{Determination by Tribunal}

\textsuperscript{146} Subsection (3).
\textsuperscript{147} Subsection (4)
\textsuperscript{148} paragraph 10 First Schedule
3.57 The provisions governing the determination of a matter before the Court under the Belize Act\textsuperscript{149} or a Tribunal under the Model Bill are similar. However the manner in which the provision is presented in section 16 of the Belize Act is recommended for adoption.

In the Cayman Islands Bill the Tribunal is required to inform the complainant of its decision following a hearing and to make certain orders in relation to the allegations or matter. The amount of legal fees damages are stipulated in the Cayman Islands Bill\textsuperscript{150} and the amount of costs payable are also stipulated\textsuperscript{151}. This is to avoid abuse of the system. Perhaps consideration should be given for such amounts to be prescribed by order to facilitate change as required. Those amounts are recoverable in Court as a civil debt.\textsuperscript{152}

The following provision should be considered for incorporation in a Model Bill where an order is being made to bind over a respondent for a period:

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("( ) The Court may, in the making of a determination under [ ] take into consideration injury to the complainant’s feelings or humiliation suffered by the complainant.”
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\textit{Clause 17 of the Model Bill}

\textit{Inquiry may be held in private}

3.58 Under clause 17 of the Model Bill an enquiry shall be held in public unless the Tribunal determines otherwise. Under section 17 the Belize Act an inquiry shall be held in camera unless the Court directs otherwise. \textit{The rationale for a public hearing of a dispute between the parties is not clear especially if the matter is before a Tribunal and does not constitute a criminal offence.} It is suggested that proceedings be held in camera to encourage persons to air their grievances in the workplace, in educational institution or in seeking accommodation without being subjected to further public scrutiny.

\textsuperscript{149} Section 16.
\textsuperscript{150} $10,000 and $20,000
\textsuperscript{151} clause 24(2)
\textsuperscript{152} section 24(3)
As far as practicable, proceedings relating to sexual harassment should be held in camera or private. A provision similar to section 17 of the Belize Act is recommended for inclusion in the draft Bill. This should lessen the level of intimidation a complainant may experience in particular where the accused is a supervisor. It has been noted that the pervasive sexual harassment in areas where a lot of women work with men, e.g. in factories, is not simply about sex but about power and control. Perhaps this is why sexual harassment has been classified to include violence against women.

Clause 18 of the Model Bill

Tribunal may prevent publication of evidence etc.

3.59 Clause 18 of the Model Bill empowers the Tribunal to prohibit publication of certain evidence or information given or produced to the Tribunal. The provisions on publications of evidence are similar to section 18 of the Belize Act. In the Cayman Islands Bill a person is required to obtain the permission of the Tribunal to publish a report of the proceedings. Perhaps matters before the Tribunal should be published in the Gazette to assist in establishing a legal precedent or record of cases before the Tribunal.

Clause 19 of the Model Bill

Appeal

3.60 Under Clause 19 of the Model Bill a person aggrieved by the decision of the Tribunal may appeal to the Court of Appeal. Since the matter is determined by a Court in Belize an appeal provision is not expressly provided for but the normal procedure will be adopted. Clause 29 of the Cayman Islands Bill permits a person aggrieved by a decision of, or any power exercised by the Tribunal, to appeal to the Grand Court against that decision or exercise of power.

Clause 20 of the Model Bill

Unlawful Act not offence unless so provided.

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3.61 Under clause 20 of the Model Bill the acts that are prohibited are not held to be offences for which a penalty is attached. A similar provision does not exist in the Belize Act.

**Clause 21 of the Model Bill**

**Offence in relation to inquiry**

3.62 Clause 21 of the Model Bill makes it an offence for a person without reasonable excuse to fail to attend an enquiry or to furnish information or produce documents. A similar provision exists in section 19 of the Belize Act. However, a penalty and not a term of imprisonment is imposed under the Model Bill, whilst the Belize Act provides for a term of imprisonment.

Clause 21 the Model Bill addresses a situation where a person makes a false statement, in relation to an enquiry before the Tribunal, whilst frivolous and vexatious complaints are addressed in clause 9(3)(c).

Where a person is liable to conviction under the Act, consideration should be given to an alternative sentence to a fine i.e. a term of imprisonment unless the person is an entity or a corporation, in such a case, an expressed alternative penalty should also be provided.

**Clause 22 of the Model Bill**

**Offence of victimisation**

3.63 Clause 22 of the Model Bill makes it an offence for a person to commit an act of victimisation against another person. However, unlike in the Belize Act the penalty does not include a term of imprisonment. If victimisation is an offence under any other provision of the law the penalty imposed may be the same. The CARICOM Model Equality of Opportunity and Treatment in Employment and Occupation Bill and Model Anti-Discrimination Bill contain provisions prohibiting victimisation as it relates to discrimination in various areas, such as, sex and sexual orientation, but not expressly in relation to sexual harassment.

**Clause 23 of the Model Bill**

**Particulars of complaint not to be communicated**
3.64 Under clause 23 of the Model Bill a person is prohibited from divulging particulars of a complaint that is before the Tribunal. However there is a strict prohibition in the Belize Act against the publication of any report of proceedings held in camera. Under the Belize Act a person who publishes the report of the proceedings which were held in camera would be liable to a fine and a term of imprisonment and the Court may punish the person for contempt. Clause 27 of the Cayman Islands law prohibits the publication of any report of the proceedings of the Tribunal unless leave of the Tribunal is granted.

A penalty is not attached in the Model Bill for the divulgence of information without the consent of the Tribunal. It is recommended that such a penalty be attached.

Other General Observations

Discontinuance of complaint

3.65 Clause 22 of the Cayman Islands Bill provides that the Tribunal may decide against commencing an investigation or discontinue an investigation where it reasonably believes that the complainant does not wish that the inquiry be made or continued. However under section 9(3)(a) of the Model Bill the authorised officer may decide not to carry out any investigation or, as the case may be, may decide to discontinue any investigation if the authorised officer is of the opinion that the complainant does not desire that the inquiry be made or continued; but under section 12(2), the Tribunal shall not conduct or shall discontinue an inquiry if the complainant notifies the Tribunal that the complainant does not wish the inquiry to be held or to be continued. There seems to be a lack of discretion on the part of the Tribunal in relation to the discontinuance of an inquiry.

A provision may be introduced to provide for the discontinuation of an investigation as provided for in the Cayman Islands Bill.

Limitation period

3.66 Under clause 20(3) and (4) of the Cayman Islands Bill a complaint must be made within 6 months from the date on which the alleged sexual harassment was committed unless otherwise agreed by the Tribunal. It may be useful to insert a limitation period in the law to ensure that complaints are addressed in a speedy manner.
Regulations
3.67 The Tribunal is empowered to regulate its own procedure. However provision should, but does not exist for the Minister to make regulations, or issue guidelines, instructions, directives and standards, including making standardized forms, for the comprehensive and timely implementation of the legislation.

The Belize Protection Against Sexual Harassment Act, Chapter 1

3.68 The Belize Protection Against Sexual Harassment Act 154 appears to be modelled on the CARICOM Model Draft Bill and provides for sexual harassment in employment, at an institution and in relation to accommodation.

However there appears to be significant improvements to the CARICOM Model Draft Bill (which have already been noted in this Report) such as the inclusion of provisions relating to the vicarious liability of an employer for sexual harassment,155 the liability of an employer where opportunities are granted for sexual favours,156 provisions prohibiting acts adversely affecting employment,157 and regarding the duty of an employer to keep an institution free from sexual harassment. These provisions are absent in the Model Bill and may be considered for incorporation in a revised Model Bill.

The Barbados Draft Protection Against Sexual Harassment in the Workplace Bill, 2005

As stated in the Explanatory Memorandum, the Protection Against Sexual Harassment in the Workplace Bill, 2005 is intended to –

(a) declare the existence of a right to freedom from sexual harassment in the work environment;

(b) facilitate the taking of preventative measures against sexual harassment in the workplace through the establishment of the Protection Against Sexual Harassment Council, which Council not only plays a key role in the treatment of complaints of sexual harassment, but also

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154 Chapter 1
155 Section 4
156 Section 5
157 Section 6
participates in policy making and is responsible for public awareness of the harm of sexual harassment;

(c) provide remedies for victims, and sanctions for perpetrators and facilitators, of sexual harassment in the work environment;

(d) establish a procedure for the efficient treatment of complaints of sexual harassment;

(e) enable sexual harassment claims to be dealt with by a specialised tribunal established by law for the hearing and determination of employment rights even if such tribunal is established after the commencement of this Act, but to provide access to the High Court in the meantime.

3.70 The Protection Against Sexual Harassment In The Workplace Bill 2005 includes a Preamble as well as a purpose clause. The Preamble recites sexual harassment as a form of violence and discrimination because it causes physical, sexual harm and is a product of gender based hostility. However, sexual harassment is not akin to rape or domestic violence although it is included as part of a campaign against violence to women. Its core is unwelcome sexual advances, which may not include a criminal sexual offence. The draft Bill focuses on the female sex whilst men are also subject to sexual harassment in the work place.

3.71 Under Clause 5 of the draft Bill the meaning of sexual harassment is unclear and subjective. The focus should be on the fact that the conduct is unwelcomed, the use of terms like “affects the human dignity of the recipient” is a bit too emotive and subjective. A more relevant and objective definition of the term “sexual harassment” is provided for in the Cayman Islands Sexual Harassment Bill 2013. (See also Appendix I, Part C).

3.72 Under Clause 10 of the draft Bill a person who commits an act of sexual harassment is liable to a criminal offence i.e. a fine of $5000 or to imprisonment for 12 months or to both. An employer is also vicariously liable and may be imprisoned. Perhaps since the law seeks to establish rights and entitlement a civil penalty may be considered instead of a term of imprisonment, an employer may be an entity, so the liability of directors and senior management may be considered. However, Clause 12 of the draft Bill
on civil liability should be reconciled with clause 10 of the draft Bill which provides for criminal liability.

3.73 Under clauses 22 to 29 of the draft Bill an inquiry may be conducted of the members of the Council. Perhaps other provisions may be considered for the removal of a member, if and when that becomes necessary.

The Barbados draft Protection Against Sexual Harassment in the Workplace Bill, 2005 which is available online, does not seem to adequately address the subject of sexual harassment in the workplace. Only a few of the 63 clauses in the Bill address the subject of sexual harassment. Emphasis is placed on the establishment of a Council and appointment of enforcement officers. Guidance may be sought by the examination of the Cayman Islands Bill which contains relevant provisions in the area of sexual harassment.
SECTION 4

OTHER RELEVANT CARICOM MODEL LEGISLATION

Since the preparation of the Model Protection against Sexual Harassment Bill in 1996, the Member States have been provided with a Model Anti-Discrimination Bill in 2012 and a Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation.

4.1 MODEL ANTI-DISCRIMINATION BILL

4.1.1 The CARICOM Model Anti-Discrimination Bill, 2012 would provide for the protection of a person against discrimination, including discrimination involving harassment, victimization and vilification on the grounds of HIV status, sexual orientation, lawful sexual activity, disability, gender and status as an orphan.

4.1.2 The protection is against discrimination and harassment on the grounds of a person’s “gender” not “sex”. “Harassment” is defined to include conduct that has the purpose or effect of violating another person’s dignity or creating an intimidating, hostile degrading, humiliating or offensive environment for that other person. The conduct may include sexual harassment as interpreted in the Model Bill on Protection against Sexual Harassment.

4.1.3 The Model Anti-Discrimination Bill, 2012 is not intended to replace the Model Bill on sexual harassment.
4.2 MODEL HARMONISATION ACT REGARDING EQUALITY OF OPPORTUNITY AND TREATMENT IN EMPLOYMENT AND OCCUPATION

4.2.1 *The Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation*,\(^{158}\) which has been passed in Saint Lucia, seeks to give effect to the provisions of the ILO Convention concerning Discrimination in Employment and Occupation, No 111 (1958) and ILO Convention concerning Equal Remuneration, No 100 (1951); and to certain provisions in the UN Convention on the Elimination of all Forms of Discrimination Against Women.

The Bill is intended to eliminate, as far as possible, discrimination in employment and occupation against persons on the grounds of race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy or marital status.

4.2.2 The Bill provides that any act of sexual harassment against an employee that is committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex, within the meaning of clause 4 of that Bill.

4.2.3 However, "sexual harassment" in defined to mean unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

**Burden of proof**

Under clause 22, of that Bill, except where otherwise provided in the Bill, the person alleging a violation of that law shall bear the burden of presenting a *prima facie* case of discrimination or of an offence related to discrimination under that law. Upon a *prima facie* showing of discrimination, the burden or persuasion shall shift to the respondent to disprove the allegations.

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\(^{158}\)Seeks to give effect to the provisions of the ILO Convention concerning Discrimination in Employment and Occupation, No 111 (1958) and ILO Convention concerning Equal Remuneration, No. 100 (1951); and to certain provisions in the UN Convention on the Elimination of All Forms of Discrimination Against Women.
4.2.4 It has been noted that some countries outside the CARICOM Member States have also adopted comprehensive anti-discrimination laws that prohibit harassment on a number of bases and in a number of contexts.\textsuperscript{159} These laws prohibit discrimination on the basis of sex, race, ethnic origin, and sexual orientation, among other bases, and address discrimination in employment, housing, marriage rights and property. However, according to Genoveva Tisheva some women's advocates have complained that comprehensive anti-discrimination laws, and the monitoring/enforcement agencies they create, do not draw enough attention to the specific problem of sex discrimination in employment (including sexual harassment) and do not provide the most effective mechanisms for monitoring and enforcing the sex discrimination provisions of the law in particular. As a result, these advocates believe that it will be more difficult for the relevant government to promote equal employment opportunities for women and men under a comprehensive discrimination law than under a sex discrimination law or a law providing for equal employment opportunities for men and women.\textsuperscript{160}

4.2.5 In Central and Eastern Europe, Romania and Bulgaria have adopted broad anti-discrimination laws in 2002 and 2003, respectively. Romania's Law\textsuperscript{161} guarantees equality between citizens in working conditions, recruitment, promotions, access to training, social security, public services, education, and public peace.\textsuperscript{162} Bulgaria's Law on the Protection Against Discrimination prohibits "any discrimination in relation to labour, education, access to social services, etc." on the basis of age, gender, ethnic group, national origin, education, family status and property status. The Commission on the Prevention of Discrimination in Bulgaria is responsible for enforcing this law and is empowered to hear discrimination complaints, including complaints of sexual harassment.\textsuperscript{163}

\textsuperscript{159} E.g. Australia
\textsuperscript{161} Romania's Law No. 48 of 2002 on the Prevention and Sanction of All Forms of Discrimination.
\textsuperscript{162} Article 1
4.2.6 The CARICOM Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation treats harassment and sexual harassment as a form of sex discrimination and appears to be limiting in its application to sexual harassment and a specific Model Bill on sexual harassment should provide for a wide range of areas in which a person would be protected from sexual harassment.
SECTION 5

OTHER CURRENT LEGISLATION IN FORCE IN CARICOM MEMBER STATES

There are other indirect legislation in force in some Member State that impact on sexual harassment which may be considered in the preparation of sexual harassment law at the national level.

5.1 Anguilla

5.1.1 The Criminal Code\textsuperscript{164} in Anguilla makes it a criminal offence for a prospective employer, co-worker to sexually harass a minor\textsuperscript{165}. If convicted that person would be liable to a fine of $10,000 or to imprisonment for 5 years or to both.

5.1.2 The Anguilla Constitution Order 2009 prohibits discrimination generally on the grounds of sex but does not expressly provide for sexual harassment.

See relevant provisions in Appendix 1, Part B to this Report.

5.2 Antigua and Barbuda

5.2.1 The Antigua and Barbuda Constitutional Order 1981 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.2.2 The Criminal Law contains indirect provisions which may be applicable in the absence of expressed provisions in the law relating to sexual harassment of a woman. The Criminal Law is silent as it relates to a man. Sexual harassment is not an expressed criminal offence against a person but may be pursued as an assault against a person if the intent is to commit an offence, like unlawful carnal knowledge or indecent assault on a female or if the acts complained of included assault on the person by another\textsuperscript{166}.

\textsuperscript{164} Anguilla Criminal Code, Chapter C140
\textsuperscript{165} Criminal Code, Chapter C140, section 158
\textsuperscript{166} Offences against the Person Act, Chapter 300 (1873) Amended up to 1986, provides penalties for various offences against a person.
5.2.3 Under the Sexual Offences Act, 1995, sexual intercourse with a minor employee is not viewed as sexual harassment within the meaning of the term in the draft Bill. The Act does not treat sexual harassment as a criminal offence. However there is need to confirm whether sexual intercourse with a minor employee is to be viewed as sexual harassment within the meaning of the term in the draft Model Bill.

5.2.4 The Prevention of Crime Act makes it a criminal offence, punishable with a fine of $250 or a term of imprisonment not exceeding 3 months for any person to use violence to any person or any property, threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace, or molest or obstruct any person with a view to coerce such person. Some of these offences may also be punishable under the Domestic Violence Bill.

(See relevant provisions in Appendix 1, Part B to this Report.)

5.3 Bahamas

5.3.1 Unlike the other Constitutions, the Constitution of the Commonwealth of the Bahamas 1973 does not prohibit discrimination on the grounds of sex nor does it expressly provide for sexual harassment.

(See relevant provisions in Appendix 1, Part B to this Report.)

5.4 Barbados

5.4.1 Unlike the other Constitutions, and like in the Bahamas, the non-discriminatory provision of the Constitution of Barbados does not prohibit discrimination on the grounds of sex and does not expressly provide for sexual harassment.

5.4.2 The Minor Offences Act 1998 makes it an arrestable offence for a person to harass another person in a public place, by using words, gestures and actions

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167 No. 9 of 1995 the law relates to sexual crimes and other criminal sexual offences.
168 Cap. 339 prohibits the use of violence on any person or property, molesting and threatening or intimidating a person.
169 Minor Offences Act 1998 – 1 which provides for the law in relation to certain minor offences.
that annoy, alarm or abuse a person; insulting, taunting or challenging a person in a manner likely to offend; using obscene and profane language to intimidate a person, or disturbing or irritating especially by continued and repeated acts. The implications and the consequences on the person harassed is not the same as that in the case of sexual harassment under the Model Bill.

5.4.3 The Employment Rights Act, 2012 provides for the rights of employed persons. The Act establishes an Employment Rights Tribunal\(^ {170} \) to enforce the rights conferred under the Act, determine complaints and make awards. Consideration may be given to the need to establish another Tribunal under the sexual harassment law to address sexual harassment in the work place. Complaints to the Tribunal are made through the Chief Labour Officer. The Act does not bind the Crown.

**Perhaps reference should be made to the Tribunal established under the Employment Rights Act 2012.**

(See relevant provisions in Appendix 1, Part B to this Report.)

5.5 Belize

5.5.1 The Belize Constitution Act, Chapter 4\(^ {171} \) prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.5.2 Section 7 of the Crime Control and Criminal Justice Act,\(^ {172} \) of Belize appears to address harassment which may be a public “nuisance” and it is not within the context of the Model Bill. In the absence of specific legislation on “sexual harassment” the provisions relating to assault in the Criminal Code\(^ {173} \) may be held applicable in determining a complaint on sexual harassment, if the acts included assault on the person by another. However, specific sexual harassment law exists in Belize, as noted in this Report.

(See relevant provisions in Appendix 1, Part B to this Report.)

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\(^{170}\) section 6

\(^{171}\) Belize Constitution Act, Chapter 4 as in force March 1, 2012

\(^{172}\) Cap 102

\(^{173}\) Cap 101
5.6.  Dominica

5.6.1  The Constitution of the Commonwealth of Dominica prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.6.2  The Offences against the Person Act\textsuperscript{174} of Dominica provides for the punishment of crimes involving the taking and harming of human life, the endangerment of and threat to human life and divers crimes against safety, liberty and wellbeing of the human person. The law does not expressly provide for sexual harassment but the term “indecent assault” may be held to be applicable in a complaint for sexual harassment if the acts complained of included indecent assault on the person by another.

5.6.3  The Sexual Offences Act\textsuperscript{175} of Dominica does not expressly provide for sexual harassment but the terms inducing sexual assault, “by threats or intimidation procures another person to have sexual intercourse” may be held to be applicable in determining a complaint for sexual harassment if the acts included sexual assault on the person by another.

(See relevant provisions in Appendix I, Part B to this Report.)

5.7.  Grenada

5.7.1  The Grenada Constitution Order, 1973 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.7.2  Under section 21 of the Criminal Code,\textsuperscript{176} of Grenada it is an offence for a person to assault and cause battery on another person. This occurs if the person without the other person’s consent, and with the intention of causing harm, pain, fear or annoyance to the other person, or of exciting him to anger, he or she forcibly touches the other person. Under section 178 of the Criminal Code, a person is guilty of the offence of unlawful sexual connection with another person if that person has sexual connection with that other person with the consent of the other person; if the consent is obtained by the use of the accused’s position of authority over that other person.\textsuperscript{177}

\textsuperscript{174}  Offences against the Person Act, Chapter 10:31. was enacted in 1873 and last amended in 1994,

\textsuperscript{175}  Sexual Offences Act, 1 of 1998, provides for sexual crimes, procurement and prostitution of women and kindred offences against a minor.

\textsuperscript{176}  Chapter 72A, (Amendment) 2012

\textsuperscript{177}  See Section 178 (3)
The *Criminal Code*\(^\text{178}\) does not expressly provide for the offence of sexual harassment but the provision on sexual assault and battery may be held to be applicable in determining a complaint for sexual harassment in the absence of a specific law on the subject if the acts included sexual assault and battery on the person by another.

(See relevant provisions in *Appendix 1, Part B* to this Report.)

**5.8. Guyana**

5.8.1 The *Constitution of Guyana*\(^\text{179}\) prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.8.2 The *Criminal Law (Offences) Act*\(^\text{180}\) provides for the procedure with respect to indictable offences. The *Criminal Law Act* of Guyana does not expressly refer to sexual harassment but provides for the offence of common assault or indecent assault on a female.

5.8.3 The *Equal Rights Act*\(^\text{181}\) makes provision for the enforcement of the principles enshrined in *article 29* of the Constitution, so as to secure equality for women. Under *section 2 (2)* of that Act, all forms of discrimination against women or men on the basis of their sex or be marital status are illegal. Under *section 2(4)* a person shall not be eligible for, or discriminated against, in respect of any employment, appointment or promotion in, or to, any office or position on the ground only of sex. The *Equal Rights Act does not address the issues of sexual harassment as provided for in the Model Bill.*

5.8.4 The *Prevention of Discrimination Act*\(^\text{182}\) seeks to provide for the elimination of discrimination in employment, training, recruitment and membership of professional bodies and the promotion or equal remuneration to men and women in employment who perform work of equal value. *Section 4* of the *Prevention of Discrimination Act* seeks to address discrimination on the grounds of sex and in employment. However, *Section 8* of the Act provides that any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker is unlawful discrimination

\(^{178}\) Chapter 72a, (Amendment) 2012 establishes a code of offences punishable on summary conviction and on indictment.

\(^{179}\) Chapter 1:01

\(^{180}\) Criminal Law (Offences) Act, Chapter 8:01.

\(^{181}\) Equal Rights Act, Chapter 38:01

\(^{182}\) Prevention of Discrimination Act, 1997 (No. 26 of 1997)
based on sex within the meaning of section 4 of the Act. It is also an offence for a person to commit an act of victimisation on another.

(See relevant provisions in Appendix 1, Part B to this Report.)

5.9. Jamaica

5.9.1 The Constitution of Jamaica prohibits discrimination on the grounds of gender, but does not expressly provide for sexual harassment.

5.9.2 The Sexual Offences Act, 2011 relates to sexual crimes and other criminal sexual offences. Sexual harassment is not an expressed sexual offence under the Sexual Offences Act of Jamaica, but may be pursued as an offence under the Sexual Offences Act if the acts included a sexual offence on the person by another.

5.9.3 The Offences against the Person Act, provides penalties for various offences against a person. Sexual harassment is not an expressed criminal offence against a person under the Offences against the Person Act of Jamaica, but may be pursued as an offence against a person under the Offences against the Person Act if the acts included an assault or battery on a male child under 14 years of age or any female.

A specific Bill on sexual harassment has been proposed in Jamaica.

(See relevant provisions of available laws in Appendix 1, Part B to this Report.)

5.10. Montserrat

5.10.1 The Montserrat Constitution Order 2010 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

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183 i.e. being male or female (and not expressly “sex”)
185 Cap 268
186 The Montserrat Constitution Order 2010 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.
5.10.2 The *Penal Code* \(^{187}\) amends and codifies the penal laws of Montserrat. The *Penal Code* does not expressly provide for sexual harassment but the terms, “*attempts to procure, a woman by threats or intimidation to have sexual intercourse*” may be held to be applicable in determining a complaint for sexual harassment, if the acts included procurement of a woman by threats or intimidation to have sexual intercourse.

(See relevant provisions in *Appendix 1, Part B* to this Report.)

5.11. **Saint Christopher and Nevis**

5.11.1 The *Constitution of Saint Christopher and Nevis* \(^{188}\) prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.11.2 The *Prevention of Crimes Act* \(^{189}\) prohibits the use of violence against a person or to destroy property and molesting and threatening or intimidating a person. Like in Antigua and Barbuda, the *Prevention of Crimes Act* makes it a criminal offence, punishable with a fine of $300 or a term of imprisonment not exceeding 3 months for any person to use violence against any person or any property, threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him or her, to bind over the person so threatening or intimidating to keep the peace, or molest or obstruct any person with a view to coerce the person. Some of these offences may also be punishable under the *Domestic Violence Act*.

5.11.3 The *Small Charges Act* \(^{190}\) of Saint Christopher and Nevis provides for the offence of assault on any person, but does not expressly provide for the offence of sexual harassment.

(See relevant provisions in *Appendix 1, Part B* to this Report.)

5.12. **Saint Lucia**

5.12.1 The *Civil Code* \(^{191}\) provides for the civil law of Saint Lucia and provides that liability for acts such as assault, battery or other violence on the person by an

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\(^{187}\) Chapter 4.02  
\(^{188}\) Chap. 1.01  
\(^{189}\) Prevention of Crimes Act, Chap. 4.20  
\(^{190}\) Small Charges Act, Chap. 4.33  
\(^{191}\) Civil Code, Chapter 4.01, articles 324 and 325
employee of the corporation may fall on the management or the directors of the corporation.

5.12.2 The Constitution of Saint Lucia \(^{192}\) prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

(See relevant provisions in Appendix 1, Part B to this Report.)

5.13. Saint Vincent and the Grenadines

5.13.1 The Saint Vincent and the Grenadines Constitution Order 1979 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.13.2 The Criminal Code \(^{193}\) of Saint Vincent and the Grenadines does not expressly provide for the offence of sexual harassment. However a claim can be lodged for sexual assault or indecent assault, if either is an element of the sexual harassment.

5.13.3 The Protection of Employment Act, 2003 \(^{194}\) protects a person from the unfair termination of his or her employment but does not expressly refer to termination or the grounds of sexual harassment. The law also prohibits discrimination on the grounds of sex. A dispute resolution mechanism is provided for under the Act, which is similar to that provided in the Model Bill.

(See relevant provisions in Appendix 1, Part B to this Report.)

5.14. Trinidad and Tobago

5.14.1 The Equal Opportunity Act \(^{195}\) prohibits certain kinds of discrimination, to promote equality of opportunity between persons of different status, to

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\(^{192}\) Constitution of Saint Lucia. Chapter 1.01

\(^{193}\) The Criminal Code amends and codifies the criminal laws of Saint Vincent and the Grenadines.

\(^{194}\) Protection of Employment Act, 2003 No. 20 of 2003 makes provisions for the promotion of the employment relationship.

\(^{195}\) Equal Opportunity Act,
establish an Equal Opportunity Commission and an Equal Opportunity Tribunal. The *Equal Opportunity Act* prohibits discrimination in employment, education, the provision of goods and services and the provision of accommodation but does not expressly provide for sexual harassment. That Act applies to discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is discrimination on the ground of status or discrimination by victimisation.

5.14.2 The *Offences against the Person Act*\(^{196}\) relates to “harassment”, of any person and the provisions of that Act would be relevant if the focus was on “sexual harassment”, which has a different connotation.

5.14.3 The *Sexual Offences Act* \(^{197}\) provides for sexual crimes, the procuration, abduction and prostitution of persons and kindred offences. The Act makes it a criminal offence for an adult to have sexual intercourse with a minor who is in the adult’s employment; or is in respect of any employment or work under or in any way subject to the adult’s control or direction; or receives his or her wages or salary directly or indirectly from the adult. The adult is liable on conviction to imprisonment for 25 years. In the absence of specific legislation on “sexual harassment” the provisions relating to harassment in the *Offence against a Person Act* of Trinidad and Tobago may be held applicable in determining a complaint on sexual harassment if the act complained of is prohibited under that Act.

5.14.5 The *Summary Offences Act*\(^{198}\) provides for offences punishable on summary conviction. In the absence of specific legislation on “sexual harassment” the provisions relating to assault in the *Summary Offences Act* of Trinidad and Tobago may be held applicable in determining a complaint on sexual harassment if the act complained of is prohibited under that Act.

(See relevant provisions in *Appendix 1, Part B* to this Report.)
5.15. The Virgin Islands

5.15.1 The *Anti-Discrimination Act* \(^{199}\) makes unlawful discrimination on racial grounds and in other matters relating to the treatment of persons generally.

5.15.2 The *Virgin Islands Constitution Order 2007* prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

*As far as practicable, the various provisions in the various laws that relate to sexual harassment should be consolidated and strengthened at the national level.*

(See relevant provisions in Appendix 1, Part B to this Report.)

SECTION 6

OVERVIEW OF LEGISLATION RECENTLY PASSED IN OTHER COMMONWEALTH COUNTRIES: MAIN PROVISIONS, SIMILARITIES AND DIFFERENCES, AND THE SOURCE OF THE PROVISIONS TO DETERMINE RECENT THINKING ON THE SUBJECT.

6.1 India

6.1.1 Sexual harassment is an issue of concern world-wide. India enacted a *Sexual Harassment of Women at Workplace (Prevent, Protection and Redressal) Act* in 2013. \(^{200}\) In India, it was acknowledged that the protection against sexual harassment and the right to work with dignity are universally recognised human rights under international conventions such as the *Convention on the Elimination of all Forms of Discrimination against women*. \(^{201}\) It was also acknowledged that sexual harassment was a violation of the fundamental rights of a woman to equality under the Constitution of India, her right to live with dignity and to practice any profession, occupation trade or business in an environment free from sexual harassment.

6.1.2 Consequently, *the focus of the India Act is on women and on harassment in the workplace so it is limiting*, unlike the Cayman Islands Bill which has a wide scope. The India Act also extends to grievances experienced by a woman in

\(^{199}\) Anti-Discrimination Act, 2001 No. 2 of 2001

\(^{200}\) No. 14 of 2013 which came into effect on 22 April 2013

\(^{201}\) Preamble to Act No. 14 of 2013
the service of the Government and expressly prohibits sexual harassment against any woman. It is a direct prohibition which does not exist in the Model Bill. That notwithstanding, the India Act seeks to promote gender equality in the work place and in the enforcement of the law. The India Act requires every employer to establish an internal Complaints Committee and the presiding officer of that Committee must be a senior woman and a half of the members of that Committee should be women. The making of false and malicious complaints is punishable under the law.

