

## **Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic**

Glossary of Key Terms .....	1
A Note on Jamaican language .....	1
I. SUMMARY .....	2
II. RECOMMENDATIONS .....	5
To the Jamaican government.....	5
Reform the law enforcement system.....	5
Enhance the national effort against HIV/AIDS.....	7
To Donors and International Organizations.....	8
III. METHODS .....	8
IV. BACKGROUND .....	9
HIV/AIDS in Jamaica .....	9
Homophobia in Jamaica and its role in driving the HIV/AIDS epidemic.....	11
V. FINDINGS OF HUMAN RIGHTS WATCH'S INVESTIGATION .....	17
Police abuse .....	18
Police abuse based on sexual orientation and gender identity.....	18
Police abuse of sex workers .....	31
Police interference with access to HIV/AIDS information and health services.....	32
Abuses in the health care system.....	36
Discrimination by health care providers .....	36
Discrimination in health care provision.....	39
Inadequate protection of confidential information.....	41
Driving men who have sex with men and people living with HIV/AIDS from health care services .....	44
Fostering dangerous practices and complicating health care provision.....	49
Denial of access to transportation.....	50
Other abuses by non-state actors: violence in the family and in the community .....	52
Abuses based on sexual orientation and gender identity.....	52
Abuses against people living with HIV/AIDS .....	55
VI. GOVERNMENT RESPONSE.....	56
Improving legal and policy protections .....	57
Educating health personnel.....	58
Efforts to address police abuse and provide HIV/AIDS education to police.....	59
Institutional mechanisms to address police misconduct .....	60
Police training on HIV/AIDS and related human rights issues .....	62
VII. REGIONAL EFFORTS TO ADDRESS HIV/AIDS.....	62

VIII. LEGAL STANDARDS.....	66
Freedom from violence.....	66
The right to privacy and the right to freedom from discrimination .....	68
Freedom from arbitrary arrest and detention.....	70
Freedom of association and assembly .....	71
The right to the highest attainable standard of health.....	72
IX. CONCLUSION.....	73
Acknowledgments.....	74
Appendix .....	75

## Glossary of Key Terms

**Bisexual:** a person who is attracted to both sexes.

**Gay:** a synonym for homosexual.

**Gender identity:** a person's internal, deeply felt sense of being male or female, or something other than or in between male and female.

**Heterosexual:** a person attracted primarily to people of the opposite sex.

**Homosexual:** a person attracted primarily to people of the same sex.

**Lesbian:** a female attracted primarily to other females.

**LGBT:** lesbian, gay, bisexual, or transgender; an inclusive term for groups and identities sometimes also associated together as "sexual minorities."

**Men who have sex with men:** men who engage in sexual behavior with other men, but do not necessarily identify as "gay," "homosexual" or "bisexual."

**Sexual orientation:** the way in which a person's sexual and emotional desires are directed. The term categorizes according to the sex of the object of desire—that is, it describes whether a person is attracted primarily toward people of the same or opposite sex, or to both.

**Transgender:** One whose inner gender identity differs from the physical characteristics of his/her body at birth. Female-to-male transgender people were born with female bodies but have a predominantly male gender identity; male-to-female transgender people were born with male bodies but have a predominantly female gender identity.

**Women who have sex with women:** women who engage in sexual behavior with other women, but do not necessarily identify as "gay," "homosexual," "lesbian" or "bisexual."

## A Note on Jamaican language

Many Jamaicans speak "patois" or Jamaican creole in addition to Caribbean Standard English. The following patois words and phrases appear in this report:

**battyman:** "Batty" is slang meaning buttocks. Battyman is a pejorative term for men who have sex with men, as anal sex is seen as the act that defines them.

**"battyman fi dead:"** gay men should be dead/killed; gay men must die

**"battyman mus' dead:"** gay men should be dead/killed; gay men must die

**chi chi man:** derogatory term for a man who has sex with men.

**sodomite:** derogatory term for woman who has sex with a woman

**"man on man fi dead:"** gay men should be dead

## I. SUMMARY

On June 9, 2004, Brian Williamson, Jamaica's leading gay rights activist, was murdered in his home, his body mutilated by multiple knife wounds. Within an hour after his body was discovered, a Human Rights Watch researcher witnessed a crowd gathered outside the crime scene. A smiling man called out, "Battyman [homosexual] he get killed!" Many others celebrated Williamson's murder, laughing and calling out, "let's get them one at a time," "that's what you get for sin," "let's kill all of them." Some sang "boom bye bye," a line from a popular Jamaican song about killing and burning gay men.

Jamaica's growing HIV/AIDS epidemic is unfolding in the context of widespread violence and discrimination against people living with and at high risk of HIV/AIDS, especially men who have sex with men. Myths about HIV/AIDS persist. Many Jamaicans believe that HIV/AIDS is a disease of homosexuals and sex workers whose "moral impurity" makes them vulnerable to it, or that HIV is transmitted by casual contact. Pervasive and virulent homophobia, coupled with fear of the disease, impedes access to HIV prevention information, condoms, and health care.

Violent acts against men who have sex with men are commonplace in Jamaica. Verbal and physical violence, ranging from beatings to brutal armed attacks to murder, are widespread. For many, there is no sanctuary from such abuse. Men who have sex with men and women who have sex with women reported being driven from their homes and their towns by neighbors who threatened to kill them if they remained, forcing them to abandon their possessions and leaving many homeless. The testimony of Vincent G., twenty-two, is typical of the accounts documented by Human Rights Watch: "I don't live anywhere now. . . . Some guys in the area threatened me. 'Battyman, you have to leave. If you don't leave, we'll kill you.'"<sup>1</sup>

Victims of violence are often too scared to appeal to the police for protection. In some cases the police themselves harass and attack men they perceived to be homosexual. Police also actively support homophobic violence, fail to investigate complaints of abuse, and arrest and detain them based on their alleged homosexual conduct. In some cases, homophobic police violence is a catalyst for violence and serious—sometimes lethal—abuse by others. On June 18, 2004, a mob chased and reportedly "chopped, stabbed and stoned to death" a man perceived to be gay in Montego Bay. Several witnesses told Human Rights Watch that police participated in the abuse that ultimately

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<sup>1</sup> Human Rights Watch interview with Vincent G., Kingston, June 14, 2004.

led to this mob killing, first beating the man with batons and then urging others to beat him because he was homosexual.

Because HIV/AIDS and homosexuality often are conflated, people living with HIV/AIDS and organizations providing HIV/AIDS education and services have also been targeted. Both state and private actors join violent threats against gay men with threats against HIV/AIDS educators and people living with HIV/AIDS. In July 2004, for example, the Jamaican Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received an email threatening to gun down “gays and homosexuals” and “clean up” a group that provided HIV/AIDS education for youth. In a 2003 case, a police officer told a person living with HIV/AIDS that he must be homosexual and threatened to kill him if he did not “move [his] AIDS self from here.”

Discrimination against people living with HIV/AIDS in Jamaica poses serious barriers to obtaining necessary medical care. In interviews with people living with HIV/AIDS, Human Rights Watch found that health workers often mistreated people living with HIV/AIDS, providing inadequate care and sometimes denying treatment altogether. Doctors failed to conduct adequate medical examinations of people living with HIV/AIDS, sometimes refusing even to touch them. And, in some cases, lack of treatment in the initial stages made it even less likely that people living with HIV/AIDS would receive health care services at a later date. Visible symptoms heightened the discrimination they faced, which in turn created further barriers to obtaining treatment. People suffering from visible HIV-related symptoms were sometimes denied passage on public and private transportation, making it difficult to obtain any medical care at facilities beyond walking distance.

People living with HIV/AIDS said that health workers also routinely released confidential information to other patients and to members of the public, both through discriminatory practices that signaled patients’ HIV status (such as segregating HIV-positive patients from others) and by affirmative disclosure of such information. Such actions violate fundamental rights to privacy and also drive people living with HIV away from services.

Discrimination also spreads HIV/AIDS in Jamaica by discouraging at-risk individuals from seeking HIV-related information or health care. Men who have sex with men reported that health workers had refused to treat them at all, made abusive comments to them, and disclosed their sexual orientation, putting them at risk of homophobic violence by others. As a result, many men who have sex with men delayed or avoided seeking health care altogether, especially for health problems that might mark them as

homosexual, such as sexually transmitted diseases. Because the presence of other sexually transmitted diseases heightens the risk of HIV transmission, such discrimination may have fatal consequences.

Jamaica is at a critical moment in its efforts to address a burgeoning HIV/AIDS epidemic. An estimated 1.5 percent of Jamaicans are living with HIV/AIDS, and HIV/AIDS is on the increase. Jamaica's Ministry of Health has taken steps to combat discrimination against people living with and at high risk of HIV/AIDS (such as men who have sex with men and sex workers), which it has recognized as a key factor driving Jamaica's HIV/AIDS epidemic. Its national HIV/AIDS program has fostered important relationships with nongovernmental organizations with established links to marginalized high-risk groups, provided support for their HIV/AIDS work with them, and looked to them for guidance in developing an effective response to the epidemic. It also has provided HIV/AIDS training for health personnel addressing stigma and discrimination.

But other parts of Jamaica's government undermine these important efforts by condoning or committing serious human rights abuses. Abuses against men who have sex with men take place in a climate of impunity fostered by Jamaica's sodomy laws and are promoted at the highest levels of government. Jamaican legal provisions that criminalize consensual sex between adult men are used to justify the arrest of peer HIV educators and to deny HIV prevention services to prisoners, among others. High-level political leaders, including Prime Minister P.J. Patterson and Minister of Health John Junor, repeatedly refuse to endorse repeal of discriminatory legislation, ignoring not only international human rights standards but also reports by both the government's national HIV/AIDS program and its advisory National AIDS Committee on the role of these laws in driving Jamaica's HIV/AIDS epidemic.

Jamaican health officials acknowledge that Jamaica's sodomy laws make it difficult for them to work directly with men who have sex with men. As one high-level health official told Human Rights Watch: "We don't promote direct programs or services to MSM [men who have sex with men] as a group because the existing laws impede this work [and] because [of] the high-level of stigma and discrimination, they're not open to getting services through the public sector." The police, however, actively impede government-supported peer HIV prevention efforts among men who have sex with men and also among sex workers. AIDS outreach workers reported that the very possession of condoms—a key tool in HIV prevention—triggers police harassment, and in some cases, arrest and criminal charges.

Jamaica's failure to take action to stop human rights abuses committed by state agents, to take measures to protect against abuses by state and private actors, and to ensure access to HIV/AIDS information and services to all Jamaicans violate its obligations as a state party to regional and international human rights treaties.

In 2004, Jamaica launched an ambitious project to provide antiretroviral treatment to people living with HIV/AIDS and to address underlying human rights violations that are driving the epidemic. These are promising initiatives. They will be compromised, however, unless government leaders make a sustained commitment to end discrimination and abuse against people living with and at high risk of HIV/AIDS. The government knows that although HIV/AIDS is stigmatized as a "gay disease," in reality, in Jamaica as in most of the Caribbean, the most common means of transmission is heterosexual sex. It also knows that if the epidemic in Jamaica continues to accelerate, all Jamaicans will suffer. This fact should encourage high-level Jamaican government officials to act quickly and forcefully to eliminate discriminatory laws and abusive practices that violate basic rights to equality, dignity, privacy, and health and undermine HIV/AIDS prevention and treatment efforts. This includes speaking out strongly and acting forcefully against homophobic violence and abusive treatment of homosexual men and women and of sex workers. If the Jamaican government chooses instead to let popular prejudices continue to undermine its attempts to establish rights-based HIV/AIDS policies, the consequences for all Jamaicans will be dire. Thousands of Jamaicans will be consigned to lives of horrific abuse and thousands will face premature and preventable death.

## **II. RECOMMENDATIONS**

### ***To the Jamaican government***

#### ***Reform the law enforcement system***

##### **Police Conduct**

- Ensure that all allegations of excessive force and other human rights abuses by law enforcement officials against HIV/AIDS workers, sexual minorities, sex workers, and people living with HIV/AIDS are investigated promptly and thoroughly by a body independent of those alleged to be responsible and which has the necessary powers and resources to fully investigate offences by state agents. Sanction officials who engage in or condone abuse.

- Cease and publicly repudiate all violence and harassment by police and other agents of the state against men who have sex with men, women who have sex with women, sex workers, and people living with HIV/AIDS.
- Train all criminal justice officials in international human rights standards and nondiscrimination, including issues of sexuality, sexual orientation, and HIV/AIDS. Ensure that such training is fully integrated into training programs provided to all ranks, and not treated as an additional class separated from the full curriculum of training. Ensure that police at all levels are trained on the fundamentals of HIV transmission and care for people living with HIV/AIDS and on the importance of the lifesaving efforts of HIV/AIDS outreach workers.

## Law Reform

- Repeal sections 76, 77, and 79 of the Offences against the Person Act, which criminalize sex between consenting adult men and are used as justification for harassment of men who have sex with men and of HIV/AIDS educators working with them.
- Adopt legislation to protect the rights of people living with HIV/AIDS, including legislation to proscribe discrimination against them.
- Repeal section 80 of the Offences against the Person Act and section 4 of the Towns and Communities Act, which grant broad latitude for arrest and detention without a warrant or an order from a magistrate, and replace them with clear, strict limitations on situations in which an arrest without warrant is permissible, such as when a crime is occurring or about to occur.
- Include “sexual orientation and gender identity” and “sex” in the anti-discrimination clause of the Charter of Rights and Freedoms proposed as amendments to the Jamaican Constitution.
- Invite international scrutiny of protections against torture and ill-treatment by:
  - Ratifying the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Optional Protocols to the International Covenant on Civil and Political Rights and to the U.N. Convention against Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.
  - Making the necessary declaration under article 22 of the U.N. Convention against Torture to enable the U.N. Committee against Torture to consider complaints submitted to it.
  - Including information on the treatment of HIV/AIDS workers and members of high-risk groups (men who have sex with men, sex



workers) in future periodic reports to human rights treaty bodies established for the International Covenant on Civil and Political Rights (overdue as of July 11, 2001) and the Convention on the Elimination of All Forms of Discrimination Against Women.

### ***Enhance the national effort against HIV/AIDS***

- Ensure that high-level political leaders, including the prime minister and all other cabinet officials, take a leadership role in campaigns focusing on improving human rights protections and reducing stigma and discrimination against people living with and at high risk of HIV/AIDS. National and parish-level governments should work with the media and nongovernmental organizations to disseminate this information in a manner that is accessible to people with limited literacy skills.
- Ensure that the national HIV/AIDS program, in consultation with the Ministry of National Security and the Jamaican Constabulary Force, develops and implements a formal plan for a budgeted program of monitoring of and regular public reporting on violence and abuse against marginalized groups at high risk of HIV/AIDS.
- Government officials at all levels should use public events and contacts with the media to condemn police violence against HIV/AIDS workers; should affirm international standards relating to equality, including nondiscrimination based on sexual orientation, gender identity, and HIV status; and should reiterate the importance of human rights protections for all groups vulnerable to HIV/AIDS, including men who have sex with men and sex workers. The Ministry of Health's stated position, articulated in national policy documents, on the importance of protecting marginalized groups against stigma and discrimination should be emphasized in public events and media.
- Provide training on HIV/AIDS, sexuality, and sexual orientation to all personnel in health care facilities, including instruction on the right to privacy and protection of confidential information about HIV status and specific guidance on how to guard against negligent and intentional disclosure. Ensure that appropriate and accessible legal remedies are available to individuals whose privacy has been infringed or who have experienced discrimination or harassment in the health system based on HIV status.
- Establish an effective and independent oversight and complaint mechanism to ensure the proper implementation of health policies and norms relating to HIV/AIDS, including protection of confidential and private information. Investigate and sanction all health personnel who disclose confidential information without authorization.

### ***To Donors and International Organizations***

- Condemn the criminalization of consensual homosexual conduct and support the repeal of sections 76, 77, and 79 as a violation of the prohibition against discrimination based on sexual orientation and as an impediment to the national response to the HIV/AIDS epidemic. The repeal of sections 76, 77, and 79 is consistent with the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the United Nations International Guidelines on HIV/AIDS and Human Rights.
- As part of monitoring compliance with the International Covenant on Economic, Social and Cultural Rights, the U.N. Committee on Economic, Social and Cultural Rights should report on Jamaica's efforts to ensure provision of HIV/AIDS information and services on a nondiscriminatory basis and to guarantee the confidentiality of information about HIV status.
- Ensure that monitoring of police harassment of HIV/AIDS outreach workers and of people suspected of homosexual conduct, and related human rights abuses are an important and regular part of monitoring programs supporting police reform and HIV/AIDS efforts in Jamaica. Accelerate surveillance and monitoring of NGO reports of police violence through the United Nations supported monitoring system and other means, and ensure widespread public reporting of data collected on this subject.
- Support the development of organizations among members of the lesbian, gay, bisexual and transgender community, and among sex workers, to strengthen the capacity of these persons to advocate for the protection of their rights in institutional fora.
- Promote ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

### **III. METHODS**

This report is based on a three-week field visit to Jamaica in June 2004, as well as prior and subsequent research. Two Human Rights Watch staff members conducted detailed interviews with more than seventy-five people living with or at high risk of HIV/AIDS, including sex workers, men who have sex with men (MSM), women who have sex with women, and people who had been incarcerated in police lockups and prison. These interviews took place in Kingston, St. Ann, St. James, St. Catherine, and St. Andrew, the

five parishes hardest hit by HIV/AIDS.<sup>2</sup> The identities of most of these persons and certain identifying information have been withheld to protect their privacy and safety.

These persons were identified largely with the assistance of Jamaican nongovernmental organizations (NGOs) providing services to people living with HIV/AIDS, men who have sex with men, women who have sex with women, prisoners, and sex workers. These interviewees may have had greater access to HIV/AIDS services than those without comparable connections.

Human Rights Watch also interviewed more than fifty representatives of government agencies, United Nations officials, donor governments, and NGOs specializing in HIV/AIDS or human rights; academic institutions; and healthcare workers and hospital administrators. All documents cited in this report are either publicly available or on file with Human Rights Watch.

## IV. BACKGROUND

### ***HIV/AIDS in Jamaica***

As of the end 2003, an estimated 22,000 people, or 1.5 percent of the adult population, were living with HIV/AIDS in Jamaica, the third largest population of people living with HIV/AIDS in the Caribbean region (after Haiti and the Dominican Republic).<sup>3</sup> HIV prevalence rates are very high among marginalized populations, including men who have sex with men and sex workers. The epidemic continues to spread in the general population.<sup>4</sup>

According to the Jamaican government's national HIV/AIDS program, in Jamaica HIV is predominantly transmitted through unprotected heterosexual sex and is increasing

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<sup>2</sup> Jamaica is divided into fourteen parishes, which are sub-national administrative divisions of the government.

<sup>3</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS), *2004 Report on the Global AIDS Epidemic: 4<sup>th</sup> Global Report* (Geneva: UNAIDS, 2004), p. 202.

<sup>4</sup> In 1994-1995, 25 percent of sex workers tested in Montego Bay were HIV-positive; in 1996, 9 percent of sex workers tested in Kingston were HIV-positive. From 1994-1996, HIV prevalence in major urban areas for men who have sex with men was more than 30 percent. UNAIDS, "Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections: Jamaica," 2004. See also Country Coordinating Mechanism for the Global Fund to Fight AIDS, Tuberculosis and Malaria, *A Proposal to Scale UP HIV/AIDS Treatment, Prevention, and Policy Efforts in Jamaica*, May 2003, [http://www.theglobalfund.org/search/docs/3JAMH\\_661\\_0\\_full.pdf](http://www.theglobalfund.org/search/docs/3JAMH_661_0_full.pdf) (retrieved August 27, 2004), p. 31 (stating that an estimated 20 percent of men who have sex with men and 25 percent of male and female sex workers were living with HIV/AIDS).

faster among women than men.<sup>5</sup> Ministry of Health statistics attribute 67.8 percent of AIDS cases to heterosexual sex and 5.4 percent to homosexual and bisexual sex combined.<sup>6</sup> The percentage of HIV cases acquired through male-to-male sexual contact is probably higher, however. The fact that homosexual sex is illegal, together with the strong stigma and discrimination attached to homosexual and bisexual behavior, may keep many men who have sex with men from admitting to having had sex with other men. The Ministry of Health has acknowledged that the fact that the large majority of cases of unknown transmission are among men suggests that rates of male-to-male transmission are higher than are reported.<sup>7</sup>

Several thousand Jamaicans are in urgent need of antiretroviral treatment, but as of this writing only a fraction of them are receiving it.<sup>8</sup> Jamaica secured funding in June 2004 to scale up access to treatment for people living with HIV/AIDS and made a public commitment to secure the lowest possible prices for antiretroviral drugs for all Jamaicans who need them.<sup>9</sup> However, in making concerted efforts to join the Free Trade Area of the Americas, Jamaica is subject to pressure by the United States Trade Representative to agree to trade policies that may undermine access to affordable antiretroviral medicines.<sup>10</sup>

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<sup>5</sup> Jamaica National HIV/STD Prevention and Control Program, "Facts and Figures, HIV/AIDS Epidemic Update 2004," <http://www.moh.gov.jm/AIDS%20DATA%20JUNE%202004.pdf> (retrieved August 9, 2004).

<sup>6</sup> Children comprise 7.7 percent of cases and the remaining 26.8 percent of cases are categorized as "unknown." Ibid.

<sup>7</sup> See *ibid.* (90 percent of cases of unknown transmission are among men); Ministry of Health, "Report of the Behaviour Change and Communication Task Force," 2001 (noting large percentage of males among cases of unknown transmission and observing that "If we look at the literature on male sexual behaviour, and in particular the issues of socially condemned and therefore secretive sexual behaviour that would contribute to non-reporting, we find the continuum usually conflated as 'MSMs.'") (cited in Patricia Watson, "Coping in the Dark: HIV Prevention among the MSM Community in Jamaica," *The Jamaica Gleaner*, May 5, 2002). The Pan-Caribbean Partnership on HIV/AIDS (PANCAP) has reported a similar situation in the region. PANCAP, "Caribbean Regional Strategic Framework for HIV/AIDS 2002-2006," March 2002, p. 4.

<sup>8</sup> As of June 2004, an estimated 8000 people were in need of antiretroviral therapy, and 500 persons were receiving it. J. Peter Figueroa, chief, Epidemiology and AIDS, Ministry of Health, "Implementing Access to HAART in Jamaica," June 2004.

<sup>9</sup> First-line antiretroviral (ARV) therapy costs between U.S.\$75 (generic) and U.S.\$300 (brand name drugs) per month. In September 2004, the Ministry of Health began providing ARV therapy in the public sector for free or U.S.\$8 pursuant to the Global Fund for AIDS, Tuberculosis and Malaria agreement. The Ministry of Health estimated that it would provide ARV therapy to 2000 people living with AIDS by late 2006. Global Fund Agreement, [http://www.theglobalfund.org/search/docs/3JAMH\\_661\\_238\\_ga.pdf](http://www.theglobalfund.org/search/docs/3JAMH_661_238_ga.pdf).

