



Notwithstanding some improvements in the administration of justice, gender-based violence in all its forms continues to restrict the security, lives, choices and freedoms of the people of Trinidad and Tobago and in particular women and girls.

On a regular basis, we wake up to the news of missing girls and women and femicides, which may involve sexually assault. There is no doubt that sexual predators stalk the country. Yet the detection rate for sexual offences is woefully low (reportedly 28% in the last five years) and consequentially the majority of sexual offence victims do not receive justice or support. Most perpetrators are not held to account and remain in the public to prey and harm.

Gender-based violence is an expression of gender inequalities. It is on a continuum of harms experienced by women and girls because of the persistence of strains of culture that demean women, under-value their worth and carries the message to men that they are entitled to power and control over the bodies of women and girls. We are also concerned that sexual assaults and other sexual-based harms against men and gender non-conforming persons are under-reported and left without redress.

Fixing the criminal justice system is therefore one priority. Policing must be improved for quicker detection, and consequential initiation of prosecution. The harms experienced must be comprehensively captured in legislation so that there are clear pathways to accountability.

For these reasons, the **Alliance for State Action to End Gender-based Violence (ASA)**¹ welcomes the proposed amendments to the Sexual Offences Act and the Children Act. The proposed amendments create new offences which respond to the reality of the use of technology to perpetrate sexual offences through the invasion of privacy. With the exponential growth of virtual events hosted on social media platforms and the shift to online education in the wake of the COVID-19 pandemic, the online space has become a place where sexual harassment and sexual violations are perpetrated. Naming and identifying the forms of sexual violence is important for shaping gender-responsive policies. Image-based sexual abuse includes revenge

¹ Coalition Against Domestic Violence, CAISO: Sex & Gender Justice; Institute for Gender and Development Studies; UWI; CEDAW Committee of Trinidad & Tobago; Caribbean Association for Feminist Research and Action (CAFRA) TT; Mamatoto; The Shelter for Battered Women and Children; WOMANTRA, Caribbean Centre for Human Rights, Network of NGOs of Trinidad and Tobago for The Advancement of Women. Conflict Women, Women's Institute for Alternative Development (WINAD), The Center for Nonviolence, Research, and Development

porn, sextortion or sexual extortion², up skirting, downblousing³ and voyeurism. On social media and websites devoted to pornography, there are videos of schoolgirls, migrant women and trafficked victims being uploaded and distributed without consent.

The laws therefore need to respond to voyeurism, illicit and non-consensual image capture and sharing not just in private spaces but also in public spaces such as the streets, at fetes or while playing mas during carnival when done to or will foreseeably cause humiliation, coercion, control or distress. The law needs to move beyond the location of the image and focus on the issue of consent.

We note the three offences:

- 22A: Voyeurism
- 22B Taking and sharing, or threatening to share, intimate images without consent
- 22C offence of sharing intimate images without consent

We also note the proposed amendments also provide under 22D for the Court to order a person who has been convicted of these offences under sections 22A, 22B and 22C to pay compensation and to remove, retract, recover, delete or destroy any intimate image taken or shared by the person.

As provided in the Explanatory Note, Clause 6 of the Bill also seeks to amend the Children Act, Chap. 46:01 “to insert a new Part VIIIA, which would provide for the offence of voyeurism in relation to children. The provisions of this new Part would be similar to the proposed sections 22A, 22B, 22C and 22D of the Sexual Offences Act.”

The Alliance for State Action to End Gender-based Violence considers that these offences respond to the newer forms of harm being perpetrated using information and communications technology and dissemination of consequential materials without consent. We are in full agreement.

We make the following recommendations:

1. We note that the legislation continues to use gender exclusionary language under the patriarchal interpretative assumption that ‘he includes she’. Now more than ever the laws of Trinidad and Tobago should be drafted within more inclusive and non-discriminatory linguistic conventions. In this case, given that the subject of sexual abuse is most often women and girls, the use of the masculine pronoun throughout amounts to an erasure of

² See here for more information on “sextortion”: <https://www.cybersmile.org/what-we-do/advice-help/sextortion>

³ See here for more information on image-based sexual abuse: <https://www.1800respect.org.au/violence-and-abuse/image-based-abuse>

women's experiences of harm. This should be remedied through the adoption of gender-inclusive drafting.⁴