6.1.3 An interesting feature of the India Act is the expressed application of the law to a domestic worker or a person employed to do household work. Where the complaint is made by a domestic worker, the Local Committee may refer the case to the police in accordance with the Penal Code. The matter may be dealt with as a criminal offence.

It is evident that the Model Bill applies to any employee and should of necessity include a domestic worker, but a workplace is generally interpreted to refer to an organizational framework; especially where that organization is required to establish a policy statement in respect of sexual harassment in the workplace. Consideration may be given to the expressed application of the Model Bill to domestic workers for the avoidance of doubt.

6.1.4 In the India Act “employee” includes persons who are employed with or without the knowledge of the principal employer. A very extensive definition of “employer” exists as it relates to the work place; and includes any person responsible for the management, supervision and control of the work place i.e. anyone responsible for the formulation and administration of policy.202 “Workplace” is defined to include any private entity or public body including an educational institution, hospital and a nursing home.

6.1.5 “Sexual harassment” is defined under the India Act to include certain unwelcomed acts and behaviour whether directly or by implication; such as physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks and showing pornography. The list is not

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202 Section 2
as exhaustive as that of the Cayman Islands Bill but captures the essential elements of the term “sexual harassment” without repetition.

6.1.6 However, the provisions of the India Act outline the circumstances which may be connected to any act included in the definition of sexual harassment, which would constitute sexual harassment, such as the “implied or explicit promise of preferential treatment in the person’s employment”. This is interesting for whereas the Model Bill seeks to define the term, the prohibition is not communicated in the same manner.

(See definition of “sexual harassment in the India Act in Appendix 1, Part C.)

6.1.7 A complaint should be made within 3 months of its occurrence. A Local Committee is also established by every District Officer to receive complaints of sexual harassment where an Internal Complaints Committee has not yet been established. However, for the purposes of inquiring in the matter, the Internal Committee or Local Committee has the same powers as are vested in a civil court.

6.1.8 An aggrieved person may make a complaint in writing to either Committee if established. The legal heir of an aggrieved person who has a physical or mental incapacity or has died may make a complaint on behalf of that person. It appears that a complaint may be made even in respect of a deceased person. A matter may be settled by conciliation at the request of the complainant and no monetary settlement may be made as a basis for conciliation.

6.1.9 The employer is obligated to display in a conspicuous place in the work place, the penal consequences of sexual harassment, as well as to organise workshops and awareness programmes at regular intervals for employers.
and members of the Internal Committee treat sexual harassment as a misconduct under the staff rules and initiate action for such misconduct.

The duties of the employer under the India Act are instructive and very relevant in addressing sexual harassment in the workplace.

It is notable that sexual harassment is not criminalised under the 2013 Act of India but the focus is on prevention, protection and appropriate redressal of complaints. A complaint may be settled by conciliation at the request of the complainant. If the harassment is grave, the employer is bound to inform the relevant authorities to institute penal action under the Indian Penal Code, 1860, which contains provisions for crimes relating to sexual harassment.

Annual Report

6.1.10 The Employer, Internal Committee and Local Committee are required to submit an annual report in the prescribed form. The annual report should include the number of cases filed and their disposal.

This requirement should greatly assist in establishing statistics in determining the extent of the problem at any given time and to facilitate appropriate action to address the problem.

6.2 Australia

6.2.1 There appears to be no specific law on sexual harassment in Australia but a Sex Discrimination Act and an Equal Opportunity Act were enacted in 1984 and amended progressively up to 2013.

6.2.2 The Sex Discrimination Act prohibits discrimination on the grounds of sex, sexual orientation, gender identity, intersex status or involving sexual

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208 Section 19
harassment in the areas of work, accommodation, education, the provision of goods and services, the disposal of land and the activities of clubs.

6.2.3 The *Equal Opportunity Act* seeks to prohibit certain kinds of discrimination based on sex, chosen gender or sexuality, against applicants, employees, agents, independent contractors, contract workers and within partnerships. The *Equal Opportunity Act* also prohibits such discrimination by associations, qualifying bodies and educational authorises, discrimination in relation to land, goods, services and accommodation. *Section 86 of the Equal Opportunity Act* provides for victimisation to be unlawful and *Section 87* addresses sexual harassment in the workplace, by an educational authority and a supplier of goods and services. Discrimination is defined to refer to unfavourable treatment of a person on the basis of a particular attribute of that person in circumstances where another person is treated more favourably. A tribunal is established under the law to deal with complaints.

The areas addressed the *Sex Discrimination Act* and the *Equal Opportunity Act* of Australia are also addressed in similar draft model legislation prepared for adoption in the Member States, namely: the *Anti-Discrimination Bill* and the *Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation*; but these laws do not focus on sexual harassment in the manner contemplated by the Model Bill on sexual harassment.

6.3 Canada

6.3.1 Like in Australia, there appears to be no specific law on sexual harassment in Canada. However provisions relating to harassment are incorporated in the *Canadian Human Rights Act, 1985* last amended in 2014, the *Criminal Code*, last amended in 2014 and the *Labour Code* of Canada.

6.3.2 The *Human Rights Act* prohibits discriminatory practices on the grounds of sex and sexual orientation. The *Criminal Code* addresses the offence of “criminal harassment”\(^\text{209}\) which includes engaging in threatening conduct directed at a person. Sexual harassment in employment is addressed in the

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\(^{209}\) in Section 264
A very “general” definition of sexual harassment is provided in the Labour Code. (See Appendix 1, Part C.) The Labour Code requires employers to maintain a policy statement on sexual harassment and provides details on the contents and requirements in relation to the policy statement. (See Appendix 1, Part D) The Labour Code also provides for the appointment and functions of inspectors, civil remedies and for the making, suspension and rejection of complaints.

It is notable that there are different elements in the term “sexual harassment” and a general recommendation to criminalise sexual harassment must be addressed cautiously. The requirements in relation to the policy statement on sexual harassment is instructive.

6.4 South Africa

6.4.1 The Protection from Harassment Act, 2010211 provides for the issuing of protection orders against harassment, to afford victims of harassment an effective remedy against such behaviour. Harassment is defined to include directly or indirectly engaging in conduct that the respondent knows or ought to know amounts to sexual harassment of the complainant or a related person.

The Protection from Harassment Act 2010 of South Africa appears to be an updated version of the domestic violence law of the CARICOM Member States, which provides for the issue of protection orders against harassment. Sexual harassment is defined, but it is to be interpreted within the context of harassment. (See Appendix 1, Part C.) The South Africa law does not address sexual harassment in the comprehensive manner intended under Model Bill.

6.5 United Kingdom

6.5.1 Like in Australia and Canada, there appears to be no specific law on sexual harassment in the United Kingdom. However harassment is addressed in the Equality Act 2010 which has two main purposes: to harmonise discrimination law, and to strengthen the law to support progress on equality. The Equality

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210 Sections 247.1 to 247.4
211 No. 17 of 2011
Act brings together and re-states a number of enactments and other related provisions in order to harmonise existing provisions and give a single approach, where appropriate. It extends the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic e.g. sex, age or sexual orientation and gender reassignment. The Equality Act makes it unlawful to discriminate against, harass or victimise a person when providing a service\textsuperscript{212} or when exercising a public function. It also makes it unlawful to discriminate against, harass or victimise a person at work or in employment services and for educational bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place. It provides for the enforcement of its provisions, through the civil courts (in relation to services and public functions, premises, education and associations) and for the establishment and use of tribunals (in relation to work and related areas, and equal pay).

The Equality Act of the United Kingdom does not address sexual harassment in the manner intended under the Model Bill but the circumstances in which the court and a tribunal are used to address harassment complaints is instructive.

6.6 European Union

6.6.1 The European Union has taken concrete steps to address sexual harassment in its Member States.\textsuperscript{213} The European Parliament and the Council have adopted Directive 2002/73/EC (EU Directive) which prohibits sexual harassment in workplaces throughout the European Union. The EU directives are legally binding on EU Member States, but they require the adoption of implementing legislation on the EU Member State level.

6.6.2 The EU Directive seeks to harmonize the laws of the EU Member States relating to the equal treatment of men and women. When implementing the

\textsuperscript{212} Which includes the provision of goods or facilities.

EU Directive, the EU Member States are required to recognize sexual harassment as an illegal form of gender based discrimination.

6.6.3 The EU Directive contains a number of components, including definitions of workplace harassment; reference to preventative measures on sexual harassment; the establishment of judicial and/or administrative procedures for enforcement purposes; compensation for victims of discrimination and harassment; and the establishment of national agencies charged with promoting equal employment opportunities.214

6.6.4 Article 2(2) of the EU Directive recognizes “harassment” and “sexual harassment” as forms of discrimination on the grounds of sex and thus contrary to the principle of equal treatment between men and women. “Harassment” occurs “where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment.” Whilst, “sexual harassment” is defined to be “where any form of unwanted verbal, non-verbal, or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment.” A person’s rejection of, or submission to, harassment or sexual harassment may not be used as a basis for an employment decision affecting that person215.

6.6.5 The EU Directive prohibits both "quid pro quo" and "hostile work environment" harassment. Hostile work environment harassment related to sex and of a sexual nature is addressed in the definitions described in the paragraph 6.6.4 with the reference to the creation of "an intimidating, hostile, degrading, humiliating or offensive environment". In connection with the definitions of harassment and sexual harassment, the EU Directive clarifies that quid pro quo harassment is also prohibited by stating that "a person's rejection of, or submission to, [harassment or sexual harassment] may not be used as a basis for a decision affecting that person."

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215 Article 2(3).
6.6.6 Of the countries in the Central and Eastern European region that have recently joined the EU, Bulgaria, the Czech Republic, Lithuania, Estonia, Slovakia and Romania have adopted legislation addressing sexual harassment which, for the most part, complies with Directive 2002/73/EC; most other new EU Member States, such as Hungary, have also recently brought their national legislation in line with the requirements of Directive 2002/73/EC.\textsuperscript{216}

With the adoption of the EU Directive, the European Union has taken a major step toward harmonizing public policy aimed at reducing sexual harassment in the workplace. A similar initiative is desired in the CARICOM Member States. The EU Directive 2002/73/EC would be very instructive in this regard.

\textsuperscript{216} http://www.stopvaw.org/1976_equal_treatment_directive_and_2002_sexual_harassment_amendment; From Open Society Institute, Monitoring the EU Accession Process: Equal Opportunities for Women and Men(September 2003) and Open Society Institute, Equal Opportunities for Women and Men, Monitoring law and practice in new member states and accession countries of the European Union (April 2005); Bulgarian Helsinki Committee, Bulgaria Adopts Successful Protection Against Discrimination Act (September 2003); Czech Republic, Employment Act, Section 1 (1); Republic of Lithuania, Law on Equal Opportunities, Articles 2, 5, 9 and 12; and Republic of Romania, Ordinance on Preventing and Punishing All Forms of Discrimination, Article 19; Republic of Estonia, Gender Equality Act (May 2004). [}
SECTION 7

ANALYSIS OF REQUESTS BY GENDER SPECIALISTS AND OTHER GROUPS IN CARICOM MEMBER STATES FOR NEW LEGISLATION OR AMENDMENTS TO EXISTING LEGISLATION HAVING REGARD TO CHANGED CIRCUMSTANCES SINCE THE CARICOM MODEL BILL WAS PREPARED

Sexual harassment in the CARICOM Member States

7.1 The extent to which sexual harassment exists in all the Member States is not formerly confirmed, in particular, current statistics on situations in which persons have been forced to changed jobs or have been dismissed for objecting to or refusing sexual harassment were not accessible by the Consultant. It is evident that sexual harassment may be experienced by men, but in numbers they would be less important statistically. Sexual harassment appears to be a widespread and serious problem. However, with the exception of newspaper articles and short presentations by academics, the Consultant was unable to locate recent studies that address the extent of the problem in the Member States; but recent studies exist in relation to the existence of sexual harassment in the European Union and elsewhere. However, and as stated by Tracy Robinson there is enough evidence that sexual harassment is a serious problem that is under-regulated in the Member States and the problem is more prevalent in workplaces where gender inequalities exist.

7.2 Darren Reeves of Dwensea Incorporated of Barbados notes that sexual harassment was on the rise in the Caribbean and affected both men and women as young as 18 years old. The acts are said to be perpetuated by senior individuals in organisations where persons are assigned either part time or permanently. The article suggests that derogatory statements to women are the norm in the Caribbean society. The article advocates the need for positive social change to address sexual harassment in the work place, to protect the employee,

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217 Husbands page 538
218 E.g. Tracy Robinson: Sexual Harassment in the Workplace: Let the Conversation Begin! Jambar/GLC CLE Seminar.
219 Ibid.
220 Barbados Today Harassment Up – April 15, 2013
ensure respect for each other and promote high moral orders. The article alludes to the psychological effect that sexual harassment may have on the well-being of a person, such as lack of motivation, depression and marital strain and its negative impact on the organization, by the reduction of productivity.

7.3 David Paulin, a writer for the Observer newspaper of Jamaica, in an article entitled “Sexual Harassment rife in Jamaica” sought to relay the experience of a victim of sexual harassment, the unequal power relationship, the discomfort experienced by the act, the increasing demands as a result of refusal to succumb to the harassment and eventual quitting of the job and loss of livelihood. The article noted that whilst persons may leave their jobs in the private sector persons who are harassed in the public sector may opt to be transferred to another department. It was noted that the Bureau of Women’s Affairs was fine tuning draft legislation similar to the Model Bill. It was proposed that a Tribunal be established and that mediation be an option. Discussions on the subject have been undertaken by groups such as the Jamaica Employers’ Federation. It was also advocated that in the absence of sexual harassment law, the Labour Code could be amended and employers should be required to adopt policies to prevent harassment. The article suggested that persons should be required to perform community service if found liable for sexual harassment and that there was need for a good legal definition of “sexual harassment” since persons have “all sorts of concepts” about what sexual harassment involves.

7.4 Sexual harassment is also very prevalent in the workplace in Trinidad and Tobago as evident in an article published in the newspaper by Marlene S. Charles, President of the Association of Female Executives of Trinidad and Tobago (AFETT) and the case law. However, Tracy Robinson notes that while the Trinidad and Tobago Industrial Court has shown a willingness to develop common law rules in response to cases of sexual harassment that come before it, this is not a general trend, and the need for appropriate legislation remains: to clarify the boundaries of what is prohibited, to encourage prevention (through sexual harassment policies), to provide an early response.

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221 Jamaica Observer, July 07 2003
222 Newsday, March 7th 2013
mechanism within workplaces, to ensure fair treatment of workers during disciplinary proceedings and ensure just and effective relief. See paragraph 3.20 for summary of the equal opportunity and prevention of discrimination law which prohibit discrimination on the grounds of sex.

Application to both sexes

7.5 Most of the Member States seek to address sexual harassment in the workplace and with a focus on harassment of women as the vulnerable group. As in the USA the entry of more women in the workplace and the greater attention by employers to women's issues have encouraged women to speak out against sexual harassment. See paragraph 5.8.3 and on equal protection under the law and the prevention of discrimination law as they relate to discrimination on the grounds of sex.

7.6 Under article 149D. (1) of the Constitution the Cooperative Republic of Guyana the State is not to deny any person equality before the law or equal protection and benefit of the law, and is required, for the purpose of promoting equality, to take legislative and other measures designed to protect disadvantaged persons and persons with disabilities. Equality includes the full and equal enjoyment of all rights and freedoms guaranteed by or under the Constitution or any other law. The Equal Rights Act Chapter 38:01 makes provision for the enforcement of the principles enshrined in the Constitution as it relates to equality of women and men and to provide for non-discrimination on the grounds of sex. The Equal Rights Act does not address the issues of sexual harassment as provided for in the Model Bill.

7.7 In the European Community the Council of Ministers has endorsed a recommendation concerning sexual harassment which addresses the issue as one protecting the dignity of women and men at work, and in accordance with the principle of equal treatment to men and women. This equality is also contemplated under article 11 of the Convention against all forms of Discrimination against Women.

223 Sexual Harassment in the Workplace: Let the Conversation Begin! Jambar/GLC CLE Seminar.
224 Husbands, ibid. p 535-536.
225 [December 1991]
7.8 In India the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*, seeks to protect the dignity of women only.

7.9 If the CARICOM Model *Anti-Discrimination Bill* and the Trinidad and Tobago and Guyana equal opportunity law could be interpreted to include protection from sexual harassment on the grounds of gender, both men and women would be protected under that law but the law does not address sexual harassment as contemplated under the Model Bill.

7.10 It is evident that some men, whether or not they are in a subordinate position in the workplace or other areas, are also sexually harassed. Therefore the revised Model law needs to be formulated in a manner which addresses sexual harassment against both male and female victims, regardless of the gender of the perpetrator or aggressor and not simply as eliminating violence against women.

*Harassment of homosexuals*

7.11 It is notable that the draft CARICOM Model *Anti-discrimination Bill* expressly prohibits discrimination on the grounds of sexual orientation. The issue as to whether provisions similar to the proposed Model *Anti-Discrimination Bill* should apply to sexual harassment of homosexuals because of their sexual orientation was raised in the U.S.A under the federal equality law; and the Courts have decided that the victims are singled out for harassment on the basis of their homosexuality i.e. their sexual orientation and not on the basis of their sex. Sexual orientation is expressly omitted from the definition of “sex” in the Trinidad and Tobago *Equal Opportunity Act*; which addresses discrimination on the grounds of sex and is not addressed in the *Prevention of the Discrimination Act* of Guyana.

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226 See Husbands, ibid. p 546
227 Husbands ibid p 547, *De Santis v Pacific Telephone and Telegraph Co.* 606 F2d 327, 19 Fep Cass 1493 (9th Cir 1979)
228 "For moral reasons"
However the Model Bill on sexual harassment should address acts that constitute sexual harassment of a person irrespective of the person’s sexual orientation.

**Sexual Advances by one homosexual to another**

7.12 In the U.K. and in the U.S.A, at the Federal level, the courts have held that if a person is singled out because of his or her sex for unwelcome sexual advances, sex discrimination has occurred notwithstanding that the alleged harasser is of the same sex. The victim was chosen for sexual advances because of his or her sex, some one of the other sex would not have been chosen. Discrimination on the grounds of sexual orientation could include discrimination on grounds of sex.

**United Nations Handbook for Legislation on Violence against Women**

7.13 In the forward to the *Handbook for Legislation on Violence against Women*, prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW) the Deputy Secretary-General of the United Nations stated that over the past two decades, many States have adopted or improved legislation to prevent and respond to violence against women. Laws increasingly criminalize such violence, ensure the prosecution and punishment of perpetrators, empower and support victims, and strengthen prevention. Victims are also benefiting from civil remedies. But significant gaps in legal frameworks remain. States throughout the world are still failing to live up to their international obligations and commitments to prevent and address violence against women. Too many perpetrators are not held accountable. Impunity persists. Women continue to be re-victimized through the legal process.”

7.14 The Handbook outlines the international and regional legal and policy frameworks which mandate Member States to enact and implement

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229 Husbands ibid p 547,
230 [Asha-Rose Migiro Deputy Secretary-General United Nations July 2009]
comprehensive and effective laws to address violence against women. It presents a model framework for legislation on violence against women and provides users with a checklist of considerations to be kept in mind when drafting legislation on violence against women. That list highlights the importance of identifying a clear legislative goal; undertaking comprehensive and inclusive consultation with all relevant stakeholders, and in particular victims/survivors; and adopting an evidence-based approach to legislative drafting.

7.15 While the Handbook addresses the different forms of violence against women and girls, the focus is predominantly on domestic violence and sexual violence (inflicted both by strangers and non-strangers) as those tend to be the most common cases seen by prosecutors across the world.231

7.16 In the Commentary on sexual harassment the handbook notes that sexual harassment has traditionally been associated solely with labour-related offences and defined as occurring only in the context of unequal power relations (such as boss against employee). As a result, sexual harassment has often been dealt with in countries’ labour codes and only applied to those who experience such behaviour in the formal employment sector. The Handbook states that over time, countries have acknowledged these limitations and begun to address sexual harassment in a more comprehensive manner and in various areas of the law, such as anti-discrimination law, and criminal law.

7.17 The Handbook identifies as good practices the Anti-Discrimination Act (1977) of the State of New South Wales, Australia, which provides that sexual harassment is against the law when it takes place in employment; educational institutions; receipt of goods or services; renting or attempting to rent accommodation; buying or selling land; and sporting activities. It is proposed that these areas also be addressed in a new Model Law on sexual harassment in the Member States.

7.18 The Handbook also notes as a good practice that fact that in Turkey, one of the major reforms to the Penal Code in 2004 was the criminalization of sexual harassment.

231 page 13

7.20 In the case of Vishaka v. State of Rajasthan & Ors AIR\textsuperscript{232}, the Supreme Court of India applied articles 11, 22, and 23 of the Convention on the Elimination of All Forms of Discrimination against Women, as well as general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, and the relevant sections of the Beijing Platform for Action (pertaining to promotion of health and safety in work), in order to create a legally binding definition of sexual harassment, invoking a broad definition of the “workplace”.

7.21 The framers of the Handbook recommended that legislation should:

1. criminalize sexual harassment;

2. recognize sexual harassment as a form of discrimination and a violation of women’s human rights with health and safety consequences;

3. define sexual harassment as unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions; and

4. provide that unwelcome sexually determined behaviour includes (whether directly or by implication) physical conduct and advances; a demand or request for sexual favours; sexually coloured remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The \textit{Handbook for Legislation on Violence against Women of 2010} also states that while many of the framework’s recommendations are applicable to all

\textsuperscript{232} 1997 S.C.3011
forms of violence against women, some are specific to certain forms, such as domestic or sexual violence.

7.22 The UN Women (Caribbean) who works for, among other issues, the elimination of discrimination against women and girls; empowerment of women and achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security233 appears to have endorsed the need for specific comprehensive sexual harassment legislation and that it is imperative that the law of each country expressly provide protection against sexual harassment and recommended that the law:

1. provide a comprehensive definition of sexual harassment. One model in this regard is the definition of sexual harassment as:

   “unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions;”234

2. provide that unwelcome sexually determined behaviour includes-

   “(whether directly or by implication) physical conduct and advances; a demand or request for sexual favours; sexually coloured remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature”235;

3. allow for a wide range of remedies including, damages, reinstatement, employment, declaration etc;

233 See more at: http://caribbean.unwomen.org/en/about-us#sthash.klYJpcv1.dpuf
4. have provisions which seek to protect the privacy of the complainant; and

5. expressly criminalize conduct which amounts to threatening or intimidating the complainant because of the complainant’s recourse to and participation in the legal proceedings.

SECTION 8

RECOMMENDATIONS FOR DRAFTING A NEW MODEL BILL FOR ADOPTION BY CARICOM MEMBER STATES

Extent of the problem for which legislative intervention is proposed

8.1 The victims of sexual harassment are mainly young women, who are vulnerable, single, employed for the first time, divorced, separated or widowed. They may also experience severe forms of depression, stress, anxiety as a result of the sexual harassment.

8.2 Acts and complaints of sexual harassment also have adverse effect on the productivity of the employer due to absenteeism and staff turnover.

8.3 The CARICOM Member States have, since the mid 1990’s, been seeking to introduce sexual harassment legislation in their respective Parliament. Draft laws exist for Jamaica and Barbados. However at least 4 other types of laws have been identified to include provisions relating to sexual harassment: labour law, criminal law, equal opportunity or anti-discrimination law and tort law. These laws contain a broad approach to the issue, when a more

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236 Husbands ibid, p 539. A 2005 report by the International Labour Organization also indicates that sexual harassment is more prevalent against women who are more vulnerable, such as young women, separated, widowed or divorced women, women employed in “non-traditional” or male-dominated professions, women working in informal sectors of the economy, or migrant workers. International Labour Organization, Sexual harassment at work: National and international responses 4-5 (2005). See http://www.stopvaw.org/What is Sexual_Harassment.html
A comprehensive approach is desired, but may be harmonised and strengthened at the national level.

8.4 Courts in the United Kingdom and Ireland interpret sexual harassment as sex discrimination prohibited by law. The United Kingdom Equality Act also established strict employer liability for sexual harassment committed by its employees. The Labour Code of Saint Lucia interprets sexual harassment as sex discrimination but that Code does not establish employer liability for sexual harassment or compensation for victims of sexual harassment.

8.5 The sex discrimination laws and equality laws provide remedies that are not appropriate for cases of sexual harassment. There is need to introduce protective remedies for victims or potential victims who have been or might be exposed to sexual harassment conduct within different interpersonal relationships.

8.6 There is also need for sexual harassment to be identified as a legal wrong or wrongful act and for the Member States to review their policies to facilitate the enactment of a more comprehensive law, which seeks to ensure that sexual harassment is recognised as a legal wrong in various areas where there is human interaction.

General recommendations

8.7 In addition to the recommendations of the UN Women noted in paragraphs 7.21 to 7.22 which ought to be critically examined. The following are general recommendations for consideration in the preparation of a revised Model Bill on sexual harassment. The legislation should contain:

1. a clear definition of “sexual harassment”; which would identify the types of conduct that may constitute sexual harassment and remove any uncertainty as to what is intended. Since the scope of the protection against sexual harassment under the law should be increased, the definition of sexual harassment should not be incorporated within the respective sections, as presented in the Model Bill, but should be separate; See Appendix I Part C for optional definitions.

2. require the formulation of policies dealing with sexual harassment conduct in a number of professional relationship settings;
3. legal protection rules governing the liability of the employer and the harasser;
4. an appropriate procedure to deal with complaints;
5. provisions for sexual harassment complaints to be made to an independent and impartial Tribunal. A Member State may expand the functions of its Labour Tribunal, Gender Equality Tribunal or Anti-discrimination Tribunal, if any, to include the hearing and determination of complaints pursuant to the sexual harassment legislation;
6. special rules to ensure that a complainant’s sexual reputation or history is not used as evidence in a sexual harassment case;
7. clear sanctions and remedies; and
8. consequential amendments are to be made to the respective laws that address “sexual harassment” or “harassment” which has elements of sexual harassment to ensure that there are no conflicting provisions and that there is a consistent legal framework that provides protection against sexual harassment in the implementation of the law.

Summary of Specific Recommendations

8.8 The following are more specific recommendations for consideration in the preparation of the Model Bill on sexual harassment.

Role of Minister/Administration of the Act.

1. The relevant Minister responsible for the administration of the proposed law is absent in the Model Bill and it is recommended for insertion. However, it is notable that if the Model Bill applies to the Government, disciplinary matters in relation to public officers generally fall within the jurisdiction of the relevant Service Commission. The role of the Service Commission in this regard should be confirmed. (See paragraph 3.8)

Objectives of the Model Bill
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2. The objectives of the Model Bill as stipulated in its Long Title should be reviewed by the legal drafter to ensure consistency with the main provisions of any proposed new Bill. (See paragraph 3.4)

Scope of the Model Bill

3. Consideration should be given by the legal drafter to the re-examination of the scope of the Model Bill with a view to increasing the areas and types of relationships where protection is required from sexual harassment e.g. in vocational and other areas as addressed in the Model Anti-Discrimination Bill. (See paragraph 3.6-3.7)

Unlawful sexual harassment in employment

4. There seems to be a heavy burden on the victim in establishing a claim of sexual harassment. Consideration should be given to the removal of the need for a complainant to demonstrate actual or reasonably anticipated employment disadvantage in a claim of sexual harassment. The onus should be on the victim or complainant to satisfy the Tribunal that he or she was sexually harassed. The Tribunal would examine the facts, the offending conduct and determine whether it was reasonable for the victim to conclude that the conduct was directed towards the victim or complainant and caused the victim to suffer disadvantage in connection with his or her employment. (See paragraphs 3.8-3.14)

5. Section 6 of the Belize Act stipulates that where a person alleges that he or she has been sexually assaulted that person should not be discriminated against. A provision similar to section 6 of the Belize Act should be considered for incorporation in the draft Model Bill, which is silent on that issue. (See paragraph 3.15)

6. Complaints relating to sexual harassment in employment under the Model Bill are made to a Tribunal established under the Model Bill. Consideration may be given by a Member State to the use of an existing Tribunal, where practicable, to determine claims of sexual harassment in employment or otherwise. (See paragraph 3.20)
7. Where the criminal law of a Member State e.g. the Criminal Code of Saint Lucia, criminalizes the act of sexual harassment and soliciting sexual favours in an office of employment, **notwithstanding recommendations to the contrary there are varying degrees or acts of sexual harassment**; consideration may need to be given to the decriminalisation of sexual harassment and the adoption of provisions to ensure enforceability of sexual harassment claims and for the provision of adequate protection against sexual harassment in the workplace and in social relations generally **through the implementation of a sexual harassment policy.** This is to address the wide gap between law on the books and law in action. There is also need for public education and policy on sexual harassment to design the minds of the population in a certain way, before criminal sanctions could be imposed. The law may be amended subsequently to include criminal sanctions for certain things. **Criminal sanctions already exist for sexual assault. (See paragraph 3.24)**

8. Consideration should be given to the incorporation of a definition for “employer” and to the revision of the definition of “employee” to provide for a more inclusive definition. For the avoidance of doubt it is advisable that the definition of “employee” expressly include apprentice, persons on probation and full time, part time, former and prospective employees. However, Member States may need to be guided by the relevant provision of their labour law in defining an “employee” and an “employer. However, the definitions should include a “prospective employer”, “prospective employee”, “former employer” and “former employee”. (See paragraphs 3.32-3.35)

9. Since the scope of the protection against sexual harassment under the law should be increased the definition of sexual harassment should not be incorporated within the respective sections but should be separate. A specific and general definition should be provided of “sexual harassment”. (See options for consideration in Appendix 1 Part C. (See paragraph 3.36)
10. The provisions on sexual harassment in employment in the Model Bill should be elaborated to provide for: (See also paragraph 3.17)

(a) the preparation and publication by the employer of a policy statement on sexual harassment; (See contents of a policy statement in Appendix 1, Part D.)

(b) the employer should be held liable where the employer grants benefits to an employee as a result of the sexual harassment;

(c) an employer should be required to take immediate and appropriate action to correct any act of sexual harassment if the employer fails to do so, the aggrieved person may lodge a complaint against the employer.

11. The provisions governing sexual harassment in employment may need to be further elaborated in the Labour Code of Saint Lucia for effective implementation. Such elaboration may be made in a separate Act which addresses sexual harassment. (See paragraph 3.19)

Unlawful Sexual harassment in education

12. Perhaps a policy on sexual harassment should be developed by the relevant Ministries, in particular, the respective Ministry of Education, for enforcement in the respective institutions to which the law applies.

As far as practicable the provisions of the law relating to sexual harassment in education should also be harmonised at the national level. (See paragraphs 3.37-3.44)

Unlawful Sexual harassment in accommodation

13. It is recommended that the word “persistent” be removed in clause 5 of the Model Bill and reference be made to a landlord and tenant, appropriately defined, as the Model Bill is not clear on the persons who are engaged in relation to accommodation. The terms “landlord” and “tenant” should be defined in accordance with the relevant law on tenancy. (See paragraph 3.45)

Administration Investigation of complaints and Enforcement
14. Where provision is to be made for a Tribunal to hear complaints. Consideration should be given to the use of a Tribunal that is already in existence and has similar jurisdiction, qualification requirements for membership for the better and more effective use of resources, cost reduction and administrative convenience; even if the membership may have to be expanded to include an expert in a particular area, e.g. a psychologist, a human rights specialists or a person with experience in dispute resolution. (See paragraphs 3.46-3.48)

The establishment of an ad hoc tribunal may be a desirable provision in jurisdictions where complaints are minimal.