<sup>10</sup> Jamaica, as a party to the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPS), must ensure a minimum level of intellectual property protection. In 2001, WTO member states agreed that TRIPS "cannot and should not" prevent countries from taking measures to expand drug access and encouraged countries to use TRIPS mechanisms "to the full" in meeting their public health objectives. Jamaica is a party to negotiations to establish a Free Trade Area of the Americas (FTAA), covering thirty-four countries across the Americas and the Caribbean. The United States Trade Representative is attempting to include provisions in the FTAA that could inhibit Jamaica's (and other countries') flexibility to encourage generic drug competition and reduce the price of generic medicines. The negotiations are intended to be completed by end 2004, with the aim of launching the agreement in 2005. Concerns about Jamaica's domestic legal and policy commitments that conflict with FTAA proposals have slowed down

Since 1987, the Jamaican government has launched several public awareness campaigns regarding HIV/AIDS, beginning with the theme “AIDS kills.” National surveys report that a high level of knowledge about methods of HIV prevention coexists with belief in myths about HIV transmission. A 2000 survey reported that while more than 96 percent of Jamaicans could identify two or more ways to prevent HIV, a significant percentage of those surveyed subscribed to various myths about HIV, including the belief that HIV could be transmitted by casual contact (such as sharing food) and by mosquitoes. The survey also showed a dramatic rise in misconceptions about HIV transmission since 1996.<sup>11</sup> Health workers and people living with HIV/AIDS believe that the initial campaign had a lasting effect on public information about HIV/AIDS, leaving many with the impression that an HIV diagnosis means that death is imminent. According to Joanna W., a peer HIV/AIDS educator, “More than 96 percent of our people have information about HIV but how the information was given—‘AIDS kills’—left a strong impression. . . . Many people don’t understand that HIV can be with them a long time before they get AIDS.”<sup>12</sup>

### ***Homophobia in Jamaica and its role in driving the HIV/AIDS epidemic***

Violence against men who have sex with men, ranging from verbal harassment to beatings, armed attacks, and murder, is pervasive in Jamaica.<sup>13</sup> Physical attacks against gay men and men perceived to engage in homosexual conduct are often accompanied by expressions of intent to kill the victim, such as “Battyman fi dead” [gay men must die].<sup>14</sup> They are reluctant to appeal to the police for protection, as police routinely deny them assistance, fail to investigate complaints of homophobic violence, and arrest or detain men whom they suspect of being gay. In some cases, the police attack them and promote homophobic violence by others. Women who have sex with women are also

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negotiations, however. See Women’s Edge Coalition, “The Effects of Trade Liberalization on Jamaica’s Poor: an Analysis of Agriculture and Services,” June 2004, pp. 70-75.

<sup>11</sup> Hope Enterprises Ltd., “Report of National Knowledge, Attitudes, Behaviour & Practice Survey. Year 2000.” Prepared for the Ministry of Health, Jamaica. 2000.

<sup>12</sup> Human Rights Watch interview with Joanna W., Kingston, June 6, 2004.

<sup>13</sup> See Robert Carr, “On ‘Judgments:’ Poverty, Sexuality-Based Violence and Human Rights in 21<sup>st</sup> Century Jamaica,” *The Caribbean Journal of Social Work*, vol. 2 (July 2003), pp. 71-87 (finding that working class men who have sex with men are vulnerable to attack at any time in an atmosphere that sanctions and actively promotes such attacks); see also Cecil Gutzmore, “Casting the First Stone: Policing of Homo/Sexuality in Jamaican Popular Culture,” *Interventions*, vol. 6, no. 1 (April 2004), pp. 118-134 (arguing that Jamaican homophobia is exceptional for its overt virulence at the expressive level and arguably encourages documented tendency and practice toward homophobic violence, and that the combination of disregard for the law, including by police and other state officials, and the high level of violence in the society put working class men who have sex with men especially at risk).

<sup>14</sup> Human Rights Watch interview with Nicholas C., Kingston, June 9, 2004; Human Rights Watch interview with Dennis M., Montego Bay, June 21, 2004; Human Rights Watch interview with Vincent G., Kingston, June 14, 2004; Human Rights Watch interview with Curtis M., Ocho Rios, June 15, 2004; see also Robert Carr, “On ‘Judgments:’ Poverty, Sexuality-Based Violence and Human Rights in 21<sup>st</sup> Century Jamaica.”

targets of community violence and police harassment; and, as with men who have sex with men, their complaints of violence are often ignored by police.

Endemic violence by private actors and by Jamaican police and security forces, and inadequate state response to it, are problems faced by all Jamaicans.<sup>15</sup> Gays and lesbians are often on the front lines of such violence, however. Jamaica's sodomy laws, which criminalize consensual sex between adult men, are used to justify arbitrary arrest and detention, and sometimes torture, of men (and sometimes women) suspected of being homosexual. Political and cultural factors, including religious intolerance of homosexuality, Jamaican popular music, and the use of antigay slogans and rhetoric by political leaders, also promote violence and discrimination based on sexual orientation and gender identity. While many of these actions are protected under the rights to freedom of speech and religion, the Jamaican government has failed to confront them as root causes of widespread violence and discrimination based on sexual orientation and gender identity.

The church, a powerful social institution in Jamaica, denounces homosexuality as a sin and Jamaica's Christian pastors preach strongly against it, sometimes justifying their opposition in cultural, as well as religious, terms. For example, in opposing the ordination of an openly gay cleric (a position not unique to Jamaican clergy), a Kingston-based Anglican priest stated that there was "no way that a Jamaican Anglican contingency could begin to support such a decision," because "Jamaican society is intolerant of homosexuality and homosexual behavior."<sup>16</sup>

Jamaican dancehall music, a powerful cultural force in Jamaican society, reflects and reinforces popular prejudices against lesbians and gay men. Many dancehall musicians perform songs that glorify brutal violence and killing of men and women who do not

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<sup>15</sup> See United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, "Report of the Special Rapporteur, Asma Jahangir, submitted Pursuant to Commission on Human Rights Resolution 2003/53. Addendum. Mission to Jamaica," E/CN.4/2004/7/Add.2, September 26, 2003; Jamaicans for Justice, *The Jamaica Justice Report*, 2002; Families Against State Terrorism, "How Many More? Sample of Police Killings July 1999-May 2004," May 2004; Amnesty International, "'Until Their Voices are Heard.' The West Kingston Commission of Inquiry," July 2003; International Commission of Jurists, "Attacks on Justice," August 2002, pp. 222-225; Anthony Harriott, *Police and Crime Control in Jamaica: Problems of Reforming Ex-Colonial Constabularies* (Kingston, Jamaica: University of the West Indies Press, 2001); Horace Levy, *They Cry 'Respect!' Urban Violence and Poverty in Jamaica* (Kingston, Jamaica: University of the West Indies Press, 2001).

<sup>16</sup> "Kingston priests reject gay bishop. Jamaican society intolerant of homosexuality, says priest," *The Jamaica Observer*, October 30, 2003.

conform to stereotypical gender roles, and celebrate their social cleansing from Jamaica.<sup>17</sup>

High-level political leaders foster an atmosphere of violence toward men who have sex with men. During the 2001 elections, for example, the Jamaican Labour Party (the main opposition party) adopted “Chi Chi Man,” which celebrates burning and killing gay men, as its theme song.<sup>18</sup> The ruling People’s National Party responded by adopting as its campaign slogan for the 2002 national elections “Log On to Progress,” a reference to a popular song and dance (“log on”) involving kicking or stomping on gay men.<sup>19</sup>

Homophobic violence and discrimination, and state failure to respond to these abuses, violate internationally recognized human rights, including rights to privacy, nondiscrimination, and protection against violence.<sup>20</sup> These abuses are also closely linked to the spread of HIV/AIDS. Sodomy laws, which violate human rights to privacy and nondiscrimination,<sup>21</sup> undermine HIV/AIDS outreach to men who have sex with men. State failure to protect lesbian, gay, transgender, and bisexual people from violence and abuse by police and private citizens marginalizes them and inhibits them from seeking treatment for HIV and other sexually transmitted diseases that increase the risk of HIV transmission. The association of HIV/AIDS with homosexuality compounds the marginalization of many people living with HIV/AIDS, who face additional stigma and abuse through the presumption that they have engaged in illegal sex. It also keeps those at highest risk of the disease—including people who do not engage in homosexual sex—from seeking HIV-related information and health services.

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<sup>17</sup> Elephant Man’s “A Nuh Fi Wi Fault,” in which he sings that “When yuh hear a Sodomite get raped/but a fi wi fault/it’s wrong/two women gonna hock up inna bed/that’s two Sodomites dat fi dead” [“When you hear a lesbian getting raped/it’s not our fault/it’s wrong/two women in bed/that’s two sodomites who should be dead”], Beenie Man’s “I’m dreaming of a new Jamaica, come to execute all the gays,” and Babycham and Bounty Killer’s “Bun a fire pon a kuh pon mister fagoty, ears ah ben up and a wince under agony, poop man fi drown a yawd man philosophy” [“burn gay men ‘til they wince in agony, gay men should drown, that’s the yard man’s philosophy”] are typical of the exhortations to kill and maim lesbians and gay men in many popular dancehall songs. For further discussion of homophobia in Jamaican dancehall and in popular culture, see Cecil Gutzmore, “Casting the First Stone,” Tara Atluri, “When the Closet is a Region,” working paper no. 5, Centre for Gender and Development Studies, University of the West Indies, 2001; on dancehall and cultural formation, including the use of homophobia by dancehall artistes, see also Norman C. Stolzoff, *Wake the Town and Tell the People: Dancehall Culture in Jamaica* (Durham, N.C.: Duke Univ. Press, 2000).

<sup>18</sup> TOK, “Chi Chi Man,” on *Reggae Gold 2001* (2001) (lyrics cited in Appendix); see Garwin Davis, “Homophobia Remains High. Gays Remain in Seclusion, Health Officials Worry,” *The Jamaica Gleaner*, July 26, 2001.

<sup>19</sup> Elephant Man, “Log On,” on *LOG ON* (2002) (lyrics cited in Appendix).

<sup>20</sup> Jamaica has ratified international and regional treaties proscribing these actions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the American Convention on Human Rights. See discussion at pages 66-73 below.

<sup>21</sup> *Nicholas Toonen v. Australia*, Human Rights Committee, 50<sup>th</sup> Session, Case no. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (April 4, 1994).

The Jamaican Ministry of Health has acknowledged that homophobic violence and discrimination, and deep stigma associated with homosexuality, are among the factors driving the epidemic.<sup>22</sup> High-level officials from the Ministry of Health's HIV/AIDS program also recognize that Jamaica's sodomy laws create significant barriers to government provision of HIV services to men who have sex with men.

Providing HIV education and prevention services to men who have sex with men is extremely difficult because they are forced to remain invisible due to prejudice and abuse.<sup>23</sup> According to studies conducted by Jamaican and Caribbean regional health bodies, many Jamaican men who have sex with men lead dual lives and marry, have girlfriends, and have children while also engaging in same sex relationships.<sup>24</sup> Fear of being identified as homosexual may keep many people from seeking HIV testing and also from disclosing homosexual conduct as a possible risk factor if they test positive for HIV.<sup>25</sup> The invisibility of men who engage in homosexual conduct makes effective communication difficult, even among the men themselves. And the lack of information about their lives, practices, and community to guide public health interventions compromises an effective response to the epidemic.

In 1997, the mere suggestion that a task force was considering whether condoms should be issued to inmates and staff as part of HIV/AIDS prevention efforts in prison prompted a violent rampage and derailed HIV education efforts for years. After then Commissioner of Corrections John Prescod proposed that condoms be distributed to prisoners and correctional officers, correctional officers—apparently offended by the implication that by distributing condoms they, themselves, were also having sex with men—walked off their jobs. The officers did not return for several days, until they received an apology from the Commissioner and an agreement that condoms would not

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<sup>22</sup> See, e.g., Jamaican Ministry of Health, *Jamaica HIV/AIDS/STI National Strategic Plan 2002-2006*, January 2002, p. 10; see also Zadio Neufville, "Fear Among Gay Men Said to Fuel HIV/AIDS Cases," *Inter Press Service*, March 5, 2002; Garwin Davis, "Homophobia Remains High. Gays Remain in Seclusion, Health Officials Worry," *The Jamaica Gleaner*, July 26, 2001.

<sup>23</sup> *Ibid.*; Human Rights Watch interview with Dr. Yitades Gebre, executive director, Ministry of Health Program Coordination Unit, Kingston, June 23, 2004; Human Rights Watch interview with Dr. Peter Figueroa, chief, Ministry of Health Epidemiology Unit, Kingston, June 23, 2004.

<sup>24</sup> See Caribbean Regional Epidemiology Center, "Homosexual Aspects of the HIV/AIDS Epidemic in the Caribbean: A Public Health Challenge for Prevention and Control," 2000; Heather Royes, "Jamaican Men and Same-Sex Activities: Implications for HIV/STD Prevention," 1993. The subject of a Jamaican study of men who have sex with men and HIV/AIDS explained, "Society demands that a man should have a woman. To be labeled as gay or homosexual is a name no man likes. So as a result, men resort to play the game with same-sex and opposite sex activities." "Jamaican Men and Same-Sex Activities," p. 11.

<sup>25</sup> See Ministry of Health, "Report of the Behaviour Change and Communication Task Force," 2001 (cited in Patricia Watson, "Coping in the Dark: HIV Prevention among the MSM Community in Jamaica," *The Jamaica Gleaner*, May 5, 2002).



be distributed in prisons. Following the walkout by the correctional officers, inmates at two of Jamaica's largest prisons rioted. Sixteen prisoners were killed and more than fifty injured, apparently targeted because other prisoners believed that they were homosexuals.<sup>26</sup>

The popular misperception that HIV/AIDS is a homosexual disease impedes effective HIV prevention and poses serious risks for people living with HIV/AIDS. Health workers and AIDS outreach workers interviewed by Human Rights Watch reported that people with whom they worked—including hospital staff—did not believe that HIV was an issue for them personally because they were not homosexuals. A hospital-based health worker who provided HIV/AIDS prevention information and services to hospital staff and people in her town told Human Rights Watch, “When I tell them about HIV, they say . . . that HIV does not concern them, because it is a battyman [homosexual] disease.”<sup>27</sup>

The conflation of HIV/AIDS with homosexuality exposes people living with HIV/AIDS and HIV/AIDS educators to the same treatment meted out to men who have sex with men.<sup>28</sup> ASHE Caribbean Performing Arts Foundation, an NGO that works with youth, includes HIV/AIDS and sexuality education as an important part of its work. Its work on HIV/AIDS, however, subjected it to threats, as the following note sent to the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) in July 2004 illustrates:

The nasty act of homosexuality will not be tolerated here in Jamaica. Let me say it quick. One notable battyman have died recently we will be killing more as the days go by. To make it easy for you we will tell you

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<sup>26</sup> The riots were at the Tower Street Adult Correctional Centre in Kingston (Kingston general penitentiary) and St. Catherine's District Prison. Harold B., who was incarcerated at St. Catherine's District Prison during the riots, told Human Rights Watch that both prisoners and warders put his life at risk: “I couldn't walk free in prison because the warders would point me out [as a gay man]. . . . and prisoners were killing off gay men.” Human Rights Watch interview with Harold B., Kingston, June 9, 2004. See also Ministry of National Security and Justice, “Report of the Board of Enquiry into Disturbances at the Tower Street Adult Correctional Center and the St. Catherine Adult Correctional Centre Between 20<sup>th</sup>-23<sup>rd</sup> August, 1997,” March 9, 1998; Commission on Human Rights, Report of Special Rapporteur on Torture, “Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” U.N. Doc. E/CN.4/2002/76/Add.1, March 14, 2002, par. 829.; Amnesty International, “A Summary of Concerns: A Briefing for the Human Rights Committee,” October 1997, p. 14.

<sup>27</sup> Human Rights Watch interview, St. Ann's Bay, June 16, 2004. A 1993 study of Jamaican men who have sex with men and HIV/AIDS suggested that older bisexual men did not believe themselves at risk of HIV because they believed that HIV was a “gay” disease, and they did not identify as gay. Heather Royes, “Jamaican Men and Same-Sex Activities: Implications for HIV/STD Prevention,” 1993, p. 12.

<sup>28</sup> Robert Carr, “Stigmas, Gender and Coping: A Study of HIV+ Jamaicans,” *Race, Gender & Class*, vol. 9, no. 1 (2002), pp. 122-44.

where you can pick them up and who it was that we gunned down. It will not be robbery just purification. No batty man down here in Jamaica. . . . Fire burn them and them nasty living, JFLAG must crash. We declare war on all Gays and Homosexual. **Ashe dance group needs a bit of clean up now.** We will be killing gays and homosexuals daily now. War we say.<sup>29</sup> (*emphasis added*)

## Lesbians and HIV risk

*A woman without a man can be a target of both community disrespect and rape.*  
— Horace Levy, *They Cry 'Respect'! Urban Violence and Poverty in Jamaica*<sup>30</sup>

Although the risk of female-to-female HIV transmission is generally estimated to be small,<sup>31</sup> many women who have sex with women also have sex with men. Many Jamaican lesbians face strong pressure to establish relationships with men and to have children because doing so is a critical part of establishing their identity as adult women.<sup>32</sup>

Sexual violence against women and girls, a problem of grave proportions in Jamaica, has been identified by the World Health Organization as an important factor contributing to increased HIV incidence among women in the region.<sup>33</sup> Sexual violence may increase the risk of HIV and other sexually transmitted diseases for all survivors.<sup>34</sup> Forced or

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<sup>29</sup> E-mail communication from anotherkiller1@hotmail.com to J-Flag, July 14, 2004.

<sup>30</sup> (Kingston, Jamaica: University of the West Indies Press, 2001), p. 37.

<sup>31</sup> See Helena A. Kwakwa and M.W. Ghobrial, "Female-to-Female Transmission of Human Immunodeficiency Virus," *Clinical Infectious Diseases*, vol. 35, no. 3 (February 2003), pp. 40-41.

<sup>32</sup> See Robert Carr, "Stigmas, Gender and Coping: A Study of HIV+ Jamaicans," *Race, Gender & Class* (2002), vol. 9, no. 1, pp. 122-144 (discussing gender socialization in Jamaica).

<sup>33</sup> See Pan American Health Organization, "Gender and HIV/AIDS," <http://www.paho.org/english/hdp/hdw/GHIVFactSheetI.PDF> (retrieved November 3, 2004); see also United Nations Development Program, "National Reports on the Situation of Gender Violence Against Women: National Report, Jamaica," March 1999; Nancy Muturi, "Violence and HIV/AIDS in the Caribbean," presentation at the 2003 American Public Health Association meetings (arguing that high rates of sexual violence contribute to growing HIV/AIDS epidemic in Caribbean region).

<sup>34</sup> Women and girls are physiologically more vulnerable than men and boys to HIV infection during unprotected heterosexual vaginal sex. Factors that contribute to this increased risk include the larger surface area of the vagina and cervix, the high concentration of HIV in the semen of an infected man, and the fact that many of the other sexually transmitted diseases that increase HIV risk are often left untreated (because they are asymptomatic or because health care is inaccessible). Girls and young women face even greater risk than adult women, because the vagina and cervix of young women are less mature and are less resistant to HIV and other sexually transmitted infections, such as chlamydia and gonorrhea, that increase HIV vulnerability; because changes in the reproductive tract during puberty make the tissue more susceptible to penetration by HIV; and because young women produce less of the vaginal secretions that provide a

coerced sex creates a risk of trauma: when the vagina or anus is dry and force is used, genital and anal injuries are more likely, increasing the risk of HIV transmission. Forced oral sex may cause tears in the skin of the mouth, also increasing the risk of transmission. The presence of other sexually transmitted diseases also heightens HIV transmission risk.<sup>35</sup> Women who are or are perceived to be lesbians are at an even greater risk of rape, as they may be targeted for sexual violence based on both their gender and sexual orientation.<sup>36</sup>

## V. FINDINGS OF HUMAN RIGHTS WATCH'S INVESTIGATION

In Jamaica, state-sponsored homophobia and discrimination against homosexual men and women, sex workers, and people living with HIV/AIDS, the conflation of HIV/AIDS with homosexuality and sex work, and the misguided fear that HIV is transmitted by air or by casual contact are undermining an effective response to HIV/AIDS. Police not only harass and persecute people suspected of homosexual conduct, sex workers, and people living with HIV/AIDS. They also interfere with HIV/AIDS outreach to them. Men who have sex with men and people living with HIV/AIDS face serious violence and are often forced to abandon their homes and communities. Many are denied health care; some cannot even seek health services because they are denied public and private transportation services. And past experiences of discrimination, coupled with the fear that HIV status or sexual orientation will be disclosed and publicized, keep many people from seeking health care in the first instance.

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barrier to HIV transmission for older women. See, e.g., Global Campaign for Microbicides, "About Microbicides: Women and HIV Risk," <http://www.global-campaign.org/womenhiv.htm> (retrieved August 28, 2003); UNAIDS, "AIDS: Five Years since ICPD—Emerging Issues and Challenges for Women, Young People, and Infants," Geneva, 1998, p. 11; The Population Information Program, Center for Communications Programs, The Johns Hopkins University, "Population Reports: Youth and HIV/AIDS," vol. 23, no. 3, Fall 2001, p. 7 (citing studies).

<sup>35</sup> See United States Centers for Disease Control and Prevention, Fact Sheet: Prevention and Treatment of Sexually Transmitted Diseases as an HIV Prevention Strategy [online], <http://www.cdc.gov/hiv/pubs/facts/hivstd.htm> (retrieved October 27, 2003).

<sup>36</sup> See discussion in Section V, below; see also Makeda Silvera, "Man Royals and Sodomites: Some Thoughts on the Invisibility of Afro-Caribbean Lesbians," *Feminist Studies*, vol. 18, no. 3, Fall 1992, pp. 521-532 (reporting gang rape of women "suspected" of lesbianism in 1950s Jamaican towns).

## **Police abuse**

### ***Police abuse based on sexual orientation and gender identity***

#### **Verbal and physical abuse and inciting others to violence**

On the afternoon of June 18, 2004, a mob chased and reportedly “chopped, stabbed and stoned to death” a man perceived to be gay in Montego Bay.<sup>37</sup> Several witnesses reported to Human Rights Watch that police participated in the abuse that ultimately led to this mob killing, first beating the man with batons and then urging others to beat him because he was homosexual.

Fred L., thirty, described the incident as follows:

Me and another guy were sitting on the beach . . . While we were there, some little teenager was on the beach swimming, and Victor, the guy that was killed, was standing looking at the boy. The boy said, "Why are you looking me like that? You a battyman." Two rastamen<sup>38</sup> said, "Every day they come on the beach to look at men, battyboy them." Two policemen and a female police officer were there. The two male officers started to beat the man with batons. I turned to the female officer and asked, "What has he done wrong?" She turned to me and said, "Everyday me have to warn people about this guy coming on the beach. I'm going to lock him up." I said, "For what?" She didn't say. I said to her, "If he did something wrong, lock him up, don't beat him." [Victor] started to run from the two male officers toward the Old Fort Craft Market. The two policemen said, "Beat him because him a battyman."<sup>39</sup>

The crowd followed the police officers' lead, beating the victim and throwing bottles and stones at him.<sup>40</sup> Joseph W., twenty-six, told Human Rights Watch that he saw police hitting the victim with a baton and with their fists, and that once persons from the crowd started beating the victim:

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<sup>37</sup> Henry Bucknor, "Alleged Gay Man Chopped to Death in MoBay," *Western Mirror*, vol. 24, no. 72, June 19, 2004, p. 1.

