



HUMAN
RIGHTS
WATCH

NOT SAFE AT HOME

Violence and Discrimination against LGBT people in Jamaica



Not Safe at Home

Violence and Discrimination against LGBT People in Jamaica

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Printed in the United States of America

ISBN: 978-1-6231-31999

Cover design by Rafael Jimenez

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OCTOBER 2014

978-1-6231-31999

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Glossary.....	i
Note on Jamaican Language.....	iii
Summary	1
Key Recommendations	6
Methodology.....	8
I. Public Attitudes towards Homosexuality.....	10
Criminalization	10
Homophobic Discourse.....	11
Mistrust of Police.....	17
HIV and Homophobia.....	18
II. Violence against LGBT People.....	21
Physical Abuse	21
Verbal Abuse.....	26
III. Police Failures to Act	27
Failure to Intervene, Investigate, and Arrest	27
IV. Police as Perpetrators	33
Verbal Abuse	33
Physical Abuse	34
Sexual Abuse	35
Extortion	36
V. Public and Private Sector Discrimination	39
Health Care Discrimination	39
Employment Discrimination	42
Housing Discrimination	43
VI. Government and Police Response.....	48

Police	48
Positive Police Behavior	52
Government Ministries	55
VII. Civil Society	61
VIII. Regional and International Stakeholders	65
IX. International Human Rights Law	67
Non-Discrimination.....	67
Right to Privacy.....	69
Right to Protection against Violence.....	69
Economic and Social Rights, including the Rights to Health and Housing.....	71
Recommendations.....	73
To the Prime Minister.....	73
To the Ministry of National Security.....	73
To the Jamaican Constabulary Force.....	73
To the Ministry of Health.....	74
To the Ministry of Justice.....	74
To the Ministry of Education.....	74
To the Ministry of Youth and Culture	75
To the Ministry of Local Government and Community Development	75
To Parliament	75
To International Donors	76
Annex I: Information Request Regarding the JCF's Policy on Diversity.....	77
Annex II: Correspondence with the JCF Regarding Site Visits to Police Stations around the Country	79
Annex III: Information Request – JCF's Violence Attribution Assessment Form	80
Annex IV: JCF's Incident Assessment Form	81
Annex V: JFLAG Record of Homophobic Discrimination and Violence, 2009-2012	82
Annex VI: Association between HIV and Vulnerability among 201 MSM in 4 Parishes, Jamaica, 2007.....	85
Acknowledgements	86

Glossary

Bisexual: Sexual orientation of a person who is sexually and romantically attracted to both women and men.

Butch: Masculine gender expression; a popular term within lesbian and transgender communities to describe lesbians whose gender expression is masculine.

Gay: Synonym for homosexual in many parts of the world; in this report, used primarily to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

Gender Expression: External characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress, appearance, mannerisms, hair style, speech patterns, and social behavior and interactions.

Gender Identity: Person’s internal, deeply felt sense of being male, female, both, or something other than male or female.

Heterosexual: Sexual orientation of a person whose primary sexual and romantic attraction is toward people of the other sex.

Homosexual: Sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

Homophobia: Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.

Lesbian: Sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

LGBT: Lesbian, gay, bisexual, or transgender; an inclusive term for groups and identities sometimes also associated together as “sexual and gender minorities.”

Men Who Have Sex with Men (MSM): Men who engage in sexual behavior with other men, but do not necessarily identify as "gay," "homosexual," or "bisexual."

Out/To be Outed: To be in a position where one's sexual orientation is openly known and acknowledged, to have one's sexual orientation revealed (perhaps inadvertently) through words or actions, or to be exposed as homosexual or bisexual by another person without one's consent.

Sexual Orientation: The way a person's sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or opposite sex, or to both.

Transgender: Adjective used to describe the gender identity of people whose assigned gender (the gender they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender person usually adopts or would prefer to adopt a gender expression in consonance with their preferred gender, but may or may not desire to permanently alter their bodily characteristics to conform to their preferred gender.