2. We note and endorse the recommendations of the Humanitarian Foundation for a definition of sexual gratification and consent.⁵
3. Voyeurism: The offence created speaks to two motives: sexual gratification and causing humiliation or distress. There are other motives which should be included such as **to coerce an individual**.
4. 22B (1) Taking and sharing of an intimate image without consent:
 - a. 22B (1)(a): "knowingly takes and shares an intimate image of another person without the consent of the depicted person ..." We recommend that in relation to sharing that the intention (mens rea) should be captured to include both **knowingly and recklessly**.
 - b. 22 (A)(3)(c) and 22B (3)(c): In relation to the exceptions created for homeowners, we recommend that homeowners be under an obligation to inform visitors of the presence of cameras.
 - c. 22A (3)(c)(i): The term "monitoring" used in this clause should be defined to reduce any ambiguity about what can be considered "monitoring" for security purposes
 - d. We consider that the drafting of 22B (3)(c) is too expansive as it seems to give homeowners immunity from prosecution not only for the taking of images, but also for the disseminating these images without consent.
5. 22C (1) Sharing an intimate image: We recommend that threats to share intimate images be criminalised under this section and that the motive for threats be referenced to include humiliation, coercion, control or causing distress an individual.
6. We recommend that audio recordings of a sexual nature and their dissemination without consent in circumstances in which the person recorded had a reasonable expectation that they were doing a private act should also be criminalized.
7. We recommend the creation of a sexual offence of dissemination of unsolicited and unwelcome messages with sexually explicit content through emails and other personal messaging services. This amounts to harassment.
8. Gender-responsive psycho-educational interventions should be made available to all offenders. However, priority should be placed on ensuring that child offenders are

⁴ See for example, Guide to Gender Neutral Drafting: UK Office of Parliamentary Counsel <https://7a21077a.flowpaper.com/GuidetoGenderNeutralDrafting/#page=1>

⁵ Consent is indicated by agreeing by choice, and having the freedom and capacity to make that choice. The definition should include factors that vitiate (e.g virtue of deception). We are recommending consideration of conditional consent.

afforded these interventions, rather than fines and imprisonment, as a first line of response.

9. An offence should be created which takes account of adults using children to capture and disseminate materials without consent. A child under the control and influence of an adult in such a scenario should be immune from prosecution and should receive psycho-social and educational support.
10. We recommend the creation of an offence of the possessing and storing knowing or having reason to suspect that the taking and/or dissemination of an image of a sexual nature is without consent of the person depicted. A person found guilty of this offence should be made liable to a fine and/or other remedial action, including gender-responsive psycho-educational interventions and victim compensation
11. We also recommend that anonymous dissemination be considered an aggravating factor determining the nature of the punishment

We note with great disappointment that in amending the Sexual Offences Act and Children Act, there are no proposed amendments to section 20 under the Children Act which decriminalize sexual activity between children under certain conditions including that they are not of the same sex.

This continuing and intentional failure to decriminalize same sex intimacy between consenting children and young adults continues a pattern of discrimination based on sexual orientation which has been held to be unconstitutional in Trinidad and Tobago and is in violation of international human rights law.

We call on the Parliament of Trinidad and Tobago to do the right thing and ensure that all children are treated the same. There is no legitimate public policy reason to do otherwise.

We repeat our call for a whole of society and state response to prevent gender-based violence.

This would include:

- Adoption of a resourced, multi-sectoral, national strategy to end gender-based and sexual violence.
- Improvement in the criminal justice system, through a review of the treatment of sexual offence cases, looking at how every stage of the criminal justice system handles cases, from police report to outcome at court.
- Continuous police training/sensitization
- Establishment of a specialized court for sexual offences.
- Institution of a system of information, contact and surveillance for persons on charges of sex offences.

- Institution and availability of psycho-educational interventions for persons charged with or convicted of sex offences based on the principles of accountability and victim safety.
- Improved infrastructure for safer public spaces and transportation based on consultations with communities
- The integration of gender-sensitive parenting programmes into HFLE and life skills programmes in schools.
- Establishment of a Social Fund (similar to Green Fund) to support NGO-led shelters and civil society members providing services to persons affected by gender-based violence.
- Wide dissemination of ideas of social and gender equality, anti-violence, empathy and respect for human rights within formal education systems as well as through public education channels for nationwide reach.

We recommend the establishment of a multi-stakeholder coordination mechanism for the monitoring and evaluation of institutions, such as the police service, courts, and social services, which have responsibility for preventing and responding to sexual offences.

We urge the legislature to place critical focus on eliminating sexual violence against women and children in Trinidad and Tobago, based on evidence, best practice, and principles of justice, non-violence and human rights.

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