



CAISO: Sex and Gender Justice

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FOR IMMEDIATE RELEASE

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CAISO's Reading of the Latest Appeal Court Judgement

The Appeal Court has overturned the landmark 2018 High Court decision regarding the decriminalisation of same-sex sexual activities – i.e. the 'buggery' and 'serious indecency' offences in the Sexual Offences Act, with some modifications. Consensual anal sex between anyone – opposite sex and same-sex couples – has been made illegal again. And consensual sex acts or 'serious indecency' between same-sex adult couples have been reverted to the original language of 'gross indecency' as found in Section 61 of the Offences Against the Persons Act 1925.

This judgement is because of the State's appeal of the 2018 ruling, which declared Sections 13 and 16 of the Sexual Offences Act unconstitutional and nullified them as they related to consensual sexual conduct between adults. A central argument by the State in the appeal was that these sections were considered 'saved law' and therefore protected from being struck down by the Courts.

In repealing the 2018 judgement, the Court of Appeal maintained that although Sections 13 and 16 are discriminatory, the court must yield to Parliament to make the necessary amendments via legislative reform. Justices Nolan Bereaux and Charmaine Pemberton upheld the State's appeal while Justice Vashiest Kokaram dissented.

As it relates to 'serious indecency', the judges opted for a reinstatement of Section 61 of the Offences Against the Person Act (1925), preserving legal prohibitions against acts of gross indecency, punishable by up to two years in prison. Further, Justice Bereaux clarified that buggery remains a crime under Section 13, however the penalty has been reduced from 25 years to five years of imprisonment. The judges insisted that, ultimately, the onus falls on Parliament to repeal these laws, not the Courts.

Throughout the life of this case, a focal point has been whether the sections in question are considered 'saved' as provided in the Exceptions (Savings) for Existing Law clause (section 6) in our Constitution; and even more, the impact of this colonial limitation on the potential of our nation, as an Independent Republic, to create and shape laws in alignment with the evolution of human rights. The Savings for Existing Law (or savings law clause) Section of the Constitution was introduced in Trinidad and Tobago's early days as a sovereign nation to save existing colonial laws from being struck down. In 2025, however, the savings law



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clause effectively limits these laws' ability to be consistent with an evolving society and contemporary understandings of human rights. Despite being an independent republic since 1976, this clause is a glaring legal hangover of our British colonial past.

Notwithstanding, there is consensus that Parliament is uniquely positioned to legislate on this issue. We hope it will take up the challenge and do so in a manner that honours the dignity and human rights of all people living in Trinidad and Tobago – in keeping with the spirit of our Constitution. We support Justice Kokaram's view that:

[A]s an emerging nation, our maturing vision of our collective personhood in the Republic is mummified by a saving law that still averts our gaze from the untruths told to us in our societal infancy. However, in my view it is equally a task for the Legislature and the court as guardians of democracy and the rule of law, even in the face of the current interpretation of the savings law clause, to release us from this time warp and to ensure our society can evolve organically to reflect the developing needs and norms of society [Appeal Court Judgement, para. 113],

We call upon our political leaders and Parliament to amend these legal discrepancies and contradictions, guided by the rights and freedoms promised by our Constitution. It is high time for the Republic of Trinidad and Tobago to decolonise our legal systems.

CAISO: Sex and Gender Justice is a feminist civil society organisation that seeks to mobilise a forward-thinking, visionary, and human rights approach to wholeness, justice, and inclusion for Trinidad and Tobago's LGBTQI+ communities, through developing analysis, alliances, and advocacy. **CAISO: Sex & Gender Justice** is a registered non-profit organisation in Trinidad and Tobago. Founded in June 2009 as Coalition Advocating for the Inclusion of Sexual Orientation, **CAISO changed its name in 2016 to CAISO: Sex and Gender Justice** to align closer with the growth in our areas of focus, namely wholeness, justice, and inclusion. LGBTQI+ persons in Trinidad and Tobago who have experienced a violation, or who need help determining same, may contact the programme for legal and psychosocial support via phone at **868-28-CAISO (282-2476)** or via email at wholenessandjustice@caisott.org.

CAISO RESOURCES & PUBLICATIONS

- [Beyond Decriminalisation](#): Policy Paper on Laws & LGBTQI+ Inclusion and Protection (2023)
- [Insights from Wholeness and Justice](#) (2020-2021; 2022; 2023)

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