Transphobia: Fear and contempt of transgender people, usually based on negative stereotypes about transgender people.

Women Who Have Sex with Women (WSW): Women who engage in sexual behavior with other women, but do not necessarily identify as "gay," "homosexual," "lesbian," or "bisexual."

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/Battybwoy: “Batty” is a slang term for “buttocks.” Battyman or Battybwoy 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.

Fish: Effeminate man who has sex with men.

Sodomite / Sodomite gal: Derogatory term for a woman who has sex with women.

Summary

On July 21, 2013, 16-year-old Dwayne Jones attended a dance party in Montego Bay, Jamaica, dressed in women's clothing. When partygoers at the bar in Irwin, St. James, realized she was biologically male, they subjected her to almost every form of physical violence imaginable—beating, stabbing, and shooting her before running her over with a car. No one helped her during the assault. When police arrived, they found her body dumped in bushes along the main road. Dwayne had been homeless since age 12, rejected by her family because of her gender identity. Her family initially refused to claim her corpse from the morgue.

Dwayne's murder received national, regional, and international media attention, and served as a catalyst for public debate. Justice Minister Mark Golding condemned the brutal murder, calling on the police to "spare no effort in bringing the perpetrators to justice." A small public protest against the killing took place in Kingston's Emancipation Park. The police interviewed witnesses and provided information about the murder investigations to Jamaica's preeminent lesbian, gay, bisexual, and transgender (LGBT) rights organization, J-FLAG. At time of writing, however, no one had been arrested or charged.

The story of Dwayne Jones lies at one extreme end of a continuum of violence experienced by Jamaicans who identify as lesbian, gay, transgender, or bisexual. Nevertheless, the circumstances of her murder provide a snapshot of the current situation facing many LGBT people in Jamaica: a high risk of violence, vulnerability heightened by poverty and family rejection, and mixed responses from both the authorities and the public.

This report builds on previous research published by Human Rights Watch in 2004, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*. Documenting human rights violations carried out against LGBT persons in Jamaica between 2006 and 2013, it focuses on the intolerable level of violence, physical and sexual, perpetrated based on actual or perceived sexual orientation or gender identity. Second, it documents discrimination LGBT people face from government institutions, including health care facilities, as well as in the private sector. The report then turns to the state's responsibility

for this abuse, considering legislation that facilitates abuses by private and public actors (such as “buggery laws” that outlaw anal sex and all male homosexual conduct), and government efforts to protect the rights of LGBT persons, including police investigation of homophobic and transphobic violence.

High levels of violent crime, public mistrust of police, low levels of crime reporting, low prosecution rates, and a perception that the criminal justice system is skewed against the poor are widespread in Jamaican society. However, LGBT Jamaicans—especially those who are poor and unable to live in safer, more affluent areas—are particularly vulnerable to violence. Many live in constant fear. They are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.

Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks.

Human Rights Watch conducted five weeks of field research in Jamaica in April and June 2013, interviewing 71 LGBT people as well as state officials and other stakeholders. Of those interviewed:

- More than half (44) said they had been victims of some form of violence based on their sexual orientation or gender identity, some more than once;
- Nineteen had reported these crimes to the police, who only took formal statements in eight cases;
- Victims were aware of arrests by police in only 4 of the 56 cases of violence that Human Rights Watch documented;
- Twenty-six of those who had experienced violence said they did not report crimes due to fear of retaliation from the perpetrators or because reporting a homophobic or transphobic hate crime would “out” them to broader society.

In recent years, the police have taken some steps to address homophobic and transphobic violence. In 2011, the Jamaican Constabulary Force launched a Policy on Diversity, developed in consultation with J-FLAG, which requires police to ensure that LGBT people and other vulnerable groups can safely file police reports. The policy establishes a

mechanism to monitor police non-compliance, although Human Rights Watch has not been able to ascertain whether any police have been held accountable for non-compliance, despite a formal request for this information (see Annex I).