<sup>38</sup> "Rastaman" is a term used to refer to men with dreadlocks (a hairstyle in which the hair grows and is left uncombed, and forms ropelike locks that hang down from the head) and to Rastafarians, a religious group whose members wear their hair in dreadlocks.

<sup>39</sup> Human Rights Watch telephone interview with Fred L., Montego Bay, July 6, 2004.

<sup>40</sup> *Ibid.*; Human Rights Watch interview with Dennis M., Montego Bay, June 21, 2004; Human Rights Watch interview with Joseph W., New York, June 28, 2004.

the police officers walked off. The crowd got thicker and more persons started hitting the guy. Then I saw the guy run out of the road into the town. . . . Then I woke up the next morning to hear that Victor was killed about a mile and a half from the beach.<sup>41</sup>

Police abuse is a fact of life for many men who have sex with men and women who have sex with women in all of the communities that Human Rights Watch visited in Jamaica. As in the incident described above, homophobic police violence can be a catalyst for violence and abuse by others. It is sometimes lethal. Police abuse is also profoundly destructive because it creates an atmosphere of fear sending a message to other lesbian, gay, bisexual, and transgender people that they are without any protection from violence.

Dennis M., twenty, lived in Montego Bay. He told Human Rights Watch:

Police always harass me. . . . They stop you and hear you talk a bit feminine [and ] they ask you personal questions like are you top or bottom and like that. . . . The last time this happened . . . two police came over and said “Battyman mus’ dead. You should be under the ground. You should not be living in Jamaica.” Not every police officer does that. Some police officers say it is not legal so you should curtail your behavior. But most of them, once they hear you talk feminish they begin to bitch [verbally abuse] you and a crowd comes around.<sup>42</sup>

Nicholas C., twenty-nine, was stopped by the police while walking down the street one evening in April 2004. The police asked him if he was a battyman and searched him. After finding condoms, lubricant, and gel, they became violent. “They said, ‘You a battyman. Battyman mus’ dead. Run before I shoot you.’” The police beat Nicholas C., hit him with batons, kicked him, and scattered his things on the ground.<sup>43</sup>

Several gay men reported that police abuse accelerated violence by others. Albert B., thirty-three, and his friends had been attacked by Kingston police a few days before Human Rights Watch met with him in June 2004. The police beat Albert B. and his

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<sup>41</sup> Human Rights Watch interview with Joseph W., New York, June 28, 2004. Joseph W. was an acquaintance of Victor Jarrett’s. A third witness told Human Rights Watch that he saw the police beating the victim and a crowd throwing bottles and stones at him as he ran from the police, and heard people shouting that the victim was gay and should be killed. Human Rights Watch interview with Dennis M., Montego Bay, June 21, 2004.

<sup>42</sup> Human Rights Watch interview with Dennis M., Montego Bay, June 21, 2004.

<sup>43</sup> Human Rights Watch interview with Nicholas C., Kingston, June 9, 2004.

friends, threw stones at them, called them “battymen,” “faggot,” and “nasty men” and drew their guns at them. The police actions drew the attention of other men, who came and beat them with boards, crying out “battymen.”<sup>44</sup>

Peter T., nineteen, was walking on the street with friends late in the evening of December 25, 2003. A police car drove by, and the policemen inside yelled, “Battymen, go home.” When Peter T.’s friend told the police to leave them alone, the police stopped their car, beat the men, then put them in the police car and drove them to another part of town. As they let the men out of the car, the police yelled, “Battymen, battymen, beat them,” and fired their guns in the air. This attracted the attention of a crowd of men armed with machetes, who followed the police instruction and beat them.<sup>45</sup>

Harold B., thirty-four, reported several incidents of police abuse in 2004, including an attack by police a few hours before his interview with Human Rights Watch. For Harold B., the public humiliation by police that incited others to violence was worse than physical attacks. “The worst thing is when police embarrass you whenever they see you in a crowd. When I’m walking on the street, the police yell, ‘battyboy, you catch men.’ When they do that, people start to look at you and some want to attack you.”<sup>46</sup>

Many of the men who have sex with men interviewed by Human Rights Watch reported having to flee their homes and communities because of homophobic violence by their neighbors or other residents of their towns. In some cases, police abuse of men suspected of homosexual conduct prompted violence by private actors, whose violence effectively evicted them from their homes.

Until early 2003, Peter T. lived with a group of gay men in a house in Kingston. He said that the police visited the house frequently, making derogatory comments about homosexuality and beating the residents. The police presence would attract others, who would join in the abuse. He told Human Rights Watch:

Police visit there a whole heap of time. . . . Every time the police come to the house, others would always show up. The police come there and start searching and then the next neighbor would come over and start in.

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<sup>44</sup> Human Rights Watch interview with Albert B., Kingston, June 9, 2004.

<sup>45</sup> Human Rights Watch interview with Peter T., Kingston, June 9, 2004. Machetes are common property in Jamaica and are used for agricultural work, for personal protection at home (in case of break-ins), and as weapons.

<sup>46</sup> Human Rights Watch interview with Harold B., Kingston, June 9, 2004.

Police would search in the closet, under the bed. If they see condoms, they say that we were fucking, we carry AIDS, battymen have AIDS, man on man fi dead. [gay men should be dead].<sup>47</sup>

By February 2003, the violence had escalated sufficiently to drive Peter T. and his housemates away. One afternoon, “people come and say we can’t sleep there tonight because we’re going to bomb it down.” Peter T. and his housemates fled, leaving without their belongings.<sup>48</sup>

Police abuse of gay men extends to men living with HIV/AIDS, whom they assume must be gay. Paul M., forty, told Human Rights Watch that in 2003, he was with a friend who had AIDS when the police approached and asked:

“Eh boy, how you look so, w’happen to you?” The person say, “I have AIDS and I want to take my medication.’ Police say, “you must be battyman. Eh boy, eh boy, move your AIDS self from here. Mind me turn mi gun pon yuh and kill you. [Watch out because I might turn my gun on you and kill you.]”<sup>49</sup>

### Arrests, detention, and prosecution

Gay and bisexual men and AIDS service providers told Human Rights Watch that men who are or perceived to be gay are routinely threatened with arrest, arrested, detained, and sometimes prosecuted because of their actual or perceived homosexuality or homosexual conduct. Human Rights Watch also documented cases of police arrest of women because of homosexual conduct.

Jamaica’s sodomy laws criminalize consensual homosexual conduct between adult men, prohibiting the “abominable crime of buggery, committed either with mankind or with any animal” and “gross indecency.”<sup>50</sup> “Buggery,” which generally refers to all acts of

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<sup>47</sup> Human Rights Watch interview with Peter T., Kingston, June 9, 2004.

<sup>48</sup> Ibid.

<sup>49</sup> Human Rights Watch interview with Paul M., Kingston, June 6, 2004.

<sup>50</sup> Offences against the Person Act, sections 76, 79. Caribbean states in the British Commonwealth inherited similar penal codes from the British colonial administration, some of which have since been amended or nullified. For example, Bahamian law proscribes consensual same sex sexual activity between adults in public but not in private. Sexual Offences and Domestic Violence Act of the Bahamas, section 16(2)(b). Jamaican and Guyanese laws are silent on lesbianism, while all acts of homosexuality are illegal in Trinidad and Tobago, Barbados and St. Lucia. “Sodomy Laws in the Carriibbean,” <http://www.sodomylaws.org/world/caribbean.htm> (retrieved November 3, 2004). In 2000, Britain issued an order repealing sodomy laws in its Overseas Territories, which it had to do to meet its own international treaty

anal intercourse and bestiality, is a felony punishable by imprisonment with hard labor for up to ten years.<sup>51</sup> “Gross indecency,” generally interpreted to mean any sexual intimacy between men short of anal intercourse, is a misdemeanor punishable by up to two years with hard labor.<sup>52</sup>

Jamaican law provides broad latitude for police to detain individuals on ill-defined charges, including suspicion of buggery or gross indecency. The Offences against the Person Act permits a police officer to arrest without warrant any person found “loitering in any highway, yard, or other place” between 7 p.m. and 6 a.m. the following morning whom the constable has “good cause to suspect of having committed, or being about to commit any felony” proscribed by the Act.<sup>53</sup> Jamaican police are also empowered to arrest without warrant and based on charges made by any “credible person” any person loitering in a public place to solicit another for prostitution.<sup>54</sup>

It is impossible to say how frequently sodomy laws are enforced against men engaged in consensual same sex contact in Jamaica, but by some accounts, they are in active use.<sup>55</sup> Lawson Williams, a Kingston attorney who has represented men charged under these statutes, told Human Rights Watch:

I always seem to have a case of a practicing gay man who is in court on account of his homosexuality. It's either that he and another have been busted and are jointly charged for [consensual] buggery, he's been charged in circumstances where someone has alleged forcible or

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obligations under the European Convention on Human Rights and the International Convention on Civil and Political Rights. This order affected laws in Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands. “U.K. Ends Territories’ Sodomy Laws,” *PlanetOut*, December 22, 2000. Prime Minister P.J. Patterson’s opposition to foreign intervention to repeal Jamaican sodomy laws is ironic, as it is not the same-sex behavior, but the laws that prohibit it, that are the colonial imposition.

<sup>51</sup> *Ibid.*, section 76. According to Jamaican lesbian, gay, bisexual and transgender rights advocates, most buggery prosecutions involve adult men suspected of engaging in consensual anal sex. Jamaica Forum for Lesbians, All-Sexuals and Gays, “Parliamentary Submission with Regard to ‘An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and for Connected Matters,” [http://www.jflag.org/programmes/parliamentary\\_sub.htm](http://www.jflag.org/programmes/parliamentary_sub.htm) (retrieved August 24, 2004).

<sup>52</sup> Offences against the Person Act, section 79. This provision follows Victorian law on “gross indecency,” which was known as the “blackmailer’s charter,” because a man could be convicted on the strength of a blackmailer’s accusation. H. Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (London: Heinemann, 1971), p. 136.

<sup>53</sup> Offences against the Person Act, section 80.

<sup>54</sup> Towns and Communities Act, sections 3(r), 4 (empowering police to arrest without warrant based on charges made by any “credible person” that certain offences committed within view of charging party).

<sup>55</sup> In June 2004, Human Rights Watch requested police statistics on arrests, convictions and charges imposed under laws proscribing sodomy and prostitution, but as of this writing has not received them.



unwarranted homosexual advances against him, or there is an allegation that he has had sex with a minor. . . . Too many of the charges of sex with a minor are motivated by the prejudice that gay men are naturally inclined to have sex with underage boys, and they fail because of a lack of physical or credible evidence.

Usually, the police indict gay men for buggery. This is very difficult to prove in the context of consensual anal sex and there is seldom a successful prosecution for buggery. The damage is in the terror of the charge itself. Oftentimes, the defendant pleads guilty to the lesser offence of gross indecency, to abbreviate the embarrassment. Or if the defendant is adamant that he will not compromise, very often the charge is dismissed for lack of evidence. But the damage is in the charge. It is standing in the dock in the face of judge, police and sometimes other litigants, where it is known that you are charged as a battyman.<sup>56</sup>

High-level police officials claimed that sodomy laws seldom were enforced. Clarence Taylor, assistant commissioner of police in charge of administration, said that sodomy cases among adults were rare.<sup>57</sup> A St. Ann's Bay constable told Human Rights Watch, "We occasionally arrest homosexuals. If they're caught in the act, we charge them with buggery."<sup>58</sup> A high-level police officer at a Kingston divisional police headquarters told Human Rights Watch in June 2004 that it had been "many moons since we have had an arrest for solicitation, buggery, or gross indecency."<sup>59</sup> A high-level police officer at a second Kingston divisional police headquarters said that he could not recall a case of buggery, and that the last one may have been three or four years before.<sup>60</sup>

Regardless of how often buggery and gross indecency laws are actually enforced, the arrests themselves send a message.<sup>61</sup> The Jamaican press publishes the names of men charged with "consensual" buggery and gross indecency, shaming them and putting them at risk of physical injury.<sup>62</sup> And the threat of criminal sanctions for homosexual

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<sup>56</sup> Human Rights Watch e-mail communication with Lawson Williams, August 10, 2004. "Lawson Williams" is a pseudonym.

<sup>57</sup> Human Rights Watch interview with Clarence Taylor, Kingston, June 18, 2004.

<sup>58</sup> Human Rights Watch interview, St. Ann's Bay, June 16, 2004.

<sup>59</sup> Human Rights Watch interview with K.K. Knight, senior police superintendent, Kingston, June 18, 2004.

<sup>60</sup> Human Rights Watch interview with Newton Ames, superintendent of police, Kingston, June 18, 2004.

<sup>61</sup> Human Rights Watch does not oppose punishment for sexual violence or coercion that would fall within the sodomy law. We urge Jamaica to amend the criminal law so that sexual violence or coercion against and between men is subject to equal punishment as sexual violence against women.

<sup>62</sup> See, e.g., *The Jamaica Observer*, January 11, 2003; *The Star*, January 18, 2000.

conduct is itself powerful. Buggery and gross indecency laws provide a means to harass, arrest, and in some cases imprison individuals. They also perpetuate social prejudices.

Allen C., twenty-two, said that he was arrested and charged with buggery after someone reported to the police having observed him having sex with another man. He was taken to the police station, where police officers urged him to confess to a charge of buggery while beating him with a stick and chanting “buggery fi dead” [people who commit buggery should be killed]. The police told him that he would be examined by a doctor in the rape unit to see if he was the receiving partner in anal intercourse. He was placed in a jail cell, where he was cursed out as a “battyman” by other inmates. When he was released to the custody of his mother, the police ensured that the abuse would continue: when Allen C. left the station, they announced the charges to people outside.

Although the incident took place in 1999 (five years prior to his interview with Human Rights Watch), Allen C. was still suffering its consequences. He told Human Rights Watch that since this arrest, “The whole community find out [that I’m homosexual.] People put up a hand like a gun to their head and say, ‘battyman fi dead,’ and throw stones at me. I can’t complain to police, because they know I am a homosexual and will turn on me. Most of the time, I just keep to myself and my friends who are homosexual.” He remained worried about being charged again with buggery and imprisoned.<sup>63</sup>

A number of witnesses said that they thought that some element of their outward behavior, dress, or appearance was the motivation for police to arrest or detain them. Ryan N., twenty-three, was interrupted by police while talking with friends. “Police started saying I’m gay because how me talks. Police took me to the station and threatened to charge me with gross indecency. I asked him, ‘What is gross indecency? Can you define gross indecency?’ Police say, ‘When two men start to play with their penis.’ I say, ‘Was I doing that?’ When they realized that I’m not stupid about the law and started to quote the law to them, the police started threatening to lock me up and then men could screw me up in prison.” Ryan N. was charged with obstructing police on duty and resisting arrest.<sup>64</sup>

Several gay men told Human Rights Watch that they had been stopped by police while in a car with male friends. Harold B. recalled being stopped by police twice in the first half of 2004, once the week before his interview with Human Rights Watch. “If you’re

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<sup>63</sup> Human Rights Watch interview with Allen C., Kingston, June 8, 2004.

<sup>64</sup> Human Rights Watch interview with Ryan N., Kingston, June 9, 2004.

driving with a friend, police stop you and say, ‘battyman, what are you doing in the car—fucking?’ Try to argue with them and they’ll take you to the station.”<sup>65</sup> Vincent G. was present in early 2004 when police approached a car in which two male friends of his were sitting, arrested them and threatened to charge them with buggery. His friends were taken to the police station and then released.<sup>66</sup> Ryan N. was parked in a car, eating burgers with several friends when police approached them, told them they had observed them kissing, and made them get out of the car and show their documents.<sup>67</sup>

Police also use other laws as a pretext to stop men based on nonconforming gender identity. Patrick D., twenty-five, told Human Rights Watch about a 2004 incident: “I was going to a costume party and wearing a dress. The police stop me and tell me to hold up my head. I do and they see I am a man. I tell them I am entering a costume party competition. They radio other cars and accuse me of wanting to rob someone. They let me go, but they come and look and talk and call me ‘battyman.’”<sup>68</sup>

Women who have sex with women are also targeted for arrest because of homosexual conduct. Lillie P., thirty-six, told Human Rights Watch that she was arrested while parked in a car with her girlfriend on December 31, 2002. “On New Year’s Eve, myself and my girlfriend went to a lovers’ spot after a party. There were a lot of other cars there, but the police approached us.” The police called Lillie P. and her girlfriend “dirty lesbians,” threatened to charge the women with indecent and lewd exposure and asked them for money. When the women refused to offer a bribe, the police arrested them and took them to the Portmore police station. At the station, the police superintendent told the women that they were not going to be charged, but that their names would be recorded in a register. “It was scary at first because at this point I was not out to my parents and I was going to start a job soon and I was afraid that it was going to jeopardize it. I was concerned for my girlfriend . . . She works for [a government ministry] and could suffer problems if they find out she is gay.”<sup>69</sup>

## Extortion and theft

Men who have sex with men are easy targets for extortion by both police and private actors. Discriminatory police practices, fear that their homosexuality might be publicized, the paucity of available legal assistance, and the possibility of being

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<sup>65</sup> Human Rights Watch interview with Harold B., Kingston, June 9, 2004.

<sup>66</sup> Human Rights Watch interview with Vincent G., Kingston, June 14, 2004.

<sup>67</sup> Human Rights Watch interview with Ryan N., Kingston, June 9, 2004.

<sup>68</sup> Human Rights Watch interview with Patrick D., Kingston, June 9, 2004.

<sup>69</sup> Human Rights Watch interview with Lillie P., Kingston, June 19, 2004.

prosecuted themselves combine to keep men who have sex with men from filing complaints or seeking redress when they are victims of extortion.

Several gay men told Human Rights Watch that police demanded money from them and arrested or beat them when they refused to pay. Harold B. recalled being stopped twice by police in 2004 and accused of having sex with another man. On one occasion, Harold B. and a friend were arrested and threatened with a charge of buggery after they refused to pay money to police. They were taken to the police station, where, after being questioned by the arresting officers' superior, they were ultimately released.<sup>70</sup>

Two days before his interview with Human Rights Watch, police stopped Lawrence O. and two friends outside a shopping center in New Kingston. According to Lawrence O., the police yelled "battymen" and told them that they could avoid arrest by paying a bribe. When no one produced any money, the police started to shout and to beat Lawrence O. and his friends, attracting the attention of shopping center security guards, who, hearing the commotion, joined the police in beating the men.<sup>71</sup> A Jamaica AIDS Support outreach worker reported another case in which a gay man who complained to police that he was being blackmailed had to pay police to keep them from disclosing his sexual orientation.<sup>72</sup>

Lawson Williams, a Kingston attorney, represented several men who had been blackmailed with accusations of buggery or gross indecency by men who had committed crimes against them. He said that fear of prosecution under buggery laws and the dire implications of charges of buggery prevented blackmail victims from even contemplating seeking the protection of the state.

The sodomy laws are used to silence MSM, to keep them in check. They allow criminal acts to be committed against MSM with impunity. People know—thieves, crooks, layabouts—that if they commit a crime against you, they can play the "battyman card" to silence you. I've seen this in my cases. And this builds on the perception that gay men are saps, not only because they're effeminate, but because their vulnerability is supported by state institutions—police, courts—that don't protect them.

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<sup>70</sup> Human Rights Watch interview with Harold B., Kingston, June 9, 2004.

<sup>71</sup> Human Rights Watch interview with Lawrence O., Kingston, June 19, 2004.

<sup>72</sup> Human Rights Watch interview with Paul M., Kingston, June 6, 2004.

In a 2004 case, for example, a man charged with car theft claimed that he had taken the car from its owner after having been forced to have anal sex with him. In his statement to the police, he admitted driving the car away without permission, stating that he had meant to drive to the police station to report having been bugged but had been too ashamed to do so. The car owner was subsequently charged with buggery. His accuser never appeared in court to prosecute his complaints, and the buggery charges against the car owner ultimately were dropped. As of this writing, the car has not been recovered.<sup>73</sup>

## Police failure to provide protection from violence and abuse

*We haven't had any reports about violence against homosexuals. Most of the violence against homosexuals is internal. We never have any cases of gay men being beaten up. I know that there is a sort of revulsion against homosexuals, lesbians, but evidence does not substantiate that there is any level of violence perpetrated against them.*

— K.K. Knight, senior superintendent of police, Kingston, June 18, 2004

*If you make a police report, they start by making you instead of the victim the person that is wrong. The police ask, 'Why all of a sudden they calling you a battyman? How do they know you a battyman?' These kinds of questions trivialize the problem.*

— Adrian S., thirty, Kingston, June 13, 2004

Men who have sex with men and women who have sex with women repeatedly told Human Rights Watch that they did not bother to report homophobic violence because they did not believe that police would take any action to address it, especially in cases where police were the perpetrators. In some cases, attempts to make complaints were ignored altogether; in others, police investigation efforts inspired little confidence, fueling concerns that police cared little for the lives and wellbeing of homosexual men and women.

Joseph W., twenty-six, lived with two male friends in the Kingston area. In December 2002, a policeman came to their house and told them that he had received a report that

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<sup>73</sup> Human Rights Watch interview with Lawson Williams, Kingston, June 23, 2004 and statements of complainant and accused to police. A “buggery” defense appears to have been used by a man charged with felonious wounding, who claimed he stabbed another man after having been forced by him to have sex in the car at knife point. John Tavares, “Buggery, Case Continues June 22,” *The Jamaica Observer*, June 4, 2004.

they were gay. The policeman forced his way past the security gate and onto the veranda and threatened to kill Joseph and his roommates if they did not leave. Joseph attempted to lodge a complaint with the police later that day. When he told police that he lived with two other men, they laughed and said that there was nothing that they could do to assist him. The following day, Joseph went to the Police Public Complaints Authority, the independent state authority charged with investigating allegations of police abuse, which likewise refused to investigate the case or otherwise provide assistance. After the initial incident, a crowd gathered around the house hurling antigay insults, and the men were forced to move—both because they feared for their safety and because their landlord was concerned about possible damage to his property.<sup>74</sup>

The night before Lawrence O.'s interview with Human Rights Watch, a friend of his was robbed and stabbed in front of him. The police came to the scene, retrieved the knife, and left without investigating the incident or assisting the injured man in obtaining medical care. "The guy [the assailant] told the police that we were battymen. So the police just left. The police should have done something. [My friend] was cut and he was bleeding. . . . They looked at us and said, 'you are all battymen.' Then they took the knife [from the assailant] and told him to go."<sup>75</sup>

In Ocho Rios, several gay men said that there was a man in town who frequently harassed them and other gay men, threatening to kill them, extorting money from them, and inciting others to commit violent acts against them. Leroy J., thirty-three, said that in May 2004, when he tried to report this harassment to the police, the police chased him out of the station and threatened to attack him. "I went to the police to report these threats. They wouldn't come. They said that we don't have a right to live in our own country and that they would chop us up and kill us."<sup>76</sup>

When he met with Human Rights Watch in June 2004, Allen C. said that people often threw stones and bottles at him when he walked down the street. He had not complained about this to the police, however, believing that a prior buggery charge had effectively stripped him of police protection. "Because of the [buggery charge], police think I'm homosexual. I can't complain about stone throwing, because then they'll turn on me."<sup>77</sup>

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<sup>74</sup> Human Rights Watch interview with Joseph W., Kingston, June 11, 2004.