15. The authorised officer should seek as far as practicable to serve as a mediator before the matter is referred to the Labour Tribunal or other Tribunal or a Court. A complainant should be assigned an investigator of the same sex if the acts complained of are too embarrassing or sensitive for the complainant to discuss with the opposite sex. (See paragraph 3.49)

16. The onus should not be on the Court to “investigate” the matter. Parties should seek to mediate the dispute before it goes to a Tribunal or Court. (See paragraph 3.50)

17. It is recommended that, where a Labour Tribunal or other Tribunal, or a Labour Commissioner exists complaints arising from employment should be lodged by or on behalf of the aggrieved person with the Labour Commissioner or Chairman of the Labour Tribunal or other Tribunal prior to its submission to the Court. It is recommended that consideration be given to the incorporation in the law of the minimum procedure to be adopted by the authorised officer or Tribunal prior to hearing a complaint, for the guidance of the complainant. (See paragraph 3.50)

18. The requirement for a party to pay the attorney’s fees of the other party where the Court believes that it is just and fair to do so, may be needed to avoid frivolous claims by parties and as part of the compensation to an aggrieved party, and it is recommended for inclusion in the Model Bill. (See paragraphs 3.56-3.57)
19. The following provision should be considered for incorporation in a Model Bill where an order is being made to bind over a respondent for a period:

“( ) The Court may, in the making of a determination under [ ] take into consideration injury to the complainant’s feelings or humiliation suffered by the complainant.” (See paragraph 3.57)

20. An inquiry shall be held in camera unless the Court directs otherwise. As far as practicable proceedings relating to sexual harassment should be held in private. A provision similar to section 17 of the Belize Act is recommended for inclusion in the draft Bill. (See paragraph 3.58)

21. Where a person is liable to conviction under the Act consideration should be given to an alternative sentence to a fine i.e. a term of imprisonment unless the person is an entity or a corporation, in such a case, an alternative expressed penalty should also be provided. (See paragraph 3.62)

22. A penalty is not attached in the Model Bill for the divulgence of information without the consent of the Tribunal. It is recommended that a penalty be attached. (See paragraph 3.64)

23. A provision may be introduced to provide for the discontinuation of an investigation as provided for in the Cayman Islands. (See paragraph 3.65)

24. If may be useful to insert a limitation period in the law to ensure that complaints are addressed in a speedy manner. (See paragraph 3.66)

25. As far as practicable, the various provisions in the various laws that relate to sexual harassment in an indirect way should be consolidated and strengthened at the national level.

26. It is evident that the Model Bill applies to any employee and should of necessity include a domestic worker, but a workplace is generally interpreted to refer to an organizational framework especially where that organization is required to establish a policy statement in respect of sexual harassment in the workplace. Consideration may be given
to the expressed application of the Model Bill to domestic workers for the avoidance of doubt. *(See paragraph 6.13)*

27. The Employer and perhaps the tribunal/court should be required to submit an annual report in a prescribed form. The annual report should include the number of cases filed and their disposal. This requirement should greatly assist in establishing statistics in determining the extent of the problem at any given time and to facilitate appropriate action to address the problem. *(See paragraph 6.1.10)*
APPENDICES
APPENDIX 1

PART A

RELEVANT LAWS OF CARICOM STATES EXAMINED

1. ANGUILLA (Showing the Law as at 15 December 2000)
   1.1 Draft Anguilla Constitution Order 2009
   1.2 Criminal Code, Chapter C140
   1.3 Education Act, Chapter E25
   1.4 Fair Labour Standards Act, Chapter F17

2. ANTIGUA AND BARBUDA
   2.1 The Antigua and Barbuda Constitutional Order 1981
   2.2 Criminal Law (Amendment) Act, Cap. 116
   2.3 Domestic Violence (Summary Proceedings) Act 1999, No. 3 of 1999
   2.4 Education Act, 2008 No. 21 of 2008
   2.5 Labour Code, Cap. 27
   2.6 Offences Against the Person Act, Cap. 300; (Amendment) Act No. 9 of 1995
   2.7 Prevention of Crime Act, Cap. 339
   2.8 Sexual Offences Act, 1995 No. 9 of 1995

3. BAHAMAS
   3.2 Domestic Violence (Protection) Orders, Chapter 99A
   3.3 Employment Act, Chapter 321A

4. BARBADOS
   4.1 The Constitution of Barbados, 1966
   4.2 Domestic Violence (Protection Orders), Cap. 130A (1992, No 4)
   4.3 Employment Rights Act, 2012, No. 9
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4.4 Minor Offences Act, 1998, No 1
4.5 Protection Against Sexual Harassment in the Workplace Bill, 2005

5. BELIZE
5.1 Belize Constitution, 1981, Cap 4, (as in force March 1, 2012)
5.2 Crime Control and Criminal Justices Act, Cap 102
5.3 Criminal Code, Cap. 101
5.4 Domestic Violence Act, Cap 178
5.5 Education Act, Cap 36
5.6 Labour Act, Cap 297
5.7 Protection against Sexual Harassment Act, Cap. 107 (Revised Law as at December 2000)

6. COMMONWEALTH OF DOMINICA
6.2 Education Act, 1997 (No. 11 of 1997)
6.3 Offences against the Person Act, Chapter 10:31
6.4 Protection of Employment Act, Chapter 89:02
6.5 Sexual Offences Act, 1998 (No 1 of 1998)

7. GRENADA
7.1 Criminal Code, Chapter 72A, (Amendment No. 29 of 2012)
7.2 Domestic Violence Act, 2010 (No. 19 of 2010)
    Subsidiary Legislation Domestic Violence (Summary Procedure) Rules
7.3 Education Act, Chapter 86 (No 21 of 2002)
7.4 Employment Act, 1999 (No. 14 of 1999)
7.5 The Grenada Constitution Order, 1973

8. GUYANA
8.1 Constitution of the Co- operative Republic of Guyana, 1970, Chapter 1:01
8.2 Criminal Law (Offences) Act, Chapter 8:01
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8.3 Domestic Violence Act, Chapter 11:09
8.4 Equal Rights Act, Chapter 38:01
8.5 Prevention of Discrimination Act, 1997 (No. 26 of 1997)

9. JAMAICA
9.1 Constitution of Jamaica, 1962
9.2 Sexual Offences Act, 2009 (No 12 of 2009); Amdt 2011
9.3 The Offences against the Person Act, 1864, Cap 268 (with amendments from 1958 to 2010)

10. MONTSERRAT
10.1 The Montserrat Constitution Order, 2010
10.2 Education Act, Chapter 16.01 (No. 1 of 2004)
10.3 Labour Code, 2012 (No. 20 of 2012)
10.4 Penal Code, Chapter 4.02

11. SAINT CHRISTOPHER AND NEVIS
11.1 The Constitution of Saint Christopher and Nevis, 1983, Chap.1.01
11.2 Domestic Violence Act, Chap. 12.04
11.3 Prevention of Crimes Act, Chap. 4.20
11.4 Small Charges Act, Chap. 4.33

12. SAINT LUCIA
12.2 Constitution of Saint Lucia, 1978, Chapter 1.01
12.3 Criminal Code (Relevant Provisions Relating to Assaults and Sexual Offences)
   Chapter 3.01 (Acts 9 of 2004 and 38 of 2006)
12.4 Education Act, Cap. 18.01 (Act 41 of 1999)
12.5 Labour Code, 2006
13. **SAINT VINCENT AND THE GRENADINES**
13.1 The Saint Vincent and the Grenadines Constitution Order, 1979
13.2 Criminal Code, Cap. 171

14. **TRINIDAD AND TOBAGO**
14.1 Domestic Violence Act, Chapter 45.56
14.2 Equal Opportunity Act, Chapter 22:03
14.3 Offence against a Person Act, Chapter 11:08
14.4 Offenses Against the Person (Amendment) (Harassment) Act 2005
14.5 Sexual Offences Act, Chapter 11:28
14.6 Summary Offences Act, Chapter 11:02

15. **VIRGIN ISLANDS**
15.1 The Virgin Islands Constitution Order, 2007
15.2 Domestic Violence (Summary Proceedings) Act,
15.3 Labour Code Act, 2010, No. 4 of 2010
APPENDIX 1

PART AA

OTHER RELEVANT CARICOM MODEL BILLS EXAMINED

1. Equality of Opportunity and Treatment in Employment and Occupation

2. Anti-Discrimination
APPENDIX 1

PART B

RELEVANT PROVISIONS OF CARICOM LAWS EXAMINED

1. ANGUILLA (Showing the Law as at 15 December 2000)

1.1 Draft Anguilla Constitution Order 2009

1.2 Criminal Code, Chapter C140

1.3 Education Act, Chapter E25

1.4 Fair Labour Standards Act, Chapter F17

1. ANGUILLA (Revised laws up to 15 Dec 2000)

1.1 DRAFT ANGUILLA CONSTITUTION ORDER 2009

Relevant Provisions

Section 14 Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression (a) “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, political opinions, colour, creed, sex or place of origin, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.
Observations/Recommendations

The Anguilla Constitution Order 2009 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

1.2 CRIMINAL CODE, CHAPTER C140

Relevant Provisions

Section 2 Interpretation

“unlawful sexual intercourse” means sexual intercourse outside of the bond of marriage;

Section 158 Sexual harassment of minor

(1) Any person who—

(a) being a prospective employer importunes or solicits sexual favours from a minor—

(i) in the terms or conditions on which he offers, to that minor or any other person, employment or admission into any institution, or

(ii) under a threat of rejection (whether implied or otherwise) of any application made by that minor or any other person for employment or for admission into any institution, or of causing such rejection;

(b) being in a position of authority over, or being a co-worker of, a minor in any place of employment or any institution, importunes or solicits sexual favours from that minor under any holding out, promise or threat of the grant or imposition of any favour, benefit, advantage or disadvantage, as the case may be, at the place of employment or institution; or

(c) being a person of or above 16 years of age and under 18 years of age, importunes or solicits from a person in a position of authority in any place of employment or any institution, any favour, benefit or advantage, or the forbearance from the exercise of any right, power or duty, relating to that authority under any holding out or promise of sexual favours;

is guilty of the offence of sexual harassment.
(2) Any person who is guilty of the offence of sexual harassment is liable to a fine of $10,000 or to imprisonment for 5 years or to both.

(3) In this section, “prospective employer” means any person who—

(a) is in a position of authority in any place of employment or any institution; or

(b) is authorised to act on behalf of a person mentioned in paragraph (a) for the purpose of employing personnel for a place of employment or admitting persons into an institution.

Section 170  Procuring woman by threats or false pretences

Any person who procures or attempts to procure a woman—

(a) by threats or intimidation; or

(b) by false pretences or false representation;

to have unlawful sexual intercourse, whether within Anguilla or elsewhere, commits an offence and is liable on conviction to imprisonment for 3 years.

Observations/Recommendations

The Criminal Code in Anguilla makes it a criminal offence for a prospective employer, co-worker to sexually harass a minor.

1.3 EDUCATION ACT CHAPTER E25

The Education Act makes new provision for the delivery of education services in Anguilla, by both the public and the private sectors.

Relevant Provisions

Section 54  Prohibition of discrimination

No person who is eligible for admission to a public educational institution as a student shall be refused admission on account of race, place of origin, political opinions, colour, creed or sex.

Section 100  Loitering, etc., on school premises

(1) Any person who—

(a) is found loitering, wandering or otherwise trespassing on the premises of any school;
(b) creates a disturbance on the premises of any school;
(c) while on the premises of any school—
   (i) uses threatening or insulting language or in any manner interferes with any student or member of the staff of the school,
   (ii) assaults, insults or abuses a teacher or student, or
   (iii) disrupts any lawful activity conducted on the premises of the school;
(d) in a public place causes or makes a noise that disturbs or is likely to disturb any lawful activity carried out on the premises of the school; or
(e) commits any damage to any school building or other property found on the premises of, or forming part of, the compound of the school;

is guilty of an offence and is liable on summary conviction to a fine of $1,000 or to imprisonment for a term of 1 year or to both.

(2) For the purposes of this section, a school includes a registered private school, registered private educational institution and assisted private school.

(3) A person who commits an offence under subsection (1) may with or without a warrant be arrested by any member of the Police Force.

(4) A prosecution for an offence under this section in relation to a public educational institution may be brought in the name of the Chief Education Officer.

Observations/Recommendations
The Education Act prohibits discrimination in education on the grounds of sex but does not expressly provide for sexual harassment.

1.4 FAIR LABOUR STANDARDS ACT, CHAPTER F17

Relevant Provisions

Section 1 Interpretation

“employee” means an individual who has entered into or works (or in the case of a contract which has been terminated, worked) under a contract of service or apprenticeship with an employer, whether the contract is for manual labour,
clerical work or otherwise, is expressed or implied, or is oral or in writing, and “employer” and any reference to “employment” shall be construed accordingly.

Section 10  Limitation on termination of employment

(1) The employment of an employee shall not be terminated unless there is a valid reason for such termination connected with his capacity or conduct or based on the operational requirements of the undertaking, establishment or service.

(2) An employer shall not terminate the employment of an employee on any of the following grounds, that is to say—

(c) making a complaint or participating in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion or affiliation, national extraction or social origin.

Observations/Recommendations

The *Fair Labour Standards Act* prohibits discrimination in employment on the grounds of sex but does not expressly provide for sexual harassment.

2. ANTIGUA AND BARBUDA

2.1 The Antigua and Barbuda Constitutional Order 1981

2.2 Criminal Law (Amendment) Act, Cap. 116

2.3 Domestic Violence (Summary Proceedings) Act 1999, No. 3 of 1999

2.4 Education Act, 2008 No. 21 of 2008

2.5 Labour Code, Cap. 27

2.6 Offences Against the Person Act, Cap. 300; (Amendment) Act No. 9 of 1995

2.7 Prevention of Crime Act, Cap. 339
2.8 Sexual Offences Act, 1995 No. 9 of 1995

2.1 THE ANTIGUA AND BARBUDA CONSTITUTIONAL ORDER 1981

The Constitution is the supreme law of Antigua and Barbuda and, subject to the provisions of the Constitution, if any other laws is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Relevant Provisions

Section 14 Protection from discrimination on the grounds of race, sex etc.

1. Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

2. Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

3. In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

4. Subsection (1) of this section shall not apply to any law so far as the law makes provision-
   a. for the appropriation of public revenues or other public funds;
   b. with respect to persons who are not citizens; or
   c. whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.
5. Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to race, place of origin, political opinions or affiliations, colour, creed or sex) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

6. Subsection (2) of this section shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

7. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that that law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 8, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by paragraph (a) or (b) of subsection (3) of section 8, subsection (2) of section 10, subsection (4) of section 11, subsection (4) of section 12 or subsection (2) of section 13, as the case may be.

8. Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Observation/Recommendations

The Antigua and Barbuda Constitutional Order 1981 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

2.2 CRIMINAL LAW (AMENDMENT) ACT, CAP. 116

The Criminal Law (Amendment) Act 2006 Cap. 116 (1887) seeks to address defilement, rape of girls, and prostitution of girls under 16 years.

Relevant Provisions

Section 2 Procuring defilement by threats or fraud, or administering drugs
Any person who –

(a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection, or

(b) by false pretences or false representations procures any woman or girl to have any unlawful carnal connections, or

(c) applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl,

shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding two years:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

**Observation/Recommendations**

Section 2 of the *Criminal Law* of Antigua and Barbuda prohibits procurement of any woman or girl by threat or intimation for purposes of having carnal knowledge with the woman or girl.

The *Criminal Law* contains indirect provisions which may be applicable in the absence of expressed provisions in the law relating to sexual harassment of a woman. The *Criminal Law* is silent as it relates to a man.

2.3 **DOMESTIC VIOLENCE (SUMMARY PROCEEDINGS) ACT 1999, No. 3 of 1999**

The *Domestic Violence (Summary Proceedings) Act* provides for protection by means of summary proceedings in cases involving domestic violence.

**Relevant Provisions**

**Section 2 Interpretation**

“domestic violence” means any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a member of the same household.
which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or any other member of the household;

Section 4 Application for protection order

(1) Application may be made to the court in accordance with Form 1 of the Schedule for a protection order prohibiting the respondent

(a) from entering or remaining in the household residence of any specified person;

(b) from entering or remaining in a specified area where the household residence of a specified person is located;

(c) from entering the place of work or education of any specified person;

(d) from entering or remaining in any place where a specified person happens to be; or

(e) from molesting a specified person by

(i) watching or besetting the specified person’s household residence, place of work or education;

(ii) following or waylaying the specified person in any place;

(iii) making persistent telephone calls to or sending in writing any form of correspondence, whether in handwriting or by mechanical or electronic means, to a specified person; or

(iv) using abusive language to or behaving towards a specified person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the specified person.

(2) On hearing an application under subsection (1) the court may make a protection order if it is satisfied that

(a) the respondent has used or threatened to use, violence against, or caused physical or mental injury to a specified person and is likely to do so again; or

(b) having regard to all the circumstances, the order is necessary for the protection of a specified person,

and the court may, if it thinks fit, attach a power of arrest to the order.
(3) A protection order may be made on an *ex parte* application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail

   (a) risk to the personal safety of a specified person, or

   (b) serious injury or undue hardship.

(4) Any protection order made on an *ex parte* application shall be an interim order.

(5) Where a protection order is granted on an *ex parte* application, the respondent may apply immediately for it to be discharged.

Observation/Recommendations

Unlike the legislation of other Member States the *Domestic Violence (Summary Proceedings) Act* of Antigua and Barbuda does not make express reference to “harassment” or “sexual harassment”.

2.4 EDUCATION ACT 2008, No. 21 of 2008

*The Education Act, 2008* provides for a regulatory system for the delivery of educational services.

Relevant Provisions

Section 29 Prohibition of discrimination

Subject to the provisions of this Act, no person who is eligible for admission to a public educational institution or an assisted private school as a student shall be refused admission on any discriminatory grounds including race, place or origin, political opinions, colour, creed, sex, or subject to the provisions of this Act, mental or physical handicap.

Section 174 Loitering etc. on school premises

(1) Any person who –

   (c) while on the premises of any educational institution –

      (i) uses threatening or insulting language or in any manner interferes with any student or member of the staff of the educational institution; or
(ii) assaults, insults or abuses a teacher or student;

(iii) disrupts any lawful activity conducted on the premises of the educational institution;

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or both.

(3) A person who commits an offence under subsection (1) above, may be arrested by any member of the Police Force, with or without a warrant.

Observation/Recommendations

The Education Act prohibits discrimination in education on the grounds of sex but does not expressly provide for sexual harassment. The non-discriminatory provision on the ground of sex applies to the eligibility for admission to a school. This is subject to the provisions of the Act which may authorise the management of same sex schools. No sanction is imposed for the contravention of that section in Antigua and Barbuda.

2.5 ANTIGUA AND BARBUDA LABOUR CODE, CAP. 27

Relevant Provisions

Section 2 Interpretation

“unfair dismissal” refers to terminations of employment which may be deemed to be unfair dismissal covered by Part 5 of Division C.

Section C4 Discrimination because of race, etc.

(1) No employer shall discriminate with respect because of race, etc. to any person's hire, tenure, wages, hours, or any other condition of work, by reason of race, colour, creed, sex, age or political beliefs:

Provided, however, that this shall not be construed as forbidding the taking of personnel actions genuinely related to that person's ability to discharge the duties of the employment in question.

(2) Anyone who contravenes the requirements of subsection (1) shall be guilty of an offence and on summary conviction shall be liable to a fine of three thousand dollars and to imprisonment for twelve months.
Section E8   Equal pay for women

(1) No woman shall, merely by reason of her sex, be employed under terms or conditions of employment less favourable than that enjoyed by male workers employed in the same occupation and by the same employer.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and in addition thereto the Court may order that the employer convicted of an offence under this section shall pay to the employee concerned such sums of money as the Court is satisfied she has been underpaid and such order shall rank as a judgement debt and may be enforced accordingly.

Section C56   Right not to be unfairly dismissed

Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause.

Section C57   Termination after fixed term of employment

For the purposes of this Part, an employee will not be deemed to have been dismissed unfairly if his employment is terminated at the expiration of the term specified at the time of his hire.

Section C58   Good cause for dismissal; test for measuring same

(1) A dismissal shall not be unfair if the reason assigned by the employer therefor –

   (a) relates to misconduct of the employee on the job, within the limitations of section C59(1) and 92);

   (b) relates to the capability or qualifications of the employee to perform work of the kind he was employed to do, within the limitations of section C59(3);

   (c) is that the employee was redundant;

   (d) is that the employee could not continue to work in the position he held without contravention (on his or on the employer’s part) of a requirement of law; or
(e) is some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held:

Provided, however, that there is a factual basis for the assigned reason.

(2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee’s dismissal.

Section C59  Termination for misconduct or failure to perform duties satisfactory manner

(1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to, situations in which the employee has –

(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;

(b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer; or

(c) behaved immorally in the course of his duties.

(2) Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of repetition; which action may include suspension without pay for such period as may be specified in the written; and, thereafter, if the employee is, within six months following the receipt of the written warning, guilty of misconduct in or in relation to his work which is the same or substantially the same as the misconduct in
respect of which the written warning was given, the employer may terminate the employment of said employee or take such other action as may have been specified in the written warning.

(3) Where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning which shall describe the unsatisfactory employment in respect of which the written warning is given and state the action the employer intends to take in the event of repetition; and, thereafter, if the employee does not, during the period of three months following the receipt of the written warning, demonstrate that he is able to perform and has performed and has performed his duties in a satisfactory manner, the employer may terminate the employment of said employee.

Observation/Recommendations

The Antigua and Barbuda Labour Code makes it an offence for an employer to discriminate against an employee on the grounds of sex. If convicted, the employer is liable to a fine of $3000 and to imprisonment for 12 months.

The Antigua and Barbuda Labour Code also makes it an offence for an employer to provide unequal terms or conditions of employment for male and female workers. If convicted the employer would be liable to a fine of $1000.

2.6 OFFENCES AGAINST THE PERSON ACT Cap. 300 (1873) amended up to 1986.

The Act provides penalties for various offences against a person.

Relevant Provisions

Section 39 Assault with intent to commit felony

Whossoever assaults any person with intent to commit felony, or assaults, resists, or wilfully obstructs any revenue or peace officer in the due execution of his duty, or any person acting in aid of such officer, or assaults any person with the intent to resist or prevent the lawful apprehension or detainer of himself, or of any other
person, for any offence, is guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Section 50  Indecent assault

Whosoever commits any indecent assault upon any female is guilty of a misdemeanour and, being convicted thereof, is liable to be imprisoned for any term not exceeding five years.

Observation/Recommendations

Sexual harassment is not an expressed criminal offence against a person under the Offences Against the Person Act of Antigua and Barbuda but may be pursued as an assault against a person if the intent is to commit an offence, such as indecent assault on a female.

2.7  PREVENTION OF CRIME ACT, CAP. 339

The law prohibits the use of violence on any person or property, molesting and threatening or intimidating a person.

Relevant Provisions

Section 4  Offences made punishable

(1) Every person who shall do any one or more of the following acts, that is to say-

(a) use violence to any person or any property;

(b) threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace;

(c) molest or obstruct any person in manner defined by this section with a view to coerce such person;
shall be guilty of an offence against this Act, and shall be liable to a fine not exceeding two hundred and fifty dollars, or to be imprisoned for any term not exceeding three months.

(2) A person shall, for the purposes of this Act, be deemed to molest or obstruct another person in any of the following cases, that is to say-

(a) if he persistently follow such person about from place to place;

(b) if he hide any tools, clothes, or other property, owned or used by such person, or deprive him of, or hinder him in, the use thereof;

(c) if he watch or beset the house, or other place, where such person resides, or works, or comes on business, or happens to be, or the approach to such house or place, or if, with two or more other persons, he follow such person in a disorderly manner in or through any street or road.

(3) Nothing in this section shall prevent any person from being liable under any other Act, or otherwise, to any other, or higher, punishment than is provided for any offence by this section, so that no person be punished twice for the same offence:

Provided that no person shall be liable to any punishment for doing, or conspiring to do, any act on the ground that such act restrains, or tends to restrain, the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing, as hereinbefore mentioned.

Observation/Recommendations

The *Prevention of Crime Act* makes it a criminal offence, punishable with a fine of $250 or a term of imprisonment not exceeding 3 months for any person to use violence to any person or any property; threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace; or molest or obstruct any person with a view to coerce such person.

Some of the offences may also be punishable under the *Domestic Violence Bill*.

2.8 SEXUAL OFFENCES ACT, 1995 No. 9 of 1995

The *Sexual Offences Act* relates to sexual crimes and other criminal sexual offences.
Relevant Provisions

Section 10  Sexual intercourse with minor employee

(1) An adult who has sexual intercourse with a minor who –

(a) is in the adult’s employment; or

(b) is in respect of any employment work under or in any way subject to the adult’s control or direction; or

(c) receives his or her wages or salary directly or indirectly from the adult,

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

(2) For the purposes of subsection (1) it is not a defence for the adult to prove that the minor employee consented to the intercourse.

(3) An adult shall not be guilty of an offence under this section if the minor is the spouse of the adult.

Section 14  Indecent assault

(1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years.

(2) A person under the age of sixteen years cannot in law give any consent which would prevent an act being an assault for purposes of this section.

(3) In this section, “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.

Section 15  Serious indecency

(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment -

(a) for ten years, if committed on or towards a minor under sixteen years of age;

(b) for five years, if committed on or towards a person sixteen years of age of more,

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

(a) a husband and his wife; or
(b) a male person and a female person each of whom is sixteen years of age or more; both of whom consent to the commission of the act.

(3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.

Observation/Recommendations

However there is need to confirm whether sexual intercourse with a minor employee is not viewed as sexual harassment within the meaning of the term in the draft Model Bill.

The Sexual Offences Act does not treat sexual harassment as a criminal offence.
THE BAHAMAS

3. BAHAMAS


3.2 Domestic Violence (Protection) Orders, Chapter 99A

3.3 Employment Act, Chapter 321A


The Constitution of The Bahamas Constitution is the supreme law and, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void.

Relevant Provisions

Section 26 Protection from discrimination on the grounds of race, etc.

(1) Subject to the provision of paragraph (4), (5) and (9) of this Article no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of paragraphs (6), (9) and (10) of this Article, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the function of any public office or any public authority.

(3) In this Article, the expression "discriminatory" means affording different treatment to different person attributable wholly or mainly to their respective descriptions by race, place of origin political opinions colour or creed whereby person of one such description are subjected to disabilities or restrictions to which person of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.
Subject to the provisions of subparagraph (4)(e) and of paragraph (9) of this Article no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

Subject to the provisions of this Article no person shall be treated in a discriminatory manner-

(a) in respect of any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease of any freehold or leasehold hereditament which have been offered for sale or lease to the general public;

(b) in respect of any covenant or provision in any conveyance or lease or agreement for, or in consideration of, or collateral to, a conveyance or lease restricting by discriminatory provision the transfer, ownership, use or occupation of any freehold or leasehold hereditament which have been offered for sale or lease to the general public.

Observations/Recommendations

Unlike the other Constitutions the Constitution of the Commonwealth of the Bahamas 1973 does not prohibit discrimination on the grounds of sex nor does it expressly provide for sexual harassment.

3.2 DOMESTIC VIOLENCE (PROTECTION) ORDERS, CHAPTER 99A

Provides for the granting of protection orders in circumstances surrounding domestic violence.

Relevant Provisions

Section 2 Interpretation

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependant;

“harassment” includes —

(a) the intimidation of a person by —
(i) persistent verbal abuse;
(ii) threats of physical violence;
(iii) the malicious damage of the property of a person; or
(iv) any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct which is offensive or objectionable to the recipient, including, but not limited to: epithets derogatory or suggestive comments, slurs or gestures and offensive posters, cartoons, pictures, emails, telephone calls or drawings but not being an occasional compliment of a socially acceptable nature;

(b) stalking;

(c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or

(d) the indulgence or engagement in a pattern of behaviour by a person that would or likely have the effect of undermining the emotional or well-being of another;

“stalking” includes —

(a) persistent following of a person from place to place;
(b) the watching or besetting of the place where a person resides, works, carries on business or happens to be;
(c) persistent telephoning or other attempts at communicating with a spouse, partner or child or other member of that spouse's household and knowing that such course of conduct would likely cause annoyance to that spouse, partner or member:

Provided nothing in paragraphs (a), (b) or (c) applies to conduct on the part of a person acting in the performance of his duties in providing security for the benefit of another.

Section 3(1)(b) Protection order

(1) Where on an application made in accordance with section 4 in respect of a person and without prejudice to section 5(6) the court is satisfied on the balance of probabilities that a person —
(b) without prejudice to paragraph (a), has engaged in conduct that may reasonably be regarded as harassment of the spouse, partner or child, or other member of the household, and unless that person is restrained, is likely to engage in further conduct that would constitute conduct referred to in paragraph (a) or (b), it may make an order, in this Act referred to as a protection order, restraining the person from engaging in that conduct or in similar conduct.

Section 4(1)(a)(e), 4(7) and 4(9)  Application for protection order

(1) An application for a protection order in accordance with Form 1 in the Second Schedule may be made by way of complaint by —

(a) the spouse or partner of the person against whom the order is sought where the domestic violence was committed or the harassment conducted against that spouse, partner or a child of the household;

(e) an officer of the Department on behalf of a child against whom the domestic violence was committed or the harassment conducted.

(7) Where a complainant is a person referred to in paragraph (b), (c) or (d) of subsection (1), a protection order shall not be made in respect of the application unless notice of the application in accordance with Form 2 of the Second Schedule was given to the spouse or partner against whom the domestic violence was committed or the harassment was conducted or to any other interested party concerned.

(9) A court may make a protection order where it considers just to do so upon the evidence presented to it notwithstanding the absence of the oral testimony of the person against whom the domestic violence or harassment is alleged to have been or attempted to have been perpetrated.

Section 9(1)(a)  Matters to be taken into account

(1) In determining an application for a protection order, the court shall have regard to the following —

(a) the need to ensure that persons are protected from violence and harassment;

Observations/Recommendations
The Domestic Violence (Protection) Orders Chapter 99A provides for the granting of protection orders in circumstances surrounding domestic violence. The law relates to “harassment” in domestic relationship and provisions would be relevant if the focus was on “sexual harassment” which has a different connotation and is an offence under the Sexual Offences Act. However paragraph 1 (iv) of the interpretation of the word “harassment” contains elements of “sexual harassment”.

3.3 EMPLOYMENT ACT, CHAPTER 321A

An Act to establish minimum standard hours of working and vacation with pay for employees; to provide for the grant of maternity and family leave; to provide for redundancy payments to employees; to make provisions relating to notices to terminate contracts of employment; to make provisions relating to summary dismissal and unfair dismissal; to make provisions in respect of the employment of children and young persons; to make provisions in respect of the wages of employees; to make provisions relating to fingerprinting and lie detector tests; and for connected purposes.

Relevant Provisions

Section 2 Interpretation

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;

“employee” means any person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of employment, whether the contract is for manual labour, clerical work or otherwise and whether it is a contract of service or apprenticeship, and any reference to employment shall be construed accordingly;

“employer”, in relation to an employee, means any person or undertaking, corporation, company, public authority or body of persons including —

(a) the owner of a business in which the employee is employed:

(b) any managing agent of an employer;

(c) in relation to a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under a contract of bailment (other than a hire-purchase agreement), the said owner;
(d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or, where the club is managed by a committee, the members of the managing committee, of the club, who or which employs any person to work under a contract of employment or uses the services of a commission agent or contract worker; and includes the heirs, successors and assigns of an employer;

Section 6 Non-discrimination and equal pay for equal work.