The Ministry of National Security has also developed tools to monitor experiences of crime, including the Violence Attribution Assessment Form. This specifically mentions “hate crime” as a cause of violent crime, lists “sexual orientation and gender identity” as one possible motivation for hate crime, and requires that police conduct immediate assessments to determine whether a hate crime has indeed occurred. (The definition of “hate crime” is not provided, however, potentially complicating the work of the police.)¹

In March 2012, the Inter-American Commission on Human Rights’ (IACHR) “Report on the Situation of Human Rights in Jamaica” found that discrimination based on sexual orientation, gender identity, and gender expression is widespread and entrenched in Jamaican state institutions. Following the report’s release, Justice Minister Mark Golding acknowledged the need for targeted anti-discrimination legislation to address violations against certain groups in society, although he did not specifically mention LGBT people.

Nonetheless, police protection remains inadequate, and is among several factors that contribute to the specific vulnerability of LGBT people. Families and neighbors often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatize them when they seek services; and employers arbitrarily fire them.

Many LGBT Jamaicans become effectively homeless, forced to flee their homes and sometimes the country, and denied full citizenship rights. Among the most vulnerable are dozens of gay and transgender Jamaican children and young adults who have been rejected by their families and are living on the streets, where they face violence and harassment by police and the public.

The negative public discourse about LGBT people, who are referred to in the most derogatory of terms in public spaces, combined with the risk of physical violence, can have

¹ Human Rights Watch wrote to Assistant Commissioner of Police Kevin Blake in October 2013 to request the data collected since the implementation of this assessment form. Blake had not sent any further information at time of writing, despite an undertaking in November 2013 that his department would try to furnish Human Rights Watch with the data (see Annex III).

severe psychological implications. A 2007 study of LGBT Jamaicans found that they had disproportionately higher rates of mental health issues, and many interviewees said they constantly struggle with the stress associated with keeping their sexuality hidden in order to stay safe from harm. Some spoke of wanting to commit suicide.²

Given the risk of violence and discrimination, many LGBT people remain closeted in order to protect themselves. But in the last three years, a number of LGBT activists have come out publicly, in media or as lawyers or litigants in two major court cases challenging anti-gay discrimination. LGBT people are also increasingly reporting incidents of hate crime: in 2012 J-FLAG found that almost half of the 63 reports it received were also reported to police. J-FLAG, with funding from the Caribbean Vulnerable Communities Coalition, launched a social media campaign, “We are Jamaicans,” in which LGBT persons and allies speak out online about sexual orientation and gender identity, including their own experiences.

Despite these public and private initiatives, the Jamaican government still offers little in practical terms to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT people. Jamaica has neither comprehensive anti-discrimination legislation, nor specific legislation prohibiting discrimination on the grounds of sexual orientation or gender identity. Serious rights abuses based on sexual orientation and gender identity continue, and justice for these crimes remains elusive.

International law and standards require Jamaica to prohibit discrimination on the basis of sexual orientation. Jamaica’s sodomy laws violate those international standards, as do the abuses documented in this report, including police failure to address violence against LGBT people.

In December 2011, Prime Minister Portia Simpson Miller pledged that, “No one should be discriminated against because of their sexual orientation,” and at the same time called for the legislature to revisit Jamaica’s buggery laws.³ However, on April 3, 2014, she stated in

² For example, Anne I., a transgender woman who has survived several brutal attacks, including rape, and has been regularly subjected to humiliation, including at the hands of hospital personnel, told Human Rights Watch she had tried to kill herself by overdosing on Panadol just two weeks before we interviewed her in April 2013. It was not her first attempt. Human Rights Watch interview with Anne I., Kingston, April 5, 2013.