<sup>75</sup> Human Rights Watch interview with Lawrence O., Kingston, June 19, 2004.

<sup>76</sup> Human Rights Watch interview with Leroy J., Ocho Rios, June 16, 2004.

<sup>77</sup> Human Rights Watch interview with Allen C., Kingston, June 8, 2004.

Edward P., twenty-two, said that: “Sometimes I can’t walk in peace. People shout battyman and all this stuff. They keep saying that I’m a battyman and men will fuck me and that I can’t walk in this neighborhood. And sometimes if I turn they will try to attack me.” He has not registered a complaint with police, however. “To be honest, I feel scared because police themselves will try to bitch you and even tell you to leave the police station.”<sup>78</sup>

Nicholas C. testified that people in the town where he had lived were constantly threatening to kill him because he was gay, forcing him to move from the town. He also testified that he had been beaten by police on more than one occasion. When asked about lodging a complaint about his neighbors or the police, Nicholas replied, “Complain? No, because I don’t know who to complain to. Police [and homophobic people in town] are the same thing.”<sup>79</sup>

Albert B. said, “It doesn’t make sense to complain because you will not get anything from them. One time, a guy accused me of being gay and wanted to beat me. The policemen drove around and asked me if I did it.”<sup>80</sup> In May 2004, Paul M. and his housemates were driven out of his house by a group of men armed with machetes. “I did not complain to the police. When it comes to homosexuals, we have no rights.”<sup>81</sup>

Some police denied that homophobic violence was a problem in Jamaica. K.K. Knight, senior superintendent at the Kingston police station charged with investigating Brian Williamson’s murder, told Human Rights Watch: “Most of the violence against homosexuals is internal. We never have any cases of gay men being beaten up.”<sup>82</sup> According to Knight, gay men inflict injury on each other in crimes of passion: “Usually in homosexual cases, you can see some kind of passion by the amount of injury inflicted and the scars on the body, and the sort of information you get from witnesses.”<sup>83</sup> Newton Ames, police superintendent at St. Andrew parish south divisional headquarters, testified that “we have never had any report of community violence against homosexuals. [Police involvement] is not a thing that people want in these areas. People stay away from accusing someone of homosexuality or getting involved in it.”<sup>84</sup>

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<sup>78</sup> Human Rights Watch interview with Edward P., Ocho Rios, June 16, 2004.

<sup>79</sup> Human Rights Watch interview with Nicholas C., Kingston, June 9, 2004.

<sup>80</sup> Human Rights Watch interview with Nicholas C., Kingston, June 9, 2004.

<sup>81</sup> Human Rights Watch interview with Paul M., Kingston, June 6, 2004.

<sup>82</sup> Human Rights Watch interview with K.K. Knight, senior superintendent of police, Kingston, June 18, 2004.

<sup>83</sup> Ibid.

<sup>84</sup> Human Rights Watch interview with Newton Ames, superintendent of police, Kingston, June 18, 2004.

An individual with close links to law enforcement agencies who had experience working at murder scenes said that:

abuse of gay men is by gay men. From my experience, all gays are killed the same way. If you go to a crime scene, you can tell if a person is gay or straight by how they are killed. Gay men, they are more brutally slain—by a knife, strip them up.<sup>85</sup>

There is evidence that supports the claim that in many countries, gay, lesbian, bisexual and transgender people are victims of serious violence, including murder, because of their sexual orientation and that these murder victims often undergo exceptional brutality, sometimes called “overkill” (extreme harm beyond that necessary to cause death).<sup>86</sup> But this evidence does not support any conclusion that gay men commit such savage acts of violence against other gay men. The “overkill” stems from hate. The misperception that gay men kill each other in brutal crimes of passion is a common barrier to investigating “gay murders” not only in Jamaica but in many parts of the world.<sup>87</sup>

Percival Buddan, the officer in charge of HIV/AIDS training for the Jamaican police force, acknowledged that members of the police force shared homophobic attitudes common in the general community. According to Buddan, “The police force has a culture. If they know you’re homosexual, you’ll definitely be discriminated against and stigmatized.”<sup>88</sup> However, in some cases, police had helped protect against assault. A St. Ann’s Bay police officer said that he knew of an incident where police had intervened to

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<sup>85</sup> Human Rights Watch interview, Kingston, June 10, 2004. A newspaper columnist commenting on Brian Williamson’s murder wrote that “based on cursory investigations, all indications are he was murdered by someone ‘in-house.’ The police report suggests that he was chopped all over his body. This is fairly consistent with previous murders in Jamaica involving male homosexuals.” Mark Wignall, “Those Flamin’ Homosexuals,” *The Daily Observer*, June 17, 2004. See also S. Escoffery, “Letter of the day – Outrage! and hypocrisy in dancehall attack,” *The Jamaica Gleaner*, October 6, 2004 (arguing that in Jamaica, “98 per cent, if not all crimes against homosexuals are homosexual on homosexual crimes”).

<sup>86</sup> See, e.g., “Homicide in Homosexual Victims: A Study of 67 Cases from the Broward County, Florida, Medical Examiner’s Office (1982-1992), with Special Emphasis on ‘Overkill,’” *The American Journal of Forensic Medicine and Pathology*, vol. 17, no. 1 (March 1996), pp. 65-69 (comparing number and extent of injuries in homosexual and heterosexual homicide victims and finding that homosexual homicides were more violent); Douglas Victor Janoff, “Tales from the Turkish Crypt: Ottawa Researcher Explores Homophobia, Violence and Murder,” *Capital Xtra!*, July 1, 2004 (reviewing studies of serious violence against lesbian, gay and transgender people).

<sup>87</sup> See, e.g., Human Rights Watch and International Gay and Lesbian Human Rights Commission (IGLHRC), *Public Scandals: Sexual Orientation and Criminal Law in Romania* (New York: Human Rights Watch and IGLHRC, 1998), pp. 65-66.

<sup>88</sup> Human Rights Watch interview with Percival Buddan, sub-officer in charge, Jamaican Constabulary Force First AID Center, Kingston, June 18, 2004.



stop people from stoning gay men.<sup>89</sup> A few gay men also testified that police had assisted them in leaving dangerous situations, such as escorting them from their homes when armed men were threatening them with serious violence.

On June 9, 2004, Brian Williamson, a prominent gay rights activist and one of the very few people in Jamaica to appear openly in the media as a gay man, was murdered in his home, his body mutilated by multiple knife wounds. Because of his international prominence as a gay rights advocate, his middle-class status, and his dual Canadian/Jamaican nationality, members of the lesbian, gay, bisexual, and transgender community initially were hopeful that police would take special care in the investigation of his murder. But police actions from the start raised cause for concern.

Williamson's body was discovered on the floor of his apartment, reportedly with stab wounds to his neck and body. After the police left the crime scene, Ernest N., thirty-six, a friend of Williamson's, went to the apartment to clean up. He told Human Rights Watch that the apartment was unlocked and the door open. A few feet from where the body had lain, Ernest N. found a ratchet knife and an ice pick, both of which had blood on them.<sup>90</sup>

A witness told police that he had seen two men at the apartment the morning of the murder. The police detained one of the men, nicknamed 'Wingee,' and called the witness to identify the suspect in a lineup. As the witness passed the lockup on his way to the lineup, inmates called out, "See the battyboy who has come for Wingee. Him fi dead. [He should be dead.]" At the lineup, nine individuals were presented with towels on their heads and white cream (apparently toothpaste) on their faces, making them virtually unrecognizable. According to the witness, "I never saw that guy with anything on his head or face so I couldn't identify him." The witness also stated that even one of the police officers at the station told him that he had never seen participants in a lineup disguised in this way.<sup>91</sup>

### ***Police abuse of sex workers***

Male and female sex workers interviewed by Human Rights Watch reported being harassed by police, who apparently regarded them as a source of both money and sex. Because soliciting sex is illegal, police face little risk of censure for these actions. Male sex workers face the double condemnation of homosexual conduct and prostitution.

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<sup>89</sup> Human Rights Watch interview, St. Ann's Bay, June 16, 2004.

<sup>90</sup> Human Rights Watch interview with Ernest N., Kingston, June 11, 2004.

<sup>91</sup> Human Rights Watch interview with Ellis R., Kingston, June 25, 2004.

These abuses may increase HIV risk for sex workers by driving them further underground and away from potentially lifesaving information on HIV prevention and other health services.

Male and female sex workers told Human Rights Watch that police extorted sex and money in exchange for not arresting them. Vincent G.'s experience was typical of the accounts we heard. "Police ask for sex and they don't pay. Last time I was with a policeman was about a month ago. Police said I had to give him a blow job. I had to do this because I didn't want to get charged."<sup>92</sup>

An outreach worker with Jamaica AIDS Support told Human Rights Watch: "Sex workers are arrested, but not as often as gay men. Very naughty police will try to get sex off of the ladies so they won't get locked up. The ladies say it happens often. . . . Gay men selling sex [are treated] worse than females. They [police] beat them up bad. This happens often."<sup>93</sup>

A number of sex workers said that they could not report violence or abuse, in part because they risked abuse by the police if they did so. Jennifer S. told Human Rights Watch that police beat her and asked her for money and sex, and clients stole money from her. When asked whether she had ever reported such abuse to the police, she said, "Complain? I can't do that because they will not listen to us. . . . 'Come out of the station. You're nothing but a whoring girl.' This is what police say when we try to complain."<sup>94</sup> Vincent G. said that when one of his clients stole money from him, "I couldn't complain to the police about it because I am homosexual."<sup>95</sup>

### ***Police interference with access to HIV/AIDS information and health services***

Jamaican government policy recognizes that the most effective and indeed in some cases the only possible AIDS educators for members of marginalized groups, such as men who have sex with men and sex workers, are their peers.<sup>96</sup> But peer educators and others who reach out to marginalized groups are often held in the same contempt as the

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<sup>92</sup> Human Rights Watch interview with Vincent G., Kingston, June 14, 2004.

<sup>93</sup> Human Rights Watch interview, Kingston, June 6, 2004.

<sup>94</sup> Human Rights Watch interview with Jennifer S., Kingston, June 9, 2004.

<sup>95</sup> Human Rights Watch interview with Vincent G., Kingston, June 14, 2004.

<sup>96</sup> See, e.g., Ministry of Health, "Jamaica HIV/AIDS/STI National Strategic Plan 2002-2006," January 2002; see also Pan-Caribbean Partnership on HIV/AIDS, "The Caribbean Regional Strategic Framework for HIV/AIDS 2002-2006," March 2002.

individuals with whom they work and subjected to discrimination and violence at the hands of the government. Human Rights Watch documented numerous cases of police harassment of HIV/AIDS workers providing services to men who have sex with men and to male and female sex workers. In some cases, the very possession of condoms—a key tool in the work of HIV prevention—triggered police harassment of HIV/AIDS educators and of sex workers.

### Men who have sex with men

The Ministry of Health relies on the NGO Jamaica AIDS Support (JAS) to provide HIV/AIDS information and services to men who have sex with men.<sup>97</sup> Dr. Yitades Gebre, executive director of Jamaica's Program Coordination Unit at the Ministry of Health, acknowledged that the ministry had "identified MSM as a target population, but we're not reaching them." He explained "because the laws impeded the Ministry of Health from working with MSM, we give the work to JAS. To date, we don't promote direct programs or services to MSM as a group because the existing laws impede this work [and] because [of] the high level of stigma and discrimination, they're not open to getting services through the public sector."<sup>98</sup> The police however, are actively impeding JAS' government-supported efforts.

A JAS outreach worker told Human Rights Watch that: "police always try to get in the way of handing out condoms. . . . Police say, 'how can you be handing out condoms to battymen. . . . We do not encourage you to do this work because battymen fi dead. [gay men should be dead].'"

He recounted two arrests for handing out condoms to MSM:

In May 2003, I was in an area known to be frequented by gay men . . . I was there handing out condoms on the main road. It was me alone, at about 9:30 in the evening. I was issuing condoms and about five guys were there and a police car drove up. There were four police in the car. They asked, "What are you doing here? You must be battymen." I say that I am on my job, issuing condoms. They turned to me and said, "How come you issuing condoms to battymen?" I say it's a part of my

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<sup>97</sup> Jamaica AIDS Support is an NGO that also provides HIV/AIDS information and services to men and women who sell sex for money and engage in transactional sex, hearing-impaired individuals, and inmates, ex-convicts and correctional services staff. This work is funded by the Ministry of Health through the Global Fund and USAID. The Caribbean Epidemiology Centre (CAREC) and several United States NGOs also support condom distribution work. Jamaica AIDS Support, "Targeted Intervention," <http://www.jamaicaaidsupport.com/services/intervention.htm> (retrieved August 1, 2004).

<sup>98</sup> Human Rights Watch interview with Dr. Yitades Gebre, Kingston, June 23, 2004.

job. . . . He turned to me and said he was going to lock me up because I am not supposed to be issuing condoms to battymen. . . . Then his friend said “come and charge the boy for loitering.” And then they said for me to get in the car and they took me to the police station.

When I was in the police station, I was placed in a holding area and I asked them to call [my supervisor] at my workplace. They didn’t give me the call right away. I was there for about three hours. And every police comes into the station, the policemen that arrested me would say to their friends, the other policemen, “the boy handing out condoms to battymen.” Some will talk some abusive things, like “boy, are you gay? You a battyman too? Battyman fi dead!” Then I asked them again for the call because I wanted to know if I am going to be charged because I am here for over three hours now. After a long deliberation, they let me go. When I was released, they told me, “Go home and stop helping the battymen. And we hope we don’t catch you handing out condoms to battymen.”<sup>99</sup>

In October 2003, this outreach worker was again arrested and charged with loitering for handing out condoms to men:

I was out on the main road handing out condoms in an area known to be a gay area and the police came down and the men began to run. I stood my ground and I had a condom in my hand and the policemen asked me what I was doing there and the police asked me if I were a battyman. I had three boxes of about 100 condoms in my hand. . . . They said that they were going to charge me with loitering, but if they see me in the act they would kill me. And they said that they were going to charge me for loitering because they knew that I was a battyman because only a battyman would be handing out condoms to men. . . . I was accused of buying sex and being a battyman and charged with loitering.<sup>100</sup>

The outreach worker was called to appear in court twice, but the charges ultimately were dropped.<sup>101</sup>

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<sup>99</sup> Human Rights Watch interview with [name withheld on request], Kingston, June 18, 2003.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

## Sex workers

Jamaica AIDS Support also provided condoms and HIV/AIDS education to male and female sex workers who operated in the Kingston, Montego Bay, and Ocho Rios areas, including street sex workers, go-go dancers, and massage parlor workers. A Kingston-based JAS outreach worker explained: “We have educational sessions with ladies and men two nights of the week on the road. We hand out condoms and pamphlets and talk a little about safe sex and what we can do to help them. We also invite them to JAS to do free HIV testing, have a place to chat.”<sup>102</sup> He told Human Rights Watch that he had been stopped by police several times while handing out condoms on the road to sex workers. Once he was once accused of being a sex worker and detained overnight in jail.<sup>103</sup>

Steve Harvey, JAS’ coordinator of targeted interventions in Kingston, said that he had been stopped by police while doing outreach to sex workers several times in 2003 and 2004. On one occasion, the police accused him of illegal soliciting; other times, police stopped and searched him, his colleagues, and their car.<sup>104</sup>

Police crackdowns on sex work—of which there were at least two in Kingston in the first five months of 2004—hampered HIV/AIDS prevention work by undermining outreach workers’ ability to distribute condoms and to discuss HIV/AIDS and other health services with sex workers. Harvey told Human Rights Watch:

Sometimes the police decide that they are going to crack down on sex work, and they do it for two weeks. During that time, the girls are afraid. Some of them won’t come onto the streets, some of them will go to other places, and some of them are in hiding so when you go down the streets, you can’t see them. It hampers HIV/AIDS prevention work. We really don’t have the time then to talk to the girls.<sup>105</sup>

Police also threatened sex workers that possession of condoms could be used as evidence of their illegal activity. Joyce D., forty-one, had been selling sex on the street since she was a young girl. She told Human Rights Watch that police regularly took condoms from her, threatening to use them as evidence against her if she refused to

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Human Rights Watch interview with Steve Harvey, coordinator of targeted interventions, Jamaica AIDS Support, Kingston, June 6, 2004.

<sup>105</sup> Ibid.

provide them with sex. “Police say, ‘hey girl, if you don’t give me some pussy, condom is there for evidence that you’re fucking in the street.’ . . . Now they have the handle. I have the blade. There is nothing that I can do about it. I give them my body.”<sup>106</sup>

### ***Abuses in the health care system***

People living with HIV/AIDS and men who have sex with men face numerous human rights abuses that constitute barriers to obtaining necessary medical care. Among these are discrimination by health workers who forced them to wait extended periods of time to be seen, treated them in an abusive or degrading manner, provided inadequate care, or denied them treatment altogether. Health workers also routinely violated their privacy by disclosing confidential information about HIV status and sexual orientation.

Human Rights Watch found that the threat of serious violence and discrimination, compounded by the deep stigma associated with homosexuality, was keeping men who engaged in homosexual conduct from seeking medical treatment and from existing prevention services and driving them to engage in unsafe and unprotected sex. Discrimination and stigma also was driving people living with HIV/AIDS away from health care and other HIV/AIDS services.

Several people told Human Rights Watch that health care provision to people living with HIV/AIDS had improved in the last few years, crediting the Ministry of Health and the efforts of AIDS service organizations like Jamaica AIDS Support (JAS) and the Center for HIV/AIDS Research, Education and Services (CHARES) for these changes. “Things have changed a lot,” said Orchid Gowe-Hunter, a nurse with Jamaica AIDS Support, “but people still have some bad experiences.”<sup>107</sup>

### ***Discrimination by health care providers***

#### **Health care delayed or denied**

Human Rights Watch interviewed several nurses and AIDS service workers who said that public hospitals and clinics provided inadequate care to people living with HIV/AIDS, sometimes refusing to treat them. Some acknowledged that the situation had improved since the start of the epidemic but stressed that the abuses had not abated altogether.

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<sup>106</sup> Human Rights Watch interview with Joyce D., Kingston, June 9, 2004.

<sup>107</sup> Human Rights Watch interview with Orchid Gowe-Hunter, Montego Bay, June 21, 2004.

Human Rights Watch learned that some doctors who treated people living with HIV/AIDS failed to conduct adequate medical exams or even to touch them, and that clinic staff had refused to register people living with HIV/AIDS for admission. Men who have sex with men also told Human Rights Watch that they had been denied health care treatment.

Tonya Clark, a nurse with Jamaica AIDS Support in Kingston, said that a JAS client who had suffered a head injury had been denied services twice in the week prior to her interview with Human Rights Watch. In June 2004, Gary T. was beaten and suffered a head injury. He first went to the police, who referred him to the hospital with a form to be completed with details of his injury. After Gary T. told the nurse that he had HIV, she tore the form up and told him to leave. A JAS social worker returned to the hospital with Gary T., where they again refused to treat him.<sup>108</sup>

A health worker with years of experience working in the health sector in northern Jamaica who assisted people living with HIV/AIDS in obtaining medical care said that based on her experience, physicians at the regional hospital treated HIV-positive patients differently from other patients and had provided inadequate care to two of her clients in April and May 2004. In one case, she brought a client to the regional hospital because he had lesions on his penis and difficulty urinating. The examining physician stated that the man had HIV, donned gloves, and ignored the health worker's request to examine the client's genital area, instead focusing on his chest and abdomen and sending him home without examining the lesions on the penis. The health worker told Human Rights Watch:

The doctor that came to see him knows me and my work [with people living with HIV/AIDS] and said at once, "this is a positive person." . . . I said we found him on the road, I think he has some sores on his penis. The doctor put on gloves, did a chest exam, peeled off that set [of gloves], did an abdomen exam, peeled off that set . . . and I was saying, there is something wrong with his penis. You need to look at him. [The patient] said he has sores on it and hasn't urinated in a while. And he has this smell coming from his genitals. The doctor wouldn't look at it. . . .

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<sup>108</sup> Human Rights Watch interview with Tonya Clark, Kingston, June 14, 2004.

The man received no treatment for the lesions on his penis that day. The health worker ultimately secured the assistance of a nurse who worked with an AIDS service organization to examine him and provide appropriate medication to treat his lesions.<sup>109</sup>

Men who have sex with men and health workers reported that public and private health care providers refused to treat men whom they knew or perceived to be gay and made abusive comments to them, at times instigating abusive treatment by others. Curtis M., twenty-four, told Human Rights Watch that when a friend accompanied him to St. Ann's Bay Hospital, a nurse made homophobic remarks, and he left without receiving treatment. "[The nurse] said, 'I wonder which one is the woman and which one is the man. . . . We had to leave because the crowd started looking at us and then on the road they were hurling words at us, 'battymen fi dead.' I felt threatened.'"<sup>110</sup> He did not receive treatment that day.

When Leroy J., thirty-three, went to a private doctor, he was told "we don't work with gay people here."<sup>111</sup> Craig F., a health worker in northeast Jamaica, said that public health centers in the region have refused to treat men whom they believed to be homosexual and that he had heard health workers making abusive comments to gay and bisexual men. For example, one health worker told a gay man with gonorrhoea that he was "nasty" and asked why he had sex with other men.<sup>112</sup>

Several people told Human Rights Watch that health workers routinely mistreated people living with HIV/AIDS, delaying care or impeding access to treatment. When Eric B., a thirty-year-old man living with HIV/AIDS, sought treatment for a foot injury, he had to wait until all other patients had been seen, including people who arrived after him and people with lesser injuries, before he was examined.<sup>113</sup> Craig F. told Human Rights Watch that in May 2004, a health clinic clerk had refused to register a person living with HIV/AIDS for treatment, stating that she would not look after anyone who was HIV-positive.<sup>114</sup>

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<sup>109</sup> Human Rights Watch interview, Ocho Rios, June 16, 2004.

<sup>110</sup> Human Rights Watch interview with Curtis M., Ocho Rios, June 16, 2004.

<sup>111</sup> Human Rights Watch interview with Leroy J., Ocho Rios, June 16, 2004.

<sup>112</sup> Human Rights Watch interview with Craig F., Ocho Rios, June 16, 2004.

<sup>113</sup> Human Rights Watch interview with Eric B., Kingston, June 8, 2004.

<sup>114</sup> Human Rights Watch interview with Craig F., Ocho Rios, June 16, 2004.