No employer or person acting on behalf of an employer shall discriminate against an employee or applicant for employment on the basis of race, creed, sex, marital status, political opinion, age or HIV/AIDS by —

(a) refusing to offer employment to an applicant for employment or not affording the employee access to opportunities for promotion, training or other benefits, or by dismissing or subjecting the employee to other detriment solely because of his or her race, creed, sex, marital status, political opinion, age or HIV/AIDS;

(b) paying him at a rate of pay less than the rate of pay of another employee, for substantially the same kind of work or for work of equal value performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions except where such payment is made pursuant to seniority, merit, earnings by quantity or quality of production or a differential based on any factor other than race, creed, sex, marital status, political opinion, age or HIV/AIDS;

(c) pre-screening for HIV status:

Provided that this section does not affect any other law or contract term which stipulates a retirement age.

Observations/Recommendations

The Employment Act prohibits discrimination in employment on the grounds of sex but does not expressly provide for sexual harassment.

The *Sexual Offences Act* contains provisions relating to sexual offences.

**Relevant Provisions**

**Section 2  Interpretation**

“*sexual offence*” means any offence under sections 6 to 14 or section 16 of this Act.

**Section 5D  Indecent assault**

(1) Any person who —

(a) indecently assaults any other person;

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

is guilty of an offence and liable to a term of imprisonment of three years.

(2) It is no defence to a charge of an indecent assault committed on a person under sixteen years of age, to prove that the person consented to the act of indecency.

**Section 17  Indecent assault**

(1) Any person who —

(a) indecently assaults any other person;

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

is guilty of an offence and liable to imprisonment for eight years.

(2) It is no defence to a charge of an indecent assault committed on a person under fourteen years of age, to prove that that person consented to the act of indecency.

**Section 26  Sexual harassment**
(1) Any person who —
   (a) being a prospective employer importunes or solicits sexual favours from another person —
       (i) in the terms or conditions on which he offers, to that person or any other person, employment or admission into any institution; or
       (ii) under a threat of rejection (whether implied or otherwise) of any application made by that person or any other person for employment or for admission into any institution, or of causing such rejection;
   (b) being in a position of authority over, or being a co-worker of, another person in any place of employment or any institution, importunes or solicits sexual favours from that other person under any holding out, promise or threat of the grant or imposition of any favour, benefit, advantage or disadvantage, as the case may be, at the place of employment or institution; or
   (c) importunes or solicits from a person in a position of authority in any place of employment or any institution, any favour, benefit or advantage, or the forbearance from the exercise of any right, power or duty relating to that authority under any holding out or promise of sexual favours,

is guilty of the offence of sexual harassment.

(2) Any person who is guilty of the offence of sexual harassment is liable to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(3) In this section, “prospective employer” means any person who —
   (a) is in a position of authority in any place of employment or any institution; or
   (b) is authorised to act on behalf of a person mentioned in paragraph (a) for the purpose of employing personnel for a place of employment or admitting persons into an institution.

(4) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General.
Section 27(2)(3)  Powers of court where sexual offence committed.

(2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.

(3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

Observation/Recommendations

Sexual harassment in the work place is a criminal offence by virtue of section 26 of the Sexual Offences Act, of the Bahamas. A person who is convicted of sexual harassment may be required to attend a psychiatrist for psychiatric assistance by virtue of section 27(2) of the Act. It appears that the Sexual Offences Act provides protection for both sexes.
4. BARBADOS

4.1 The Constitution of Barbados 1966

4.2 Domestic Violence (Protection Orders), Cap. 130A (1992)

4.3 Employment Rights Act, 2012, No. 9

4.4 Minor Offences Act, 1998 –No 1

4.5 Protection Against Sexual Harassment [In The Workplace] Bill, 2005
4. BARBADOS

4.1 THE CONSTITUTION OF BARBADOS L.R.O. 2002

The Constitution is the supreme law of Barbados and, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Relevant Provisions

Section 23 Protection from discrimination on grounds of race, etc.

(1) Subject to the provisions of this section—

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

Observations/Recommendations

Unlike in the other Constitutions and like in the Bahamas where sex is addressed in their Constitutions the non-discriminatory provision of the Constitution of Barbados L.R.O. 2002 does not prohibit discrimination on the grounds of sex and does not expressly provide for sexual harassment.

4.2 DOMESTIC VIOLENCE (PROTECTION ORDERS) Cap. 130A (1992)
IMPACT Justice Report on the CARICOM Model Protection Against Sexual Harassment Bill and Recommendations for a New Model Bill

The Domestic Violence (Protection Orders) Act provides for the granting of protection order in circumstances surrounding domestic violence.

Relevant Provisions

Section 2 Interpretation

“harassment” includes

(a) the intimidation of a person by
   (i) persistent verbal abuse;
   (ii) threats of physical violence;
   (iii) the malicious damage of the property of a person; or
   (iv) any other means;

(b) the persistent following of a person about from place to place;

(c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or

(d) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be, or the approach to the house or other place;

Section 3(1)(b) Protection Order

(1) Where on an application made in accordance with section 4 in respect of a person, the Court is satisfied on the balance of probabilities that a person

   (b) has engaged in conduct that may reasonably be regarded as harassment of the spouse, former spouse or child, or other member of the household,

and unless that person is restrained, is likely to engage in further conduct that would constitute that or another offence referred to in paragraph (a) or (b), it may make an order, in this Act refer to as a protection order, restraining the person from engaging in that conduct or in similar conduct.

Section 4(1)(a)(c), 4(7) Application for Protection Order

(1) An application for a protection order in accordance with Form 1 in the Schedule may be made by way of complaint by
(a) the spouse or former spouse of the person against whom the order is sought where the offence was committed or the harassment conducted against that spouse or a child of the household;

(c) the Commissioner of Police;

(7) Where a complainant is a person referred to in paragraph (b), (c) or (d) of subsection (1), a protection order shall not be made in respect of the application unless notice of the application in accordance with Form 2 of the Schedule was given to the spouse against whom the offence was committed or the harassment was conducted or to any other interested party concerned.

Section 7(1)(a) Matters to be taken into account

(1) In determining an application for a protection order, the Court shall have regard to the following

(a) the need to ensure that persons are protected from violence and harassment;

Section 21(1)(a) Bail

(1) Notwithstanding any other law to the contrary, where the court is required to determine whether to grant bail in respect of an offence under this Act, the matters that it shall take into account include

(a) the need to ensure that persons are protected from violence and harassment;

Observations/Recommendations

The Domestic Violence (Protection Orders) Act addresses harassment in domestic relationship between family members but does not address sexual harassment within the meaning of the draft Model Bill.

4.3 EMPLOYMENT RIGHTS ACT 2012, No. 9

The Employment Rights Act, 2012 provides for the rights of employed persons. The Act establishes an Employment Rights Tribunal (section 6) to enforce the rights conferred under the Act and to determine complaints and make awards.

Relevant Provisions
Section 2    Interpretation

“employee” means an individual who has entered into or works under, or, where the employment has ended, worked under, a contract of employment;

“employer”, in relation to an employee, means the person by whom the employee is, or, in a case where the employment has ended, was, employed;

“employment” means employment under a contract of employment;

Section 26    Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer where

   (a) the contract under which he is employed is terminated by the employer, whether with or without notice;

   (b) he is employed under a contract for a fixed term and that term expires without being renewed under the same contract; or

   (c) the employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled so to terminate it by reason of the conduct of the employer.

(2) An employee shall be taken to have been dismissed by his employer for the purposes of this Part where

   (a) the employer gives notice to the employee to terminate his contract of employment; and

   (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the notice of the employer is due to expire,

and the reason for the dismissal is to be taken to be reason for which the notice of the employer is given.

Section 27    The right

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part.

(3) Subsection (1) does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than one year ending with the effective date of termination.
Section 29  Fairness generally

(2) An employer shall have the right to dismiss an employee for a reason which falls within this subsection if it

   (b) relates to the conduct of the employee;

(5) Notwithstanding subsection (1), an employer is not entitled to dismiss an employee for any reason related to

   (b) the conduct of the employee,

without informing the employee of the accusation against him and giving him an opportunity to state his case, subject to the Standard Disciplinary Procedures and the Modified Disciplinary Procedures set out in Parts B and C, respectively of the Fourth Schedule.

Section 51  Exemptions

This Act does not bind the Crown but applies to statutory corporations.

Observations/Recommendations

The Employment Rights Act does not bind the Crown.

Consideration may be given to the need to establish another [Employment] Tribunal under the proposed sexual harassment law to address sexual harassment in the work place. Perhaps reference should be made to the Tribunal established under the Employment Rights Act 2012 in the new law. Complaint to the Tribunal are made through the Chief Labour Officer.

4.4  MINOR OFFENCES ACT 1998 - 1

An Act to revise the law in relation to certain minor offences.

Relevant Provisions

Section 2  Disorderly behaviour

(1) An person who –

   (f) in any street, highway or public place, including a beach, without lawful authority or excuse (the proof whereof shall lie on the person accused), accosts, molests, threatens or harasses any person or follows him about;
commits an offence and is liable on conviction before a magistrate to a penalty of $2,500 or to imprisonment for 2 years or to both.

(2) For the purposes of this section “harass” means to

(a) use words, gestures and actions that annoy, alarm or abuse a person;
(b) insult, taunt or challenge a person in a manner likely to offend;
(c) use obscene and profane language to intimidate a person; or
(d) disturb or irritate especially by continued and repeated acts.

(3) In proving the intent to commit an arrestable offence, referred to in paragraphs (e) and (f) of subsection (1), it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case and from his known character as proved to the court, it appears to the court that his intent was to commit an arrestable offence.

Section 5  
Arrest of persons found committing offences

A police officer or parish constable may arrest any person who is found committing an offence under this Act and shall immediately take him before a magistrate to be dealt with in the manner prescribed by this Act.

Observations/Recommendations

The *Minor Offences Act 1998* makes it an arrestable offence for a person to harass another person in a public place, by using words, gestures and actions that annoy, alarm or abuse a person; insulting, taunting or challenging a person in a manner likely to offend; using obscene and profane language to intimidate a person; or disturbing or irritating especially by continued and repeated acts. The implications and the consequences on the person harassed is not the same as that in the case of sexual harassment under the proposed new law.

4.5 PROTECTION AGAINST SEXUAL HARASSMENT [IN THE WORKPLACE] BILL, 2005

As stated in the Explanatory Memorandum the Protection Agency Sexual Harassment in the Workplace Bill, 2005 is intended to –

(a) declare the existence of a right to freedom from sexual harassment in the work environment
(b) facilitate the taking of preventative measures against sexual harassment in the workplace through the establishment of the Protection Against Sexual Harassment Council, which Council not only plays a key role in the treatment of complaints of sexual harassment, but also participates in policy making and is responsible for public awareness of the harm of sexual harassment;

(c) provide remedies for victims, and sanctions for perpetrators and facilitators, of sexual harassment in the work environment;

(d) establish a procedure for the efficient treatment of complaints of sexual harassment;

(e) enable sexual harassment claims to be dealt with by a specialised tribunal established by law for the hearing and determination of employment rights even if such tribunal is established after the commencement of this Act, but to provide access to the High Court in the meantime.

Relevant Provisions

Clause 2 Interpretation

“affiliate” includes a person who share the same working premises;

“associate” means a client, family or friend of the employer;

“client” means a person who has dealings with the employer in the course of business and includes students at an educational institution, job applicants, suppliers, the employer’s affiliates and their employees;

“Council” means the Protection Against Sexual Harassment Council;

“co-worker” includes a supervisor and a person who shares the same working premises but have different employers;

“employee” includes apprentices, a person on probation, a person employed full or part-time, a person remunerated by way of a commission, a prospective employee and a former employee;

“employer” includes the Government of Barbados, a statutory authority and a quasi-government body heirs, successors and assigns of an employer, a prospective employer and a former employer;
“Minister” means the Minister responsible for Labour;
“prescribed” means prescribed by regulations;
“sexual harassment” has the meaning assigned in section 5;
“Tribunal” means the specialised tribunal established by law to deal with and adjudicate upon employment rights, and until such tribunal is established by law, the High Court;

Section 3  Purposes

The purpose of this Act is to establish legal measures to prevent, punish and eradicate sexual harassment in the workplace by regulating workplace sexual harassment policy, providing additional remedies for victims of sexual harassment and facilitating changes in the cultural norms that give rise to sexual harassment in the workplace.

Section 5  Meaning of sexual harassment

(1) Sexual harassment means any unwelcome physical, verbal or non-verbal conduct, whether of a sexual nature or based on sex, which affects the human dignity of the recipient. It includes a comment, gesture, contact or display of a graphic picture
(2) Conduct is unwelcome if—
   (a) it is persisted in once it has been made clear that it is regarded by the recipient as offensive; or
   (b) it is a serious affront to the dignity of the recipient, whether or not it has occurred more than once.
(3) Without limiting the generality of paragraph (2)(b), if a person's rejection of or submission to the conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training or to employment, continued employment, promotion, salary or any other employment decisions, that conduct is a serious affront to the dignity of the person.

Section 6  Right of employee and client

(1) An employee is entitled to employment free of sexual harassment.
(2) A client is entitled to have dealings with an employer or on the employer’s premises without being subject to sexual harassment.

Section 7 Responsibility of co-workers
A person shall not subject a co-worker or a client of his or her employer to sexual harassment.

Section 8 Responsibility of employer
(1) An employer shall not subject an employee or a client to sexual harassment.
(2) An employer shall make every reasonable effort to ensure that no employee or client is subjected to sexual harassment by an employee or an associate of the employer.

Section 9 Policy Statement by employer
(1) After consulting with the employees or their representatives, an employer shall issue a policy statement concerning sexual harassment.
(2) The policy statement may contain any term consistent with the tenor of this Act the employer considers appropriate but must contain the following—
   (a) a definition of sexual harassment that is substantially the same as the definition in section 5;
   (b) a statement to the effect that every employee is entitled to employment free of sexual harassment;
   (c) a statement to the effect that every client is entitled not to be subjected to sexual harassment;
   (d) a statement to the effect that the employer will make every reasonable effort to ensure that no employee or client is subjected to sexual harassment;
   (e) a statement to the effect that the employer will take such disciplinary measures as the employer considers appropriate against any person under the employer’s direction who subjects, or whose agent subjects, any employee or client to sexual harassment;
   (f) a statement to the effect that the employer will take such measures as are practicable against any associate who subjects any employee or client to sexual harassment;
(g) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(h) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation to the complaint; and

(i) a statement informing employees of this Act and any other law that pertain to rights of persons to seek redress in respect of sexual harassment.

(3) The employer shall present the policy to an employee on the commencement of employment with the employer. [Notice posted for clients?]

Section 10 Offence

(1) A person who contravenes any of the provisions of section 7 or 8 whose conduct amounts to sexual harassment of the type referred to in section 5(2)(b) or 5(3) commits an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

(2) An employer whose employee or associate commits an offence under subsection (1) also commits an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both, unless the employer establishes that the offence was committed without the knowledge or consent of the employer and that the employer exercised all due diligence to prevent its commission.

Section 11 Administrative monetary penalty for violation

(1) An employer who fails to comply with section 9 commits a violation and is liable to the prescribed penalty and no proceedings against him or her shall be taken by way of summary conviction.

(2) The procedure for enforcement of a violation is set out in Part IV.

Section 12 Civil liability

(1) A person who subjects another to sexual harassment is liable in damages to that person in the amount that the Council considers appropriate having regard to all the circumstances.
(2) An employer is vicariously liable in damages for the sexual harassment committed by his or her employees or associates unless he or she proves that he or she exercised due diligence in preventing its commission.

Observations/Recommendations

The Protection Against Sexual Harassment [In The Workplace] Bill includes a Preamble as well as a purpose clause. The Preamble recites sexual harassment as a form of violence and discrimination because it causes physical, sexual harm and is a product of gender base hostility. However, sexual harassment is not akin to rape or domestic violence although it is included as part of a campaign against violence to women. Its core is unwelcome sexual advances which may not include a criminal sexual offence.

The Bill focuses on the female sex whilst men are also subject to sexual harassment in the work place.

The definition of “employee” is wider than in the CARICOM Model Bill and includes a “prospective employee” and a “former employee” which are commendable.

The law focuses on sexual harassment in the work place and falls under the administration of the Minister for Labour and is more limiting in that respect since the CARICOM Model Bill includes harassment in educational institutions and for the purposes of accommodation.

Workplace is extended under the Bill to include any place to receive training or attending a conference on employment. This suggests applicability to any sexual harassment by another employee which occurs whilst the person is in the course of employment.

It is assumed that a Labour Tribunal does not currently exist to address complaint arising from employment e.g. complaints relating to unfair or constructive dismissal.

Clause 5 Meaning of Sexual Harassment

The meaning of sexual harassment is unclear and subjective. The focus should be on the fact that the conduct is unwelcomed, the use of terms like “affects the human dignity of the recipient” is a bit too emotive and subjective.

See Cayman Islands Bill for a more relevant and objective definition of the term “sexual harassment”.

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Clause 6  Right to employee and client

A right is presented as an entitlement, perhaps the provision may state. “A person shall not be subject to sexual harassment in his or her employment” or words to that effect.

A co-worker or client?

Clause 9(2)  Policy Statement by employer: The use of the word entitlement may need to be reviewed.

Clause 9(2)(e), (f) and (h) to confirm obligation placed on employer to take disciplinary measures. Is this before or after a hearing of a complaint by a Tribunal.

Clause 10  Offence

A person who commits an act of sexual harassment is liable to a criminal offence i.e. a fine of $5000 or to imprisonment for 12 months or to both.

An employer is also vicariously liable and may be imprisoned.

Perhaps since the law seeks to establish rights and entitlement a civil penalty may be considered instead of a term of imprisonment, an employer may be an entity, liability of directors etc. may be considered.

Clause 11 administrative monetary penalty may be imposed on an employer for failure to issue a policy on sexual harassment.

This requirement is commendable. The detailed procedure set out in Part IV may not be applicable perhaps the employer should be required to provide a copy of the policy to the staff on recruitment and to the Minister or make that policy available for inspection by the Minister or authorised officer on a periodic basis.

Clause 12 on civil liability to be reconciled with clause 10 which provide for criminal liability.

Clause 13  Establishment of a Council

Is there need for a Council? Should the matter fall within the jurisdiction of a Ministry of Gender Affairs? Or a Labour Commissioner since it relates to activities in the work place?

Clause 14  Functions of the Council
The Council would be responsible for the investigating and dealing with complaints. To be reconciled with the role of the Tribunal.

**Clause 21 Meaning of “judge”** the definition may be provided in the general interpretation section.

To confirm scope of qualification of judge as being from any Court in the Commonwealth jurisdiction? Policy decision.

**Clauses 22 to 29 Inquiry:** An inquiry may be conducted of the members of the Council. Perhaps other provisions may be considered for the removal of a member if and when that becomes necessary.

**Clauses 30 to 36:** Provides for the appointment of enforcement officers, their tenure and their functions. The administrative structure seems “heavy” under the Act. Enforcement officers are to be appointed to assist the Council in investigating complaints and monitor compliance with the Act. Roles to take into account the amount of the complaints and the level of compliance is required in the circumstances? Focus should be on an effective system to provide the necessary protection and redress to a complainant or an aggrieved person.

**Clauses 53 to 55:** Need to reconcile the role of the Council and Tribunal in relation to the investigation of a complaint of sexual harassment.

The Barbados draft *Protection against Sexual Harassment in the Workplace Bill 2005* which is available online, does not seem to adequately address the subject of sexual harassment in the workplace. Only a few of the 63 clauses in the Bill address the subject of sexual harassment. Emphasis is placed on the establishment of a Council and appointment of enforcement officers, guidance may be sought by the examination of the Cayman Islands proposed law which contains relevant provisions in the area of sexual harassment.
5. **BELIZE**

5.1 Belize Constitution 1981, Cap 4, (as in force March 1, 2012)

5.2 Crime Control and Criminal Justices Act, Cap 102

5.3 Criminal Code, Cap. 101

5.4 Domestic Violence Act, Cap 178

5.5 Education Act, Cap 36

5.6 Labour Act, Cap 297

5.7 Protection against Sexual Harassment Act, Cap. 107 (Revised Law as at December 2000)
5. BELIZE

5.1 BELIZE CONSTITUTION ACT, Cap. 4 as in force March 1, 2012

This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

Relevant Provisions

Section 16 Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person or authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Observations/Recommendations

The Belize Constitution Act Chapter 4 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

5.2 CRIME CONTROL AND CRIMINAL JUSTICES ACT, CAP 102

Relevant Provisions

Section 7 Anti-social behaviour orders. (18 of 1998)

(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely:-
that the person has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to two or more persons not of the same household as himself; and

(b) that such an order is necessary to protect persons in the area in which the harassment, alarm or distress was caused or was likely to be caused from further antisocial acts by him;

and in this section “relevant authority” means the Department of Human or Social Development or a police officer of or above the rank of Assistant Inspector.

(2) Such an application shall be made by complaint to the magistrate’s court of the judicial district where it is alleged that the harassment, alarm or distress was caused or was likely to be caused.

(3) If, on such an application, it is proved that the conditions mentioned in subsection (1) above are fulfilled, the magistrate’s court may make an order under this section (an “anti-social behaviour order”) which prohibits the defendant from doing anything described in the order.

(4) The prohibition that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting persons in the area from further antisocial acts by the defendant.

(5) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until replaced by a further order.

(6) Subject to subsection (7) below, the applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.

(7) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.

(8) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, he shall be liable:

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars, or to both such fine and term of imprisonment; or
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand dollars, or to both such fine and term of imprisonment.

Observations/Recommendations

Section 7 of the Crime Control and Criminal Justice Act, appears to address harassment which may be a public “nuisance” and not written the context of the proposed law.

5.3 CRIMINAL CODE, CAP 101

Relevant Provisions

Section 66 Kinds of assault.

(1) “Assault” includes-
   (a) assault and battery;
   (b) assault without actual battery;
   (c) imprisonment.

(2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Title VI.

Section 67 Definition of assault.

(1) A person makes an assault and battery upon another person if, without the other person’s consent, and with the intention of causing harm, pain, fear or annoyance to the other person, or of exciting him to anger, he forcibly touch the other person, or cause any person, animal or matter, to forcibly touch him.

(2) This definition is subject to the following provisions-
   (a) Where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as but for the consent obtained by the deceit would have been likely to cause fear or annoyance, or to excite anger.
   (b) Where the other person is insensible or unconscious or insane, or is by reason of infancy, or of any other circumstance, unable to give or
refuse consent, it suffices with respect to intention, either that the touch is intended to cause harm, pain, fear or annoyance to him, or that the touch is intended to be such as would be likely to cause harm, pain, fear or annoyance to him, or to excite his anger, if he were able to give or refuse consent, and were not consenting.

(c) The slightest actual touch suffices for an assault and a battery if the intention is such as is required by this section.

(d) A person is touched within the meaning of this section if his body be touched, or if any clothes or other thing in contact with his body or with the clothes upon his body is touched, although his body is not actually touched.

(e) For the purpose of this section, with respect to intention to cause harm, pain or annoyance, it is immaterial whether the intention be to cause the harm, pain, fear, or annoyance, by the force or manner of the touch itself, or to forcibly expose him, or cause him to be exposed to harm, pain, fear or annoyance, from any other cause.

Section 68 Assault without actual battery.

(1) A person makes an assault without actual battery on another person if, by any act apparently done in commencement of an assault and battery, he intentionally put the other person in fear of an instant assault and battery.

(2) The definition is subject to the following provisions, namely-

(a) It is not necessary that an actual assault and battery should be intended, or that the instruments or means by which the assault and battery is apparently intended to be made should be, or should by the person using them be believed to be, of such a kind or in such a condition as that an assault and battery could be made by means of them.

(b) A person can make an assault within the meaning of this section by moving, or causing any person, animal or matter, to move towards another person, although he, or such person, animal or matter be not yet within such a distance from the other person as that an assault and battery can be made.
(c) An assault can be made on a person within the meaning of this section although he can avoid actual assault and battery by retreating or by consenting to do, or to abstain from doing, any act.

Observations/Recommendations

In the absence of specific legislation on “sexual harassment” the provisions relating to assault in the Criminal Code may be held applicable in determining a complaint on sexual harassment. However, specific sexual harassment law exists in Belize.

5.4 DOMESTIC VIOLENCE ACT, CAP 178

Relevant Provisions

Section 2 Interpretation

“conduct of an offensive or harassing nature” in relation to a respondent, includes -

(a) the persistent intimidation of a person by the use of abusive and threatening language;
(b) the damaging of the property of a person;
(c) the persistent following of a person from place to place;
(d) depriving a person of the use of his personal property;
(e) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be, or the watching or besetting of the premises that are the place of education of a person;
(f) the willful or reckless neglect of a child or dependent person; and
(g) making persistent unwelcome telephone calls to a person;

“harassment” means a course of conduct which may include words, gestures and actions which tend to annoy, alarm or abuse another person and which causes emotional distress to another person and includes -

(a) the intimidation of a person by -
   (i) persistent verbal abuse;
(ii) threats of physical violence;
(iii) the malicious damage of the property of a person; or
(iv) any other means;

(b) the persistent following about of a person from place to place;

(c) the hiding of any clothes or other property owned and used by a person; or

(d) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be, or the watching or besetting of a person’s place of education;

Section 4 Protection order or undertaking.

(1) Where, on an application made in accordance with this Act, the Court is satisfied on the balance of probabilities, that -

(d) the respondent has engaged in conduct of an offensive or harassing nature, or conduct which amounts to psychological abuse, intimidation or persecution in respect of a spouse of the respondent, a parent, or a child or dependant of the spouse or of the respondent, to the extent that the spouse or the parent is fearful of injury, physical or mental, to herself or himself or to a child or dependant of spouse or of the respondent,

the Court shall, subject to this section, make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section.

Section 5 Restrictions in order.

(1) Subject to this Act, a protection order may-

(e) prohibit the respondent from engaging in conduct of an offensive or harassing nature towards a prescribed person;

(f) prohibit the respondent from speaking or sending unwelcome messages to a prescribed person;

(g) where the order contains a prohibition of the kind referred to in paragraph (e) relating to conduct of an offensive or harassing nature that amounts to willful or reckless neglect of a child or dependent
person, direct the respondent to ensure that reasonable care is provided in respect of that child or dependent person;

**Section 6 Matters to be taken into account.**

(1) In determining whether to impose one or more of the prohibitions or conditions specified under section 5, the Court shall have regard to the following:

   (a) the need to ensure that a prescribed person is protected from violence or harassment;

(2) In having regard to the matters referred to in subsection (1) above, the Court shall consider the matter referred to in subsection (1) (a) and (b) above as being of primary importance.

**Observations/Recommendations**

The *Domestic Violence Act* provides for the granting of protection orders in circumstances surrounding domestic violence. The Act addresses harassment but not sexual harassment within the meaning of the proposed Model Bill.

### 5.5 EDUCATION ACT, CAP. 36 (Revised Edition 2003 Showing the Subsidiary Laws as at 31st October, 2003)

**Relevant Provisions**

**Section 114 Gender and other biases.**

(1) Coeducational schools shall be free of gender and other biases which contravene the Act or these rules and are contradictory to the goals of education and they are prohibited from engaging in activities and adopting structures which reflect such biases.

(2) Teachers are prohibited from the conscious display of such biases and shall seek to avoid implied biases in what and how they teach and in textbooks and other resource materials.

**Section 115 Protection from harassment, abuse and harmful influences**

(1) Schools shall maintain a culture free of intimidation in which students are free to participate in school activities, pursue individual interest, express opinions and are encouraged to be truthful.
(2) The Ministry of Education shall develop and Managing Authorities and Principals and Vice Principals shall enforce regulations to prevent sexual harassment and physical or psychological abuse of students.

(3) Dangerous weapons shall not be allowed at school. Pornographic, unlawful or subversive materials shall be prohibited from school.

Section 140 Investigation of charges.

(3) Where the Principal has substantial grounds to believe that it is in the best of other students and generally of the school, a student may be suspended while the school investigates an accusation against him involving sexual abuse or harassment or other forms of harassment, abuse or intimidation, including possession of illegal or dangerous weapons, or with the possession and/or use of illicit drugs, or with the possession of pornographic materials or other unlawful or subversive materials at school.

(4) Where a student has been suspended from school pending the investigation of an accusation against him, the student and his parent(s) or guardian(s) shall be immediately notified in writing of the accusation against him and the student shall be given every opportunity to defend himself against such accusations. If the accusation is not heard within ten school days after suspension, he shall be immediately re-enrolled without prejudice to his status as a student; provided that the student and/or his representative has presented himself at each and every scheduled hearing of the accusation made against him.

Section 141 Disciplinary measures

(5) For serious offences involving activities which bring the school into disrepute, serious physical harm, sexual and other forms of harassment and intimidation including possession of dangerous or illegal weapons, the possession and/or use of illicit drugs, the destruction of school property, or conviction on a criminal charge, the school may suspend the student for a period of no more than two weeks, demand a reasonable number of hours of in school or out-of-school community service, or dismiss the student. In suspending a student, care shall be taken not to have such suspension preclude examinations and other activities essential to successful completion of a course or programme of studies.

Observations/Recommendations

The Education Act, contains provisions to ensure equality of treatment in schools and requires co-educational schools to be free of gender and other biases and urges schools to maintain a culture free from intimidation [section 114]. The Ministry of Education is empowered to develop regulations to prevent sexual
harassment, of students. These Regulations are to be enforced by Managing Authorities and (section 115). Perhaps a policy on sexual harassment should be developed by the relevant Ministries for education for enforcement in the schools.

5.6 LABOUR ACT, CAP. 297

LABOUR (AMENDMENT) BILL, 2010

AN ACT to amend the Labour Act, Chapter 297 of the Substantive Laws of Belize, Revised Edition 2000-2003; to provide for continuity of employment; to protect workers against unfair dismissal; to establish procedures for termination of contract in a fair and equitable manner; to establish a Labour Complaints Tribunal to hear and determine complaints from workers;…

Relevant Provisions

Section 2 Interpretation

“contract of employment” or “contract of service” means any agreement between an employer and a worker, whether expressed or implied, oral or written, for a definite or indefinite period by which the worker works under the authority and directions of the employer even if not under his direct supervision, in return for remuneration fixed according to the hours of work or at piece or task rate, and includes a contract of apprenticeship or probation;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he is, in relation to that person, in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor

“employment” includes part time employment and employment under a contract of employment;

“employer”, means a person who employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker, and includes the heirs, successors and assigns of an employer;"

“worker” or “employee” means a person who has entered into or works under a contract with an employer under a contract of employment."
“gross misconduct” means misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the worker;

Section 42 Unfair dismissal.

(1) Notwithstanding anything to the contrary contained in any other law or agreement, the following reasons do not constitute good and sufficient cause for dismissal or for the imposition of disciplinary action against a worker:

   (d) worker's race, colour, sex, marital status, ethnic origin, family responsibilities, religion, nationality, indigenous population or social origin;

   (h) that was subjected to sexual harassment at the work place or by the employer or another worker of the same employer;

(2) For the purpose of this section, the term unfair dismissal includes any distinction, execution or preferences made on the basis of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(3) A reference is subsection (1)(h) “sexual harassment” is a reference to sexual harassment as constituted in the Protection Against Sexual Harassment Act.