³ Colin Stewart, “Jamaica: Vote coming soon on repeal of anti-gay law,” *Erasing 76 Crimes*, June 7, 2013, <http://76crimes.com/2013/06/07/jamaica-vote-coming-soon-on-repeal-of-anti-gay-law/> (accessed May 3, 2014); Gary

an interview that repealing the law would have to be “based on the will of the constituents,” and that repeal was not a “priority.”⁴

Meaningful progress will require a deeper commitment to equality on the basis of sexual orientation and gender identity, particularly by the police. Progress will also require strong leadership from Jamaica’s government in the face of intense public resistance to any type of legal reform that would uphold the rights of LGBT people.

In order to translate words into action and ensure the equal rights of all persons regardless of their gender identity or sexual orientation:

- Prime Minister Portia Simpson Miller, parliamentarians, and other leaders should consistently condemn violence and discrimination.
- Police should undertake rigorous investigations into all allegations of anti-LGBT hate crimes, improve monitoring of the Policy on Diversity, and strengthen police training on LGBT rights, in collaboration with LGBT civil society groups.
- Parliament should strike down all discriminatory laws and replace them with laws that protect Jamaicans from discrimination on the grounds of gender identity and sexual orientation.

Younge, “Troubled island,” *The Guardian*, April 26, 2006, <http://www.theguardian.com/world/2006/apr/27/gayrights.comment> (accessed May 3, 2014); “Golding talks about policing, gays on BBC,” *Jamaica Gleaner*, May 21, 2008, <http://jamaica-gleaner.com/gleaner/20080521/lead/lead3.html> (accessed May 3, 2014); Conrad Hamilton, “Portia Promises to Review Buggery Law,” *Jamaica Observer*, December 21, 2011, <http://www.jamaicaobserver.com/elections/news/Portia-promises-to-review-buggery-law> (accessed October 8, 2014).

⁴ “Jamaican Prime Minister on Buggery Conscience Vote,” video report, *GLBTQ Jamaica*, April 4, 2014, https://www.youtube.com/watch?v=37t4JOj_B2M (accessed October 14, 2014).

Key Recommendations

To the Prime Minister

- Uphold your election campaign pledge that “no one should be discriminated against because of their sexual orientation,” and translate it into concrete policy by proposing comprehensive anti-discrimination legislation that prohibits all forms of discrimination, including on the grounds of sexual orientation and gender identity, in all areas of life governed by law.

To the Ministry of National Security

- Closely monitor implementation of the Jamaica Constabulary Force (JCF) Policy on Diversity, and issue regular, public reports on its implementation.
- Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

To the Jamaican Constabulary Force

- Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated by sexual orientation or gender identity.
- Build a stronger working relationship with Jamaica’s leading LGBT organizations, including J-FLAG and Quality of Citizenship Jamaica. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

To the Ministry of Justice

- Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Youth and Culture, Ministry of Local Government and Community Development

- Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to addressing the needs of LGBT homeless people, including children and young adults.

To Parliament

- Repeal Sections 76, 77, and 79 of the Offences against the Person Act, which criminalize consensual adult same-sex conduct.
- Amend the Sexual Offences Act 2009 to remove the gender-specific definitions of sexual intercourse and rape.

Methodology

This report is based on information collected during five weeks of field research conducted in Jamaica in April and June 2013, as well as prior and subsequent desk-based research.

Two Human Rights Watch researchers conducted 71 interviews with self-identified lesbian, bisexual, gay, and transgender people, including 3 LGBT children (i.e., under 18 years old). These interviews took place in Kingston, Manchester, St. Ann, St. James, St. Catherine, and St. Andrew.

All persons interviewed provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. These interviewees have been given pseudonyms and in some cases other identifying information has been withheld to protect their privacy and safety. No one was compensated for their participation.

Most interview subjects were identified with the help of Jamaican nongovernmental organizations (NGOs) that provide services to people living with HIV, men who have sex with men (MSM), women who have sex with women, transgender people, and sex workers.