## **Discrimination in health care provision**

*My neighbor, she was ill, she was HIV-positive. [At the hospital], they screened her off. Her food was taken to her in a styrofoam box, and everyone else on the ward was treated differently. Everybody else had regular plates, and hers was just in a box. . . . I went to her because I knew her. Nobody cleaned her, looked after her. The nurse said, 'You know what she have?' I said yes. The nurse said, 'Then you have gloves?' I looked after her, gave her a bath. Her mother came and asked, 'Why are they treating her like this, like a dog?' No one cared for her. I went every day with her mum and cleaned her, taught her mother how to care for her.*

— Tonya Clark, nurse with Jamaica AIDS Support, Kingston, June 14, 2004

Among those encountered by Human Rights Watch, people living with HIV/AIDS who did receive medical care were separated from other patients and placed at the back of a ward or behind a screen with their basic needs left unattended. Health workers also engaged in discriminatory practices that called attention to their HIV status, such as placing their clothes and linens in conspicuously marked bags, and making sure that medical equipment did not touch their skin.<sup>115</sup>

Orchid Gowe-Hunter, a nurse with Jamaica AIDS Support, had worked with people living with HIV/AIDS in the Kingston, St. Andrews, and St. James parishes for several years. She told Human Rights Watch that both Kingston Public Hospital (KPH) and Cornwall Regional hospitals continued to isolate people living with HIV/AIDS in the ward. At KPH, for example:

they always isolate them in the ward. They have a little corner way to the back. One day, we went to visit this guy and he was just lying in the bed alone. He had no sheets on the bed, no proper clothes. . . He was

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<sup>115</sup> HIV is not spread by casual contact nor by any airborne means of transmission, including sneezing or spitting. There is therefore no public health justification for segregating people living with HIV/AIDS from other patients, or in any way isolating their food, laundry or medical equipment for non-invasive procedures solely because someone has HIV. Such actions threaten to reveal HIV status, and undermine public health efforts by creating a false sense of protection from the disease, creating harmful stigma, and thus keeping people from seeking health care and prevention services. See UNAIDS, *HIV/AIDS and Human Rights-International Guidelines*, p. 42. International health organizations recommend that workers in settings where the possibility of occupational HIV transmission does exist, as where there may be exposure to bloody injuries or being stuck with unsterile syringes, be trained in "universal precautions" (simple measures to protect against HIV and other blood borne illnesses) and provided with adequate supplies (such as gloves) to take such precautions. World Health Organization, "Universal Precautions, Including Injection Safety," <http://www.who.int/hiv/topics/precautions/universal/en/> (retrieved September 16, 2004).

unable to feed himself or take his medication. All of the food, all of the medication was just left by the bed.<sup>116</sup>

Gowe-Hunter's account is typical of those documented by Human Rights Watch.

HIV-positive men who have sex with men faced additional barriers. "They perceive, and rightfully so, that if they divulge who they are and what they do, they may be shunned," said Deborah Manning, program manager of the Center for HIV/AIDS Research, Education and Services. In one case, for example, when an HIV-positive patient's boyfriend came to visit him, a nurse ran him out of the hospital, telling him that she did not want any of their "nastiness" there.<sup>117</sup> Joseph W., twenty-six, told Human Rights Watch that when he visited a friend at Kingston Public Hospital in December 2003:

the nurses and the ancillary workers were laughing and saying, "which one of them is the man, which is the woman?" Partly because of his sexuality and because he was [HIV] positive he was not given the kind of treatment he should have gotten. He wasn't able to help himself. They wouldn't change his sheets . . . They would leave his food there. Myself and all my friends had to go help him eat.<sup>118</sup>

Patrick D., twenty-five, found his HIV-positive friend lying in soiled diapers, and changed them while a nurse called out, "Battyman, you shit up yourself. You shitty shitty."<sup>119</sup>

Health care workers at public and private hospitals in Kingston parish told Human Rights Watch that patients at their institutions were treated the same as others, but noted that their clothes and linens were placed in specially marked bags and laundered separately; doctors and nurses used gloves when attending to them; and that when taking the blood pressure of a person living with HIV/AIDS, they put a "precautionary barrier" between the person's arm and the cuff. One health worker explained that "if a patient knows another person is HIV-positive, he won't use the same blood pressure cuff."<sup>120</sup>

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<sup>116</sup> Human Rights Watch interview with Orchid Gowe-Hunter, Montego Bay, June 21, 2004.

<sup>117</sup> Human Rights Watch interview with Deborah Manning, director, CHARES, Kingston, June 14, 2004.

<sup>118</sup> Human Rights Watch interview with Joseph W., Kingston, June 11, 2004.

<sup>119</sup> Human Rights Watch interview with Patrick D., Kingston, June 9, 2004.

<sup>120</sup> Comments made at workshop to discuss quality of care for HIV-positive patients, Kingston, June 7, 2004.

Several health workers said that HIV-positive patients posed a danger to health care workers because they had a tendency to be angry and aggressive and would try to intentionally infect others with HIV.<sup>121</sup> A health worker at a private facility offered this example of such dangerous behavior: “I had a patient who said he contracted HIV and it’s not his fault, he’s not going down with it. He threatened to spit on a nurse.”<sup>122</sup> A nurse at a Kingston public hospital acknowledged that she and her coworkers treated patients differently from other patients. She said that they were concerned about contracting the virus from patients who were often “deliberately demanding,” in part because they “really hopelessly wanted you to get HIV too.”<sup>123</sup>

In the view of some health workers, the fear that HIV-positive patients would spread the disease to health care workers and others—whether intentionally or otherwise—justified segregating patients living with HIV in the hospital as well as in the larger community. At a workshop to discuss quality of care for patients with HIV, one health worker, summarizing the views of a small group discussion, said that people living with HIV “should be isolated to prevent this epidemic from being spread to the rest of society.”<sup>124</sup> A spokesperson for a second small group added that “some persons [with HIV] are isolated for their own protection,” while others because they “are more aggressive. They want to bite you, spit on other patients.”<sup>125</sup>

### ***Inadequate protection of confidential information***

*That word, confidentiality. I’m so afraid of that word because in most instances it don’t mean anything.*

— Lena B., twenty-nine, Montego Bay, June 22, 2004

Human Rights Watch found that some health workers failed to preserve the confidentiality of patients’ HIV status. By singling HIV-positive patients out for disparate treatment absent medical justification, they risked divulging confidential information about their HIV status. In some cases, health care workers disclosed confidential information about HIV status without patient authorization. Some health care workers also disclosed private information about sexual orientation.

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

The failure to preserve confidential information about HIV status and sexual orientation violates the right to privacy protected by the ICCPR and the American Convention on Human Rights.<sup>126</sup> Such actions also threaten other rights. As described above, people living with HIV/AIDS and men who have sex with men may be denied health care or subjected to violence and stigma when state and private actors discover their sexual orientation or that they are HIV-positive.

Lena B., twenty-nine, was hospitalized for the last four months of her pregnancy at the regional medical center. Doctors and nurses there repeatedly chastised her in front of other staff and patients about having continued to have sex while living with HIV. A doctor who knew that she had worked as an HIV/AIDS educator told her that she “should have known better” not to have sex when she had HIV and chided her for proving a poor example for others. One of the nurses instructed the ward assistant not to serve Lena on plates that other patients might use; when that nurse was on duty, Lena had to use disposable dishware.

At the end of Lena’s pregnancy, two doctors discussed the decision to give her an emergency caesarean section in the middle of the ward, “in front of a lot of people.” The first doctor explained, “I’m going to do the C-section [caesarean section] because you want to push the child out of your vagina, and you know you have the disease running around in the vagina and you want to put the child more at risk than he is already at.”<sup>127</sup> A second doctor added, “I want to take you on a tour up to the top where all the AIDS babies and children are and show the misery that you people cause to come on the land. Because I agree that you should not be having sex, much less getting pregnant.”<sup>128</sup>

Hospital staff signaled Lena B.’s HIV status to her mother-in-law through their treatment of her newborn son and comments they made. When Lena B.’s mother-in-law came to see her new grandchild, she found the baby by the nurse’s station, still unwashed, and asked to help clean it.

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<sup>126</sup> ICCPR, 999 U.N.T.S. 171, entered into force March 23, 1976, art. 17; American Convention on Human Rights, entered into force July 18, 1978, art. 11. Jamaican law provides that physicians, nurses and midwives may be subject to sanctions for failure to protect confidential patient information. See The Medical Act, section 11; The Nurses and Midwives Act, section 11.

<sup>127</sup> Caesarean section delivery has been shown to reduce the risk of mother-to-child HIV transmission. It may not be appropriate in resource-constrained settings because of limited availability, cost and risk of complications. World Health Organization, *HIV in Pregnancy: A Review*, WHO/CHS/RHR/99.15, UNAIDS/99.35E (Geneva: UNAIDS, 1999), pp. 9, 25. Insistence on caesarean sections may also present a substantial ethical problem if women are not properly briefed about both the risks and the advantages associated with undergoing caesarean sections.

<sup>128</sup> Human Rights Watch interview with Lena B., Montego Bay, June 22, 2004.

The nurse said, “you come in off the street with germs wanting to take care of the child and want to finish killing him off because he has everything going bad for him already?” . . . The nurse clean up the child and she still have him over behind the nurse’s station. . . . My mother-in-law says, “I’m going to take him over to the mother to breastfeed.” The nurse said, “Breastfeed what? Mothers like those not even supposed to have children much less to breastfeed with the type of sickness they have.”

At this point, Lena B.’s mother-in-law asked whether she had AIDS. Lena B. lived with her in-laws and extended family. She said that since returning home after her HIV status was disclosed, her family members have tried to kill her on at least three occasions. Lena had no money to pay for shelter elsewhere, and stayed with her children in a locked room at the house to protect them.<sup>129</sup>

The hospital neglected to attend properly to Lena B.’s surgical wounds from her c-section and they became infected. Lena B. said that based on her experiences, she would no longer seek treatment for herself in the public health system. There was a comprehensive health clinic within walking distance of Lena’s home. Lena B. said that she would not take her children there, nor pick up infant formula and groceries provided to mothers who are living with HIV, because health workers there chastised her and other women for having gotten pregnant while living with HIV, and publicly disclosed their status to other patients and members of the public without their authorization. As a result, Lena B.’s children were also effectively denied health care and other benefits to which they are entitled.<sup>130</sup>

Hospital staff providing ancillary services (such as porters, ward assistants, cooks) often knew patients’ HIV status and sometimes disclosed it to family and community members. A laundry attendant at a Kingston area private hospital said that the head nurse pointed out a person with HIV to her because his clothes had to be washed separately.<sup>131</sup> A peer educator in St. Andrews and St. Catherine’s parishes told Human Rights Watch: “Sometime the ward assistant knows, sometime the cook know, and I don’t see why they should know. And they talk a lot. . . . They go back to their area

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<sup>129</sup> Lena B. said that in the first few months of 2004, she had been threatened at home several times: her drinking water had been poisoned; an armed man had come to her house and warned her that he had been hired by her family to kill her; and she had found materials used in obeah (witchcraft) outside her room. Ibid.

<sup>130</sup> Human Rights Watch interview with Lena B., Montego Bay, June 22, 2004.

<sup>131</sup> Comments made at workshop to discuss quality of care for HIV-positive patients, Kingston, June 7, 2004.

and they say that Mary Jane is at the hospital, she's HIV-positive. So all of that person's confidentiality is out." In one case, for example, a patient with HIV recognized a warder from her area.

She said she had a family member who did not know that she was sick in the hospital and she did not want the family member to know. The warder told her family member that this person was HIV-positive and was in the hospital. . . [The person] did not go back to her community because she was afraid that she would not be treated nice.<sup>132</sup>

In some hospitals, porters may learn patients' status because they have access to patient records. Glenn C., thirty-nine, a JAS volunteer, said that "When patients go into a ward, files are given to the porter and they discuss it and they say, 'this is another C13 [the hospital code for HIV/AIDS]. This is a homosexual.'" He remembered visiting a person living with HIV/AIDS at a Kingston-area hospital in 2003. "I asked the porter where he was. The porter said, 'The battyman. The one with AIDS' [and then] told me where he was."<sup>133</sup>

Men who have sex with men and AIDS service workers told Human Rights Watch that hospital staff also disclosed information about people's sexual orientation. Craig F., a health worker who worked with men who have sex with men, said that after his client disclosed his sexual orientation to a contact investigator, "the same day, persons in the health center knew that he was gay. I heard them talking. 'That man is a battyman.' They mentioned his name. There was a lot of talk that he is gay and fire burn and him fi dead."<sup>134</sup>

### ***Driving men who have sex with men and people living with HIV/AIDS from health care services***

Abusive treatment in the health care system and state failure to protect men who have sex with men from homophobic violence keep people from seeking health services, especially for conditions that might mark them as homosexual. Several gay and bisexual men told us they delayed or avoided seeking treatment for sexually transmitted infections because they had received poor health care when they were known or perceived to be gay; feared mistreatment because they were gay; and were concerned that

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<sup>132</sup> Human Rights Watch interview, Kingston, June 6, 2004.

<sup>133</sup> Human Rights Watch interview with Glenn C., Kingston, June 13, 2004.

<sup>134</sup> Human Rights Watch interview with Craig F., Ocho Rios, June 16, 2004.

health workers would publicly disclose their sexual orientation, thus risking their safety. Since the presence of other sexually transmitted diseases heightens the risk of HIV transmission, the failure to seek care promptly in such cases may have fatal consequences.<sup>135</sup>

Craig F., a health worker in northeast Jamaica, estimated that 90 percent of men who engage in homosexual conduct with whom he had worked had told him that they would not seek treatment for sexually transmitted diseases in the public health system because they feared that confidentiality was not maintained.<sup>136</sup> Harold B., thirty-four, told Human Rights Watch that health workers mistreated men who have sex with men: “When you go to a clinic and they know you are gay, they scorn you.”<sup>137</sup>

A JAS health worker said that the stigma attached to being gay and fear of discrimination put gay and bisexual men at risk of HIV, both because they did not get relevant HIV prevention information in the first instance, and because they delayed seeking care for sexually transmitted diseases that they feared might mark them as gay. He said that many men who have sex with men “don’t know that safer sex goes beyond using a condom. . . . They don’t use a lubricant and the condom breaks.” And many were reluctant to get tested for sexually transmitted diseases and did not know that the presence of other sexually transmitted diseases could increase the risk of HIV transmission.<sup>138</sup>

Using a water-soluble lubricant helps prevent condom breakage and is recommended for anal intercourse. Many men who have sex with men will not buy lubricant, however, because its purchase is equivalent to announcing one’s sexual orientation.<sup>139</sup> And, as in the case of Nicholas C. (described above), men who have sex with men who carry lubricant may be subject to police violence.<sup>140</sup>

Adrian S., thirty, told Human Rights Watch that he did not feel safe asking his doctor about gay health issues, especially concerns related to anal or oral sex.

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<sup>135</sup> See United States Centers for Disease Control and Prevention, Fact Sheet: Prevention and Treatment of Sexually Transmitted Diseases as an HIV Prevention Strategy [online], <http://www.cdc.gov/hiv/pubs/facts/hivstd.htm> (retrieved October 27, 2003).

<sup>136</sup> Human Rights Watch interview with Craig F., Ocho Rios, June 16, 2004.

<sup>137</sup> Human Rights Watch interview with Harold B., Kingston, June 9, 2004.

<sup>138</sup> Human Rights Watch interview, Kingston, June 11, 2004.

<sup>139</sup> Human Rights Watch interview with Martin B., Kingston, June 14, 2004; Human Rights Watch interview with Adrian S., Kingston, June 13, 2004.

<sup>140</sup> See testimony of Nicholas C., p. 19, above.

There was one concern I had with regards to feeling something different after anal sex with someone, and I just had to not talk about it and watch it and use my own way of approaching it. There was one instance when I had anal sex with someone that was very endowed. That meant that there was some stretching and some tissues torn. I wanted to find out if I was okay, but I couldn't say anything to anyone and all I could do is pay extra attention to hygiene and use topical solutions that were safe.<sup>141</sup>

Edward P., twenty-two, testified:

One time, I caught gonorrhoea. I was so scared of it, to go to the doctor. At first I said, this will go away. I started to see it getting yellow, and it started to run [from my penis], then it started to turn green, so I put a diaper there because it was running really hard and painful. . . . Some of my friends won't go to doctors. They don't want the word spread around, and they say what they don't know won't hurt them.<sup>142</sup>

When asked where he sought medical treatment, James P., twenty-six, said, "You come [to Jamaica AIDS Support] if you have something on your bottom," because when gay men sought treatment elsewhere, health workers pointed out to others that they were gay. "I think that this keeps gay men from getting treatment. Some of them will keep from getting treatment until it stinks [until the discharge from an infection has begun to smell]. [They say] 'I've got gonorrhoea and I'm scared to go to the doctor.'"<sup>143</sup> Tonya Clark, a JAS nurse, said:

Most of the gay men that I talk to don't even want to go to the hospital at all. They come to me one-on-one and say can you get this for me, can you get this medicine. Sometimes ordinary medicines, nothing to do with HIV. But they are afraid to go to a doctor or hospital even with a common cold or flu because they will ask them questions or call them names.<sup>144</sup>

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<sup>141</sup> Human Rights Watch interview with Adrian S., Kingston, June 13, 2004.

<sup>142</sup> Human Rights Watch interview with Edward P., Ocho Rios, June 16, 2004.

<sup>143</sup> Human Rights Watch interview with James P., Kingston, June 8, 2004.

<sup>144</sup> Human Rights Watch interview with Tonya Clark, Kingston, June 14, 2004.



Curtis M., twenty-four, explained:

I try to keep myself healthy because if you go to the hospital, they won't take care of you. If you got a bruise on your anus, that would make it worse. To be honest, if anything should happen to me, I am not going to the public hospital. I would buy over-the-counter medication or speak to my friends. I know that I am at risk but just to keep myself safe I cannot go to the hospital. Because if something should happen to me, I cannot go to the police because they will not help me.<sup>145</sup>

Homophobic police actions interfered with HIV/AIDS information and other prevention services by driving gay and bisexual men from places where they might safely receive services. JAS held support group meetings for gay and bisexual men to address a range of issues, including HIV/AIDS, sexuality, violence and discrimination, and spirituality and family life.<sup>146</sup> JAS' targeted interventions coordinator acknowledged that men who engage in homosexual sex were difficult to reach, noting that "some people won't come to JAS."<sup>147</sup> Some men told Human Rights Watch that they had been accosted by police when leaving JAS support group meetings, which may explain some of the reluctance to come to JAS' offices for services.

Joseph W. said that after they left a support group meeting in 2001, he and his friends were approached by police who asked them, "What are you doing? What kind of meeting are you coming from? All you look like battymen." They threatened to arrest us because we always have to keep up with our 'nastiness.'<sup>148</sup> Harold B., thirty-four, testified he and his friends had been assaulted by police in June 2004, around the corner from where they had just attended a support group meeting.<sup>149</sup>

A JAS outreach worker told Human Rights Watch that men who have sex with men would find a safe place to hang out, but police would come and beat them, undermining JAS' outreach work. In May 2004, he was working in a Kingston area that JAS outreach workers had identified as a gay hangout when the police approached. "The police came and said, 'Battymen leave the area. Don't contaminate the area. Don't come back here.'

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<sup>145</sup> Human Rights Watch interview with Craig R., Ocho Rios, June 16, 2004.

<sup>146</sup> Human Rights Watch interview with Steve Harvey, coordinator of targeted interventions, Jamaica AIDS Support, Kingston, June 6, 2004.

<sup>147</sup> Ibid.

<sup>148</sup> Human Rights Watch interview with Joseph W., Kingston, June 11, 2004.

<sup>149</sup> Human Rights Watch interview with Harold B., Kingston, June 9, 2004.

One [of the men] ran and broke his foot. . . . We were so frightened . . . that we just drove away.”<sup>150</sup>

The Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) would be a natural place to convene men who have sex with men and women who have sex with women to discuss HIV/AIDS-related issues. J-FLAG’s office, however, is not a safe space, as its own website acknowledges: “Although we provide services and network island-wide, our office is located in Kingston, Jamaica’s Capital and largest city. Due to the potential for violent retribution, we cannot publish the exact location. We do receive mail at Box 1152, Kingston 8.”<sup>151</sup>

Human Rights Watch also received numerous reports from people living with HIV/AIDS that they avoided seeking health care at both public and private facilities because of the abusive treatment they had received and the public disclosure of their HIV status. As described above, after doctors and nurses at the regional hospital and local health clinic chastised Lena B. for having sex while she was living with HIV, disclosed her status to family members who have since tried to kill her, and neglected to attend to her wounds after delivering her baby by caesarean section, she decided that she would no longer seek treatment in the public health system for herself, or in the local clinic for her children.<sup>152</sup>

Pam B., forty-three, overheard a nurse from the local health clinic telling someone from her town that she had AIDS. Public hospitals in Kingston and Portland parishes had isolated her with other HIV-positive patients, failed to provide her hospital gowns and linens, and made her wait much longer than other patients for care. Although unemployed (she lost her job after her employer learned she had AIDS), she avoided seeking care in health clinics and hospitals in her area “because of the stigma.” She also said that she knew other people living with HIV/AIDS who were afraid to go to the clinic because clinic staff gossiped about their HIV status.<sup>153</sup>

John B., forty-nine, told Human Rights Watch:

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<sup>150</sup> Human Rights Watch interview, June 6, 2004.

<sup>151</sup> Jamaica Forum for Lesbians, All-Sexuals and Gays website, <http://www.jflag.org/misc/contact.htm> (retrieved August 27, 2004).

<sup>152</sup> Human Rights Watch interview with Lena B., Montego Bay, June 22, 2004.

<sup>153</sup> Human Rights Watch interview with Pam B., Kingston, June 8, 2004.

I don't go to the hospital any more because of bad experiences there. There was one experience but it stands out in my mind and I would never go back there. . . . The nurse said that I had to draw up my shirt so she could take my blood pressure. She looked through my docket, saw the referral from Jamaica AIDS Support and that I was HIV-positive, and told me to roll down my shirt and she took my pressure from there [on top of the shirt].<sup>154</sup>

When Human Rights Watch met Patrick D., twenty-five, he was concerned that his health was failing and that "some day soon" he would have to go to the health clinic. He was avoiding doing so, however. "I'm afraid to go to the clinic because there's a special mark on my docket. The porter sees it and says, 'that boy's HIV-positive.'"<sup>155</sup>

Eric B., thirty, pulled his own teeth because he had heard that people living with HIV/AIDS had been treated poorly by the dentist in his local health care center. He told Human Rights Watch:

I didn't go there because on the whole, a lot of people go there and have a bad experience. I just took some pliers and pulled out the teeth myself. I've heard that the dentist there treats people badly, so I avoided going. I suffered for six months with a bad tooth because I avoided care.<sup>156</sup>

### ***Fostering dangerous practices and complicating health care provision***

Under conditions of surveillance by their families and communities, Jamaican gay, lesbian, bisexual, and transgender people find little privacy for their sexual lives at home. As discussed below, many face serious violence and become homeless after being driven from their homes and their towns because of their sexual orientation or gender identity. Men who have sex with men also risk violence for carrying condoms and lubricant—both needed for practicing safer sex. The lack of private space to have sex, the threat of violence based on sexual orientation and for even carrying condoms, and the lack of recourse to police protection makes it difficult for many gay, lesbian, bisexual, and transgender people to take precautions to protect against HIV/AIDS. Sex workers suffer from many of the same threats, and face similar problems in taking measures to protect against HIV/AIDS.