(5) This section does not apply to workers

   (a) engaged under a contract of employment for a specified period of time or for a specified task,

   (b) serving a period of probation or qualifying period of employment determined in advance and of reasonable duration,

   (c) engaged in employment of a casual nature.

Section 200 Establishment of Tribunal

(1) A Labour Complaints Tribunal shall be established for the purpose of providing a fair and impartial appeal process arising from complaints of unfair dismissal or wrongful termination.

Section 201 Powers and Functions of the Tribunal

(1) The functions of the Tribunal shall be to:

   (a) receive complaints and hear appeals from employees against an employer's action of unfair dismissal or wrongful termination,
(b) to perform such other functions and to hear such other appeals as are specified in this Act or as may be prescribed by Regulations made under this Act.

(2) An employee who is aggrieved by a decision of an employer falling under subsection (1) may appeal to the Tribunal in the manner prescribed by the Tribunal pursuant to subsection (3).

Observations/Recommendations

Section 42 of the Labour Act prohibits the unfair dismissal of or the imposition of disciplinary action against a worker on the grounds of the worker’s sex, or a worker that was subjected to sexual harassment at the work place or by the employer or another worker of the same employer;

The term “unfair dismissal” includes any distinction, execution or preferences made on the basis of nullifying or impairing equality of opportunity or treatment in employment or occupation. However sexual harassment shall be interpreted in accordance with the Protection Against Sexual Harassment Act.

However section 42 is limited and does not apply to workers engaged under a contract of employment for a specified period of time or for a specified task, serving a period of probation or qualifying period of employment determined in advance and of reasonable duration, or engaged in employment of a casual nature.

5.7 PROTECTION AGAINST SEXUAL HARASSMENT ACT, CAP 107; Revised Law as at December 2000

The Act which came into force on 1st October 1996 provides for the protection against sexual harassment in employment, institutions and in relation to residential and business accommodation.

Relevant Provisions

Section 2 Interpretation

“complaint” means a grievance lodged under section 10 or a matter referred to the Court for inquiry as a complaint pursuant to section 11;

“employee” includes apprentices, persons on probation, full and part-time employees and commission agents;
“employer” includes the Government of Belize, statutory authorities, quasi-government bodies and any other employer

“employment” includes part-time and temporary employment and work under a contract of services;

“functions” includes powers, duties, obligations and rights;

“Minister” means the Minister for the time being responsible for Human Resources;

“unwelcome sexual advance” means conduct of a sexual nature which is unwelcome, undesirable or offensive to the person to whom that conduct is directed.

**Section 3  Sexual harassment in employment.**

(1) No employer or supervisor of an employee shall harass sexually an employee so as to make it appear to the employee that the prospects or working conditions of that employee are contingent upon the employee’s acceptance of sexual advances or toleration of the sexual advances from the employer or supervisor.

(2) A prospective employer shall not harass sexually a person so as to make it appear to that person that -

   (a) an offer of employment to that person; or

   (b) the terms on which employment is offered,

is or are contingent on that person’s acceptance of sexual advances or toleration of the sexual suggestions or innuendos from the prospective employer.

(3) An employer or employee shall not harass sexually a fellow worker.

(4) For the purpose of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature to the other person, and-

   (a) the other person suffers any form of disadvantage in connection with that other person’s employment or work or possible employment or possible work; or
(b) the unwelcome request for sexual favours has the effect of interfering unreasonably with the other person’s work performance or when it creates an intimidating, hostile or offensive working environment.

(5) In order to determine whether the alleged conduct constitutes sexual harassment in employment, all of the circumstances surrounding the facts that occurred shall be taken into consideration. The determination of the legality of an action shall be based on the findings of each particular case.

Section 4  Liability of employer for sexual harassment.

An employer shall take immediate and appropriate action to correct any act of sexual harassment towards employees in the work place, where the employer, his agents or his supervisors know or are informed of such conduct, and if the employer fails to take immediate and appropriate action to correct the situation, he shall be held responsible therefor, and the aggrieved person may lodge a complaint against him under section 10.

Section 5  Liability of employer where opportunities granted for sexual favours.

Where an employer grants employment opportunities or benefits as a result of a person’s submission to sexual harassment and demands of the employer or his agents or his supervisors, the employer shall be held liable for sexual harassment in employment with regard to any other person who was denied such opportunity or benefit because of the refusal of that person to submit to sexual harassment:

Provided that the employer shall be liable for the acts of his agents or supervisors only if he knew or was informed of such acts.

Section 6  Prohibition on acts adversely affecting employment.

No employer shall carry out any action which adversely affects the opportunities, terms and working conditions of an employee who has rejected the employer’s practices that are in conflict with the provisions of this Act, or who has instituted proceedings, has given testimony, collaborated or participated in any investigation, procedure or hearing initiated under this Act.

Section 8  Duty to keep institution free from sexual harassment.
(1) It shall be the duty of every person in charge of an institution to keep that institution free from sexual harassment and intimidation and to clearly express a policy against sexual harassment to staff, students, inmates or wards of that institution.

(2) For the purpose of this section, sexual harassment constitutes unwelcome verbal or physical conduct of a sexual nature including, but not limited to, the deliberate making of unsolicited gestures or comments, unwelcome sexual advances or requests for sexual favours or the deliberate display of offensive sexually graphic material which is not necessary for institutional purposes.

Observations/Recommendations
The Protection Against Sexual Harassment Act of Belize appears to be modelled on the CARICOM Model Draft Bill and provides for sexual harassment in employment, at institutions and in relation to accommodations.

However there appears to be significant improvements to the CARICOM Model Bill, such as the inclusion of the following provisions in the Belize Act which are absent in the CARICOM Model Bill.

Section 4 – Liability of employer for sexual harassment
Section 5 – Liability of employer where opportunities granted for sexual favours
Section 6 – Prohibition of acts adversely affecting employment
Section 8 – Duty to keep institution free from sexual harassment

The Court and not a Tribunal has jurisdiction in relation to complaints. This maybe a policy decision for the Member State.

Definition of Employee
The definition of Employee in the Belize Act expressly includes apprentices, persons on probation and full and part time employees whilst the CARICOM Model Bill only includes commission agents, which is also included in the Belize Act.

However “employer” is defined in the Belize Act to include the Government, statutory authorities and quasi Government bodies.

Generally if the law addresses discrimination in the work place the anti-discrimination clause in the Constitution is deemed to apply to Government employees, however the Constitution does not address sexual harassment and
legislation governing sexual harassment may be made applicable to all employers and employees since it is not inconsistent with the provisions of the Constitution.

**Institution**

The Belize Act seeks to apply to all institutions including a mental institution and the prison. It is advisable to make the law as extensive as possible since sexual harassment is evident in all places where persons are gathered for work or otherwise, for an extended period.

The fact that the employer includes the Government also speaks to the wide scope of the Act; but it is not as extensive as the similar law of the Cayman Islands.

**Minister/Administration of the Act**

The person responsible for the administration of the law is generally identified in the definition of Minister in the Interpretation section. In Belize responsibility for the administration of the law is vested in the Minister with responsibility for Human Resources.

If the law extends to the Government disciplinary action generally falls within the jurisdiction of the relevant public service commission in most of the Member States.

**Definition of “sexual harassment”**

Since the circumstances leading to sexual harassment differs in the respective areas where it is prohibited e.g. in the workplace, at an institution or in relation to residential or business a general definition is not provided in the Interpretation section but can be gleaned from the context. However the term “unwelcome sexual advances” is more general and is defined in the general Interpretation section in the Belize Act.

**Vicarious Liability**

Under section 4 of the Belize Act, an employer is required to take immediate and appropriate action to correct any act of sexual harassment if the employer fails to do so the aggrieved person may lodge a complaint against the employer.

Under section 5 the employer may also be held liable where the employer grants benefits as a result of the sexual harassment.

Under section 6 where a person alleges that he or she has been sexually assaulted that person should not be discriminated against.

Sections 4, 5, 6 and 8 may be considered for adoption in a revised Model Bill.
6. CAYMAN ISLANDS

6.1 Cayman Islands Constitution Order 2009

6.2 Labour Law 2007 Revision

6.3 Gender Equality Bill 2011

6.4 The Sexual Harassment Bill 2012
6. CAYMAN ISLANDS

6.1 CAYMAN ISLANDS CONSTITUTION ORDER 2009

Relevant Provisions

Section 16 Non-discrimination

(1) Subject to subsections (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution.

(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of defence, public safety, public order, public morality or public health.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(a) for the appropriation of revenues or other funds of the Cayman Islands or for the imposition of taxation (including the levying of fees for the grants of licences);

(b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Cayman Islands of persons who are not Caymanian;

(c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (2) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or

(d) whereby persons of any such description of grounds as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable
proportionality between the means employed and the purpose sought to be realised.

(5) Nothing in any law shall be held to contravene subsection (1) to the extent that it requires a person to be a Caymanian, or to possess any other qualification (not being a qualification specifically relating to any such description of grounds as is mentioned in subsection (2)) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(6) Subsection (1) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (3), (4) or (5).

(7) Subsection (1) is without prejudice to any restriction on the rights and freedoms guaranteed by section 9, 10, 11, 12, 13 or 14 if that restriction would, in accordance with that section, be a restriction authorised for the purposes of that section on the ground that—

(a) the provision by or under which it is imposed is reasonably required in the interests of a matter, or for the purpose, specified in that section; and

(b) the provision and the restriction imposed under it are reasonably justifiable in a democratic society.

Observations/Recommendations

The Cayman Islands Constitution Order 2009 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

6.2 LABOUR LAW 2007 REVISION


Relevant Provisions

Section 80 Discrimination because of race, etc.

(1) No person (whether an employer or an employee) shall discriminate with respect to any person’s hire, promotion, dismissal, tenure, wages, hours or other conditions of employment, by reason of race, colour, creed, sex, pregnancy or any
reason connected with pregnancy, age, mental or physical disability (provided their ability to perform the job is not impaired), political belief or the exercise of any rights under this or any other Law.

(2) Subsection (1) shall not be construed as prohibiting the taking of any personnel action genuinely related to an employee’s ability to discharge the duties of the employment in question.

(3) Whoever contravenes subsection (1), is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

Observations/Recommendations

The Cayman Islands Labour Law 2007 Revision prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

6.3 GENDER EQUALITY BILL 2011

A Bill for a law to provide for the elimination of gender discrimination in employment, training and recruitment; to provide for the payment of equal remuneration to employees who perform work of equal value; and to provide for incidental and connected purposes

Relevant Provisions

Section 2 Interpretation

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of, or recruitment for work, which is threatened or imposed as a condition of employment on an employee or which creates a hostile working environment for the employee, being conduct which has the purpose or effect of violating the dignity of the employee or intimidating, degrading, humiliating or offending the employee;

Section 3 Prohibited grounds of discrimination

(1) For the purposes of this Law, a person discriminates against another person on grounds specified in subsection (2) if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.

(2) The grounds referred to in subsection (1) are -
(a) sex, marital status or pregnancy; or
(b) any characteristic based on gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state.

(3) Any act, practice or policy that directly or indirectly results in discrimination against a person on any ground specified in subsection (2), is an act of discrimination regardless of whether the person responsible for the act, practice or policy intended to discriminate.

Section 4  Prohibition on discrimination in employment

(1) A person who is an employer, shall not in relation to the recruitment, selection or employment of any other person, discriminate against that other person on any ground specified in section 3(2) -

(a) in an advertisement of a job;
(b) in an interview or other arrangements made for the purpose of determining who should be offered employment;
(c) in determining who should be offered employment;
(d) in the terms or conditions on which employment is offered; or
(e) in the creation, classification or abolition of jobs.

(2) An employer shall not discriminate against an employee on any ground specified in section 3(2) -

(a) in the terms or conditions of employment afforded to the employee by the employer;
(b) in conditions of work or occupational safety and health measures;
(c) in the provision of facilities related to or connected with employment;
(d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
(e) by retrenching or dismissing the employee; or
(f) by subjecting the employee to any other disadvantage.

(3) Subsection (1) does not apply to employment -

(a) for the purposes of a private household; or
(b) by a private educational authority.
Section 7  Sexual harassment

(1) Any act of sexual harassment against a person committed by any other person constitutes discrimination based on sex within the meaning of section 3.

(2) A person shall not commit sexual harassment against any other person.

6.4 THE SEXUAL HARASSMENT BILL 2013
A bill for a law to provide for the prevention of sexual harassment; and to provide for incidental and connected purposes.

Relevant Provisions

“employee” includes-

(a) any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract is oral or written, express or implied, full or part-time;
(b) a person whose services have been interrupted by a suspension of work during a period of leave;
(c) an apprentice;
(d) an intern; or
(e) a person on employment probation;

“employer” includes-

(a) any person who has entered into or stands ready to enter into a contract of employment with an employee;
(b) an agent or representative of the employer; or
(c) a supervisor of the employee;

Section 3  Commission of an act of sexual harassment

3. (1) A person commits an act of sexual harassment against another person if, having regard to-

(a) all the circumstances referred to in subsection (2); and
(b) the effect upon the person against whom the conduct described in
subsection (3) is alleged to have been committed, it is reasonable for the
sexually harassed person to conclude that the conduct was directed
towards him or her and was calculated to-

(i) offend, humiliate, disrespect or degrade him or her;

(ii) intimidate, threaten or compel him or her by putting him or her in
fear of being placed at a disadvantage or prejudiced if he or she
does not submit to the sexual harassment; or

(iii) create a hostile environment for him or her, or violate his or her
dignity.

(2) For the purposes of subsection (1)(a), the circumstances to be taken into
account include-

(a) the sex, age, marital status, sexual preference, religious belief, colour,
nationality or ethnicity of the person who has alleged sexual harassment;

(b) the relationship between the person alleging sexual harassment and the
person who is alleged to have engaged in the sexual harassment;

(c) any disability of the person alleging sexual harassment.

(3) The conduct referred to in subsection (1)(b) includes conduct which
involves-

(a) making an unwelcome sexual advance towards a person;
(b) making an unwelcome request for sexual favours from a person;
(c) making an unwelcome sexual comment to a person;
(d) making an unwelcome sexual comment about a person within his or her
hearing;
(e) making an unwelcome sexual gesture to a person;
(f) making unwelcome sexual contact with a person;
(g) providing a person with unwelcome sexual images or graphics;
(h) providing a person with unwelcome audio of a sexual nature;
(i) transmitting unwelcome electronic messages of a sexual nature to a
person;
(j) making unwelcome sexual innuendos to a person;
(k) engaging in conduct of a sexual nature knowing that there is a likelihood
that the person to whom the conduct is intended to affect will become
aware of the conduct;
(l) directly or indirectly engaging in any other form of unwelcome conduct of
a sexual nature; or
(m) exposing third parties to any of the conduct described in paragraphs (a) to (l).

(4) Any conduct described in subsection (3) shall constitute sexual harassment irrespective of-

(a) the method used to convey the conduct; or

(b) whether the conduct was committed on a single occasion

Observations and recommendations

Clause 3 contains a very long list of acts which would constitute sexual harassment. Perhaps some drafting refinement may be required to avoid the repetition of words in that definition.

The legislative precedents for that Bill include the Australian *Sex Discrimination Act, 1984*, the Bahamian *Sexual Offences and Domestic Violence Act, 2006*, the CARICOM Model Law on Sexual Harassment, the Belizean *Sexual Harassment Act, 2000*, the California *Civil Code*, the *Canadian Labour Code* and the *Sex Discrimination Act, 1975* of the United Kingdom.

The Bill contains provisions that are similar to the CARICOM Draft Anti-Discrimination Bill. However, the scope of the Cayman Islands Bill is much wider than the CARICOM Model Bill on sexual harassment it includes –

1. Institutions - clause 8
2. Vocational training bodies - clause 10
3. Qualifying bodies - clause 11
4. Associations - clause 12
5. Organisations – clause 13
6. Employment Agencies - clause 14
7. Goods services and facilities clause 15
8. Accommodation clause 16

The CARICOM Model Bill is limited to sexual harassment in 3 areas: employment, educational institutions and accommodation (residential and business). Consideration should be given to extending the scope of the CARICOM Model Bill to include the areas addressed in the *Cayman Islands Bill, 2013*. 
Like the Model Bill the Cayman Islands Bill makes provision for victimization as a result of a complaint. However the provision in the Cayman Islands Bill 2013 is not limited to a person who makes the complaint but also includes a person who provides any information to any person in the exercise of their power under the law.

The Model Bill provides for the establishment of a special Tribunal to address sexual harassment matters. Whilst the Cayman Islands Bill provides for the use of an existing Tribunal to address the complaints relating to sexual harassment. Consideration should be given to the use of a Tribunal that is already existing and has similar jurisdiction, qualification requirements for membership for better and more effective use of resources, cost reduction and administrative convenience even if membership may have to be expanded to include an expert in that area, e.g. a psychologist e.g. a Labour Tribunal.

**Complaints to Tribunal:** Like in the Belize Act clause 20 of the Cayman Islands Bill seeks to provide for a complaint to be made not only by the person aggrieved but also by another person on behalf of an aggrieved person. On receipt of a complaint the Tribunal may carry out or cause an investigation to be carried out. Under the Model Bill the investigation is carried on by an authorised officer. The onus should be on the Tribunal to cause the investigation to be carried out even if it is done by an authorised officer. This would seem more administratively feasible.

**Limitation period:** Under clause 20(3) and (4) of the Cayman Islands Bill a complaint must be made within 6 months from the date on which the alleged sexual harassment was committed unless otherwise agreed by the Tribunal. It may be useful to insert a limitation period in the law to ensure that complaints are addressed in a speedy manner.

**Penalty for false complaint:** Unlike in clause 21 the Cayman Islands Bill, the Model Bill does not address a situation where a person makes a false complaint but addresses frivolous and vexatious complaints in section 9(3)(c).

**Discontinuance of Investigation:** Clause 22 provides that the Tribunal may decide against commencing an investigation or discontinue an investigation where it reasonably believes that the complainant does not wish that the inquiry be made
or continued. The onus of discontinuing an investigation resides in the Tribunal under the Cayman Islands Law. However under the Model Bill the onus is on the Tribunal to discontinue an inquiry. The complainant should have an express right to discontinue an investigation as in the Cayman Islands (section 22).

**Hearing of Complaint:** Under the Cayman Islands Law complaints are heard by the Tribunal which provides written notice of the complaint with the date, time and place to the parties. Whilst it is expected that an authorised officer or Tribunal may do so the Model Bill by virtue of the fact that the Tribunal is empowered to regulate its own procedure (paragraph 10 First Schedule) does not contain a similar provision. It is recommended that consideration be given to the minimum procedure to be adopted by the authorised officer or tribunal prior to hearing a complaint, for the guidance of the complainant. The provisions governing the hearing of complaint is presented in a logical sequence under section 22 of the Cayman Islands Law draft and should be considered for adoption.

**Findings of Tribunal:** Cayman Islands Law Clause 24 – Model Bill Clause 16 – Belize Clause 16: The Tribunal is required to inform the complainant of its decision following a hearing and make certain orders in relation to the allegations or matter. However the amount of legal fees damages ($10,000) and [$20,000] are stipulated in the Cayman Islands draft Law and the amount of costs payable are also stipulated [section 24(2)]. This is to avoid abuse of the system. Perhaps consideration should be given for such amounts to be prescribed by order to facilitate change as required. Those amounts are recoverable in Court as a civil debt [section 24(3)].

**Agreement** [Cayman Islands Section 25]: The lodging of a complaint does not prevent the parties from setting the matter before the Tribunal hearing and withdrawing the complaint. A similar provision should be incorporated in the Model Bill.

**Confidentiality** [Cayman Islands Section 26]: An obligation is placed on the Tribunal to maintain confidentiality of information provided to the Tribunal. Information if not required to be divulged to a Court unless it is for the purposes of the Sexual Harassment Law. The Policy of Employers should also address the issue of confidentiality.

**Publication of Tribunal Proceedings** [Cayman Islands Section 27 – Model Bill Clause 18] A person is required to obtain the person of the Tribunal to publish a
report of the proceedings. Perhaps matters before the Tribunal should be published in the *Gazette* to assist in establishing a legal precedents or record of cases before the Tribunal.

**Protection from Liability** [Cayman Islands 28: ]Members of the Tribunal are protected from liability in for damages, for acts done in good faith and provides for indemnification by government for acts done in food faith.

**Appeal** [Cayman Islands Section 29 – Model Bill Clause 19]: A person who is aggrieved by the decision of the Tribunal may appeal to the Court within 28 days of the decision. Under the Model Bill a time frame is not provided but such appeal would be required to be done in accordance with the Rules of Court.

**Standard of Proof** [Cayman Islands Clause 30 – Model Bill Clause 20]: Since complaints are treated as civil action the standard of proof is expressly stated. Under the Model Bill acts arising from complaints are deemed not to be an offence [clause 20]

**Regulations** [Cayman Islands Clause 31]: A similar provision was not incorporated in the Model Bill but is generally required for the effective administration of an Act.

**Law Binding on the Crown:** The Constitution provides for the non-discrimination in relation to sex, breach of which would give rise to a right of action against a public official. However, sexual harassment is more than discrimination on the grounds of sex. To ensure that the law applies to Government as an employer it is expressly stated that the Law binds the Crown on the State. A similar provision does not exist in the Model Bill.
7. COMMONWEALTH OF DOMINICA


7.2 Education Act, 1997 (No. 11 of 1997)

7.3 Offences against the Person Act, Chapter 10:31

7.4 Protection of Employment Act, Chapter 89:02

7.5 Sexual Offences Act, 1998 (No 1 of 1998)
7. COMMONWEALTH OF DOMINICA

7.1 THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA

Relevant Provisions

Section 13 Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person or authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Observations/Recommendations

The Constitution of the Commonwealth of Dominica prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

7.2 EDUCATION ACT, NO. 11 OF 1997

The Education Act provides for the education of a child and contains provisions relating to the discipline, suspension and expulsion of a child from a school.

Relevant Provisions

Section 51 Suspension for major offences

(1) The principal of any public school or assisted private school may suspend a student for a period of more than two days but not exceeding ten school days –

(a) gross misconduct that may be considered a risk or danger to members of staff or other students;

(f) assaulting the principal, a member of staff or other employee of the school, a student or any other person lawfully present in the school;
Observations/Recommendations

The *Education Act* authorises the principal of any public school or assisted private school to suspend a student for a period of more than 2 days but not exceeding 10 school days for gross misconduct or for assaulting the principal, a member of staff or other employee of the school, a student or any other person lawfully present in the school.

The law does not expressly provide for suspension for sexual assault or sexual harassment but that provision may be held to be applicable in respect of a complaint for sexual harassment, in the absence of a specific law on the subject.

7.3 OFFENCES AGAINST THE PERSON ACT, CHAPTER 10:31

The *Offences against the Person Act* was enacted in 1873 and last amended in 1994. This Act provides for the punishment of crimes involving the taking and harming of human life, the endangerment of and threat to human life and divers crimes against safety, liberty and well being of the human person.

Relevant Provisions

Section 50 Indecent assault

(1) Any person who is convicted of any indecent assault upon any female is liable to imprisonment for seven years.

(2) A girl under the age of sixteen cannot in law give any consent which would prevent an act being an indecent assault.

Observations/Recommendations

The *Offences Against the Person Act of Dominica* does not expressly provide for sexual harassment but the term “indecent assault” may be held to be applicable in respect of a complaint for sexual harassment.

7.4 PROTECTION OF EMPLOYMENT ACT CHAPTER 89:02

Relevant Provisions

Section 5 Termination where serious misconduct

An employer may terminate the employment of an employee without notice or payment of any sum in lieu of notice where the employee has been guilty of
serious misconduct in or in relation to his employment such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee.

Section 20 Termination in case of serious misconduct by employer

An employee may terminate his employment with an employer without complying with section 19 where the employer has been guilty of serious misconduct in relation to the employee such that the employee cannot reasonably be expected to take any course other than to terminate his employment with the employer.

Section 36 Complaint to Minister

(1) Any employee or employer who alleges that his employer or employee has failed to comply with any provision of Part I and II, or any trade union which on behalf of an employee, alleges that an employer has failed to comply with any provision of those Parts, may make a complaint in writing to the Minister:

(2) A complaint made to the Minister pursuant to subsection (1) shall contain –

(a) names of the employee and the employer;

(b) a brief statement of the facts and circumstances relevant to the complaint; and

(c) a statement of the relief claimed.

(3) Upon receipt of a complaint made pursuant to subsection (1), the Minister may send a copy of the complaint to the Labour Commissioner for the purpose of giving an opportunity for the complaint to be settled by way of conciliation.

(4) Where the Labour Commissioner receives a complaint from the Minister pursuant to subsection (3), he shall take such urgent steps as he considers appropriate to assist the parties to the complaint to settle the complaint.

(5) Where at any time –

(a) after an employer has terminated the employment of an employee in circumstances in which the employee claims that he was unfairly dismissed; but

(b) before any complaint relating to that claim has been presented by the claimant under subsections (1) and (2), and a request is made direct to the Labour Commissioner by the employer or by the employee of their representatives to make his services available to them, the Labour Commissioner may act in accordance with subsections (3) and (4) as if the complaint had been presented in pursuance of that claim.
(6) Where the parties to a complaint are unable to settle the complaint within twenty-one days or such other period as the Minister may determine or allow from the date on which it was forwarded to the Labour Commissioner pursuant to subsections (4) and (5) either of the parties or the Labour Commissioner may report to the Minister that the parties are unable to settle the complaint.

Complaint to the Tribunal

(7) Where a report has been received by the Minister pursuant to subsection (6) the Minister may refer the complaint to the Tribunal at any time thereafter and the Tribunal shall proceed to hear and determine the complaint.

(8) Any thing communicated to the Labour Commissioner in connection with his functions under this section shall not be admissible in evidence in any proceedings before the Tribunal, except with the consent of the person who communicated it to the Labour Commissioner, provided that this privilege shall not extend to evidence which would otherwise be admissible.

(9) For the purposes of subsections (2) to (4) and (6) to (8), an application under section 17 shall be deemed to be a complaint under subsection (1).

(10) Nothing in this section shall be construed as derogating from any powers or duties of the Minister under any other enactment.

Section 38 Power of Tribunal to make orders

(1) The Tribunal has, in relation to any complaint or application made to it pursuant to this Act, power to order –

(a) any person to comply with any provision of this Act;

(b) an employer to reinstate any employee to his former employment where the employer has –

(i) terminated the employment of that employee contrary to Part I;

(ii) laid off, reduced the hours of work of or suspended without pay that employee contrary to Part I;

(iii) failed to give preference to that employee in circumstances where the provisions of section 14 apply; and

(c) an employer to pay to an employee –

(i) whose employment has been terminated contrary to Part I;

(ii) who has been laid off, put on reduced hours of work or suspended without pay contrary to Part I; or
(iii) who has not been given preference in circumstances where the provisions of section 14 apply, compensation not exceeding such sum as, in the opinion of the Tribunal, is equivalent to the remuneration that would have been paid to the employee but for the action of the employer.

(2) Where, after hearing a complaint made to it by an employee pursuant to Part I, the Tribunal concludes that, while the employee is entitled to be reinstated by his employer to his former employment, an order reinstating the employee would not be practicable or desirable for the reason that –

(a) the return of the employee to his former employment would have a seriously detrimental effect on industrial relations in the business concerned; or

(b) the employee does not wish to return to his former employment,

the Tribunal may, in lieu of making an order requiring the employer to reinstate the employee to his former employment, order the employer to pay compensation to the employee in such amount as the Tribunal may determine.

Observations/Recommendations

The Protection of Employment Act does not expressly provide for protection from sexual harassment, but in the absence of specific law on the subject the acts of the employee which amounts to sexual harassment may be deemed to be serious misconduct.

Provision exists for complaints to be made to the Minister or Labour Commission and for matters to be settled by Tribunal by way of conciliation.

A policy and specific law on sexual harassment is required in Dominica.

7.5 SEXUAL OFFENCES ACT, 1 OF 1998

The Sexual Offences Act provides for sexual crimes, procurement and prostitution of women and kindred offences against a minor.

Relevant Provisions

Section 5 Inducing sexual intercourse or sexual connection by force, duress, etc.

(1) A person is guilty of an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person –
(a) by force or duress;
(b) by false or fraudulent representation as to the nature of the act; or
(c) by administering, to that other person, or by causing that other person
to take, any drug, matter or thing with intent to stupefy or overpower
that person.

(2) A person who is guilty of an offence under subsection (1) is liable on
conviction to imprisonment for fourteen years.

Section 13    Indecent assault

(1) Any person who indecently assaults another is guilty of an offence and
liable on conviction to imprisonment –

   (a) for ten years, if committed on a person under the age of fourteen;

   (b) for seven years, if committed on a person of fourteen years of age or
    more but who has not yet attained the age of sixteen years; or

   (c) for five years, if committed on a person who is sixteen years of age or
    more.

(2) A person under the age of sixteen years cannot in law give any consent
which would prevent an act being an assault for the purposes of this section.

(3) In this section “indecent assault” means an assault or battery accompanied
by words or circumstances indicating an indecent intention.

Section 14    Gross indecency

(1) Any person who commits an act of gross indecency with another person is
guilty of an offence and liable on conviction to imprisonment for five years.

(2) Subsection (1) does not apply to an act of gross indecency committed in
private between an adult male person and an adult female person, both of whom
consent.

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

   (a) an act shall be deemed not to have been committed in private if it is
    committed in a public place; and

   (b) a person shall be deemed not to consent to the commission of such an
    act if –

   (i) the consent is extorted by force, threats or fear of bodily harm or
    is obtained by false and fraudulent representations as to the
    nature of the act;
(ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

**Section 19 Procuring defilement of a person**

A person who –

(a) by threats or intimidation procures another person to have sexual intercourse with any person in Dominica or elsewhere;

(b) by deception procures another person to have sexual intercourse with any person in Dominica or elsewhere; or

(c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person in order to enable any other person to have sexual intercourse with that person,

is guilty of an offence and liable on conviction to imprisonment for twenty-five years.

**Observations/Recommendations**

The *Sexual Offences Act* does not expressly provide for sexual harassment but the terms, “by threats or intimidation procures another person to have sexual intercourse” may be held to be applicable in determining a complaint for sexual harassment.
GRENADA

7. GRENADA

7.1 Criminal Code, Chapter 72A, (Amendment No. 29 of 2012)

7.2 Domestic Violence Act, 2010 (No. 19 of 2010)
   Subsidiary Legislation Domestic Violence (Summary Procedure) Rules

7.3 Education Act, Chapter 86 (No 21 of 2002)

7.4 Employment Act, 1999 (No. 14 of 1999)

7.5 The Grenada Constitution Order 1973
7. GRENADA

7.1 CRIMINAL CODE, CHAPTER 72A, (AMENDMENT) 2012

The Criminal Code establishes a code of offences punishable on summary conviction and on indictment.

Relevant Provisions

Section 20 Different kinds of assault

(1) “Assault” includes—
   (a) assault and battery;
   (b) assault without actual battery; and
   (c) imprisonment.

(2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Title VII of this Code.

Section 21 Definition of and provision relating to assault and battery

(1) A person makes an assault and battery upon another person if, without the other person’s consent, and with the intention of causing harm, pain, fear or annoyance to the other person, or of exciting him to anger, he or she forcibly touches the other person, or causes any person, animal or matter to forcibly touch him or her.