Many interview subjects told Human Rights Watch they were victims of violence based on their sexual orientation and gender identity. Such accounts were often difficult to independently verify. Most victims were alone when they were attacked, and many did not file police reports, for reasons discussed in Section II. We were able to corroborate 11 out of 56 reported incidents through police receipts documenting the incidents, court proceedings, or letters and incident reports from J-FLAG. In terms of the types of physical assaults documented, the information that we garnered closely paralleled the yearly incident reports that J-FLAG collated.

Human Rights Watch also interviewed representatives of government agencies, United Nations (UN) officials, representatives of NGOs specializing in HIV/AIDS or human rights, academics, health care workers, and members of Jamaica's police force.

On October 30, 2013, Human Rights Watch wrote to the Commission of Police requesting information about the JCF's Policy on Diversity and its implementation as well as its impact (see Annex I). The letter further asked for information on how the JCF monitors crimes against sexual minorities, and for information about specific cases and their outcomes. At time of writing, we had not received a response.

All documents cited in this report are publicly available or on file with Human Rights Watch.

I. Public Attitudes towards Homosexuality

Criminalization

Jamaica's anti-sodomy or "buggery" laws that prohibit same-sex conduct between consenting adult males date to 1864 when Jamaica was a British colony. Sections 76 and 77 of the Offences Against the Person Act make "the abominable crime of buggery" punishable by "imprisonment and hard labor for a maximum of ten years," while an "attempt" to commit buggery is punishable by seven years' imprisonment. Section 79 prohibits "acts of gross indecency" (generally interpreted as referring to any kind of physical intimacy) between men, in public or in private. The Sexual Offences Act of 2009 requires men convicted of the "abominable crime of buggery" to register as sex offenders.⁵

Prosecutions under these laws are rarely pursued. Nevertheless the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.

The laws have been used by police to extort money from adults engaged in consensual homosexual sex; by public television stations to justify refusal to air public service announcements making positive statements about LGBT persons; and by landlords to justify refusal to rent apartments to them. Though those arrested are rarely if ever prosecuted, gay men who are "outed" through arrest risk violence and other abuse by community members.

While the law does not directly reference transgender people, transgender women and homosexuals are often conflated. Gender non-conforming Jamaicans, especially transgender women and gender non-conforming gay men who are publicly visible, are most likely to suffer violence and discrimination.

⁵ Sexual Offences Act of 2009, Act 12 of 2009, sections 29-33, http://www.japarliament.gov.jm/attachments/341_The%20Sexual%20Offences%20Act,%202009.pdf (accessed October 5, 2014).

Same-sex relations between women are not criminalized in Jamaica. However, lesbians and bisexual women are stigmatized and subjected to violence, including sexual violence, as discussed in Section III.

In contrast, the Sexual Offences Act narrowly defines rape as the non-consensual penetration of a vagina by a penis, with a maximum penalty of life imprisonment.⁶ Accordingly, the law does not recognize male rape, only “buggery,” with perpetrators facing a significantly lower penalty. Anal rape of females is also classified as “buggery.” The gender-biased, inadequate definition of rape in the Sexual Offences Act leaves several categories of victims of sexual violence, including male victims of rape and female victims of anal rape, unprotected by the law.

Homophobic Discourse

Anti-LGBT public rhetoric continues to be fueled by some elements of the religious, media, music, and political establishments.