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<sup>154</sup> Human Rights Watch interview with John B., June 21, 2004.

<sup>155</sup> Human Rights Watch interview with Patrick D., Kingston, June 9, 2004.

<sup>156</sup> Human Rights Watch interview with Eric B., Kingston, June 8, 2004.

Homelessness carries additional health risks and complicates the provision of even routine medical care.<sup>157</sup> Exposure to harsh weather conditions, poor nutrition, and the stress of living in disordered and unsafe conditions compound health problems for people living with HIV/AIDS.

Albert B., thirty-three, had been homeless since 2001, when he fled his town after his close gay friend was murdered, and he was told that he was next. He told Human Rights Watch that most of the time, he had sex outside, in open land or in the bushes. “Gay people tend to use those places because they can’t carry on at home. . . . But you have to look out, in case you have to run.”<sup>158</sup>

### ***Denial of access to transportation***

People known or perceived to be living with HIV are denied access to public and private transportation, relegating many to lives isolated from important sources of social support and undermining their capacity to obtain even basic medical care. Men who are known or perceived to be gay are likewise denied passage on public and private transportation, sometimes leaving them vulnerable to attack, and are routinely attacked on public buses because of conduct or appearance perceived as homosexual.

People with HIV/AIDS may be prone to skin infections on large parts of their bodies. Several people with HIV/AIDS told Human Rights Watch that when they suffered visible skin infections, people in their communities would shun them, perhaps because they feared that the skin infections—or HIV more generally—were contagious.

Angela M., forty-one, lived in a remote village, about one hour’s drive from the regional hospital and several miles from the nearest clinic. She was homebound: no public transportation would carry her, and the only private car that would drive her was prohibitively expensive. She told Human Rights Watch that since developing the skin rash, “All the taxi men, they know, they say they won’t carry me. . . . At the bus stop, nobody will stand beside me. I come near, people run away.” When she tries to flag a taxi by her house:

no taxi stops. People tell them that my hair falls off and I run full of sores and I run bloody water, and nobody wants to carry me. . . . I

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<sup>157</sup> See, e.g., Institute of Medicine, *Homelessness, Health, and Human Needs* (Washington, D.C.: National Academy Press, 1988), chapter 4.

<sup>158</sup> Human Rights Watch interview with Albert B., Kingston, June 9, 2004.

need to go to the doctor, to the hospital and I don't have money to pay a private man to get me there. To get to [the hospital], I would have to pay a private man 3000 [Jamaican] dollars [U.S.\$50] both ways. A road taxi would cost 170 dollars one way [U.S. \$2.85], 170 dollars [U.S.\$2.85] to come back.<sup>159</sup>

Lacking funds for transportation, Angela M. was unable to obtain medical treatment.

John B., a forty-nine-year-old man living with HIV/AIDS, said that taxi drivers sometimes increased fares for people whom they suspected had HIV. He said that on one occasion, he had a chest infection and was coughing and short of breath. He told Human Rights Watch that as he was exiting the taxi, the driver commented, "you have pneumonia; you have AIDS," and charged him double the usual fare.<sup>160</sup>

Adrian S., thirty, told Human Rights Watch that as a man perceived as effeminate, he faced constant verbal and physical abuse and had been denied transportation in public buses and taxis on many occasions. He said that: "I would be denied passage [on public buses] because someone would say I was gay. I would have to seek transportation elsewhere." Nor would taxis pick him up once they heard that he was gay. And boarding a bus would not guarantee safe passage. Thomas said that he had been assaulted by a conductress, a bus driver, and by passengers while riding the bus.<sup>161</sup>

Fabian Thomas, coordinator of JAS' Montego Bay office, told Human Rights Watch that he had been contacted by a man who had been attacked and thrown off a public bus after falling asleep on another passenger's shoulder. According to Thomas, when other passengers noticed the man's head resting on his male neighbor's shoulder, they cried out 'battyman,'" threw him off the bus, beat him, stabbed him and left him by the side of the road.<sup>162</sup>

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<sup>159</sup> Human Rights Watch interview with Angela M., June 15, 2004. In June 2004, 1 Jamaican dollar was equivalent to U.S. \$0.015.

<sup>160</sup> Human Rights Watch interview with John B., June 21, 2004.

<sup>161</sup> Human Rights Watch interview with Adrian S., Kingston, June 13, 2004. A conductor collects fares on public buses. A conductress is a female bus conductor.

<sup>162</sup> Human Rights Watch interview with Fabian Thomas, Montego Bay, June 22, 2004.

## ***Other abuses by non-state actors: violence in the family and in the community***

People living with HIV/AIDS, men who have sex with men, and women who have sex with women are subject to violence, discrimination, and other forms of abuse by private actors based on their HIV status and their sexual orientation. State authorities have an obligation to respond, both to offer redress for violations and punish the offenders, but also to prevent these violations in the first instance.

### ***Abuses based on sexual orientation and gender identity***

*Because gay in Jamaica, it's hard for us to live anywhere. Those that can afford, they can rent an apartment and not be molested. But we cannot afford it. Some might attempt to rent a little house. But within days, or it doesn't last for a month, they have to run away, leave everything that they have.*

—Aaron H., thirty-eight, Kingston, June 13, 2004

Men who have sex with men and women who have sex with women are routinely subjected to verbal and physical harassment, in many cases violently evicted from their homes and driven from their towns.

On the morning of June 24, 2004, a group of armed men forced their way into a Kingston home, beating up six occupants while shouting homophobic threats.<sup>163</sup> The dancehall musician Buju Banton (Mark Anthony Myrie) is alleged to have been one of the assailants, reportedly denouncing the occupants for being homosexual and kicking one man in his mouth and beating him with a board. At least two of the men were beaten seriously enough to require medical treatment. All nine residents of the house were forced to abandon their home and possessions that same day, warned by the attackers that they would be killed if they returned.<sup>164</sup> Four of the men returned the following evening with a police escort to find that their home had been ransacked, thousands of dollars stolen, and valuable property (including a new refrigerator and electronic equipment) destroyed.<sup>165</sup> All of the men abandoned the residence and the

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<sup>163</sup> Human Rights Watch interviews with Charles R., Kingston, June 24 and 25, 2004 and statement of Charles R. to police. Banton composed and performed "Boom Bye Bye," a song that celebrates the killing and burning of gay men.

<sup>164</sup> Human Rights Watch interviews with Charles R., Kingston, June 24 and 25, 2004; Human Rights Watch interviews with Ricardo P., Kingston, June 24 and 25, 2004; Human Rights Watch interviews with Robert E., Kingston, June 24 and 25, 2004.

<sup>165</sup> A Human Rights Watch researcher accompanied the victims to the residence and observed the condition of the home and the victims' property.

neighborhood, fearful that they would be killed if they return; since the intrusion, at least one has received death threats.

Charles R., forty-two, Robert E., eighteen, and Ricardo P., twenty, three of the occupants, described the attack. Charles R. told Human Rights Watch that about a dozen men armed with machetes, guns, and knives had come to his front door around 10 a.m. on June 24, one of them pointing a gun at him, threatening to shoot him if he did not let them in. After Charles R.'s landlord ordered him to open the door, the men stepped in the house and ordered the occupants outside. The assailants told Charles R. and the others that they were battymen and could not live there, and threatened to shoot them and burn the house if they remained.<sup>166</sup> Charles R. was kicked in the face and beaten on his back, arm, and leg with a machete and a metal rod by at least three assailants.<sup>167</sup>

Robert E. told Human Rights Watch that he was attacked by at least four men, who chased him from the house, hurling insults and stones, threatening him with a knife, and accusing him of being the "battymen ringleader." Robert E. ran into the street and tripped and fell into a gully, seriously injuring his foot.<sup>168</sup> Ricardo P. told Human Rights Watch that he was beaten with a metal rod, forced to take off his shoes, and told to run from the house.<sup>169</sup>

Human Rights Watch documented violent evictions in several towns in Jamaica, many of which occurred either immediately preceding or during the three weeks that we were in Jamaica. A Kingston man said:

Right now, I'm not living in my house because people thought I was gay. . . . About two weeks ago, I got a call at work that there were twenty-five men surrounding the house because they understood we were gay and wanted us to leave because they didn't want any gay men in the area. [I was told] that the men had machetes. I didn't go home for two days because I was scared.

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<sup>166</sup> Human Rights Watch interview with Charles R., Kingston, June 24, 2004.

<sup>167</sup> Ibid.

<sup>168</sup> Human Rights Watch interview with Robert E., Kingston, June 24, 2004. The physician who examined his foot told Human Rights Watch that Robert E.'s heelbone was broken and he risked further serious injury if he did not take good care of it.

<sup>169</sup> Human Rights Watch interview with Ricardo P., Kingston, June 24, 2004.

When he returned to the house to retrieve some of his things, he noticed several men outside. “I heard the men say, ‘oh the battymen, they move.’ I was scared, because they all had machetes in their hands. In this house, all gay men lived there. Now no one sleeps there.”<sup>170</sup>

Daniel S., nineteen, had lived on his own in Montego Bay since he was threatened by neighbors that they would kill him and chop him up because they had heard he had sex with men. He told Human Rights Watch, “I am unable to visit my family in the day. If I want to visit them, it would have to be in the midnight hours.”<sup>171</sup> Vincent G., twenty-two, stated, “I don’t live anywhere now.” He had been homeless since 2003, after he was forced to leave his mother’s house and his town when he was threatened by men in the area who told him, “battyman, you have to leave. If you don’t leave, we’ll kill you.”<sup>172</sup>

Human Rights Watch interviewed Sebastian L., twenty-seven, a few days after he and his friends had been attacked outside Sebastian L.’s apartment. He said that he was afraid that the assailants might return. “So I am looking to move now, because I am afraid for my life.”<sup>173</sup>

Women who have sex with women reported that they were subjected to constant threats of sexual violence, in some cases serious enough to force them to leave their homes and their neighborhoods. Several women who have sex with women told Human Rights Watch that the message they were given was clear: that they could be “cured” of their homosexuality by having sex with a man.

Phoebe S., forty-nine, owned a home in St. Thomas parish, where she lived alone for five years. Men in her community called her “sodomite,” pressured her to have sex with them, and spied on her while she was bathing. She told Human Rights Watch: “Men try to get friendly. They say, ‘you’re living alone for so long. You need some sex.’” She said that she had decided to sell her house “because some of the men know I’m gay and want to rape me.” She could not discern, however, whether she was continuously targeted for sexual violence because she was a woman or because she was a lesbian. She

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<sup>170</sup> Human Rights Watch interview with Paul M., Kingston, June 6, 2004.

<sup>171</sup> Human Rights Watch interview with Daniel S., Montego Bay, June 21, 2004.

<sup>172</sup> Human Rights Watch interview with Vincent G., Kingston, June 14, 2004.

<sup>173</sup> Human Rights Watch interview with Sebastian L., Ocho Rios, June 15, 2004.



told Human Rights Watch: "I have been raped three times. Sometimes I wonder if it is because I refuse to be with a man."<sup>174</sup>

Cynthia S., twenty-seven, said that a lesbian friend of hers had to move out of her neighborhood because she faced constant verbal and physical harassment by men who knew that she was a lesbian. "They would say, 'Hey girl, don't you know you are supposed to take cock,' and put their hands on her when she passed by."<sup>175</sup> Ryan N. was with two lesbian friends in a local park when a man approached the women and said, "I want to give you a good fuck and you will leave women and start with men."<sup>176</sup>

Homosexual men and women also face violence and abuse by their own family members. After Edward P.'s mother found out that he was gay, she threatened to poison him, which she was encouraged to do by others in their town. Edward P. told Human Rights Watch: "My mother said she wanted to poison me. . . . I could go for days after days starving myself. I won't eat her cooking. Yes, I actually believe she might. People went to her and said, 'after all, he is *her* son."<sup>177</sup> When Lillie P.'s mother found out that she was lesbian, she threw her out of the family home, leaving her without a place to live.<sup>178</sup>

### ***Abuses against people living with HIV/AIDS***

*My mother said she would kill me herself if I stayed in the house.*

—Ray B., eighteen, Kingston, June 8, 2004

Abuses based on sexual orientation reflect and reinforce abuses against people living with HIV/AIDS. Health workers, AIDS outreach workers, and people living with HIV/AIDS told Human Rights Watch that they faced abuse by family and community members who feared that they could contract HIV/AIDS through casual contact with them and who associated the disease with homosexuality and prostitution. Several people living with HIV/AIDS said that they had been thrown out of their family homes or evicted from private housing when their HIV status became known. Others kept their HIV status secret for fear that disclosure would subject them to violence.

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<sup>174</sup> Human Rights Watch interview with Phoebe S. Kingston, June 14, 2004.

<sup>175</sup> Human Rights Watch interview with Cynthia S., Kingston, June 8, 2004.

<sup>176</sup> Human Rights Watch interview with Ryan N., Kingston, June 9, 2004.

<sup>177</sup> Human Rights Watch interview with Edward P., Ocho Rios, June 16, 2004.

<sup>178</sup> Human Rights Watch interview with Lillie P., Kingston, June 19, 2004.

After Ray B., eighteen, told his mother that he was HIV-positive, she threatened to poison him. He could not return home because his mother was afraid that she would catch HIV from him. Ray told Human Rights Watch: “My mother is afraid that if I touch the gate, she will catch AIDS.”<sup>179</sup> When a JAS outreach worker heard someone telling a person living with HIV/AIDS that “AIDS smoke” from his burning rubbish would affect him and his children, the outreach worker tried to explain that the virus was not transmitted through the air. His efforts were unsuccessful, however. “People started to murmur [gossip]. They said they didn’t care, this guy had to leave. And he had to move out of the community.”<sup>180</sup>

Neither age nor disability affords protection from abuse. Tonya Clark, a JAS nurse, told Human Rights Watch that the previous week, she had heard from an elderly woman living with HIV/AIDS whose son made her sleep on the porch and fed her from a pan, like a dog. “Her son tells everyone in the community she has AIDS. They reject her, except for one neighbor, who gives her food—but she can’t let anyone in the neighborhood see her giving her food.”<sup>181</sup> Leonard S., a thirty-year-old disabled man living with HIV, lived with his family. His mother, who knew that he was gay, told him that if he contracted HIV, she would abandon him at the hospital. He feared worse. He told Human Rights Watch that if his family or neighbors found out that he was HIV-positive, he would flee because they would beat or kill him.<sup>182</sup>

## VI. GOVERNMENT RESPONSE

Jamaica acknowledges in its official policy documents the role that homophobia plays in driving the country’s HIV/AIDS epidemic, and lists as a key priority the development of legislation and policy to protect the human rights of people living with and affected by HIV/AIDS.<sup>183</sup> Despite these stated commitments, there exist few policy or legal protections for people living with HIV/AIDS or people whose marginalized status puts them at high risk of infection. The vast majority of people living with HIV/AIDS remain without access to lifesaving antiretroviral medicines. While some ministries (such as the Ministry of Education) have drafted national AIDS policies, the lack of institutional commitment and intersectoral coordination among them hampers the

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<sup>179</sup> Human Rights Watch interview with Ray B., Kingston, June 8, 2004.

<sup>180</sup> Human Rights Watch interview, Kingston, June 6, 2004.

<sup>181</sup> Human Rights Watch interview with Tonya Clark, Kingston, June 14, 2004.

<sup>182</sup> Human Rights Watch interview with Leonard S., Kingston, June 11, 2004.

<sup>183</sup> See, e.g., Ministry of Health, “Jamaica HIV/AIDS/STI National Strategic Plan 2002-2006,” January 2002, pp. 10-12 (identifying “discrimination and stigmatization around HIV/AIDS especially homosexuality” as among the factors driving the epidemic, and policy, advocacy, legal and human rights as a top priority area in its HIV/AIDS plan).

government's response to the epidemic. And the lack of high-level political commitment to addressing homophobic violence further weakens efforts to fight HIV/AIDS.

### ***Improving legal and policy protections***

In 2001, the National AIDS Committee (NAC), a government-organized NGO established in 1988 to advise the Ministry of Health on policy issues, drafted a report reviewing legal, ethical, and human rights issues for people living with HIV/AIDS.<sup>184</sup> The report identified a number of weaknesses within existing legislation and recommended changes to address them. These included drafting comprehensive antidiscrimination legislation, strengthening legal protections for confidential information, and repealing the sodomy laws.<sup>185</sup>

The Office of the Attorney General reviewed the NAC report and in 2002 rejected its main recommendations, insisting that there be a national AIDS policy before any legislation was adopted. As of this writing, the national policy document has not yet been completed.<sup>186</sup> High-level officials at the National HIV/AIDS Control Programme, consistent with the NAC report and Ministry of Health policy documents, have advocated for the need to repeal discriminatory laws because they impede HIV prevention efforts and drive vulnerable groups from HIV services. Minister of Health John Junor repeatedly has rejected these appeals, however.<sup>187</sup> And in July 2004, Prime Minister P.J. Patterson reportedly announced that his government would not be forced by foreigners to repeal Jamaica's sodomy laws, apparently ignoring government and NAC reports on their role in driving Jamaica's HIV/AIDS epidemic.<sup>188</sup>

The U.N. Guidelines on HIV/AIDS and Human Rights specifically recommend that "an independent agency should be established to redress breaches of confidentiality."<sup>189</sup>

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<sup>184</sup> The Minister of Health established the National AIDS Committee (NAC) in 1988 to coordinate a national multi-sectoral response to HIV/AIDS. It has more than one hundred members, including representatives from public and private sector organizations and NGOs. [http://www.nacjamaica.com/about\\_nac/index.htm](http://www.nacjamaica.com/about_nac/index.htm) (retrieved September 16, 2004).

<sup>185</sup> See National AIDS Committee, "HIV/AIDS Legal, Ethical and Human Rights Issues in Jamaica," [http://www.nacjamaica.com/subcom/legal\\_ethical/index.htm](http://www.nacjamaica.com/subcom/legal_ethical/index.htm) (retrieved April 19, 2004).

<sup>186</sup> A draft National AIDS Policy is expected to be circulated for review in the fourth quarter of 2004. Human Rights Watch telephone interview with Ruth Jankee, executive director, National AIDS Committee, Kingston, September 7, 2004.

<sup>187</sup> Human Rights Watch interview with Dr. Peter Figueroa, chief, Ministry of Health Epidemiology Unit, Kingston, June 23, 2004; see also Zadie Neufville, "Fear Among Gay Men Said to Fuel HIV/AIDS Cases," *Inter Press Service*, March 5, 2002 (reporting that Minister Junor said that while the government is "committed to preventing the spread of the disease," it had no intention of changing the laws).

<sup>188</sup> "PM Says Gov't Will Not Change Anti-Homosexual Laws," *Jamaica Observer*, July 2, 2004.

<sup>189</sup> U.N., *HIV/AIDS and Human Rights: International Guidelines*, para. 30(c).

Professional organizations governing certain health professionals are empowered to sanction physicians, nurses, and midwives for professional misconduct, including failure to protect confidential patient information.<sup>190</sup> No independent agency exists, however, to redress breaches of confidentiality by other health workers, such as porters and ward assistants, who have access to patient docket and may otherwise discover patients' HIV status.<sup>191</sup>

### ***Educating health personnel***

Doctors, nurses, and other medical personnel who work with people living with HIV need training, both about the disease as well as how to ensure human rights protections for people living with HIV/AIDS, including ensuring confidentiality of HIV-related information and addressing discrimination. The Jamaican government has acknowledged that many health care personnel are not adequately trained in HIV/AIDS care and treatment and has undertaken steps to address this problem. The Ministry of Health has devoted a major portion of a World Bank loan to strengthening institutional capacity to respond to HIV/AIDS, including by providing training on AIDS-related stigma and discrimination for a range of health personnel (including doctors, nurses, nutritionists, and medical records workers).<sup>192</sup> The Ministry has also specifically targeted individuals working with medical records for training on protecting confidentiality.<sup>193</sup> These training sessions are optional, however.<sup>194</sup> In addition, the Ministry also has begun work with domestic and international HIV/AIDS organizations to address problems with quality of care for people living with HIV/AIDS.<sup>195</sup>

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<sup>190</sup> See, e.g., The Medical Act, section 11; The Nurses and Midwives Act, section 11.

<sup>191</sup> Patients can lodge complaints with the Ministry of Health within ten days after suffering a breach of confidentiality or discrimination by health workers. Ministry of Health, "Client Charter," <http://www.moh.gov.jm/Standards.htm> (retrieved August 27, 2004)

<sup>192</sup> U.S.\$4.82 million, or 29 percent of a World Bank loan received for the 2002-2006 period is being used for HIV/AIDS-related projects, but it is unclear what portion of these funds are going to training. Country Coordinating Mechanism for the Global Fund to Fight AIDS, Tuberculosis and Malaria, *A Proposal to Scale UP HIV/AIDS Treatment, Prevention, and Policy Efforts in Jamaica*, May 2003, [http://www.theglobalfund.org/search/docs/3JAMH\\_661\\_0\\_full.pdf](http://www.theglobalfund.org/search/docs/3JAMH_661_0_full.pdf) (retrieved August 27, 2004), p. 26.

<sup>193</sup> Human Rights Watch telephone interview with Kevin Harvey, coordinator of treatment, care and support for people living with HIV/AIDS, Ministry of Health, Kingston, September 7, 2004.

<sup>194</sup> *Ibid.*

<sup>195</sup> In 2004, the Johns Hopkins Program for International Education in Gynecology and Obstetrics (JHPIEGO), a nonprofit organization affiliated with Johns Hopkins University that receives funding from USAID, and Jamaica AIDS Support provided training addressing stigma and discrimination against people living with HIV/AIDS and on infectious disease control to health care workers at Kingston Public Hospital, one of Jamaica's highest-volume hospitals. The National HIV/AIDS Program at the Ministry of Health provided oversight for this training, which did not address stigma and discrimination against men who have sex with men or other vulnerable groups. JHPIEGO, "Project Proposal: Building the HIV/AIDS Capacity of Health Care Providers and Communities in Jamaica," 2004; E-mail communication with Robert Carr, director, Jamaica AIDS Support, September 7, 2004.

These are laudable initiatives, but the findings of this report make it clear that considerable room for improvement remains. HIV/AIDS training, including basic information addressing HIV transmission, must extend to all hospital personnel, including porters and laundry workers, and it must be mandatory. In addition, sanctions must be available and imposed for disclosing confidential information about HIV status and other HIV/AIDS-related discrimination.

In May 2004, Jamaica signed an agreement with the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) that should enable it to address some of the major gaps in its national response. The bulk of the funds is intended to scale up availability of antiretroviral medications, with the goal of providing access to all Jamaicans living with HIV/AIDS within five years. The agreement also prioritizes efforts to complete and implement policies and a legislative framework to protect the human rights of people living with and at high risk of HIV/AIDS, including by “address[ing] the repeal of discriminatory laws and policies that make it difficult to reach vulnerable high-risk communities (especially MSM, CSWs [commercial sex workers], and incarcerated populations).”<sup>196</sup> The findings of this report underscore the importance of enacting into law and enforcing human rights protections for vulnerable high-risk groups, especially men who have sex with men, to ensure the success of its AIDS treatment program. If the Jamaican government fails to do so, men who have sex with men will be denied access to AIDS treatment in the same ways that they have long been denied access to other health care services.