(2) This definition is subject to the following provisions—
   (a) where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be such as to cause harm or pain, or is intended to be such as, but for the consent obtained by the deceit, would have been likely to cause fear or annoyance or to excite anger;
   (b) where the other person is insensible, unconscious or insane, or is, by reason of infancy or any other circumstance, unable to give or refuse consent, it suffices, with respect to intention, either that the touch is intended to cause harm, pain, fear or annoyance to him, or that the touch is intended to be such as would be likely to cause harm, pain, fear or annoyance to him, or to excite his or her anger, if he or she were able to give or refuse consent, and were not consenting;
   (c) the slightest actual touch suffices for an assault and battery, if the
intention is such as is required by this section;

(d) a person is touched, within the meaning of this section, if his or her body is touched, or if any clothes or other thing in contact with his or her body or with the clothes upon his or her body are or is touched, although his or her body is not actually touched; and

(e) for the purpose of this section, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention be to cause the harm, pain, fear or annoyance by the force or manner of the touch itself, or to forcibly expose the person, or cause him or her to be exposed, to harm, pain, fear or annoyance from any other cause.

Section 22 Definition of and provisions relating to assault without actual battery

(1) A person makes an assault without actual battery on another person if, by any act apparently done in commencement of an assault and battery, he or she intentionally puts the other person in fear of an instant assault and battery.

(2) This definition is subject to the following provisions—

(a) it is not necessary that an actual assault and battery should be intended, or that the instrument or means by which the assault and battery is apparently intended to be made should be, or should by the person using them believed to be, of such a kind or in such a condition as that an assault and battery could be made by means of them;

(b) a person can make an assault, within the meaning of this section by moving, or causing any person, animal or matter to move, towards another person, although he or she, or the person, animal or matter is not yet within such a distance from the other person as that an assault and battery can be made; and

(c) an assault can be made on a person, within the meaning of this section, although he or she can avoid actual assault and battery by retreating, or by consenting to do, or to abstain from doing, any act.

Section 81 Assault

(1) Whoever unlawfully assaults any person shall be liable to imprisonment for three months, or to a fine of one thousand dollars, or to both.

Section 81A Indecent Assault

(1) A person who indecently assaults another person commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five
years.

(2) A person under the age of sixteen years cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

(3) For the purposes of this section —indecent assault‖ means, an assault committed in circumstances of indecency.

Section 175 Assault

A person who unlawfully assaults any person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding five years.

Section 178 Unlawful sexual connection

(1) A person is guilty of the offence of unlawful sexual connection with another person if that person has sexual connection with that other person —

(a) without the consent of the other person;

(b) without believing that the other person consents to that sexual connection;

(c) with the consent of the other person if the consent is —

(i) obtained from a person under the age of sixteen years;

(ii) extorted by threats or fear of bodily harm to that other person or any other person, or by threats or fear of the application of force to that other person or any other person;

(iii) obtained by impersonating the spouse or of any other person known to that other person;

(iv) obtained by false and fraudulent representations as to the nature of the act;

(v) obtained by the use of the accused’s position of authority over that other person;

(d) by the administration to that other person of a drug, matter or thing, with intent to stupefy or overpower that other person or causing that other person to take the same with intent to stupefy or overpower that other person.

(2) For the purposes of this section —sexual connection‖ means —

(a) the introduction, to any extent, into the vagina or the anus of the person of —

(i) any part of the body of any other person; or
(ii) any object held or manipulated by any other person, otherwise than for *bona fide* medical purposes.

(b) connection between the mouth or tongue of the person and any part of the genitalia of any other person.

(3) A person who is guilty of the offence of unlawful sexual connection is liable on conviction on indictment to a term of imprisonment not exceeding fourteen years.

(4) A husband is guilty of the offence of unlawful sexual connection with his wife without her consent where there is in existence in relation to them —

(a) a decree nisi of divorce or nullity granted by the Court;

(b) a decree of judicial separation granted by the Court;

(c) a separation agreement or where the parties are in fact separated;

(d) an order for the husband not to molest his wife or have sexual intercourse with her.

(5) The provisions of subsection (4) apply *mutatis mutandis* to a wife who commits the offence of unlawful sexual connection.

(6) Except for subsections (4) and (5), it is a defence to a charge under this section if the person charged proves that —

(a) the other person consented; and

(b) the person charged —

(i) was not more than twenty-one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and

(ii) had reasonable cause to believe and did believe that the other person was sixteen years of age or more.

(7) Subsection (6) shall not apply if it is proved that —

(a) consent was obtained in the manner specified in subsection (1) (c) (ii) to (v) of section 178.

(b) the offence was committed under subsection (1) (d) of section 178; or

(c) the other person is under the age of twelve years.

**Section 179  Inducing sexual intercourse or sexual connection by force, duress, etc.**

(1) A person who induces another person to have sexual intercourse or unlawful
sexual connection with any person by—

(a) threat, force or duress;

(b) false or fraudulent representation as to the nature of the act; or

(c) administering, to that other person, or by causing that other person to take, any drug, matter or thing with intent to stupefy or overpower that person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding five years.

Section 180  Corruption of female

Whoever by threats, deceit or duress, or by administration of any intoxicating or other matter, procures any female to permit carnal knowledge otherwise than in marriage, shall be liable to imprisonment for five years.

Observations/Recommendations

The Criminal Code does not expressly provide for suspension for sexual assault or sexual harassment but the provision on sexual assault and battery may be held to be applicable in determining a complaint for sexual harassment in the absence of a specific law on the subject.

Under section 21 of the Criminal Code, Chapter 72A, (Amendment) 2012, it is an offence for a person to assault and cause battery on another person. This occurs if the person without the other person’s consent, and with the intention of causing harm, pain, fear or annoyance to the other person, or of exciting him to anger, he or she forcibly touches the other person.

Under section 178 of the Criminal Code, a person is guilty of the offence of unlawful sexual connection with another person if that person has sexual connection with that other person with the consent of the other person; if the consent is obtained by the use of the accused’s position of authority over that other person. Sexual connection means —

(a) the introduction, to any extent, into the vagina or the anus of the person of —

(i) any part of the body of any other person; or

(ii) any object held or manipulated by any other person, otherwise than for bona fide medical purposes.

(b) connection between the mouth or tongue of the person and any part of the genitalia of any other person.

A person who is guilty of the offence of unlawful sexual connection is liable on
conviction on indictment to a term of imprisonment not exceeding 14 years.

7.2 DOMESTIC VIOLENCE ACT, CHAPTER 84, (No. 19 of 2010)

The Domestic Violence Act seeks to provide greater protection for victims of domestic violence, and to make provision for the granting of protection orders.

Relevant Provisions

Section 2 Interpretation

“domestic violence” means any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child, and includes but is not limited to the following–

(a) physical abuse or threats of physical abuse;
(b) sexual abuse or threats of sexual abuse;
(c) emotional, verbal or psychological abuse;
(d) economic abuse;
(e) intimidation;
(f) harassment;
(g) stalking;
(h) damage to or destruction of property; or
(i) entry into the applicant’s residence without consent, where the parties do not share the same residence;

“harassment” means engaging in a pattern of conduct that induces the fear of harm, including–

(a) watching or loitering outside of, or near the building or place where the applicant resides, works or carries on business, studies or happens to be;
(b) repeatedly making telephone calls, or inducing another person to make telephone calls to the applicant, whether or not conversation ensues; or
(c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person;

**Observations/Recommendations**

The *Domestic Violence Act* provides for the granting of protection orders in circumstances surrounding domestic violence. The Act relates to “harassment” in domestic relationship and its provisions would be relevant if the focus was on “sexual harassment”.

7.3 **EDUCATION ACT, CHAPTER 86, No. 21 of 2002**

The *Education Act* makes new provision for the delivery of education services in Grenada, by both the public and the private sectors.

**Relevant Provisions**

**Section 27 No discrimination**

(1) Subject to this Act, no person who is eligible for admission to an educational institution as a student may be refused admission on any discriminatory ground relating to the student or a parent of the student.

(2) A person or body who or which refuses admission to a school to any student, or expels from a school any student on any discriminatory ground relating to the student or a parent of the student commits an offence.

Penalty: A fine of five thousand dollars.

(3) In this section, “discriminatory ground” means a ground based on race, place of origin, political opinion, colour, creed, physical handicap and, in the case of mixed gender schools, sex.

**Observations/Recommendations**

The *Education Act* prohibits discrimination in education on the grounds of sex but does not expressly provide for sexual harassment. The non-discriminatory provision on the ground of sex applies to the eligibility for admission to an
 educational institution. This is subject to the provisions of the Act which may authorise the management of same sex schools. A penalty of $ 5000 is imposed for the contravention of that section.

7.4 EMPLOYMENT ACT, 1999 ACT No. 14 of 1999

Relevant Provisions

Section 12 Prohibition of victimisation.
(1) Every employer shall grant the employees reasonable opportunity for communicating freely with the officers of the Department of Labour.
(2) No employer shall inflict any disadvantage on an employee for anything done or provided under this Part.

Section 26 Prohibition of discrimination.
(1) No person shall discriminate against any employee on the grounds of race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, age or disability, in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.
(2) Subsection (1) does not preclude any provision, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals, including those who are disadvantaged on the grounds enumerated in subsection (1).
(3) A person who contravenes this section commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

Section 27 Equal pay for equal work.
Every employer shall pay male and female employees equal remuneration for work of equal value.
Section 28  Remedies for infringement of rights

(1) An individual claiming an infringement of his rights contained in this Part may seek redress in the Court if that infringement cannot be redressed by way of the industrial relations framework.

(2) For the purposes of subsection (1) the Court may make such orders as may be necessary to ensure compliance with the provisions of this Part, including an order for reinstatement of an employee, if requested, the restoration to him of any benefit or advantage, and an order for the payment of compensation.

Section 76  Unfair dismissal.

A dismissal is unfair if it is not in conformity with section 74 or is constructive dismissal pursuant to section 80.

Section 80  Constructive dismissal.

(1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.

(2) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer.

Observations/Recommendations

The Employment Act prohibits discrimination in employment on the grounds of sex [section 26].

The Act also provides remedies for unfair and constructive dismissal of an employee but does not expressly provide for sexual harassment.

To confirm whether an employee’s conduct could be attributed to the employer
7.5 THE GRENADA CONSTITUTION ORDER 1973

Relevant Provisions

Section 13

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Observations/Recommendations

The Grenada Constitution Order 1973 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.
8. **GUYANA**

8.1 Constitution of the Co-operative Republic of Guyana, 1970, Chapter 1:01

8.2 Criminal Law (Offences) Act, Chapter 8:01

8.3 Domestic Violence Act, Chapter 11:09

8.4 Equal Rights Act, Chapter 38:01

8.5 Prevention of Discrimination Act, 1997 (No. 26 of 1997)
8. GUYANA

8.1 CONSTITUTION OF GUYANA, CHAPTER 1:01

Relevant Provisions

Section 149  Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of this article –

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this article the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their or their parents’ or guardians’ respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description.

Section 149F  Equality for women [10 of 2003]

(1) Every woman is entitled to equal rights and status with men in all spheres of political, economic and social like. All forms of discrimination against women on the basis of gender or sex are illegal.

Observations/Recommendations

The Constitution of Guyana prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

8.2 CRIMINAL LAW (OFFENCES) ACT CHAPTER 8:01

The Criminal Law (Offences) Act provides for the procedure with respect to Indictable Offences.
Relevant Provisions

Section 43  Common assault
Everyone who assaults any person shall be guilty of a misdemeanour and shall be liable to imprisonment for one year.

Section 44  Assault in pursuance of combination to raise the rate of wages
Everyone who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business, or manufacture, or respecting any person concerned or employed therein, assaults any person, shall be guilty of a misdemeanour and liable to imprisonment for two years.

Section 45  Indecent assault on female
Everyone who –
(a) indecently assaults any female; or
(b) does anything to any female by her consent which, but for that consent, would be an indecent assault, the consent being obtained by false and fraudulent representations as to the nature and quality of the act,
shall be guilty of a misdemeanour and liable to imprisonment for five years.

Observations/Recommendations
The Criminal Law Act of Guyana does not expressly refer to sexual harassment but provides for the offence of common assault or indecent assault on a female.

8.3 DOMESTIC VIOLENCE ACT, CHAPTER 11:09, (No. 18 of 1996)
The Domestic Violence Act seeks to afford protection in cases involving domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs.

Relevant Provisions

Section 2  Interpretation
(h) “harassment” includes—

(i) the intimidation of a person by—
   (A) persistent verbal abuse;
   (B) threats of physical violence;
   (C) the malicious damage to the property of a person;
   (D) inducing fear of physical or psychological violence; or
   (E) any other means;

(ii) the persistent following of a person from place to place;

(iii) the hiding of any clothing or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof;

(iv) the watching or besetting of the house or other places where a person resides, works, carries on business or happens to be or the watching or besetting of the premises that are the place of education of a person, or the watching or besetting of the approach to the house, other place or place of education;

(v) the making of persistent unwelcome communications to a person;

(vi) using abusive language to or behaving towards a person in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of that person;

Observations/Recommendations

The Domestic Violence Act provides for the offence of sexual harassment in domestic relationships but does not expressly provide for sexual harassment.

8.4 EQUAL RIGHTS ACT, CHAPTER 38:01

The Equal Rights Act makes provision for the enforcement of the principles enshrined in article 29 of the Constitution so as to secure equality for women.

Relevant Provisions

Section 2 Equal rights and opportunities for women and men

(1) Women and men have equal rights and the same legal status in all spheres of political, economic and social life.
(2) All forms of discrimination against women or men on the basis of their sex or marital status are illegal.

(3) Women and men shall be paid equal remuneration for the same work or work of the same nature.

(4) No person shall be ineligible for, or discriminated against, in respect of any employment, appointment or promotion in, or to, any office or position on the ground only of sex.

(5) No person shall, on the ground only of sex, be denied –
   (a) access to academic, vocational and professional training; or
   (b) equal opportunities in social, political or cultural activity.

(6) Without prejudice to the generality of the foregoing provisions of this section it shall be discriminatory against women where in relation to employment –
   (a) in arrangements made for the purpose of determining who should be offered employment;
   (b) in the terms on which employment is offered;
   (c) by the refusal or deliberate omission to offer employment;
   (d) in the way access is afforded to opportunities for promotion, transfer or training or to any other benefits, facilities or services, men are afforded more favourable opportunities or conditions than women or preference is given to men.

(7) Nothing in this section shall be deemed to prevent any employer form making special labour and health protection measures for women, or from making provision for conditions enabling mothers to work or for material and moral support for mothers and children, including paid leave and other benefits for mothers and expectant mothers.

(8) Where any written law makes provision for the search of any person, a woman shall be searched only by another woman and a man shall be searched only by another man.

(9) This section shall have effect notwithstanding anything contained in any other written law or contract to the contrary.

(10) In this section “remuneration” means any money or other thing, whether called salary, wage, allowance or by any other name, had or contracted to be paid, delivered or given as a recompense, reward or remuneration for any work or labour done or to be done, whether within a certain time or to a certain amount, or
Observations/Recommendations

The *Equal Rights Act* makes provision for the enforcement of the principles enshrined in *article 29* of the Constitution so as to secure equality for women.

Under *section 2 (2)* all forms of discrimination against women or men on the basis of their sex or marital status are illegal. Under *section 2(4)* a person shall be ineligible for, or discriminated against, in respect of any employment, appointment or promotion in, or to, any office or position on the ground only of sex.

### 8.5 PREVENTION OF DISCRIMINATION ACT, 1997 (No. 26 of 1997)

The *Prevention of Discrimination Act* seeks to provide for the elimination of discrimination in employment, training, recruitment and membership of professional bodies and the promotion or equal remuneration to men and women in employment who perform work of equal value.

**Relevant Provisions**

**Section 2  Interpretation**

“employee” means a person who offers his services to an employer under a contract of employment, a managerial employee or a dependent contractor and includes, where appropriate, a former employee;

“employer” means any person or undertaking, corporation, company, public authority or body or persons who or which employs any person under a contract or employment or uses the services of a dependent contractor, commission agent or a contract worker; and includes the heirs, successors and assigns or an employer;

“employment” includes—

(i) part-time employment, temporary employment and employment under a contract or service or of apprenticeship;

(ii) employment under a contract of services;

(iii) engagement as a commission agent;
“sexual harassment” means unwanted conduct or a sexual nature in the workplace or in connection with the performance or work which is threatened or imposed as a condition of employment on an employee or which creates a hostile working environment for the employee.

Section 4  Prohibited grounds of discrimination.

(1) For the purposes of this Act, a person discriminates against another person if the first mentioned person makes, on any or the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.

(2) The grounds referred to in subsection (1) are—

(a) race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors;

(b) any characteristic which appertains generally or is generally imputed to persons or a particular race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restriction on work and employment of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Section 5  Unlawful discrimination in employment

(1) It shall be unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment or any other person for purposes of training, apprenticeship or employment, to discriminate against that other person on the grounds listed in section 4 (2) -

(a) in the advertisement of the job;
(b) in the arrangements made for the purpose of determining who should be offered that employment;

(c) in determining who should be offered employment;

(d) in the terms or conditions on which employment is offered;

(e) the creation, classification or abolition of jobs.

(2) It shall be unlawful for an employer to discriminate against an employee on the grounds listed in section 4 (2) -

(a) in terms or conditions or employment afforded to that employee by this employer;

(b) in conditions or work or occupational safety and health measures;

(c) in the provision or facilities related to or connected with employment;

(d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;

(e) by retrenching or dismissing the employee;

(f) by subjecting the employee to any other disadvantage.

Section 8 Sexual harassment.

Any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex within the meaning of section 4 of this Act.

Section 22 Victimisation.

(1) A person who commits an act of victimisation against another person shall be guilty of an offence and shall be liable to a fine not exceeding fifteen thousand dollars.

(2) For the purposes of subsection (1) a person shall be taken to commit an act of victimisation against another person if the first mentioned person subjects or threatens to subject the other person to any detriment —

(a) on the ground that the other person —

(i) has made, or proposes to make, a complaint under this Act;

(ii) has brought, or proposes to bring proceedings under this Act against any person;
(iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act;

(iv) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness; or

(v) has made a good faith allegation that a person has committed an act of discrimination in contravention or this Act.

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a) (i) to (v).

Section 25 General penalty

Any person who contravenes the provisions of this Act shall, unless a penalty is otherwise specifically provided, be guilty of an offence and shall be liable to a fine not exceeding twenty thousand dollars.

Observations/Recommendations

Section 4 of the Prevention of Discrimination Act seeks to address discrimination on the grounds of sex and in employment.

Section 8 of the Act provides that any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker is unlawful discrimination based on sex within the meaning of section 4 of the Act.

It is also an offence for a person to commit an act of victimisation on another.
9. JAMAICA

9.1 Constitution of Jamaica, 1962

9.2 Sexual Offences Act, 2009 (No 12 of 2009); Amdt 2011

9.3 The Offences Against the Person Act, 1864, Cap 268 (with amendments from 1958 to 2010)
9. JAMAICA

9.1 CONSTITUTION OF JAMAICA

Relevant Provisions


(3) The rights and freedoms referred to in subsection (2) are as follows –

(i) the right to freedom from discrimination on the ground of –

(ii) race, place of origin, social class, colour, religion or political opinions;

Observations/Recommendations

The Constitution of Jamaica prohibits discrimination on the grounds of gender i.e. being male or female (and not expressly “sex”) but does not expressly provide for sexual harassment.

9.2 SEXUAL OFFENCES ACT, 2011

The Sexual Offences Act relates to sexual crimes and other criminal sexual offences.

Relevant Provisions

Section 13  Indecent assault

Any person who carries out an act of indecent assault on another person commits an offence and –

(a) on summary conviction in a Resident Magistrate’s Court, is liable to imprisonment for a term not exceeding three years;

(b) on conviction in a Circuit Court, is liable to imprisonment for a term not exceeding fifteen years.

Observations/Recommendations
Sexual harassment is not an expressed sexual offence under the *Sexual Offences Act* of Jamaica, but may be pursued as an offence under the *Sexual Offences Act* if the acts included indecent assault on the person by another.
9.3 THE OFFENCES AGAINST THE PERSON ACT, CAP 268

The Act provides penalties for various offences against a person.

Relevant Provisions

Section 40     Aggravated assaults on women or children

When any person shall be charged before a court of summary jurisdiction with an assault or battery upon any male child whose age shall not, in the opinion of such court, exceed fourteen years, or upon any female either upon the complaint of the party aggrieved or otherwise, the said court, if the assault or battery is of such an aggravated nature that it cannot, in their opinion, be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and if the same be proved, may convict the prisoner accused; and every such offender shall be liable to imprisonment with or without hard labour for a term not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of two thousand dollars, and, if the court shall so think fit, in any of the said cases, shall be bound to keep the peace, and be of good behaviour for a period not exceeding six months from the expiration of such sentence.

Observations/Recommendations

Sexual harassment is not an expressed criminal offence against a person under the Offences Against the Person Act of Jamaica, but may be pursued as an offence against a person under the Offences Against the Person Act if the acts included an assault or battery on a male child under 14 years of age or any female.
10. MONTSERRAT

10.1 The Montserrat Constitution Order, 2010

10.2 Education Act, Chapter 16.01 (No. 1 of 2004)

10.3 Labour Code, 2012 (No. 20 of 2012)

10.4 Penal Code, Chapter 4.02
10. MONTSERRAT

10.1 THE MONTSERRAT CONSTITUTION ORDER, 2010

Relevant Provisions

Section 16 Protection from discrimination

(1) Subject to subsections (4) and (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4), (5) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Observations/Recommendations

The Montserrat Constitution Order 2010 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

10.2 EDUCATION ACT CHAPTER 16.01 (No. 1 of 2004)

An Act to provide a regulatory system for the delivery of education services in Montserrat.

Relevant Provisions

Section 28 Prohibition of discrimination

Subject to the provisions of this Act, no person who is eligible for admission to a public educational institution or an assisted private school as a student shall be refused admission on any discriminatory grounds including race, place or origin, political opinions, colour, creed, sex, or subject to the provisions of this Act, mental or physical handicap.

Observations/Recommendations
The Education Act of Montserrat prohibits discrimination in education on the grounds of sex but does not expressly provide for sexual harassment.

The non-discriminatory provision on the ground of sex applies to the eligibility for admission to a public educational institution or an assisted private school. This is subject to the provisions of the Act which may authorise the management of same sex schools. A penalty is not imposed for the contravention of that section.

10.3 LABOUR CODE 2012 NO. 20 OF 2012

The Labour Code provides for law governing labour.

Relevant Provision

Section 4 Application of the Code
(1) The Code applies to all employers and employees.
(2) Despite subsection (1), only—
   (a) Parts 8, 9, 10 and 12, apply to the public service; and
   (b) Parts 8, 9 and 10 apply to the police service.

Section 5 Employers may establish working conditions above minimum standard in the Code

Nothing in the Code precludes an employer from offering to his or her employees’ better terms and conditions than those set out in the Code.

Section 10 Prohibition of victimisation
(1) An employer shall grant his or her employees reasonable opportunity for communicating freely with the Labour Commissioner.
(2) An employer who threatens or takes any prejudicial action against an employee who communicates with the Labour Commissioner and or a labour officer during an inspection visit or who has made or proposes to make a complaint or has taken part or proposes to take part in proceedings against the employer for breach of the Code commits an offence and is liable on summary conviction to a fine of $5,000.00.

Section 15 Liability of employer
Where an act or default resulting in an offence under the Code is committed by an agent of the employer, the employer is liable, unless he or she proves that the offence was committed without his or her consent or connivance.

Section 22  Procedure for the settlement of disputes

(1) Any dispute arising out of any matter covered by the Code or any law relating to employment or generally out of the relationship between the employer and the employee may be referred by either party concerned or his or her representative to the Labour Commissioner for settlement.

(2) Upon notice of the dispute, the Labour Commissioner or a labour officer shall investigate the matter and make every effort to settle the dispute by conciliation in accordance with industrial relations practice, and may—

(a) request the parties to meet with him or her jointly or separately;
(b) request the parties to state the facts as they know them and their respective positions on the issue; and
(c) request the parties to present witnesses and he or she may examine any person in relation to the issues, either alone or in the presence of others, at his or her discretion.

(3) Where the Labour Commissioner fails to achieve a settlement within 30 days from the date of notice of the dispute or such longer period as the parties may agree, the Labour Commissioner shall refer the dispute to the Labour Tribunal for determination.

(4) Anything said or admitted during conciliation at the level of the Labour Commissioner and any document prepared for the purposes of the conciliation shall not be admissible in evidence—

(a) in any subsequent investigation of the dispute concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;
(b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the conciliation may be given against any person.

Section 24  Appointment of the Tribunal

(1) The Governor acting on the advice of Cabinet shall appoint 6 members to the Tribunal—

(a) 3 members representing the interests of employers; and
(b) 3 members representing the interests of employees.

(2) The appointment shall be for such period as the Governor acting on the advice of Cabinet shall specify and each appointment shall be subject to renewal.

(3) The Chief Magistrate shall be the Chairperson of the Tribunal.

(4) Despite subsection (3), the Chief Magistrate may delegate the function of Chairperson, on a case by case basis, to another magistrate.

Section 26  Appeals of the Tribunal

(1) A decision of the Tribunal is final and may only be appealed on a point of law by way of case stated to the Court of Appeal.

(2) An appeal under subsection (1) shall be brought within 28 days of the issuance of the written decision.

Section 59  Procedure for disciplinary action

An employer shall not take disciplinary action against an employer without—

(a) a valid and fair reason connected with the capacity or conduct of the employee;

(b) informing the employee in writing of the nature and particulars of the complaint against the employee; and

(c) giving the employee or his or her representative a fair opportunity to defend himself or herself, including access to his or her employment record and all supporting documents or statements to be used against him or her.

Section 62(e)  Prohibited grounds for dismissal

(e) race, colour, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, marital status, religion, political opinion or affiliation, national extraction or social origin, ethnic origin, disability or HIV status;

Section 58  Disciplinary action by employer

(1) An employer is entitled to take disciplinary action including dismissal in accordance with this Code.

(2) Disciplinary action includes—

(a) a verbal warning;
(b) a written warning;
(c) reduction in wages or salary;
(d) demotion; and
(e) dismissal.

(3) An employer shall not impose a fine or other monetary penalty on an employee as a form of disciplinary action or otherwise.

Section 60 Termination of employment on grounds of incapacity arising from a medical condition or injury

An employer may terminate the employment of an employee where 2 medical practitioners certify that the employee is unfit to continue in employment because of incapacity of the mind or body which has lasted for at least 6 months and which is likely to be permanent.

Section 61 Termination on other lawful grounds

(1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of gross misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The gross misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has—

(a) conducted himself or herself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;

(b) been convicted of an offence in the course of his or her employment, the penalty for which prevents the employee from meeting his or her obligations under his or her employment contract for 12 working days or more.

(3) Where an employee is guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action, warn the employee in writing that repetition of the behaviour will result in summary dismissal.

(4) Where the employee, after being warned in accordance with subsection (3), is guilty of a similar offence or misconduct in the following 6 months, the employer may terminate the employee’s contract without further notice.
(5) An employer who dismisses an employee under subsection (4) shall provide the employee with a written statement of the reasons for the action.

(6) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct where he or she has failed to do so within 6 months after having knowledge of the misconduct.

(7) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.

(8) Where the employee, after he or she is warned pursuant to subsection (7), does not, during the following 3 month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(9) An employer shall not terminate the employment of an employee for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (7) and appropriate instructions and training where required to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of 3 months.

(10) An employer may terminate the employment of an employee where the employee could not continue to work in the position held without contravention of the law.

(11) An employer may terminate the employment of an employee where the employee is made redundant.

Part 8 Equality of Treatment in Employment

Section 79 Definition of discrimination

(1) For the purposes of this Part, a person discriminates against another person where the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are—

(a) race, colour, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy or marital status;
(b) any characteristic which pertains generally or is generally imputed to persons of a particular race, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state or marital status.

(3) Discrimination on the grounds of HIV or other medical status includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

Section 80 Prohibition of discrimination

(1) Subject to sections 81 and 82, an employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in—

   (a) the advertisement of a job;
   (b) the procedures used for the purpose of determining who should be offered that employment;
   (c) determining who should be offered employment;
   (d) the terms or conditions on which employment is offered; or
   (e) the creation, classification or abolition of a job.

(2) Subject to sections 81 and 82 an employer shall not discriminate against an employee—

   (a) in the terms or conditions of employment afforded to that employee;
   (b) in the conditions of work, occupational safety and health measures;
   (c) in the provision of facilities related to or connected with employment;
   (d) by denying access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
   (e) by retrenching or dismissing the employee; or
   (f) by subjecting the employee to any other disadvantage.

Section 83 Sexual harassment
(1) Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 80.

(2) “Sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Section 85 Inducement to discriminate
It is an offence to induce, or attempt to induce, a person to do any act which contravenes this Part by—

(a) providing, or offering to provide, the person with any benefit; or

(b) subjecting, or threatening to subject, the person to any detriment.

Section 88 Offences and penalties
A person who contravenes this Part commits an offence and is liable on summary conviction to a fine of $3,000.00 and to a fine of $5,000.00 for a second or subsequent offence.

Section 89 Remedies
(1) Without prejudice to any other remedy that may be available in any competent court, where any person is aggrieved by any act or omission of an employer which contravenes the provisions of this Part and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Labour Commissioner.

(2) Where any dispute referred to the Labour Commissioner is subsequently referred to the Tribunal, the Tribunal may, if an offence is proved, make an order—

(a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
(b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, despite—
   (i) the vacancy in question is already filled; and
   (ii) the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;

(c) voiding a decision found to have been based on unlawful discrimination;

(d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

Observations/Recommendations

Section 83  Sexual harassment

(1) Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 80.

(2) “Sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

10.4 THE PENAL CODE CHAPTER 4.02

THE PENAL CODE An Act to amend and codify the Penal Laws of Montserrat and for matters connected therewith.

Relevant Provisions

Section 116  Construction of certain provisions of this Part

(3) In this Part the expression “unlawful sexual intercourse” means sexual intercourse outside of the bond of marriage;
Section 122  Indecent assault on a woman

(1) Subject to the provisions of this section, any man who makes an indecent assault on a woman shall be guilty of an offence and liable—

(a) if on a girl under the age of thirteen years, to imprisonment for five years; or

(b) in any other case, to imprisonment for two years.

(2) A girl under the age of sixteen years cannot in law give consent which would prevent an act being an assault for the purposes of this section.

(3) Where a marriage is invalid under subsection (3) of section 25 of the Marriage Act, because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief.

(4) A woman who is a person of unsound mind, or a mental defective who is receiving treatment for severe mental disorder, cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault under this section by reason of such incapacity to consent, if that person knew or had reason to know that such woman was a a person of unsound mind or mental defective receiving treatment as aforesaid.

(5) No prosecution for an offence, or for an attempt to commit an offence, under this section, shall be commenced more than twelve months after the date of the commission of the offence.

Section 126  Procurement of woman by threats

(1) Any person who, within Montserrat, procures or attempts to procure, a woman by threats or intimidation to have unlawful sexual intercourse, whether within Montserrat or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Section 127  Procurement of woman by false pretences

(1) Any person who, within Montserrat, procures or attempts to procure a woman, by false pretences or false representation, to have unlawful sexual
intercourse, whether within Montserrat, or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Section 138  Indecent assault on a man

Any person who commits or attempts to commit an indecent assault on a male person shall be guilty of an offence and liable to imprisonment for two years.