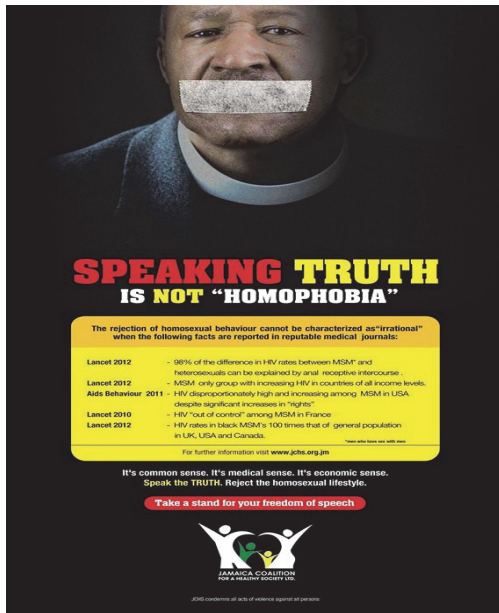
Religious

Religion, particularly protestant Christianity, has strong influence in Jamaica. Politicians often describe the country as a “Christian nation” and Jamaicans as “a God-fearing people.” Some Christians combine religious rhetoric with homophobia. The Jamaican Coalition for a Healthy Society (JCHS)—an evangelical Christian network with the stated vision that a “healthy Jamaican society” is based on the Bible—has been proactive in lobbying the government to preserve Jamaica’s sodomy laws. Established in January 2012, the JCHS has risen to some public prominence in Jamaica through an aggressive media campaign, public protests, and rallies.

In response to the International Day against Homophobia and Transphobia (IDAHOT), celebrated by LGBT rights activists around the world each May 17, JCHS produced, in 2013, a poster misusing HIV statistics to condemn “homosexual behavior,” and claiming that the voices of those who oppose such “behavior” are being silenced.⁷

⁶ Sexual Offences Act of 2009, sections 2-3.

⁷ The poster’s fine print states, “JCHS condemns all acts of violence against all persons,” perhaps acknowledging that LGBT people are frequent victims of violence.



In June 2014, an ad-hoc coalition of religious groups, Jamaica CAUSE (Churches Action Uniting Society for Emancipation), organized a mass rally, estimated at 25,000-strong, in Kingston against “the homosexuality agenda” and the repealing of the buggery law.⁸

Media

Media reflect and fuel widespread homophobia in Jamaican society. Broadsheets publish cartoons that stereotype, ridicule, foment hate against, and demonize LGBT people.

Sensationalist and homophobic articles have also appeared under headlines such as, “Gay men, bystanders in missile-throwing brawl during road march” and “Stand your ground against homosexuality.”⁹ Some of these types of headlines and associated links to the cartoons have since been removed from online editions after the papers received complaints.¹⁰

The *Jamaica Observer* did not grant Human Rights Watch permission to reproduce several cartoons that illustrate the stereotyping of LGBT people. However, they can be accessed on the newspaper’s website: <http://www.jamaicaobserver.com/tools/cartoons/>.

⁸ Javene Skyers, “Thousands rally against tossing out buggery act; shout out for clean, righteous living,” *Jamaica Observer*, June 30, 2014, http://www.jamaicaobserver.com/news/No-to-homo-agenda_17050490 (accessed July 16, 2014); Tony Merevick, “25000 People Rally In Jamaica Against Homosexual Agenda,” *Buzzfeed*, June 30, 2014, <http://www.buzzfeed.com/tonymerevick/25000-people-rally-in-jamaica-against-homosexual-agenda#05stjx> (accessed October 8, 2014).

⁹ “Gay men, bystanders in missile-throwing brawl during road march,” *Jamaica Observer*, April 8, 2013, http://m.jamaicaobserver.com/mobile/news/Carnival-clash-_14014819 (accessed April 29, 2014); Haldor Dixon, “Stand your ground against homosexuality,” *The Gleaner*, August 20, 2013, <http://jamaica-gleaner.com/gleaner/20130820/letters/letters3.html> (accessed April 29, 2014); “8 homosexuals in custody for robbery,” *Jamaica Observer*, December 1, 2013, <http://www.jamaicaobserver.com/latestnews/8-homosexuals-in-custody-for-robbery#ixzz2mGShjtHS> (accessed April 29, 2014); Erica Virtue, “‘Somebody must stand up to homosexuals’ – Stewart,” *The Gleaner*, August 25, 2013, <http://jamaica-gleaner.com/gleaner/20130825/news/news3.html> (accessed July 31, 2014).