### ***Efforts to address police abuse and provide HIV/AIDS education to police***

It is widely acknowledged that there is a crisis in policing in Jamaica, fueled in part by police failure to control high rates of violent crime or to be held accountable for crimes they commit.<sup>197</sup> Human rights abuses by the Jamaican police have been documented and publicized by national and international organizations for over thirty years, and millions of dollars have been pledged toward efforts to reform police practices and improve security.<sup>198</sup> The Jamaican government has undertaken important efforts to

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<sup>196</sup> Country Coordinating Mechanism for the Global Fund to Fight AIDS, Tuberculosis and Malaria, *A Proposal to Scale UP HIV/AIDS Treatment, Prevention, and Policy Efforts in Jamaica*, May 2003, [http://www.theglobalfund.org/search/docs/3JAMH\\_661\\_0\\_full.pdf](http://www.theglobalfund.org/search/docs/3JAMH_661_0_full.pdf) (retrieved August 27, 2004), p.25.

<sup>197</sup> See Anthony Harriott, *Police and Crime Control in Jamaica: Problems of Reforming Ex-Colonial Constabularies* (Kingston, Jamaica: University of the West Indies Press, 2001); Horace Levy, *They Cry 'Respect!' Urban Violence and Poverty in Jamaica* (Kingston, Jamaica: University of the West Indies Press, 2001).

<sup>198</sup> See, e.g. *ibid.*; United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, “Report of the Special Rapporteur, Asma Jahangir, submitted Pursuant to Commission on Human Rights Resolution 2003/53. Addendum. Mission to Jamaica,” E/CN.4/2004/7/Add.2, September 26, 2003; Amnesty International, *Jamaica: Killings*

address these abuses, including by establishing mechanisms to investigate cases of police misconduct and to train police regarding the proper use of force.<sup>199</sup> But serious problems with police abuse continue.

The Jamaican Constabulary Force (JCF) has only recently acknowledged HIV/AIDS as a workplace issue and drafted policy guidelines to address HIV/AIDS in its workforce. These draft guidelines do not, however, address police conduct toward marginalized populations or toward HIV/AIDS outreach workers. Nor has the government addressed police abuse based on sexual orientation and gender identity, apparently ignoring cases that have been documented by domestic and international human rights organizations and by foreign governments.<sup>200</sup>

### ***Institutional mechanisms to address police misconduct***

Complaints of police abuse can be lodged directly with the Jamaican Constabulary Force, with its Bureau of Special Investigations or with the Complaints Division of the Office of Professional Responsibility. The Police Public Complaints Authority (PPCA), an independent body charged with monitoring and supervising civilian complaints of police misconduct, also is empowered to investigate cases of police misconduct. Once an investigation has been completed, reports are sent to the Department of Public Prosecutions for a ruling on whether criminal or disciplinary proceedings, or a coroner's inquest, should follow.<sup>201</sup> Public access to police and independent complaint mechanisms is limited by lack of knowledge about them, distrust of the legal system, and fear of reprisals for making complaints against officials.<sup>202</sup>

The Bureau of Special Investigations, which investigates fatal shootings and other killings by police, has been criticized for its failure to conform with international standards in conducting investigations. Failure to investigate incidents promptly or

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*and Violence by Police: How Many More Victims,*" pp. 52-54; Amnesty International, "'Until Their Voices are Heard.' The West Kingston Commission of Inquiry," July 2003; Jamaicans for Justice, *The Jamaica Justice Report*, 2002; U.S. Department of State, "Country Reports on Human Rights Practices: Jamaica, 2003," February 25, 2004. International donors and agencies contributing to justice reform efforts include the Canadian International Development Agency (CIDA), the World Bank, the Inter-American Development Bank, the U.S. Agency for International Development (USAID), the European Union (EU) and the United Nations Development Program (UNDP).

<sup>199</sup> See *Police and Crime Control in Jamaica*, pp. 121-182 (discussing reforms).

<sup>200</sup> See, e.g., Amnesty International, "A Summary of Concerns: A Briefing for the Human Rights Committee," October 1997, p. 14. U.S. Department of State, "Country Reports on Human Rights Practices: Jamaica, 2003," February 25, 2004; Robert Carr and Jamaica Forum for Lesbians, All-Sexuals and Gays, "Testimonies," 2003.

<sup>201</sup> Coroner's inquests are conducted before a judge and jury of the Coroner's Court and the court's verdict referred back to the Director of Public Prosecutions for a decision whether to continue to prosecute or to close the case.

<sup>202</sup> See "Report of the Special Rapporteur on Mission to Jamaica," September 26, 2003.

thoroughly, including failure to collect blood and other forensic evidence or to properly record crime scene information, compromises the chances for successful prosecution.<sup>203</sup> The Office of Professional Responsibility, which investigates complaints of police misconduct that do not involve firearms, has been criticized for its lack of impartiality and thoroughness.<sup>204</sup>

The Police Public Complaints Authority has been criticized as “completely ineffectual” in carrying out its mandate to investigate, supervise, and monitor complaints of police misconduct.<sup>205</sup> Jamaican and international human rights organizations have argued that the PPCA’s lack of independence and transparency and the Authority’s failure to make full use of its powers contribute to the inadequacy of its investigations.<sup>206</sup> Justice Lloyd Ellis, PPCA Chairman, has stated, for example, that he did not consider it appropriate or possible to hold Jamaica to the same standards as other countries and that he was generally satisfied with the quality of police investigations.<sup>207</sup>

Little attention has been paid to police interference with HIV/AIDS outreach workers or other abuses against men who have sex with men and sex workers. When asked about police conduct toward men who have sex with men and people living with HIV/AIDS, Justice Ellis said that he “would be surprised if anyone could prove that police would set up to abuse people who are homosexuals or, as you put it at high risk of HIV. If that is done, it is done not by police acting qua police but as citizens.”<sup>208</sup> Ellis acknowledged that gay men might be targeted on the community level but suggested that they bore some responsibility for violence committed against them: “I have no evidence of police beating anyone for being gay. You have people doing it in the community, doing it out of necessity. You have it every day. . . . It happens in other countries too. It’s not just a problem in Jamaica.”<sup>209</sup>

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<sup>203</sup> See, e.g., *ibid.*; Amnesty International, *Jamaica: Killings and Violence by Police: How Many More Victims*,” pp. 52-54; Jamaicans for Justice, *The Jamaica Justice Report*, 2002.

<sup>204</sup> *Ibid.*

<sup>205</sup> Jamaicans for Justice, *Jamaica’s Human Rights Situation*, 2003, p. 6.

<sup>206</sup> Amnesty International, *Jamaica: Killings and Violence by Police*, p. 55; Jamaicans for Justice, “Jamaica’s Human Rights Situation,” 2003, pp. 6-7.

<sup>207</sup> Amnesty International, *Jamaica: Killings and Violence by Police*, p. 55.

<sup>208</sup> Human Rights Watch interview with Justice Lloyd Ellis, executive director, Police Public Complaints Authority, Kingston, June 23, 2004.

<sup>209</sup> *Ibid.*

### ***Police training on HIV/AIDS and related human rights issues***

Percival Buddan, the officer in charge of HIV/AIDS training for the Jamaican police force, acknowledged that there was an urgent need for HIV/AIDS education in the police force to ensure protection against the disease as well as protection against HIV/AIDS-related discrimination. He told Human Rights Watch: “Until two or three years ago, police officers were more or less in the dark about HIV/AIDS, how the virus was contracted, about universal precautions [to protect against HIV transmission]. And people who have HIV/AIDS may want to keep it secret because of stigma and discrimination.”<sup>210</sup> The Jamaican Constabulary Force has published a document addressing myths and facts about HIV/AIDS and has begun to include HIV/AIDS education in its training and in optional lectures given in preparation for annual first aid certification exams. It is clear that these efforts are insufficient, however. Human Rights Watch interviewed several police officers, including a high-level police officer in Kingston and constables in St. Ann’s Bay, who made comments indicating their confusion and incomplete knowledge about HIV transmission. In St. Ann’s Bay, for example, police officers told Human Rights Watch that people living with HIV/AIDS should be confined in isolated areas for treatment, “so they will not be able to contaminate other people,” and that people living with HIV/AIDS were isolated from other detainees in the police lockup.<sup>211</sup>

As of this writing, the Jamaican Constabulary Force HIV/AIDS policy has been drafted but not approved. Percival Buddan told Human Rights Watch that the draft policy did not address police conduct toward marginalized populations such as men who have sex with men and sex workers or toward HIV/AIDS outreach workers to these groups.<sup>212</sup>

## **VII. REGIONAL EFFORTS TO ADDRESS HIV/AIDS**

Regional efforts to address HIV/AIDS-related discrimination and abuses have the potential to promote domestic policy reform in Jamaica. Regional organizations providing assistance in drafting rights-respecting laws and policies can provide guidance

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<sup>210</sup> Human Rights Watch interview with Percival Buddan, sub-officer in charge, Jamaican Constabulary Force First AID Center, Kingston, June 18, 2004. “Universal precautions” are simple measures taken to reduce the risk of transmission of HIV and other bloodborne pathogens through exposure to blood or body fluids, including the use of protective barriers such as gloves for direct contact with blood or body fluids and careful handling and disposal of needles, waste, and other materials contaminated with blood or body fluids. World Health Organization, “Universal Precautions, Including Injection Safety,” <http://www.who.int/hiv/topics/precautions/universal/en/> (retrieved September 16, 2004).

<sup>211</sup> Human Rights Watch interview, St. Ann’s Bay, June 16, 2004.

<sup>212</sup> Human Rights Watch interview with Percival Buddan, sub-officer in charge, Jamaican Constabulary Force First AID Center, Kingston, June 18, 2004 and telephone interview, Kingston, October 26, 2004.



to Jamaica and use their influence to lobby Jamaica to enact such legislation on an urgent basis. Regional organizations also can lobby for policy changes that national organizations lack the political or economic resources to support (such as repeal of the sodomy laws). These efforts may be constrained by the United States, a major donor, through its imposition of policies that limit the capacity to advocate for the rights of sex workers.<sup>213</sup>

The Pan Caribbean Partnership on HIV/AIDS (PANCAP), a coalition of public and private national, regional, and international organizations, was established in 2001 by the Caribbean Community (CARICOM) to scale up national and regional responses to HIV/AIDS among twenty-one Caribbean states and territories. PANCAP's priority areas of action include ensuring that national legislation and policies incorporate international human rights protections; providing treatment, care, and support for people living with HIV/AIDS; and preventing HIV among vulnerable populations, including men who have sex with men and sex workers.

Since 2002, PANCAP has worked with the Canadian HIV/AIDS Legal Network to assist national governments in the region in developing law, policy, and ethical guidelines.<sup>214</sup> PANCAP is currently working with seven Caribbean countries to draft legislation to protect people living with HIV/AIDS against discrimination at work and in the health care system, and to ensure universal access to treatment for people living with HIV/AIDS. According to St. Kitts and Nevis Prime Minister Denzil Douglas, who represents CARICOM on HIV issues, PANCAP also has been discussing condom distribution in prisons and laws criminalizing sex between men.<sup>215</sup>

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<sup>213</sup> U.S. law and policy bars the use of international HIV/AIDS and anti-trafficking funds by organizations that promote or advocate prostitution as an employment choice or the legalization of prostitution and that do not have a policy explicitly opposing prostitution. See United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2003, P.L. 108-25 (2003) (commonly known as the President's Emergency Plan for AIDS Relief or PEPFAR), section 104A(e); Office of the United States Global AIDS Coordinator, "The President's Emergency Plan for AIDS Relief. U.S. Five Year Global HIV/AIDS Strategy," February 2004, p. 65; U.S. Agency for International Development, "Trafficking in Persons: USAID Strategy for Response," February 2003, p. 4. Peer education projects are often the most effective and only possible AIDS educators for sex workers and have been acknowledged for their success in providing HIV education and prevention services in many countries throughout the world. See Kemala Kempadoo and Jo Doezema, *Global Sex Workers: Rights, Resistance, Rebellion* (London: Routledge, 1998); Human Rights Watch, "Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India," *A Human Rights Watch Report*, vol. 14, no. 5(c), July 2002. U.S. funding restrictions undermine support for this important work, and limit advocacy strategies to ensure safe sex during sex work.

<sup>214</sup> Canadian HIV/AIDS Legal Network, PANCAP, CARICOM, "Action Plan and Workshop Reports: Programme on HIV/AIDS, Law, Ethics and Human Rights," January 2004.

<sup>215</sup> Caribbean poised to pass HIV Laws," *BBC Caribbean*, March 8, 2004. This contradicts current CARICOM model legislation for sexual offences that endorses criminalization of adult homosexual conduct. See CARICOM Model Legislation for Sexual Offences, section 15, <http://www.caricom.org/archives/sexualoffences.htm> (retrieved August 27, 2004).

In October 2003, the Global Fund approved eight CARICOM proposals, including regional proposals by PANCAP and the Organization of Eastern Caribbean States (OECS).<sup>216</sup> PANCAP's proposal aims to bolster its current law reform efforts by establishing a regional mechanism to ensure human rights protections for people living with HIV/AIDS; to coordinate regional and sub-regional HIV/AIDS prevention efforts; and to address inequities in care, treatment, and support among Caribbean countries.<sup>217</sup> PANCAP regional efforts to ensure human rights protections have the potential to complement Jamaica's national law and policy reforms.

There have been important regional efforts to establish and coordinate networks of people living with HIV/AIDS, men who have sex with men, and sex workers. The Caribbean Regional Network of People living with HIV/AIDS (CRN+) provides training and technical assistance to people living with HIV/AIDS in twenty-seven territories and seven national networks in the Caribbean region. CRN+'s position on the PANCAP steering committee has made it a key partner in regional initiatives, including with the World Bank and the Caribbean Health Research Council. In July 2004, CRN+ got approval of its own Global Fund proposal, which aims to enhance the capacity of people living with HIV/AIDS in the region to obtain treatment, care, and support services, to adhere to new treatment regimes, and to participate in advocacy and policymaking on the national and regional level.<sup>218</sup> This initiative targets people living with HIV/AIDS and their networks in twelve Caribbean countries, including Jamaica.<sup>219</sup> In Jamaica, the United Nations Theme Group on HIV/AIDS is also providing support and technical assistance for the Jamaican Network of Seropositives (JN+).<sup>220</sup>

Since 2003, the NGO International HIV/AIDS Alliance has been working in several Caribbean countries to mobilize support and HIV/AIDS prevention education for men

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<sup>216</sup> These proposals were from Guyana and Haiti (two each), Belize, Jamaica, the Organization of Eastern Caribbean States and PANCAP. CARICOM, "Eight CARICOM Proposals Successful at Sixth Meeting of Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM)," October 15, 2003.

<sup>217</sup> PANCAP, *Scaling Up the Regional Response to HIV/AIDS through the Pan Caribbean Partnership on HIV/AIDS*. The OECS proposal focuses on improving access to HIV/AIDS prevention and treatment services in the nine small island nations that comprise the OECS subregion (Anguilla, Antigua & Barbuda, the British Virgin Islands, Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia, and St. Vincent and the Grenadines), which share strong economic, social and cultural links. Country Coordinating Mechanism, *Scaling up prevention, care and treatment to combat the HIV/AIDS pandemic in the organization of Eastern Caribbean States (OECS) Sub-Region*.

<sup>218</sup> CRN+, *Strengthening the Community of PLWHA and those affected by HIV/AIDS in the Caribbean—a Community Based Initiative*, [http://www.theglobalfund.org/search/docs/4MANH\\_767\\_0\\_full.pdf](http://www.theglobalfund.org/search/docs/4MANH_767_0_full.pdf) (retrieved August 20, 2004).

<sup>219</sup> Ibid.

<sup>220</sup> Human Rights Watch interview with Bernard Bainvil, Chair, U.N. Theme Group on HIV/AIDS, Jamaica, Kingston, June 10, 2004.

who have sex with men.<sup>221</sup> In 2003, Jamaica AIDS Support collaborated with the Alliance to establish and support community organizations of men who have sex with men in the eastern Caribbean, and to form a regional network of groups working with men who have sex with men to provide support to national groups.<sup>222</sup> The Latin American Association for Comprehensive Health and Citizenship, a network of lesbian, gay, bisexual, and transgender groups in Central and South America, has been working with groups working with men who have sex with men in the region to develop and support strategies to force governments to address the needs of men who have sex with men in national HIV/AIDS programs.<sup>223</sup>

In some Caribbean countries since the mid-1990s, sex worker organizations have been providing HIV/AIDS and other health services, and advocating for the protection of sex workers' rights.<sup>224</sup> The *Movimiento de Mujeres Unidas*, MODEMU (The Movement of United Women) and the Maxi Linder Association in Suriname have been internationally recognized for such work and looked to as models for other organizations in the region.

The U.S. government provides significant funding to support HIV/AIDS-related work in the region, including work targeting sex workers. U.S. law and policy bars the use of these funds by organizations that do not have a policy explicitly opposing prostitution and limits the legal advocacy that can be done with these funds. These funding restrictions limit the extent to which other organizations might emulate the exemplary work of organizations like MODEMU and the Maxi Linder Association. A health worker working with sex workers in Jamaica told Human Rights Watch that the restrictions have impeded the organization's work with sex workers by undermining its ability to support efforts for sex workers to organize on their own behalf and to join with regional and international calls for advocacy on behalf of the rights of sex workers.<sup>225</sup> Other NGOs that receive U.S. government funding to work with sex workers in the region may face similar obstacles.

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<sup>221</sup> International HIV/AIDS Alliance, *Annual Review 2003*, pp. 41-42. The Alliance established its Caribbean program in 2003, and targets prevention and care activities for men who have sex with men, sex workers, and people living with HIV/AIDS.

<sup>222</sup> *Ibid.*; Human Rights Watch e-mail communication with Robert Carr, director, Jamaica AIDS Support, August 19, 2004.

<sup>223</sup> Asociacion para la Salud Integral y Ciudadania de America Latina (ASICAL), "Quienes Somos," <http://www.sidalac.org.mx/asical/asical.html> (retrieved August 21, 2004). The International AIDS Alliance and the POLICY Project have been collaborating with ASICAL in this work. See International AIDS Alliance, *Annual Review 2003*, p. 41; "The Men's Health in Latin America," February 6, 2003, [http://www.policyproject.com/page\\_whatsNew.cfm?read=30](http://www.policyproject.com/page_whatsNew.cfm?read=30) (retrieved August 21, 2004); POLICY Project, "POLICY/ASICAL Training Promotes Men's Health in Latin America," February 6, 2003, [http://www.policyproject.com/page\\_whatsNew.cfm?read=30](http://www.policyproject.com/page_whatsNew.cfm?read=30) (retrieved August 21, 2004).

<sup>224</sup> See Kemala Kempadoo and Jo Doezema, *Global Sex Workers: Rights, Resistance, Rebellion* (London: Routledge, 1998).

<sup>225</sup> Human Rights Watch interview, Kingston, June 14, 2004.

## VIII. LEGAL STANDARDS

When people in Jamaica are driven from their homes and towns, subjected to relentless violence with little recourse to police protection, discriminated against in health care provision, and face public disclosure of confidential and private information because they are living with HIV/AIDS or based on their sexual orientation or gender identity, they are not experiencing “Jamaican culture.” They are experiencing human rights violations.

Jamaica has ratified international and regional treaties requiring it to protect human rights to freedom from violence and arbitrary arrest and detention, freedom of association and assembly, the highest attainable standard of health, privacy, and nondiscrimination based on sexual orientation, gender identity, and HIV status. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women, and the American Convention on Human Rights (ACHR).

Laws criminalizing homosexual conduct and abuses based on sexual orientation and gender identity have been extensively reviewed by United Nations bodies charged with interpreting these treaties, U.N. special experts on torture, extrajudicial executions, and health, and bodies established by the U.N. charter for the protection and promotion of human rights. Jamaica’s sodomy laws and many of the practices described in this report are completely at odds with the conclusions of these bodies, which have roundly condemned such laws and practices as violations of fundamental human rights to privacy and nondiscrimination, and for fueling serious human rights abuses against sexual minorities.

### ***Freedom from violence***

The Jamaican Constitution recognizes the right to life as a fundamental right.<sup>226</sup> Jamaica has also ratified international and regional instruments that enshrine this protection, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights.<sup>227</sup> By inciting third parties to commit acts of serious violence against men who have sex with men and failing properly to investigate

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<sup>226</sup> Jamaican Constitution, article 14.

<sup>227</sup> ICCPR, 999 U.N.T.S. 171, entered into force March 23, 1976, article 6; American Convention on Human Rights, ratified by Jamaica on August 7, 1978, article 4(1).

crimes of violence against them, the Jamaican government is failing in its obligation to protect the right to life.

The ICCPR and the American Convention require states to prevent torture and other cruel, inhuman or degrading treatment or punishment, including by private actors.<sup>228</sup> These treaties further require state parties to ensure to all persons within their territory the rights recognized therein.<sup>229</sup>

When police beat, mistreat, and abuse people on the basis of their HIV status, sexual orientation, or consensual sexual conduct with members of the same sex, they violate these basic protections. When police instigate or fail to protect against such violence or abuse committed by private actors, they also violate these protections. The ICCPR's prohibition against torture and cruel, inhuman or degrading treatment or punishment applies "not only to acts that cause physical pain but also to acts that cause mental suffering to the victim."<sup>230</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Jamaica is a party, requires state parties "without delay" to take all appropriate measures to end gender-based discrimination, including by taking action to modify rigid stereotyping of the roles of men and women.<sup>231</sup> Gender-based violence may also be considered a form of gender-based discrimination prohibited under CEDAW.<sup>232</sup> The CEDAW Committee recognizes that pervasive sex-based stereotyping perpetuates social prejudices and contributes to gender-based violence.<sup>233</sup> Although the

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<sup>228</sup> ICCPR, article 7; American Convention, article 5; see also CEDAW General Recommendation 19 ("Under general international law, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.").

<sup>229</sup> ICCPR, article 2; American Convention, article 1(1).

<sup>230</sup> Human Rights Committee, *General Comment 20*, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994). The Human Rights Committee, the United Nations body charged with monitoring implementation of the ICCPR, has commented that states should provide special protections for particularly vulnerable persons. The Special Rapporteur on Torture has identified sexual minorities as a "particularly vulnerable group" with respect to torture in various contexts, and condemned discriminatory laws and attitudes that subject members of sexual minorities to abuse and deprive them of means to claim and ensure enforcement of their rights. "Report of the Special Rapporteur on the question of torture and other cruel, inhuman and degrading treatment or punishment," U.N. General Assembly, U.N. Doc. A/56/156, July 3, 2001.

<sup>231</sup> CEDAW, G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981, articles 2, 5(a).

<sup>232</sup> CEDAW, article 2; United Nations General Assembly, "Declaration on the Elimination of Violence against Women," A/RES/48/104, December 20, 1993 (issued on February 23, 1994), article 4; Committee on the Elimination of All Forms of Discrimination against Women, *Violence Against Women. General Recommendation 19* (eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15, para. 11; see also Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women," article 4.