Section 184  Common assault

Any person who unlawfully assaults another is guilty of an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this or any other law, shall be liable on summary conviction to imprisonment for one year.

Observations/Recommendations

The Penal Code of Montserrat does not expressly provide for sexual harassment but the terms, “attempts to procure, a woman by threats or intimidation to have sexual intercourse” may be held to be applicable in determining a complaint for sexual harassment.
10. MONTSERRAT

10.1 The Montserrat Constitution Order, 2010

10.2 Education Act, Chapter 16.01 (No. 1 of 2004)

10.3 Labour Code, 2012 (No. 20 of 2012)

10.4 Penal Code, Chapter 4.02
10. MONTSERRAT

10.1 THE MONTSERRAT CONSTITUTION ORDER, 2010

Relevant Provisions

Section 16 Protection from discrimination

(1) Subject to subsections (4) and (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (4), (5) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Observations/Recommendations

The Montserrat Constitution Order 2010 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

10.2 EDUCATION ACT CHAPTER 16.01 (No. 1 of 2004)

An Act to provide a regulatory system for the delivery of education services in Montserrat.

Relevant Provisions

Section 28 Prohibition of discrimination

Subject to the provisions of this Act, no person who is eligible for admission to a public educational institution or an assisted private school as a student shall be refused admission on any discriminatory grounds including race, place or origin, political opinions, colour, creed, sex, or subject to the provisions of this Act, mental or physical handicap.

Observations/Recommendations
The Education Act of Montserrat prohibits discrimination in education on the grounds of sex but does not expressly provide for sexual harassment.

The non-discriminatory provision on the ground of sex applies to the eligibility for admission to a public educational institution or an assisted private school. This is subject to the provisions of the Act which may authorise the management of same sex schools. A penalty is not imposed for the contravention of that section.

10.3 LABOUR CODE 2012 NO. 20 OF 2012

The Labour Code provides for law governing labour.

Relevant Provision

Section 4 Application of the Code
(1) The Code applies to all employers and employees.
(2) Despite subsection (1), only—
   (a) Parts 8, 9, 10 and 12, apply to the public service; and
   (b) Parts 8, 9 and 10 apply to the police service.

Section 5 Employers may establish working conditions above minimum standard in the Code

Nothing in the Code precludes an employer from offering to his or her employees’ better terms and conditions than those set out in the Code.

Section 10 Prohibition of victimisation

(1) An employer shall grant his or her employees reasonable opportunity for communicating freely with the Labour Commissioner.

(2) An employer who threatens or takes any prejudicial action against an employee who communicates with the Labour Commissioner and or a labour officer during an inspection visit or who has made or proposes to make a complaint or has taken part or proposes to take part in proceedings against the employer for breach of the Code commits an offence and is liable on summary conviction to a fine of $5,000.00.

Section 15 Liability of employer
Where an act or default resulting in an offence under the Code is committed by an agent of the employer, the employer is liable, unless he or she proves that the offence was committed without his or her consent or connivance.

Section 22 Procedure for the settlement of disputes

(1) Any dispute arising out of any matter covered by the Code or any law relating to employment or generally out of the relationship between the employer and the employee may be referred by either party concerned or his or her representative to the Labour Commissioner for settlement.

(2) Upon notice of the dispute, the Labour Commissioner or a labour officer shall investigate the matter and make every effort to settle the dispute by conciliation in accordance with industrial relations practice, and may—

(a) request the parties to meet with him or her jointly or separately;

(b) request the parties to state the facts as they know them and their respective positions on the issue; and

(c) request the parties to present witnesses and he or she may examine any person in relation to the issues, either alone or in the presence of others, at his or her discretion.

(3) Where the Labour Commissioner fails to achieve a settlement within 30 days from the date of notice of the dispute or such longer period as the parties may agree, the Labour Commissioner shall refer the dispute to the Labour Tribunal for determination.

(4) Anything said or admitted during conciliation at the level of the Labour Commissioner and any document prepared for the purposes of the conciliation shall not be admissible in evidence—

(a) in any subsequent investigation of the dispute concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;

(b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the conciliation may be given against any person.

Section 24 Appointment of the Tribunal

(1) The Governor acting on the advice of Cabinet shall appoint 6 members to the Tribunal—
(a) 3 members representing the interests of employers; and

(b) 3 members representing the interests of employees.

(2) The appointment shall be for such period as the Governor acting on the advice of Cabinet shall specify and each appointment shall be subject to renewal.

(3) The Chief Magistrate shall be the Chairperson of the Tribunal.

(4) Despite subsection (3), the Chief Magistrate may delegate the function of Chairperson, on a case by case basis, to another magistrate.

Section 26  Appeals of the Tribunal

(1) A decision of the Tribunal is final and may only be appealed on a point of law by way of case stated to the Court of Appeal.

(2) An appeal under subsection (1) shall be brought within 28 days of the issuance of the written decision.

Section 59  Procedure for disciplinary action

An employer shall not take disciplinary action against an employer without—

(a) a valid and fair reason connected with the capacity or conduct of the employee;

(b) informing the employee in writing of the nature and particulars of the complaint against the employee; and

(c) giving the employee or his or her representative a fair opportunity to defend himself or herself, including access to his or her employment record and all supporting documents or statements to be used against him or her.

Section 62(e)  Prohibited grounds for dismissal

(e) race, colour, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, marital status, religion, political opinion or affiliation, national extraction or social origin, ethnic origin, disability or HIV status;

Section 58  Disciplinary action by employer

(1) An employer is entitled to take disciplinary action including dismissal in accordance with this Code.

(2) Disciplinary action includes—
(a) a verbal warning;
(b) a written warning;
(c) reduction in wages or salary;
(d) demotion; and
(e) dismissal.

(3) An employer shall not impose a fine or other monetary penalty on an employee as a form of disciplinary action or otherwise.

Section 60 Termination of employment on grounds of incapacity arising from a medical condition or injury

An employer may terminate the employment of an employee where 2 medical practitioners certify that the employee is unfit to continue in employment because of incapacity of the mind or body which has lasted for at least 6 months and which is likely to be permanent.

Section 61 Termination on other lawful grounds

(1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of gross misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The gross misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has—

(a) conducted himself or herself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;

(b) been convicted of an offence in the course of his or her employment, the penalty for which prevents the employee from meeting his or her obligations under his or her employment contract for 12 working days or more.

(3) Where an employee is guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action, warn the employee in writing that repetition of the behaviour will result in summary dismissal.
(4) Where the employee, after being warned in accordance with subsection (3), is guilty of a similar offence or misconduct in the following 6 months, the employer may terminate the employee’s contract without further notice.

(5) An employer who dismisses an employee under subsection (4) shall provide the employee with a written statement of the reasons for the action.

(6) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct where he or she has failed to do so within 6 months after having knowledge of the misconduct.

(7) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.

(8) Where the employee, after he or she is warned pursuant to subsection (7), does not, during the following 3 month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(9) An employer shall not terminate the employment of an employee for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (7) and appropriate instructions and training where required to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of 3 months.

(10) An employer may terminate the employment of an employee where the employee could not continue to work in the position held without contravention of the law.

(11) An employer may terminate the employment of an employee where the employee is made redundant.

Part 8 Equality of Treatment in Employment

Section 79 Definition of discrimination

(1) For the purposes of this Part, a person discriminates against another person where the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are—

(a) race, colour, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual
orientation, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy or marital status;

(b) any characteristic which pertains generally or is generally imputed to persons of a particular race, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state or marital status.

(3) Discrimination on the grounds of HIV or other medical status includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

Section 80 Prohibition of discrimination

(1) Subject to sections 81 and 82, an employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in—

(a) the advertisement of a job;

(b) the procedures used for the purpose of determining who should be offered that employment;

(c) determining who should be offered employment;

(d) the terms or conditions on which employment is offered; or

(e) the creation, classification or abolition of a job.

(2) Subject to sections 81 and 82 an employer shall not discriminate against an employee—

(a) in the terms or conditions of employment afforded to that employee;

(b) in the conditions of work, occupational safety and health measures;

(c) in the provision of facilities related to or connected with employment;

(d) by denying access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
(e) by retrenching or dismissing the employee; or

(f) by subjecting the employee to any other disadvantage.

Section 83  Sexual harassment

(1) Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 80.

(2) “Sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Section 85  Inducement to discriminate

It is an offence to induce, or attempt to induce, a person to do any act which contravenes this Part by—

(a) providing, or offering to provide, the person with any benefit; or

(b) subjecting, or threatening to subject, the person to any detriment.

Section 88  Offences and penalties

A person who contravenes this Part commits an offence and is liable on summary conviction to a fine of $3,000.00 and to a fine of $5,000.00 for a second or subsequent offence.

Section 89  Remedies

(1) Without prejudice to any other remedy that may be available in any competent court, where any person is aggrieved by any act or omission of an employer which contravenes the provisions of this Part and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Labour Commissioner.

(2) Where any dispute referred to the Labour Commissioner is subsequently referred to the Tribunal, the Tribunal may, if an offence is proved, make an order—

(a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
(b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, despite—
(i) the vacancy in question is already filled; and
(ii) the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;
(c) voiding a decision found to have been based on unlawful discrimination;
(d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

Observations/Recommendations

Section 83 Sexual harassment
(1) Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 80.
(2) “Sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

10.4 THE PENAL CODE CHAPTER 4.02

THE PENAL CODE An Act to amend and codify the Penal Laws of Montserrat and for matters connected therewith.

Relevant Provisions

Section 116 Construction of certain provisions of this Part
(3) In this Part the expression “unlawful sexual intercourse” means sexual intercourse outside of the bond of marriage;

Section 122 Indecent assault on a woman
(1) Subject to the provisions of this section, any man who makes an indecent assault on a woman shall be guilty of an offence and liable—

(a) if on a girl under the age of thirteen years, to imprisonment for five years; or

(b) in any other case, to imprisonment for two years.

(2) A girl under the age of sixteen years cannot in law give consent which would prevent an act being an assault for the purposes of this section.

(3) Where a marriage is invalid under subsection (3) of section 25 of the Marriage Act, because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief.

(4) A woman who is a person of unsound mind, or a mental defective who is receiving treatment for severe mental disorder, cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault under this section by reason of such incapacity to consent, if that person knew or had reason to know that such woman was a person of unsound mind or mental defective receiving treatment as aforesaid.

(5) No prosecution for an offence, or for an attempt to commit an offence, under this section, shall be commenced more than twelve months after the date of the commission of the offence.

Section 126 Procurement of woman by threats

(1) Any person who, within Montserrat, procures or attempts to procure, a woman by threats or intimidation to have unlawful sexual intercourse, whether within Montserrat or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Section 127 Procurement of woman by false pretences

(1) Any person who, within Montserrat, procures or attempts to procure a woman, by false pretences or false representation, to have unlawful sexual intercourse, whether within Montserrat, or elsewhere, shall be guilty of an offence and liable to imprisonment for two years.
(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

Section 138 Indecent assault on a man

Any person who commits or attempts to commit an indecent assault on a male person shall be guilty of an offence and liable to imprisonment for two years.

Section 184 Common assault

Any person who unlawfully assaults another is guilty of an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this or any other law, shall be liable on summary conviction to imprisonment for one year.

Observations/Recommendations

The Penal Code of Montserrat does not expressly provide for sexual harassment but the terms, “attempts to procure, a woman by threats or intimidation to have sexual intercourse” may be held to be applicable in determining a complaint for sexual harassment.
12. SAINT LUCIA


12.2 Civil Code, (sections 324 to 327) Chapter 4.01

12.3 Constitution of Saint Lucia, 1978 Chapter 1.01

12.4 Criminal Code (Relevant Provisions Relating to Assaults and Sexual Offences)

Chapter 3.01 (Acts 9 of 2004 and 38 of 2006)

12.5 Education Act, Cap. 18.01 (Act 41 of 1999)


12.7 Labour Code 2006
12. SAINT LUCIA

12.1 CIVIL CODE CHAPTER 4.01

The Civil Code provides for the civil law of Saint Lucia.

Relevant Provisions

Section III  The Disabilities of Corporations

324. Corporations are subject to particular disabilities which either prevent or restrain them from exercising certain rights, powers, privileges and functions, which natural persons may enjoy and exercise. These disabilities arise either from their corporate character or are imposed by law.

325. In consequence of the disabilities which arise from their corporate character, they can neither be tutors nor curators.

Subject to the provisions of any other statute, they cannot be executors of wills or undertake any administration which necessitates the taking of an oath, or imposes personal responsibility.

They cannot be summoned personally, nor appear in Court otherwise than by attorney.

They cannot sue nor be sued for assault, battery or other violence on the person.

They cannot serve as witnesses nor as jurors before the Courts.

They can neither be guardians nor judicial sequestrators, nor can they be charged with any other functions or duties the exercise of which may entail imprisonment. (Amended by Act 34 of 1956)

Observations/Recommendations

Liability for acts such as assault, battery or other violence on the person by the corporation would fall on the management/directors of the corporation.
12.2 CIVIL CODE CHAPTER 4.01

The *Civil Code* provides for the civil law of Saint Lucia.

**Relevant Provisions**

**CHAPTER THIRD**

**DELICTS AND QUASI-DELICTS**

985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.

986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.

The father, or, after his decease, the mother, is responsible for the damage caused by minor children.

Tutors are responsible in like manner for their pupils.

Curators or others having the legal custody of persons of unsound mind, for their wards.

Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care.

The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage.

Masters and employers are responsible for damage caused by their servants and workmen in the performance of the work for which they are employed.

12.3 CONSTITUTION OF SAINT LUCIA CHAPTER 1.01

**Relevant Provisions**

**Section 13 Protection from discrimination on the grounds of race, etc.**

(1) Subject to the provisions of subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person or authority.
In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Observations/Recommendations

The Constitution of Saint Lucia prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

12.4 CRIMINAL CODE CHAPTER 3.01

The Criminal Code provides for criminal offences and procedures relating to such offences.

Relevant Provisions

SUB-PART B

Assaults

Section 115 Offence of assault

(1) A person who intentionally or recklessly—

(a) applies force to, or causes any impact on, the body of another person; or

(b) causes another person to fear that any such force or impact is imminent,

without that other person’s consent or, where the act is likely or intended to cause injury to another person, with or without that other person’s consent commits assault and is liable on conviction on indictment to imprisonment for 3 years.

(2) Without prejudice to subsection (1) a person convicted of—

(a) assault with any deadly or dangerous instrument or means;

(b) assault upon any person acting as a judicial officer;
(c) assault upon a minister of religion in the execution of the duties of his or her office;
(d) assault upon a person in any Court;
(e) assault upon a person in order to prevent him or her from doing or on account of his or her doing or having done anything as party, agent, counsel or witness in any judicial proceedings;
(f) assault with the intention to commit or attempt to commit any other crime,

is liable on conviction on indictment to imprisonment for three years or on summary conviction to imprisonment for one year.

(3) For purposes of subsection (2)(b), “judicial officer” has the same meaning assigned to it under section 86.

Section 118 Stalking

(1) A person who commits the offence of stalking is liable on conviction on indictment to imprisonment for 5 years or on summary conviction to imprisonment for one year.

(2) A person commits the offence of stalking if—

(a) he or she intentionally and maliciously follows about or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted or of suffering serious bodily injury or death;

(b) he or she wilfully and maliciously engages in a course of conduct that involves an express or implied threat to kill another person or cause serious bodily injury to another person or cause emotional distress to another person;

(c) he or she persistently makes harassing phone calls or sends unsolicited mail in any form, to another person in such manner as would cause emotional distress to the other person.

(3) In this section “course of conduct” means a persistent pattern of conduct comprising 2 or more acts carried out over a period of time that shows a continuity of purpose aimed at a particular person who is a victim of the offence.

Section 119 Report of suspected cases of abuse
(1) A person who is in a position of trust or authority towards a young person, who in the course of his or her duty becomes aware of any act of abuse committed against that young person shall as soon as is practicable make a written report of the case to any police officer, or to the Government department responsible for social services.

(2) A person mentioned in subsection (1) who without reasonable cause fails or refuses to make such report to the police officer commits an offence and is liable on summary conviction to a fine of $1,000.

(3) No civil action shall be brought against a person mentioned in subsection (1) in respect of a report made under that subsection in good faith for the purpose of complying with that subsection.

(4) In this section “abuse” means an unlawful sexual intercourse or connection with a young person in terms of Sub-Part C (Sexual Offences) or unlawful use of force on a young person.

(5) In this section “person who is in a position of trust or authority” includes a parent, guardian, teacher, medical practitioner, social worker, drivers of school buses or any other person having charge of a young person.

SUB-PART C

Sexual Offences

Section 123 Rape

(1) Any person who has sexual intercourse with another—
   (a) without the consent of that other; or
   (b) without believing that the other consents to such intercourse or is reckless as to whether the other person consents or not,

   commits the offence of rape and is liable on conviction on indictment to imprisonment for life.

(2) For the purposes of subsection (1), consent is not considered to have been obtained where the complainant submits or does not resist by reason of—
   (a) the application of force to the complainant or to any other person;
   (b) threats or fear of the application of force to the complainant or to any other person;
   (c) the personation of the spouse of the complainant;
   (d) false and fraudulent representations as to the nature of the act;
(e) the use of the accused’s position of authority over the complainant;

(f) the administration to the complainant of a drug, matter or thing, with intent to stupefy or overpower the complainant or causing the complainant to take the same with intent to stupefy or overpower the complainant; or

(g) intimidation of any kind.

(3) A husband commits the offence of rape where he has sexual intercourse with his wife without her consent by force, fear or the use of a drug or thing with intent to stupefy or overpower her, where there is in existence in relation to them—

(a) a decree nisi of divorce or nullity granted under the Divorce Act;

(b) a decree of judicial separation granted under the Civil Code;

(c) a separation agreement or where the parties are in fact separated; or

(d) a peace binding order or an order for the husband not to molest his wife or have sexual intercourse with her including a protection order from the Family Court.

(4) The provisions of subsection (3) apply with the necessary modifications to a wife who commits the offence of rape.

(5) A husband or wife who commits the offence of rape is liable on conviction to imprisonment for 14 years.

(6) A person under the age of 12 years is deemed incapable of committing the offence of rape.

Section 124 Unlawful sexual connection

(1) A person commits the offence of unlawful sexual connection with another person if that person has sexual connection with that other person—

(a) without the consent of the other person;

(b) without believing that the other person consents to that sexual connection;

(c) with the consent of the other person if the consent is—

(i) obtained from a person under the age of 16 years,

(ii) extorted by threats or fear of bodily harm to that other person or any other person, or by threats or fear of the application of force to that other person or any other person,
(iii) obtained by impersonating the spouse of that other person,
(iv) obtained by false and fraudulent representations as to the nature of the act,
(v) obtained by the use of the accused’s position of authority over that other person;
(d) by the administration to that other person of a drug, matter or thing, with intent to stupefy or overpower that other person or causing that other person to take the same with intent to stupefy or overpower that other person.

(2) In subsection (1) “sexual connection” means—
(a) the introduction, to any extent, into the vagina or the anus of the person of—
   (i) any part of the body of any other person, or
   (ii) any object held or manipulated by any other person, otherwise than for bona fide medical purposes;
(b) connection between the mouth or tongue of the person and any part of the genitalia of any other person.

(3) A person who commits the offence of unlawful sexual connection is liable on conviction on indictment—
(a) to imprisonment for 14 years; or
(b) to imprisonment for life where the sexual connection is as described in subsection (2)(a)(ii),

unless the Court is of the opinion that, having regard to the particular circumstances of the offence or of the offender, including the nature of the conduct constituting the offence, the offender should not be sentenced to imprisonment.

Section 125 Inducing sexual intercourse or sexual connection by force, duress, etc.

(1) A person commits an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person—
(a) by force or duress;
(b) by false or fraudulent representation as to the nature of the act; or
(c) by administering, to that other person, or by causing that other person to take, any drug, matter or thing with intent to stupefy or overpower that person.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for 14 years.

Section 129 Sexual intercourse with a minor employee

(1) An adult who has sexual intercourse with a minor who—
   (a) is employed by the adult;
   (b) receives wages or salary directly or indirectly from the adult, commits an offence and is liable on conviction on indictment to imprisonment for 25 years.

(2) An adult is not guilty of an offence under subsection (1) if the minor is the spouse of the adult.

(3) If a marriage is declared invalid by a Court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

Section 130 Indecent assault

(1) Any person who indecently assaults another commits an offence and is liable on conviction—
   (a) on indictment to imprisonment for 15 years, if committed on a person under the age of 12 or on summary conviction to imprisonment for 5 years;
   (b) on indictment to imprisonment for 10 years, if committed on a person of 12 years of age or more but who has not yet attained the age of 16 years or on summary conviction to imprisonment for 5 years; or
   (c) on indictment to imprisonment for 7 years, if committed on a person who is 16 years of age or more or on summary conviction to imprisonment for 3 years.

(2) A person under the age of 16 years cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

(3) In this section “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.
Section 131  Indecent act
A person who, in any place, for a sexual purpose or sexual gratification exposes his or her genital organs to a minor commits an offence and is liable on conviction on indictment to imprisonment for 10 years.

Section 132  Gross Indecency
(1) A person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment to imprisonment for 10 years or on summary conviction to 5 years.
(2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.
(3) For the purposes of subsection (2)—
   (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and
   (b) a person shall be deemed not to consent to the commission of such an act if—
      (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;
      (ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or
      (iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.
(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

Section 138  Anonymity of complainant and accused
(1) After a person is charged with an offence under this Sub-Part, any matter that is likely to lead members of the public to identify a person as the complainant or as the accused in relation to that charge shall not be published in a written publication or be broadcast in this State except—
(a) if, on the application of the complainant or the accused, the Court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the applicant; or

(b) in the case of the accused, after the person has been tried and convicted of the offence.

(2) A person who publishes or broadcasts any matter in contravention of subsection (1) commits an offence and is liable on conviction on indictment to a fine of $50,000 and to imprisonment for 3 years.

(3) The person referred to in subsection (2) is in the case of—

(a) a publication in a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) any other publication, the person who published;

(c) a broadcast by a body corporate which transmits or provides the programme in which the broadcast is made, the person having functions in relation to the programme corresponding to those of an editor or publisher of a newspaper.

(4) In subsection (1)—

“accused” means—

(a) a person named in an information alleging that the person has committed the offence;

(b) a person who appears before the Court charged with the offence;

“complainant” in relation to a person accused of an offence includes the person against whom the offence is alleged to have been committed.

Section 139 Soliciting sexual favours in the workplace

(1) It is an offence for an employer or a supervisor of an employee to make it reasonably appear to the employee that the prospects or working conditions of the employee are dependent upon the acceptance or tolerance by the employee of sexual advances or persistent sexual suggestions from the employer or supervisor.

(2) It is an offence for a prospective employer to make it reasonably appear to a person that—

(a) an offer of employment to that person;
(b) the terms on which employment is so offered,
is or are dependent on that person’s acceptance or tolerance of sexual advances or tolerance of persistent sexual suggestions from the prospective employer.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for one year.

Section 356 Harassment, alarm or distress

(1) Subject to the provisions of this section, where a person—
   (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
   (b) displays any writing, sign or other visible representations which is threatening, abusive or insulting,
within the hearing or sight of a person likely to be harassed, alarmed or distressed by such threatening, abusive or insulting words or writing or sign or other visible representation or disorderly behaviour he or she commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

(2) A person commits an offence under subsection (1) if he or she intends his or her words or behaviour or the writing, sign or other visible representation to be threatening, abusive or insulting or, as the case may be, he or she intends his or her behaviour to be or is aware that it may be disorderly.

(3) An offence under this section may be committed in a private or public place, except that no offence is committed where the words or behaviour are used, or the writing, sign or visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(4) It is a defence for a person charged with an offence under this section to prove—
   (a) that he or she had no reason to believe that there was a person within hearing who was likely to be harassed, alarmed or distressed;
   (b) that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation, would be heard or seen by a person outside that or any other dwelling;
   (c) that his or her conduct was reasonable.
Section 426  Assault on summary convictions

A person who unlawfully assaults any other person is liable on summary conviction to a fine of $1,000, or to imprisonment for one year.

Section 512  Accosting or following persons

A person who, in any public place, without lawful authority or excuse, the proof of which lies on him or her, accosts, accompanies, or follows about, any other person, in a manner likely to constitute harassment or cause alarm or distress to that other person, is liable on summary conviction—

(a)  for the first offence, to a fine of $1,000 or in default of payment to imprisonment for one year;

(b)  for the second and subsequent offences to imprisonment for 2 years.

Section 561  Annoyance in a public place

(1)  A person who on any street, highway or public place including a beach, without lawful authority or excuse, the proof of which lies on him or her, molests, harasses, threatens any other person or follows him or her about for the purpose of—

(a)  soliciting alms or employment;

(b)  satisfying idle curiosity; or

(c)  causing annoyance to the person,

is liable on summary conviction to a fine not exceeding $1,000 or to imprisonment not exceeding one year.

(2)  A sworn statement made by a person about to leave the State, before a magistrate or justice of the peace, taken in the presence of the person accused under such circumstances that he or she had a full opportunity of asking questions either by himself or herself or by counsel of the person who made the statement, and the statement signed by such person, may, if the person who made the statement has left the State, be given in evidence against the person accused on any charge under subsection (1).

(3)  It is the duty of the magistrate or justice of the peace before whom any such statement is made, before tendering it for the signature of the person making it, to read it over to the person in the presence of the accused, and to explain the statement to the accused, and upon the statement being signed by the person making it, to certify that the requirements of this section have been complied with.
(4) A statement produced in Court and purporting to be certified under this section shall be prima facie evidence for the purposes of this section of the facts stated in the statement; but the Court may require the attendance of any person present when such statement was taken, for the purpose of examination with respect to the statement.

Observations/Recommendations

The law in St Lucia seeks to criminalize the act of sexual harassment and solicits sexual favours in the office.

Under section 139 of the Criminal Code of St Lucia it is an offence for an employer or a supervisor of an employee to make it reasonably appear to the employee that the prospects or working conditions of the employee are dependent upon the acceptance or tolerance by the employee of sexual advances or persistent sexual suggestions from the employer or supervisor.

It is also an offence for a prospective employer to make it reasonably appear to a person that an offer of employment to that person; the terms on which employment is so offered, is or are dependent on that person’s acceptance or tolerance of sexual advances or tolerance of persistent sexual suggestions from the prospective employer.

A person who solicits sexual favours in the office commits an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for one year.

A person who displays any writing, sign or other visible representations which is threatening, abusive or insulting, within the hearing or sight of a person likely to be harassed, alarmed or distressed by such threatening, abusive or insulting words or writing or sign or other visible representation or disorderly behaviour commits an offence and is liable on conviction on indictment to imprisonment for 3 years.

Consideration may need to given to the decriminalisation of the sexual harassment and the adoption of provisions similar to the Cayman Islands to ensure enforceability and that adequate protection in the provided against sexual harassment in social relations generally.

12.5 EDUCATION ACT, CAP. 18.01

The Education Act, 2008 provides for a regulatory system for the delivery of educational services.

Relevant Provisions
Section 114  Prohibition of discrimination

A private school which denies admission to a child or expels a student on account of race or the political affiliation of the students is quality of an indictable offence and liable to on conviction to a fine of $10,000.00.

Observations/Recommendations

Unlike in the other Member States, like in Grenada where sex is addressed in their Act, the non-discriminatory provision of their *Education Act* the Saint Lucia *Education Act* does not prohibit discrimination on the grounds of sex and does not expressly provide for sexual harassment.

The *Education Act* was intended to be harmonised in the OECS Member States but the provision on discrimination and harassment is not consistent through-out the Member States.

The Short Title of the Act is self-explanatory, it provides for equality of opportunity and treatment in employment and occupation.

Relevant Provisions

Section 2 Interpretation

In this Act—

“educational authority” means a body of persons administering an educational institution;

“educational institution” means a school, a college, university or other institution at which education or training is provided;

“employee” means a person who offers his or her services under a contract of employment, a managerial employee or a dependent contractor or where appropriate, a former employee;

“employer” includes any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker, and the heirs, successors and assigns of an employer;

“employment” includes—

(a) part time, temporary employment and employment under a contract of service or of apprenticeship;

(b) employment under a contract for services; and

(c) engagement as a commission agent;

“employment agency” means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Section 3 Definition and prohibited grounds of discrimination
(1) For the purposes of this Act, a person discriminates against another person if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are—

(a) race, sex, religion, colour, ethnic origin, family responsibilities, pregnancy, marital status, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors; or

(b) any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate and constitutes an offence.

Section 8 Sexual harassment

Any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex within the meaning of section 3 and constitutes an offence.

Section 19 Pressure to discriminate

(1) It is unlawful to induce or attempt to induce, a person to do any act which contravenes Part 2 by—

(a) providing or offering to provide the person with any benefit; or

(b) subjecting or threatening to subject the person to any detriment.

(2) An offer or threat may fall under subsection (1) whether it is made directly or indirectly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $5,000.
Section 20 Victimisation

(1) A person who victimises another person commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment—

(a) on the ground that the other person—

(i) has made, or proposes to make, a complaint under this Act,
(ii) has brought, or proposes to bring proceedings under this Act against any person,
(iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act,
(iv) has attended or proposes to attend an inquiry under this Act or to provide evidence or testimony as a witness, or
(v) has made in good faith, allegation that a person has committed an act of discrimination in contravention of this Act;

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do any of the things referred to in paragraphs (a)(i) to (a)(v).

Observations/Recommendations

Section 3 of the Act contains a non-discriminatory provision which prohibits discrimination on the grounds of race. However, under section 8 of the Act, any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee is unlawful discrimination based on sex within the meaning of section 3 and is an offence.

12.7 LABOUR CODE 2006

The Labour Code 2006 is a consolidation and reform of legislation applicable to labour and industrial relations in Saint Lucia, which includes existing local standards and international labour law standards.
Relevant Provisions

Section 2 Interpretation

In this Code —

“employee” means a person who offers his or her services under a contract of employment, whether written, oral or implied, including a managerial employee, a dependent contractor, an apprentice, a part-time employee, a casual worker, a homeworker, a temporary worker, a seasonal employee and a person who is remunerated by commission where that person is not an independent contractor and where appropriate, a former employee;

“employer” means any person or undertaking, firm, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and the heirs, successors, agents and assigns of an employer including any statutory person or body of persons;

“employers’ organization” means any organization established by employers, the principal purposes of which are the representation and promotion of interests of employers and the regulation of relations between employers and employees;

“employment agent” means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;

“employment” includes —

(a) part time, temporary employment and performance of work under apprenticeship;

(b) performance of work under a contract of employment;

(c) engagement as a commission agent;

(d) engagement as a dependent contractor;

and “employed” shall be construed accordingly;

“sexual harassment” means any unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee;
Section 267 Definition and prohibited grounds of discrimination

(1) For the purposes of this Division, a person discriminates against another person if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are —

(a) race, sex, religion, colour, ethnic origin, social origin, political opinion or affiliation, disability, serious family responsibility, pregnancy, marital status, HIV/AIDS, trade union affiliation or activity, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of children and young persons;

(b) any characteristic which appertains generally or is generally imputed to persons on the basis of race, sex, religion, colour, ethnic origin, social origin, political opinion or affiliation, disability, serious family responsibility, pregnancy, marital status, HIV/AIDS, trade union affiliation, or age except for purposes of retirement, and restrictions on work and employment of children and young persons or for the protection of children and young persons; or

(c) a conviction which is spent pursuant to the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2) is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Section 268 Prohibition on discrimination against applicant and employees

(1) Any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment shall not discriminate against that other person on the grounds specified under section 267(2) —

(a) in the advertisement of the job;

(b) in the arrangements made for the purpose of determining who should be offered that employment;
(c) in determining who should be offered employment;
(d) in the terms or conditions on which employment is offered; or
(e) in the creation, classification or abolition of jobs.