¹⁰ John E. Sabio, “Clovis and Homophobic Cartoons,” Letters to the Editor, *Jamaica Observer*, July 29, 2011, http://www.jamaicaobserver.com/letters/Clovis-and-homophobic-cartoons_9328533 (accessed April 29, 2014). While some of Clovis Toons remain, others like one featuring the prime minister (see below) and the March 7, 2013 Clovis Toons have since been removed from the newspaper’s website.

For example, a cartoon published in the *Jamaica Observer* in January 2013 depicts the Jamaican prime minister clutching a copy of the buggery law and being pulled in two different directions by a cleric and a gay man. The gay man, wearing a pink purse and made up in white face, tries to disrobe her. “Tek it off!” he exclaims, conveying a message that LGBT people are both dangerous and want “special rights.”¹¹

Another *Jamaica Observer* cartoon published in March 2013 depicts gay men as criminals, shattering shop windows and hurling stones at figures representing “police” and “public,” as gay rights groups, portrayed as a nonchalant Uncle Sam, whistle and look away.¹²

A cartoon published in the *Jamaica Observer* in December 2012 shows a child unperturbed by men dressed in intimidating traditional holiday costumes, while in the next panel he flees in terror from a gay man in stereotypical dress.¹³ Another *Jamaica Observer* cartoon from July 2011 mocks Jamaicans for Justice (JF) former Executive Director Carolyn Gomes, and ridicules J-FLAG with a stereotyped image of gay men responding to the head of the Organized Crime Investigation Division (OCID), Senior Superintendent Fitz Bailey, who accused gay men of being behind a form of organized crime known as “lottery scams.”¹⁴

In November 2012, after University of Technology security guards were filmed beating two men for being gay and encouraging a mob to “beat the fish,” *Jamaica Observer* published a cartoon depicting a fish sitting in a classroom, reinforcing derogatory slang for gay men as “fish.”¹⁵

Both *The Gleaner* and the *Jamaica Observer* published editorials in 2012 in support of LGBT rights and the repeal of the buggery laws.¹⁶ However, this has not prevented them—

¹¹ Clovis Toons, *Jamaica Observer*, January 17, 2013, http://www.jamaicaobserver.com/assets/9094800/Ed-Cart-thurs-17-jan_w303.jpg (accessed May 1, 2014).

¹² Clovis Toons, *Jamaica Observer*, March 7, 2013, http://petchary.files.wordpress.com/2012/12/ed-cart-tues-25-dec-_w452-1.jpg (accessed May 1, 2014).

¹³ Clovis Toons, *Jamaica Observer*, December 25, 2012, http://petchary.files.wordpress.com/2012/12/ed-cart-tues-25-dec-_w452-1.jpg (accessed May 1, 2014).

¹⁴ Clovis Toons, *Jamaica Observer*, July 13, 2011, <http://anniepaulose.files.wordpress.com/2011/07/gaysed-cartoon-wedn-13-july.jpg> (accessed May 1, 2014). See also: Crystal Harrison, “Gays lead in lottery and credit card scam – Bailey,” *Jamaica Online Star*, July 13, 2013, <http://jamaica-star.com/thestar/20110713/news/news8.html> (accessed July 21, 2014).

¹⁵ Clovis Toons, *Jamaica Observer*, November 5, 2012, http://anniepaulose.files.wordpress.com/2012/11/fished-cart-mon-5-nov_w452.jpg (accessed May 2, 2014).

¹⁶ “Obama Challenges Jamaica On Gay Rights,” Editorial, *The Gleaner*, May 18, 2012, <http://jamaica-gleaner.com/gleaner/20120518/cleisure/cleisure1.html> (accessed June 29, 2014); “Tolerance of gays and that buggery law,”

particularly the *Jamaica Observer*—from also publishing homophobic rhetoric.