<sup>233</sup> CEDAW Committee, *Violence Against Women, General Recommendation 19*, para. 11.

Committee's comments focus on violence against women, the phrase "gender-based violence" includes violence targeted against both men and women based on their sexual orientation or gender identity. Thus, men as well as women may be targeted for discrimination because they fail to conform to stereotypes based on gender or because they claim a gender identity that fails to conform to societal expectations. The measures enumerated by the CEDAW Committee to combat gender-based violence include instituting effective complaints procedures and remedies for survivors of gender-based violence, and ensuring appropriate medical care, counseling and support services.<sup>234</sup> States should adopt these sorts of measures to protect men, as well as women, from gender-based violence.

### ***The right to privacy and the right to freedom from discrimination***

Jamaica's sodomy laws (sections 76, 77, and 79 of the Offences against the Person Act) are meant, and used, to criminalize consensual sexual conduct between adult males, and are used to criminalize consensual sexual conduct between adult females. In the 1994 case of *Nicholas Toonen v. Australia*, the U.N. Human Rights Committee, which monitors compliance with and adjudicates complaints brought under the ICCPR and its Optional Protocol, held that sodomy laws punishing consensual, adult homosexual conduct violate the rights to privacy and nondiscrimination guaranteed by the ICCPR.<sup>235</sup> The Committee also noted that criminalization of homosexual practices hampered HIV prevention "by driving underground many of the people at risk of infection."<sup>236</sup> The Committee has thus urged states to bar discrimination based on sexual orientation.<sup>237</sup>

Since *Toonen*, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the CEDAW Committee have called for the repeal of laws criminalizing consensual adult homosexual conduct.<sup>238</sup> In the case of Trinidad and Tobago, the Human Rights Committee has urged that it extend the provisions of anti-

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<sup>234</sup> *Ibid.*, para. 24.

<sup>235</sup> *Nicholas Toonen v. Australia*, Human Rights Committee, 50<sup>th</sup> Session, Case no. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (April 4, 1994).

<sup>236</sup> *Ibid.*, para. 8.5.

<sup>237</sup> See, e.g., U.N. Human Rights Committee, "Concluding Observations of the Human Rights Committee: Poland," 66th Session, U.N. Doc. CCPR/C/79/Add.110, p. 23 (urging inclusion of constitutional protections against sexual-orientation-based discrimination).

<sup>238</sup> See Ignacio Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation—A Decade of Development and Denial at the U.N.," *Health and Human Rights*, vol. 7, no. 2, pp. 51-52 and n. 16 (citing decisions in which HRC has called for repeal in Tanzania and Romania; the CESCR has called for repeal in Cyprus; and CEDAW has called for repeal in Kyrgyzstan).

discrimination legislation “to those suffering discrimination on grounds of age, sexual orientation, pregnancy or infection with HIV/AIDS.”<sup>239</sup>

The U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions has observed that sodomy laws facilitate violence and human rights abuses against sexual minorities:

The Special Rapporteur further believes that criminalizing matters of sexual orientation increases the social stigmatization of members of sexual minorities, which in turn makes them more vulnerable to violence and human rights abuses, including violations of the right to life. Because of this stigmatization, violent acts directed against persons belonging to sexual minorities are also more likely to be committed in a climate of impunity.<sup>240</sup>

Human Rights Watch recognizes the freedom of all people to follow their conscience in deciding whether to support or oppose homosexuality or homosexual behavior. However, rigid stereotyping of roles for men and women can lead to significant abuse of people who do not conform to those stereotypes and contribute to gender-based violence. Jamaica’s obligations under international law to protect against gender-based discrimination require that it take “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>241</sup> Moral objections to nonconforming sexual orientation or gender identity are not an adequate basis to avoid this obligation.

The U.N. Commission on Human Rights, the main political body within the U.N. system charged with human rights matters, interprets article 26 of the ICCPR, which “prohibit[s] any discrimination and guarantee[s] all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language,

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<sup>239</sup> Concluding Observations of the Human Rights Committee: Trinidad and Tobago,” U.N. Doc. CCPR/CO/70/TTO, November 3, 2000, para. 11.

<sup>240</sup> “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,” U.N. Doc. E/CN.4/1999/39, January 6, 1999, para. 77.

<sup>241</sup> CEDAW, article 5(a); see also CEDAW Committee, *General Recommendation 19* (noting importance of rejecting stereotyped roles for men because they contribute to gender-based violence).

religion, political or other opinion, national or social origin, property, birth or other status" as prohibiting discrimination based on HIV/AIDS.<sup>242</sup>

The non-binding U.N. International Guidelines on HIV/AIDS and Human Rights enjoin states to "enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities in the public and private sectors."<sup>243</sup> The guidelines advise that the laws cover health care and access to transportation (among other areas), and note particular areas where discrimination is likely and merit legal protection, including: (1) protection from discriminatory acts, including "HIV/AIDS vilification" and vilification of people who engage in same sex relationships; and (2) protection of confidentiality of medical information, including HIV status, and other personal information, and the need for disciplinary and enforcement mechanisms in cases of breaches of confidentiality.<sup>244</sup>

International law proscribing discrimination extends to discrimination in provision of transportation based on sexual orientation and HIV/AIDS. The U.N. Human Rights Committee has found that prohibitions on discrimination place a broad mandate on states to remedy unequal treatment in all areas of life, finding that article 26 of the ICCPR "prohibits discrimination in law or in fact in any field regulated or protected by the public authorities."<sup>245</sup> Jamaica is therefore responsible for providing protections against discrimination in transportation services (buses, taxis) subject to its regulation.

### ***Freedom from arbitrary arrest and detention***

The ICCPR and the American Convention protect the right to liberty and security of the person and prohibit all arbitrary detention.<sup>246</sup> The U.N. Working Group on Arbitrary Detention has affirmed that the detention of people solely on the basis of their sexual

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<sup>242</sup> ICCPR, article 26; Commission on Human Rights, "The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)," Resolution 1995/44, adopted without a vote, March 3, 1995.

<sup>243</sup> U.N., HIV/AIDS and Human Rights International Guidelines, Guideline 5.

<sup>244</sup> *Ibid.*, paras. 30(a), (d), (h). The U.N. Guidelines specifically recommend that "an independent agency should be established to address breaches of confidentiality," and that "provision should be made for professional bodies to discipline cases of breaches of confidentiality as professional misconduct." *Ibid.*, para. 30(c).

<sup>245</sup> Human Rights Committee, *General Comment 18: Nondiscrimination*, 37<sup>th</sup> Session, 1989, U.N. Doc. HRI/GEN/1/Rev.1, p. 26.

<sup>246</sup> ICCPR, articles 9(1) and 9(3); American Convention, article 7. The U.N. Human Rights Committee, in its authoritative interpretation of the article 9 right to liberty and security, states that article 9(1) is "applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc." U.N. Human Rights Committee, *General Comment 8: Right to liberty and security of persons (Art. 9)*, Sixteenth session, 30/06/82



orientation violates fundamental human rights.<sup>247</sup> The ICCPR further provides an enforceable right to compensation for victims of unlawful arrest or detention.<sup>248</sup> The protections of the ICCPR and the American Convention are violated when state agents arrest or detain people on the basis of their sexual orientation, their consensual sexual conduct with others of the same sex, or their association with homosexual men and women and with sex workers.

### ***Freedom of association and assembly***

The ICCPR and the American Convention protect the rights of assembly and to freedom of association with others.<sup>249</sup> States violate these rights when police harass, arrest and otherwise abuse men who have sex with men, women who have sex with women, sex workers, and peer educators attempting to provide HIV/AIDS education and services to them. States also violate these rights when they promulgate laws that impede efforts by such people to organize to assert and defend their rights or hinder others from doing so on their behalf. In this respect, Jamaica's sodomy laws violate the rights to freedom of association and assembly.

Jamaica's failure to protect the rights of groups like the Jamaica Forum for Lesbians, All-Sexuals and Gays to safely convene has consequences for their ability to exercise other rights, as the U.N. has recognized. The U.N. General Assembly's Declaration on Human Rights Defenders has called attention to the role of the freedoms of association and assembly in the defense of all human rights.<sup>250</sup> Indeed, the Special Representative of the U.N. Secretary General on Human Rights Defenders has called attention to the "greater risks... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be... human rights groups and those who are active on issues of sexuality, especially sexual orientation."<sup>251</sup>

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<sup>247</sup> U.N. Working Group on Arbitrary Detention, "Opinion no. 7/2002 (Egypt)", at 7 and 14-15.

<sup>248</sup> ICCPR, article 9(5); see also American Convention, article 10 (providing right to compensation where sentenced by a final judgment through miscarriage of justice).

<sup>249</sup> ICCPR, articles 21, 22(1); American Convention, articles 16, 17; see also Universal Declaration of Human Rights, article 20.

<sup>250</sup> U.N. Declaration on the Rights and Responsibilities of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (U.N. General Assembly Resolution 53/144, March 8, 1999), article 5.

<sup>251</sup> "Report of the Special Representative to the Secretary General on human rights defenders," U.N. Doc. E/CN.4/2001/94, para. 89(g).

### ***The right to the highest attainable standard of health***

International law recognizes the human right to obtain life-saving health services without fear of punishment or discrimination. The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to the highest attainable standard of health without discrimination based on certain prohibited grounds (including sexual orientation and HIV status) and requires governments to take all necessary steps for the “prevention, treatment and control of epidemic . . . diseases.”<sup>252</sup> The Committee on Economic, Social and Cultural Rights has interpreted article 12 to require state parties to ensure access to information and services necessary for physical and mental health without discrimination based on HIV status and sexual orientation.<sup>253</sup> According to the CESCR, article 12 of the ICESCR also requires states to take affirmative steps to promote health, including ensuring that third parties do not limit access to health-related information and services and refrain from conduct that limits people’s capacity to protect their health.<sup>254</sup>

Laws and policies that “are likely to result in . . . unnecessary morbidity and preventable mortality” constitute specific violations of the right to health.<sup>255</sup> Police interference with HIV prevention efforts and discriminatory access to health facilities and services are a blatant interference with the right to the highest attainable standard of health. Jamaica’s failure to ensure that government and private actors do not interfere with the ability of men who have sex with men and women who have sex with women to receive health information and services and to protect confidential information about HIV status also violates the right to the highest attainable standard of health.<sup>256</sup>

Access to complete and accurate information about condoms and HIV/AIDS is recognized by article 19 of the ICCPR, which guarantees the “freedom to seek, receive

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<sup>252</sup> ICESCR, U.N. Doc. A/6316 (1966), articles 2(2), 12(1), 12(2)(c). Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights protects the right to health. Although Jamaica has not acceded to this convention, it does codify prevailing Organization of American States (OAS) standards. Jamaica’s obligations under the American Convention require it to take measures toward progressive realization of such standards. See American Convention, article 26 (obligating state parties to adopt measures toward progressive realization of rights implicit in economic, social, educational, scientific and cultural standards set forth in the OAS Charter).

<sup>253</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, August 11, 2000, paras. 12, 18, 19, 30, 50, 54.

<sup>254</sup> *Ibid.*, paras. 33, 50.

<sup>255</sup> *Ibid.*, para. 50.

<sup>256</sup> *General Comment 14*, paras. 12, 16 and n. 8; see also Human Rights Watch, *Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States. Texas: A Case Study*, vol. 15, no. 5(g), September 2002, pp. 41-42.

and impart information of all kinds.”<sup>257</sup> Parties to the ICCPR are obliged not only to refrain from censoring information, but to take active measures to give effect to this right.<sup>258</sup> The Committee on Economic, Social and Cultural Rights similarly stated that “information accessibility” is an essential element of the human right to health, noting that “education and access to information concerning the main health problems in the community, including methods of preventing and controlling them” are of “comparable priority” to the core obligations of the ICESCR.<sup>259</sup>

Access to HIV prevention services saves lives. Access to health care prevents people living with HIV/AIDS from unnecessary suffering and early death. The right to life is recognized by all major human rights treaties and, as interpreted by the U.N. Human Rights Committee, requires governments to take “positive measures” to increase life expectancy.<sup>260</sup> These should include taking adequate steps to provide accessible information and services for HIV prevention, and ensuring access to medical treatment for people living with HIV/AIDS.

## IX. CONCLUSION

Jamaica is at a crossroads in its efforts to address its growing HIV/AIDS epidemic. The epidemic is spreading among the general population, and HIV/AIDS is on the increase. The Jamaican government—namely, the Ministry of Health’s national HIV/AIDS program—has acknowledged that human rights abuses against marginalized populations at risk of HIV and against people living with HIV/AIDS are important factors driving the epidemic. Its national HIV/AIDS strategy has at its core protection of human rights and fundamental freedoms of people living with and at high risk of HIV/AIDS. And since 2002, the Jamaican government has received significant resources to put its national HIV/AIDS strategy into action, including by developing a legal framework to ensure human rights protections.

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<sup>257</sup> ICCPR, article 19(2).

<sup>258</sup> See ICCPR, article 2(2), providing that “each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” State responsibility to give effect to the right to information is further elaborated in S. Coliver, ed., *The Right to Know: Human Rights and access to reproductive health information* (Article 19 and University of Pennsylvania Press, 1995), pp. 45-47.

<sup>259</sup> Committee on Economic, Social and Cultural Rights (CESCR), *The right to the highest attainable standard of health*, para. 44(d).

<sup>260</sup> Human Rights Committee (HRC), *The right to life: HRC General comment 6* (16<sup>th</sup> Sess., 1982), para. 5.

But absent political leadership to end state-sponsored violence and discrimination against men who have sex with men, sex workers, and people living with HIV/AIDS and against peer educators working with them, Jamaica could miss an opportunity to reverse the course of its epidemic. Government leaders must act quickly and forcefully to combat widely-held prejudices that interfere with HIV/AIDS policy and undermine Jamaicans' human right to health. The Jamaican government must also join forces with regional efforts to reform discriminatory laws and policies that create the conditions in which the epidemic flourishes. If Jamaica fails to take such steps, its investment in fighting AIDS will be wasted. The cost will be immeasurable, and for many Jamaicans, the consequences will prove fatal.

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## Appendix

### Dancehall Songs Referred to in the Report

#### Boom Bye Bye<sup>261</sup> by Buju Banton

Werl iz in chobl  
Enitaim Buju Banton com  
Battybwoy git op ahn ron  
A gonshat, mi hed bak  
Hie mi tel im nou, kruu, iz laik ...

World is in trouble  
Anytime Buju Banton comes  
Faggots get up and run  
A gunshot, yikes  
Hear me tell him now, crew, it's like ...

*Chorus:*

Boom, bai bai, iina battybwoy hed  
Ruud buai no promuot no naasi man  
Dem hafi ded  
Boom, bai bai, iina battybwoy hed  
Ruud buai no promuot no naasi man  
Dem hafi ded.

Boom, bye bye, in a faggot's head  
Rude boys don't promote nasty men  
They have to die  
Boom, bye bye, in a faggot's head  
Rude boys don't promote nasty men  
They have to die.

Tuu man ichop ahn a robop  
Ahn a lie dong iina bed  
Ogop uan aneda ahn a filop leg  
Sen fi di matic ahn di Uzi instead  
Shuut dem, no come ef wi shuut dem.

Two men hitch up and are rubbing up  
And are laying down in bed  
Hug up one another and feeling up legs  
Send for the automatic and the Uzi instead  
Shoot them, don't come if we shoot them.

No waahn Jaki, gi dem Paal insted  
Dem no waahn di swiitnis bitwiin di leg  
Gial ben dong bakwie ahn aksep di peg  
Ahn ef i riili at  
Yu nuo shi stil naa go fled.

Don't want Jackie, give them Paul instead  
They don't want the sweetness between the  
legs  
Girl bend down backwards and accept the peg  
And if it really hurts  
You know she still won't flee.

Som man stil no waahn di panti ried  
Pior batty bizniz dem lov  
Mi se uman iz di grietes ting  
Gad eva put pan di lan

Some men still don't want the panty raid  
Only bottom business they love  
I say woman is the greatest thing  
God ever put on the land

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<sup>261</sup> Gun shot sounds

Buju lovin dem fram hed dong to fut batam.

Buju loving them from head down to feet.

Bot som man a tern roun

But some men are turning around

We dem get dat fram?

Where do they get that from?

Piita iz nat fa Janit, Piita iz fa Jan

Peter is not for Janet, Peter is for John

Suuzet iz nat fa Paal, Suuzet is fa An

Suzette is not for Paul, Suzette is for Ann

We di bomboclaat dem gat dat fram?

Where the fuck do they get that from?

Ier com di DJ niem Buju Banton

Here comes the DJ named Buju Banton

Com fi schrietn yu taak

Come to straighten your talk

Kaa mi se dis iz nat a baagin

Because I say this is not a bargain

Mi se dis iz nat a diil

I say this is not a deal

Gai com nier wi den him skin mos piil

Guy comes near us then his skin must peel<sup>262</sup>

Bon im op bad laik a uol taia wiil.

Burn him up bad like an old tyre wheel.

Aal di Niuu Yaak kruu dem no promuot battyman

All the New York crew don't promote faggots

Jomp ahn daans, unu push op unu an

Jump and dance, everyone put up your hands

Aal di Bruklin gial dem no promuot battyman

All the Brooklyn girls don't promote faggots

Jomp ahn buogl ah wain yu batam

Jump and bogle<sup>263</sup> and gyrate your bottom

Kianiedian gial dem no laik battyman

Canadian girls don't like faggots

Ef yu a no uan, yu hafi push up yu an.

If you are not one, you have to put up your hand.

### Chi Chi Man [Gay Man], by TOK

My Crew (My Crew) my dogs (my dogs)

My crew (my people) my dogs (my people)

Set rules (Set rules) set laws (set laws)

Set rules (Set rules) set laws (set laws)

We represent for di lords of yards

We represent all the area dons [gang leaders]

A gal alone a feel up my balls

Only girls are allowed to feel up my balls

*Chorus:*

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<sup>262</sup> In Jamaica, pouring acid on an individual is a common revenge tactic

<sup>263</sup> A type of dance

From dem a par inna chi chi man car  
Blaze di fire mek we bun dem! (Bun dem!)

From dem a drink inna chi chi man bar  
Blaze di fire mek we dun dem! (Dun dem!)

So mi go so, do yuh see weh I see?

Niggas when your doin that  
Nuff a dem a freak dem a carry all dem dutty act

Thug nigga wanna bees nuff a dem a lick it back

It dem bring it to we, hold on nuff coppa a shot

Coppa shot rise up every calico go rat tat tat

Rat tat tat every chi chi man dem haffi get flat  
die

Get flat, mi and my niggas ago mek a pack

Chi chi man fi dead and dat's a fact.

So mi go so la la la la la la la la la la  
Nah go mek nuh chi chi man walk right a so

From a bwoy a deep we ago dun dem right now

Leff him whole family dem a blow wow  
I see it from far mi and dem nah go par

A nuff a dem bwoy weh a smoke man cigar

Mi and dem coulda never inna one bar

Dem bwoy deh flex too bizarre.

Once they get together in a gay  
men's car  
Blaze the fire, let's burn them! (Burn  
them!)

Once they drink in a gay bar  
Blaze the fire, let's burn them! (Kill  
them!)

I'm looking on, do you see what I  
see?

Niggas when you are doing that  
Lots of them are freaks, they bring  
all their dirty acts

Thug nigga wannabees – lots of  
them take it (in the arse)  
If they bring it to us, hold on lots of  
bullets are going to fly  
Bullets fly, take up every calico (gun)  
and shoot rat-tat-tat  
Rat-tat-tat every gay man will have to

Die, me and my niggas will make a  
pact  
Gay men must die and that's a fact.

We are not part of us la la la la  
Not going to let any gay men walk  
here  
Once a man takes cock we are going  
to kill them right now  
Leave his whole family to cry  
I see it from far, I am not going to  
mix with them  
There are lots of those guys that  
suck cock  
Me and them could never stay in the  
same bar  
Those boys are just too weird.

## Log On<sup>264</sup> by Elephant Man

Lag aan, ahn step pan chi chi man	Log on, and step on queer men
Tep pan im laik a uol claat	Step on him like an old cloth
Daans wi a daans ahn a bon out aal friiki man	We're dancing to burn out all freaky men
A daans wi a daans ahn a krosch out aal bingi man	We're dancing to crush out all queer men
Du di waak, mek mi si di lait ahn di tuoch dem faas.	Do the walk, show me your lighter and torch fast.
<i>Chorus:</i>	
Lag aan, ahn tep pan chi chi man	Log on, and step on queer men
Lag aan, fram yu nuo se yu no iki man	Log on, once you know you're not an ickie man
Lag aan, ahn tep pan chi chi man	Log on, and step on queer men
Daans wi a daans ahn a bon out aa' friiki man.	We're dancing to burn out all freaky men.
Bout baas? A huu da bredda cuda a taak?	What boss? Who could that brother be talking about?
Gimi paas, yu no si a dis ya daans di piipl dem want?	Excuse me, don't you see it's this dance the people want?
Tep pan im laik a uol cleat	Step on him like an old cloth
A daans wi a daans ahn a crosch out dem ...	We're dancing to crush them out
Bon blaas yu skiear yu cia bos di niu daans	Burn, blast, you're scared, you can do the new dance
Du di waak, mek mi si di lait ahn di tuoch dem faas	Do the walk, show me your lighter and torch fast
Jerimi, com elp mi du di bran niu daans.	Jeremy, come help me do the brand new dance.
Aa rait now, yu no si dem buai ya tek man fi fuul?	All right now, don't you see these guys take us for fools?
Kiaahn tek dem tu yu daansn skuul.	You can't take them to your dancing school
Gad a mi bakativ, miuzik a mi tuul	God is my support, music is my tool
Aal rait ya nou	All right here now
Yu no si di huol a di tapa <sup>265</sup> dem a dwiit?	Don't you see all the top people doing it?

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<sup>264</sup> A dance with foot motion as if squashing a cockroach - the lyrics boast about crushing gay men.

<sup>265</sup> Shortened form of tapanaaris, a term indicating persons of wealth, prestige



Fiuucha a aax Elifant ow mi dwiit  
Put owt yu rait an ahn put owt yu rait fiit

Lag aan, ahn ron di chriit.  
Aa rait, siit? Chi chi man kiaahn stap da wan  
ya fram dwiit

Wiek op, iina di rang bed yu a sliip  
Yu no si di gial dem kanchrak yu a briich?

Fiuucha ron im dong, di buai fi get biit

Kiaahn paas Spanish Tong pahn Prinsis Chriit  
Bier rat-a-tat di shata dem wud ahn a biit  
Jerimi, ton op di miuuzik ina di chriit  
Dis ya niuu daans a ron di plies.

The future is asking Elephant how I do it  
Put out your right hands and put out your  
right feet  
Log on, and run the street.  
All right, see it? Queers can't stop this one  
from doing it

Wake up, in the wrong bed you are sleeping  
Don't you see the girls' contract you are  
breaching?

In future run him down, the boy should be  
beaten

Can't go by Spanish Town on Princess Street  
Only rat-a-tat the shooters would and beating  
Jeremy, turn up the music in the street  
This new dance is running the place.