(2) An employer shall not discriminate against an employee on the grounds specified under section 267 —

(a) in terms or conditions of employment afforded to that employee by the employer;
(b) in conditions of work or occupational safety and health measures;
(c) in the provision of facilities related to or connected with employment;
(d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
(e) by making the employee redundant or dismissing the employee except as provided for under this Code; or
(f) by subjecting the employee to any other disadvantage.

(3) A person who contravenes subsection (1) or (2) is liable for damages on successful complaint to the Tribunal and the Tribunal may order the person to rectify the offending act in addition to the award of damages.

(4) The burden of proving that subsection (1) or (2) was not contravened shall be on the person against whom the complaint is made.

Section 272  Sexual harassment

Notwithstanding the provisions of the Criminal Code 2004, No.10, creating the offence of sexual harassment, any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee shall constitute unlawful discrimination based on sex within the meaning of section 267 and the employee shall be entitled to compensation in accordance with this Code.

Observations/Recommendations

An employer in obligated to provide good working conditions. Under the Labour Code of Saint Lucia [section 257(1)(a)] an employer is obligated to ensure that “a safe sound, healthy and secure working environment is provided and maintained, as far as practicable”.

The Code provides protection for “sexual harassment” which is defined as any unwanted conduct of a sexual nature in the workplace or in connection with the
performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.


It appears that sexual harassment is linked with discrimination on the grounds of sex and unfair dismissal of the employee.

Under section 272 of the Labour Code of Saint Lucia, any act of sexual harassment against an employee committed by an employer, managerial employee or co-employee also constitutes unlawful discrimination based on sex within the meaning of section 267 and the employee is entitled to compensation in accordance with the Code. Labour Code incorporates provisions of the antidiscrimination law.


The provisions governing sexual harassment may need to be further elaborated for effective implementation. Such elaboration may be made in a separate Act which addresses sexual harassment.

Complaints relating to sexual harassment in employment under the Labour Code are made to the Labour Tribunal. Consideration may be given to the extension of the requirement under the proposed Bill.
11. SAINT CHRISTOPHER AND NEVIS

11.1 The Constitution of Saint Christopher and Nevis, 1983, Chap.1.01

11.2 Domestic Violence Act, Chap. 12.04

11.3 Prevention of Crimes Act, Chap. 4.20

11.4 Small Charges Act, Chap. 4.33
11. SAINT CHRISTOPHER AND NEVIS

11.1 CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS, CHAP. 1.01

The Constitution is the supreme law of Saint Christopher and Nevis and, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Relevant Provisions

Section 15 Protection from discrimination on the grounds of race, etc.

(1) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (7), (8) and (9), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

Observations/Recommendations

The Constitution of Saint Christopher and Nevis prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

11.2 DOMESTIC VIOLENCE ACT, CHAP. 12.04

The Domestic Violence Act provides for the protection of any person subjected to domestic violence.

Relevant Provisions

Section 2 Interpretation
“domestic violence offence” means a prescribed offence committed by a person against
(a) a spouse of the person;
(b) a child or dependant of the person or of a spouse of the person; or
(c) a parent;

Section 4  Meaning of domestic violence
For the purposes of this Act, conduct that constitute domestic violence include
(a) violence that results in or is likely to result in
   (i) physical harm,
   (ii) sexual suffering, or
   (iii) psychological suffering;
(b) threats of violence;
(c) coercion;
(d) arbitrary deprivation of liberty;
(e) molestation;
(f) conduct of an offensive or harassing nature;
(g) conduct which amounts to psychological abuse, intimidation or persecution.

Observations/Recommendations
Unlike the legislation of other Member States and like the Antigua and Barbuda, the Domestic Violence Act of St Christopher and Nevis does not make express reference to “harassment” or “sexual harassment”.

11.3 PREVENTION OF CRIMES ACT, CHAP. 4.20
The Prevention of Crimes Act prohibits the use of violence to a person or property, molesting and threatening or intimidating a person.

Relevant Provisions
Section 4  Offences made punishable
(1) Every person who shall do any one or more of the following acts, that is to say,

(a) use violence to any person or any property;

(b) threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace;

(c) molest or obstruct any person in manner defined by this section with a view to coerce such person;

shall be guilty of an offence against this Act, and shall be liable to a fine not exceeding three hundred dollars, or to be imprisoned for any term not exceeding three months. [Amended by Act 7/1976]

(2) A person shall, for the purposes of this Act, be deemed to molest or obstruct another person in any of the following cases, that is to say—

(a) if he persistently follow such person about from place to place;

(b) if he hide any tools, clothes, or other property, owned or used by such person, or deprive him of, or hinder him in, the use thereof;

(c) if he watch or beset the house, or other place, where such person resides, or works, or comes on business, or happens to be, or the approach to such house or place, or if, with two or more other persons, he follow such person in a disorderly manner in or through any street or road.

(3) Nothing in this section shall prevent any person from being liable under any other Act, or otherwise, to any other, or higher, punishment than is provided for any offence by this section, so that no person be punished twice for the same offence:

Provided that no person shall be liable to any punishment for doing, or conspiring to do, any act on the ground that such act restrains, or tends to restrain, the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing, as hereinbefore mentioned.

Observations/Recommendations

Like in Antigua and Barbuda, the Prevention of Crime Act makes it a criminal offence, punishable with a fine of $300 or a term of imprisonment not exceeding 3 months for any person to use violence to any person or any property; threaten or intimidate any person in such a manner as would justify a Magistrate, on complaint made to him, to bind over the person so threatening or intimidating to
keep the peace; or molest or obstruct any person with a view to coerce such person.

Some of the offences may also be punishable under the *Domestic Violence Act*.

### 11.4 SMALL CHARGES ACT, CHAP. 4.33

**Relevant Provisions**

**Section 13  Assault**

(1) Any person who shall assault or beat any other person, shall be liable to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding two months.

(2) Any person who in the opinion of the Magistrate is guilty of an aggravated assault

   (a) on any male child whose age does not in the opinion of the Magistrate exceed fourteen years; or

   (b) upon any female;

shall be liable to a fine not exceeding ninety-six dollars, or to imprisonment for a term not exceeding six months.

**Observations/Recommendations**

The Small Changes Act of St. Christopher and Nevis provides for the offence of assault on any person but does not expressly provide for the offence of sexual harassment.
13. SAINT VINCENT AND THE GRENADINES

13.1 The Saint Vincent and the Grenadines Constitution Order 1979

13.2 Criminal Code, Cap. 171

13. SAINT VINCENT AND THE GRENADINES

13.1 THE SAINT VINCENT AND THE GRENADINES CONSTITUTION ORDER 1979

Relevant Provisions

Section 13 Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4),(5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6),(7) and (8) of this section, no persons shall be treated in a discriminatory manner by any persons acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such descriptions are not made subject or are recorded privileges of advantages which are not accorded to persons of another such description.

Observations/Recommendations

The The Saint Vincent and the Grenadines Constitution Order 1979 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.

13.2 CRIMINAL CODE, CAP. 171

The Criminal Code amends and codifies the criminal laws of Saint Vincent and the Grenadines.

Relevant Provisions

Section 127 Indecent assault

(1) Any man who indecently assaults any person is guilty of an offence and liable—
(a) if on a child under the age of fifteen, to imprisonment for five years; and

(b) in any other case to imprisonment for two years.

(2) A child under the age of fifteen cannot in law give consent which would prevent an act being an assault for the purpose of this section.

Section 192    Common assault

Any person who unlawfully assaults another is guilty of an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this Code or any other law, is liable to imprisonment for one year.

Observations/Recommendations

The Criminal Code of Saint Vincent and the Grenadines does not expressly provide for the offence of sexual harassment. However a claim can be lodged for sexual assault or indecent assault if it is an element of the sexual harassment.

13.3 PROTECTION OF EMPLOYMENT ACT, 2003 No. 20 of 2003

An Act to repeal the Protection of Employment Act, Cap. 150 and to make further and better provisions for the promotion of the employment relationship.

Relevant Provisions

Section 2    Objective.

The object of this Act is to support successful employment relationships by promoting confidence in employment relationships.

Section 5    Protection against dismissal without good cause

(1) Subject to the following provisions, every person shall be protected against the unfair termination of his employment without good cause.

(2) The employment of a worker shall not be terminated for reasons related to his conduct or performance before he is provided an opportunity to defend himself against the allegations made except in cases where the employer cannot reasonably be expected to provide such opportunity.

Section 9    Termination for good cause.
(1) The services of an employee may be terminated for good cause, and any employee whose service is so terminated shall not be eligible to receive from his employer severance pay under Part III of this Act.

(2) The service of an employee shall be deemed to be terminated for good cause where the employee:

   (a) has been found guilty of misconduct in or in relation to his employment which is of such a nature that it would be unreasonable to expect the employment relationship to continue,

   (b) has:

      (i) been guilty of repeated misconduct or unsatisfactory performance which in the first instance is not sufficiently serious to warrant dismissal under paragraph (a) and is of such a nature that the employer could not reasonably be expected to continue his employment if such conduct is repeated, or

      (ii) not been performing satisfactorily and during any period within six month, the employee has been warned by the employer in writing or orally in the presence of two credible witnesses on more than one occasion whereby the employer has indicated to him the nature of his conduct or his unsatisfactory performance and the action which the employer intends to take and thereafter no improvement in the conduct or the performance of the employee has resulted;

   (c) has been found guilty of a criminal offence relating to his employment, without the connivance, express or implied, of his employer;

   (d) does not have the capability or qualification to perform the work of the kind he was employed to do:

      Provided that the employer has given the employee at least two written warnings to that effect and that within three months thereafter the employee does not rectify the defect or make up the deficiency pointed out to him; or

   (e) cannot be retained in the position he held without contravention by him or his employer of some existing law.

Section 16    Prohibitions against termination.

An employer shall not terminate the services of an employee on any of the following grounds:
(d) race, colour, sex, marital status, pregnancy, religion, political opinion, nationality or social origin;

Section 35 Settlement of disputes.

(1) An employer or employee, or any person or organization acting on his behalf, who alleges that the employer or employee respectively has failed to comply with any provisions of this Act, shall make a complaint in writing in the first instance to the Commissioner.

Section 36 Procedure by Commissioner.

The Commissioner shall, in the case of any dispute referred to him under section 35, give notice thereof to all interested parties and Commissioner try to bring about a settlement with the parties.

Section 37 Reference to Hearing Officer.

(1) On receipt of any report from the Commissioner pursuant to section 36, the Minister shall refer the dispute to an officer, in this Act referred to as a Hearing Officer.

Section 40 Appeal

(1) Any party to the proceeding before the Hearing Officer may, within twenty one days of the decision by the Hearing Officer, appeal against the decision to the Tribunal.

Section 41 Constitution function, and powers of Tribunal

(4) The Tribunal shall enquire into the matter and report in writing its decision or order to the Minister within twenty-one days of receipt of the reference or such longer time as may be necessary having regard to the circumstances of the case.

Observations/Recommendations

The law protects a person from the unfair termination of his or her employment but does not expressly refer to termination or the grounds of sexual harassment.

The law also prohibits discrimination on the grounds of sex. A dispute resolution mechanism is provided for under the Act similar to that provided in the Model Bill.
14. TRINIDAD AND TOBAGO

14.1 Domestic Violence Act, Chapter 45.56

14.2 Equal Opportunity Act, Chapter 22:03

14.3 Offence Against a Person Act, Chapter 11:08

14.4 Sexual Offences Act, Chapter 11:28

14.5 Summary Offences Act, Chapter 11:02
14. TRINIDAD AND TOBAGO

14.1 DOMESTIC VIOLENCE ACT, CHAPTER 45:56

The *Domestic Violence Act* seeks to provide greater protection for victims of domestic violence and to ensure a prompt and just legal remedy for victims of domestic violence.

**Relevant Provisions**

**Section 3  Interpretation**

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including—

- persistent intimidation by the use of abusive or threatening language;
- persistent following of the person from place to place;
- depriving that person of the use of his property;
- the watching or besetting of the place where the person resides, works, carries on business or happens to be;
- interfering with or damaging the property of the person;
- the forced confinement of the person;
- persistent telephoning of the person at the person’s place of residence or work; and
- making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person;

“financial abuse” means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person’s access to financial resources so as to ensure financial dependance;
“physical abuse” means any act or omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the First Schedule;

“sexual abuse” includes sexual contact of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the offences listed under the Sexual Offences Act in the First Schedule;

**Observations/Recommendations**

Unlike the legislation of other Member States the *Domestic Violence Act* of Trinidad and Tobago does not make express reference to “harassment” or “sexual harassment”. The law relates to “harassment” in domestic relationship and provisions would be relevant if the focus was on “sexual harassment”.

**14.2 EQUAL OPPORTUNITY ACT, CHAPTER 22:03**

The *Equal Opportunity Act* prohibits certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal.

**Relevant Provisions**

**Section 3  Interpretation**

“employment” means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour and includes the employment of an independent contractor;

**Section 4  Application to discrimination limited.**

This Act applies to—

(a)  discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is—

(i)  discrimination on the ground of status as defined in section 5; or

(ii)  discrimination by victimisation as defined in section 6;
(b) offensive behaviour referred to in section 7.

Section 5 Discrimination

For the purposes of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of—

(a) the status of the aggrieved person;

(b) a characteristic that appertains generally to persons of the status of the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the status of the aggrieved person,

the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status.

Section 6 Discrimination by victimisation.

(1) A person (“the discriminator”) discriminates by victimisation against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has—

(a) brought proceedings against the discriminator or any other person under this Act, or any relevant law;

(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act, or any relevant law;

(c) otherwise done anything under or by reference to this Act, or any relevant law, in relation to the discriminator or any other person; or

(d) alleged that the discriminator or any other person has committed an act, which (whether or not the allegation so states) would amount to a contravention of this Act, or any relevant law,
or by reason that the discriminator knows the person victimised intends to do any of those things referred to in paragraphs (a) to (d), or suspects the person victimised has done, or intends to do, any of them.

(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him, if the allegation was false and not made in good faith.

Section 7 Offensive behaviour

(1) A person shall not otherwise than in private, do any act which—

(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;

(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and

(c) which is done with the intention of inciting gender, racial or religious hatred.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it—

(a) causes words, sounds, images or writing to be communicated to the public;

(b) is done in a public place;

(c) is done in the sight and hearing of persons who are in a public place.

(3) This section does not apply to acts committed in a place of public worship.

(4) In this section—

“public place” includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

Section 8 Discrimination against applicants

An employer or a prospective employer shall not discriminate against a person—

(a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b) in the terms or conditions on which employment is offered; or
(c) by refusing or deliberately omitting to offer employment.

Section 9  Discrimination against employees

An employer shall not discriminate against a person employed by him—

(a) in the terms or conditions of employment that the employer affords the person;

(b) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or

(c) by dismissing the person or subjecting the person to any other detriment.

Observations/Recommendations

The Equal Opportunity Act prohibits certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal.

The Equal Opportunity Act prohibits discrimination in employment, education, the provision of goods and services and the provision of accommodation but does not expressly provide for sexual harassment.

This Act applies to discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is discrimination on the ground of status; or discrimination by victimisation.

14.3 OFFENCE AGAINST A PERSON ACT, CHAPTER 11:08

An act relating to Offences against the person.

Relevant Provisions

Section 30  Assault occasioning bodily harm, Common assault
Any person who is convicted upon an indictment of any assault occasioning actual bodily harm is liable to imprisonment for five years; and any person who is convicted upon an indictment for a common assault is liable to a fine of four thousand dollars and to imprisonment for two years.

Section 30A  Harassment

(1) For the purpose of this section—

(a) “harassment” of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—

(i) following, making visual recordings of, stopping or accosting the person;

(ii) watching, loitering near or hindering or preventing access to or from the person’s place of residence, workplace or any other place frequented by the person;

(iii) entering property or interfering with property in the possession of the person;

(iv) making contact with the person, whether by gesture, directly, verbally, by telephone, computer, post or in any other way;

(v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of the person;

(vi) acting in any manner described in subparagraphs (i) to (v) towards someone with a familial or close personal relationship to the person; or

(vii) acting in any other way that could reasonably be expected to alarm or cause the person distress; and

(b) a “course of conduct” involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions.

(2) A person who pursues a course of conduct which amounts to harassment of another and which he knows or ought reasonably to know amounts to harassment of the other is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.
(3) A person who is charged with an offence under subsection (2) and whose course of conduct is in question is deemed to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

Section 30B  Putting a person in fear of violence [11 of 2005]

(1) A person who is accused of conduct which would constitute an offence under section 30A and which causes the other person to fear that violence will be used against him, and the person whose course of conduct is in question knows or ought to know that his conduct will cause the other person so to fear, commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars and to imprisonment for five years or, on summary conviction, to a fine of five thousand dollars and to imprisonment for six months.

(2) For the purpose of this section, the person whose course of conduct is in question is deemed to know that it will cause another person to fear that violence will be used against him if a reasonable person in possession of the same information would think the course of conduct would cause the other person so to fear.

(3) If on trial on indictment, a person charged with an offence under this section is found not guilty, the Court may find him guilty of an offence under section 30A.

Section 30C  Defence

It is a defence for a person charged with an offence under section 30A or 30B to show that—

(a) his course of conduct was pursued for the purpose of preventing or detecting crime;

(b) his course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law; or

(c) in the particular circumstances, the pursuit of the course of conduct was reasonable.
Section 30D Orders for protection and compensation

(1) A Court sentencing a person convicted of an offence under section 30A or 30B may, in addition, make an Order, in the prescribed form, for protection or compensation.

(2) An Order for protection made under this section shall direct a person to cease from engaging in conduct which—

(a) constitutes or may constitute harassment; or

(b) will cause fear of violence,

and to comply with any other directions contained in the Order.

(3) An Order for protection shall have effect for the period specified in the Order or until such further Order, as prescribed, is made by the Court varying or discharging the original Order.

(4) An application for the variation or discharge of a protection Order may be made in the prescribed form by the person against whom the Order is made or any other person included in the Order.

(5) Where a person fails to comply with an Order for protection made under this section or any of the directions contained therein, he commits an offence and is liable on summary conviction to imprisonment for six months.

Section 30E Award of compensation

(1) An Order for compensation under section 30D may include—

(a) loss of earnings;

(b) medical expenses;

(c) moving and accommodation expenses; and

(d) reasonable legal costs.

(2) Any compensation ordered by a Court of summary jurisdiction under subsection (1) shall not exceed the statutory maximum amount that such a Court has jurisdiction to award.

Section 30F Further order
In addition to an Order for protection or compensation made under section 30D, the Court may, where the circumstances require, make an Order under section 6 of the Mental Health Act.

**Observations/Recommendations**

The *Offences against the person Act* relates to “harassment” of any person and its provisions would be relevant if the focus was on “sexual harassment” which has a different connotation.

In the absence of specific legislation on “sexual harassment” the provisions relating to “harassment in the *Offence against a Person Act* of Trinidad and Tobago may be held applicable in determining a complaint on sexual harassment.

**14.4 SEXUAL OFFENCES ACT, CHAPTER 11:28**

The *Sexual Offences Act* provides for sexual crimes, the procuration, abduction and prostitution of persons and kindred offences.

**Relevant Provisions**

**Section 11 Sexual intercourse with minor employee**

(1) An adult who has sexual intercourse with a minor who—

   (a) is in the adult’s employment; or

   (b) is in respect of any employment or work under or in any way subject to the adult’s control or direction; or

   (c) receives his or her wages or salary directly or indirectly from the adult,

is guilty of an offence and is liable on conviction to imprisonment for twenty-five years.

(2) For the purposes of subsection (1) it is a defence for the adult to prove that the minor employee consented to the intercourse.

(3) An adult shall not be guilty of an offence under this section if the minor is the spouse of the adult.
Section 15  Indecent assault

(1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years for a first offence and to imprisonment for ten years for a subsequent offence.

(2) A person under the age of sixteen years cannot in law give any consent which would prevent an act being an assault for purposes of this section.

(3) In this section, “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.

Section 16  Serious indecency

(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—

   (a) if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;

   (b) if committed on or towards a person sixteen years of age or more for five years.

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

   (a) a husband and his wife; or

   (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.

(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.

Observations/Recommendations

The Sexual Offences Act provides for sexual crimes, the procuration, abduction and prostitution of persons and kindred offences.

The Act makes it a criminal offence for an adult to have sexual intercourse with a minor who is in the adult’s employment; or is in respect of any employment or work under or in any way subject to the adult’s control or direction; or receives
his or her wages or salary directly or indirectly from the adult. The adult is liable on conviction to imprisonment for 25 years.

14.3 SUMMARY OFFENCES, CHAPTER 11:02

The Summary Offences Act provides for offences punishable on summary conviction.

Relevant Provisions

Section 4 Assault and battery

Every person who unlawfully assaults or beats any other person, upon complaint by or on behalf of the party aggrieved, is liable to a fine of $400 or to imprisonment for 3 months.

Observations/Recommendations

In the absence of specific legislation on “sexual harassment” the provisions relating to assault in the Summary Offences Act of Trinidad and Tobago may be held applicable in determining a complaint on sexual harassment.
15. VIRGIN ISLANDS

15.1 Anti-Discrimination Act, 2001 No. 2 of 2001

15.2 Domestic Violence (Summary Proceedings) Act,

15.3 Labour Code Act, 2010, No. 4 of 2010

15.4 The Virgin Islands Constitution Order 2007
15. VIRGIN ISLANDS

15.1 ANTI-DISCRIMINATION ACT, 2001 No. 2 of 2001

The Anti-Discrimination Act makes unlawful discrimination on racial grounds and in other matters relating to the treatment of persons generally and other matters connected therewith.

Relevant Provisions

Section 5 Discrimination by way of victimisation

(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised,

(a) has brought proceedings against the discriminator or any other person under this Act;

(b) has given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act;

(c) has otherwise done anything under or by reference to this Act in relation to the discriminator or any other person;

(d) has alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act; or

(e) intends to do any of the things referred to in paragraphs (a) to (d) in respect of which the discriminator has knowledge or suspects the person victimised has done or intends to do.

(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

Section 6 Discrimination against applicants and employees

(1) Without prejudice to the Labour Code Act, it is unlawful for a person, in relation to employment by him at an establishment in the Territory, to discriminate against another person
(a) in the arrangements he makes for the purpose of determining who should be offered that employment;

(b) in the terms on which he offers that other person that employment; or

(c) by refusing or deliberately omitting to offer that other person that employment.

(2) Where a person employs another at an establishment in the Territory, it is unlawful for him to discriminate against the employee

(a) in the terms of employment which he affords the employee;

(b) in the way he affords the employee access to opportunities for promotion, transfer or training, or to any other benefit, facilities or services, or by refusing or deliberately omitting to afford the employee access to them; or

(c) by dismissing the employee, or subjecting him to any other detriment.

(3) Except in relation to discrimination falling within section 5, subsections (1) and (2) do not apply to employment for the purposes of a private household.

(4) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (whether for payment or otherwise) of benefits, facilities or services of that description to the public, or to a section of the public comprising the employee in question, unless

(a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees;

(b) the provision of the benefits, facilities or services to the employee in question is regulated by his contract of employment; or

(c) the benefits, facilities or services relate to training.

Section 29 Instructions to discriminate

It is unlawful for a person

(a) who has authority over another person, or

(b) in accordance with whose wishes another person is accustomed to act,

to instruct that other person to do any act which is unlawful by virtue of Part II or III, or procure or attempt to procure the doing by him of any such act.

Section 30 Pressure to discriminate

(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III.
(2) An attempted inducement is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

Section 31 Liability of employers and principals

(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act (except as regards offences thereunder) as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act (except as regards offences thereunder) as done by that other person as well as by him.

(3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

Observations/Recommendations

15.2 DOMESTIC VIOLENCE (SUMMARY PROCEEDINGS) ACT

The Domestic Violence (Summary Proceedings) Act provides protection by means of summary proceedings in cases involving domestic violence.

Relevant Provisions

Section 2 Interpretation

"domestic violence" means any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a member of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or any other member of the household;

Observations/Recommendations

The Domestic Violence (Summary Proceedings) Act of the Virgin Islands does not expressly provide for harassment
15.3 LABOUR CODE ACT, 2010 No. 4 of 2010

The Labour Code provides for the improvement of the administration of labour, taking into account applicable international standards, prescribing minimum conditions of employment, a system for labour administration, settlement of disputes and observance of labour laws generally, and to provide for the repeal of the Labour Ordinance (Cap. 292), the Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299) and for other connected matters.

Relevant Provisions

Section 2 Interpretation

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Section 114 Definition of “discrimination”.

(1) For the purposes of this Part, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are

   (a) race, colour, sex, sexual orientation, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;

   (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age.
(3) Discrimination on the grounds of HIV or other medical status includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

Section 119 Sexual harassment
Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 114.

Section 124 Inducement to discriminate
It is an offence to induce, or attempt to induce, a person to do any act which contravenes this Part by

(a) providing, or offering to provide, the person with any benefit; or

(b) subjecting, or threatening to subject, the person to any detriment.

Observations/Recommendations

15.4 THE VIRGIN ISLANDS CONSTITUTION ORDER 2007

Relevant Provisions

Section 26 Protection from discrimination
(1) In this section, the expressions—

(a) “discriminatory” means affording different treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or status, disability, age, birth, sexual orientation, marital or other status; and

(b) “public authority” means any statutory body or company or association in which the Government of the Virgin Islands has an interest and which performs a public function or duty.
(2) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(3) Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting under any written law or performing the functions of any public office or any public authority.

Observations/Recommendations

The Virgin Islands Constitution Order 2007 prohibits discrimination on the grounds of sex but does not expressly provide for sexual harassment.
APPENDIX 1

PART C

DEFINITION OF SEXUAL HARASSMENT

New Delhi: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013,

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

(i) physical contact and advance; or
(ii) a demand or request for sexual favours; or
(iii) making sexually coloured remarks; or
(iv) showing pornography; or
(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Cayman Islands: The Sexual Harassment Bill, 2013

Commission of an act of sexual harassment

Section 3 subsection (2)

(2) In this section “sexual harassment” includes conduct which involves-

(a) making an unwelcome sexual advance towards a person;
(b) making an unwelcome request for sexual favours from a person;
(c) making an unwelcome sexual comment to a person;
(d) making an unwelcome sexual comment about a person in his sight and hearing;
(e) making an unwelcome sexual gesture to a person;
(f) making unwelcome sexual contact with a person;
(g) providing a person with unwelcome sexual images or graphics;
(h) providing a person with unwelcome audio of a sexual nature;
(i) transmitting unwelcome electronic messages to a person;
(j) making unwelcome sexual innuendos to a person;
(k) engaging in conduct of a sexual nature knowing that there is a likelihood that the person to whom the conduct is intended to affect will become aware of the conduct;
(l) exposing third parties to sexual harassment conduct; or
(m) engaging in any other form of unwelcome conduct of a sexual nature.

**Canada**

*Labour Code*

247.1 In this Division, “sexual harassment” means any conduct, comment, gesture or contact of a sexual nature

(a) that is likely to cause offence or humiliation to any employee;

or

(b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

**South Africa**

No. 17 of 2011: *Protection from Harassment Act, 2010.*

"sexual harassment" means any-

(a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome:

(b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;
(c) implied or expressed promise of reward for complying with a sexually oriented request; or

(d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
APPENDIX 1

PART D

POLICY STATEMENT

Policy statement by employer

(1) Every employer shall, after consulting with the employees or their representatives, if any, issue a policy statement concerning sexual harassment.

Contents of policy statement

(2) The policy statement required by subsection (1) may contain any term consistent with this Act that the employer considers appropriate but must contain the following:

(a) a definition of sexual harassment that is substantially the same as the definition in section [ ];

(b) a statement to the effect that every employee is entitled to employment free of sexual harassment;

(c) a statement to the effect that the employer will make every reasonable effort to ensure that an employee is not subjected to sexual harassment;

(d) a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee to sexual harassment;

(e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(f) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary
for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and

(g) a statement informing employees of the discriminatory practices provisions of this Act that pertain to rights of persons to seek redress under this Act in respect of sexual harassment.

Publicity

(3) Every employer shall make each person under the employer’s direction aware of the policy statement required by subsection (1).

(Extract: Labour Code, Canada)
APPENDIX 2

LISTS OF LAWS OF THE OTHER COMMONWEALTH COUNTRIES EXAMINED

Australia
Equal Opportunity Act 1984; South Australia, Version: 3.10.2013

Canada

India
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013, No. 14 of 2013

Republic of South Africa

United Kingdom
Equality Act 2010

United States of America
Civil Code of California, Division 3: Obligations [1427 – 3272.9]
APPENDIX 3

TABLE SHOWING THE STATUS OF RATIFICATIONS/ACCESSIONS TO

CONVENTION TO ELIMINATE ALL FORMS DISCRIMINATION AGAINST WOMEN (CEDAW) (1979)

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>ACCESSION (A)/RATIFICATION (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Anguilla</td>
<td></td>
</tr>
<tr>
<td>2 Antigua and Barbuda</td>
<td>1st August, 1989 (A)</td>
</tr>
<tr>
<td>3 Bahamas</td>
<td>6th October, 1993 (A)</td>
</tr>
<tr>
<td>4 Barbados</td>
<td>16th October, 1980</td>
</tr>
<tr>
<td>5 Belize</td>
<td>16th May, 1990</td>
</tr>
<tr>
<td>6 Dominica</td>
<td>15th September, 1980</td>
</tr>
<tr>
<td>7 Grenada</td>
<td>30th August, 1990</td>
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<td>8 Guyana</td>
<td>17th July, 1980</td>
</tr>
<tr>
<td>9 Haiti</td>
<td>20th July, 1981</td>
</tr>
<tr>
<td>10 Jamaica</td>
<td>19th October, 1984</td>
</tr>
<tr>
<td>11 Montserrat</td>
<td></td>
</tr>
<tr>
<td>12 St. Kitts and Nevis</td>
<td>25th April, 1985 (A)</td>
</tr>
<tr>
<td>13 Saint Lucia</td>
<td>8th October, 1982 (A)</td>
</tr>
<tr>
<td>14 St. Vincent and the Grenadines</td>
<td>4th August, 1981 (A)</td>
</tr>
<tr>
<td>15 Suriname</td>
<td>1st March, 1993 (A)</td>
</tr>
<tr>
<td>16 Trinidad and Tobago</td>
<td>12th January, 1981</td>
</tr>
<tr>
<td>17 Virgin Islands</td>
<td>UK Overseas Territory CEDAW extended</td>
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TABLE SHOWING THE STATUS OF RATIFICATIONS/ACCESSIONS

TO

BELÉM DO PARÁ CONVENTION (1994)

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<thead>
<tr>
<th>COUNTRY</th>
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<td>-</td>
</tr>
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<td>16th May 1995</td>
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<td>Grenada</td>
<td>15th February 2001</td>
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<td>Haiti</td>
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<td>14th December 2005</td>
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<td>Virgin Islands</td>
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</table>
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http://www.refworld.org/docid/50b47bfc2.html Last Updated: Tuesday, 11 November 2014, 15:50 GMT


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