Such articles and cartoons may breach guidelines laid out in the professional code of practice for Jamaican journalists and media organizations, ratified on August 8, 2011:

The media should avoid prejudicial or pejorative reference to a person's race, color, religion, sex or sexual orientation or to any physical or mental disability or handicap. The media should avoid publishing details of a person's race, color, religion, sex or sexual orientation, unless these are directly relevant to the story.¹⁷

Music

A number of popular Jamaican musicians perform and produce music that contains inflammatory lyrics with regard to LGBT people. Emblematic of this genre is dancehall artist Capleton's 1990 hit "Bumbo Red," which remains popular and calls for gay and lesbian people to be shot in the head:

Lick a shot inna a battyman head! Lick a shot inna a lesbian head! All sodomite dem fi dead, all lesbian dem fi dead.¹⁸

Capleton and other dancehall artists who have a history of making homophobic comments or delivering anti-LGBT rants from the stage during performances—including Sizzla Kalonji, Buju Banton, Beenie Man, and Vybz Kartel—signed a 2007 agreement called the "Reggae Compassionate Act," in which they promised not to promote hatred and violence towards LGBT people in their music.¹⁹ Despite this, Sizzla Kalonji, Capleton, and other reggae

Editorial, *Jamaica Observer*, July 9, 2012, http://www.jamaicaobserver.com/editorial/Tolerance-of-gays-and-that-buggery-law_11919697 (accessed June 29, 2014).

¹⁷ The Press Association of Jamaica, "Code of Practice for Jamaican Journalists and Media Organizations," ratified August 8, 2011, http://pressassociationjamaica.org/wp-content/uploads/2010/09/Code_for_Media_Practitioners-Ratified-8.8.11.pdf (accessed May 1, 2014).

¹⁸ "More Songs," post to "Murder Inna Dancehall" (blog), http://www.soulrebels.org/dancehall/e_songs_more.htm (accessed July 31, 2014).

¹⁹ "The Reggae Compassionate Act," post to "Soul Rebels" (blog), http://www.soulrebels.org/dancehall/w_compassionate_001.htm (accessed July 17, 2014); Andy Towle, "Reggae Stars Renounce Homophobia, Condemn Anti-gay Violence", post to "Towleroad" (blog), June 13, 2007, http://www.towleroad.com/2007/06/reggae_stars_re.html (accessed July 17, 2014). See also: "J-FLAG applauds Kartel on signing compassionate act," *The Gleaner*, October 14, 2010, <http://jamaica-gleaner.com/gleaner/20101014/news/news1.html> (accessed July 31, 2014).

performers, continue to perform anti-gay songs or promote homophobic ideology.²⁰ On December 26, 2013, Sizzla Kalonji sang the following at the Sting Music Festival in Jamaica:

I don't care who want vex, Jamaica no support no same sex ...
I don't care who want vex, Africa no support no same [sex] ...
Them say, "Sizzla, you sing too much anti-gay lyrics."
Me just read the bible and get away with lyrics....
Burn out the lesbian, burn out the gays with the lyrics.
I don't care who want vex, rastaman no support no same sex.
Dem a tell me bout "free speech,"
so me tell de raper man dem fe leave de beach.
And me tell the pedophile dem flee the creech.
Tell de lesbian dem flee de street
and the battyman [screaming].²¹

Some artists have increasingly refrained from using homophobic lyrics at their concerts and have issued personal letters of apology following poor publicity and cancelled concerts abroad, although some of them have since denied apologizing.²² Beenie Man issued a video statement in 2012, saying, "...I have nothing against no one. I respect each and every human being regardless of which race or creed, regardless of which religious belief ... regardless of which sexual preference you have including gay and lesbian people."²³

A small but growing number of Jamaican artists are openly supportive of LGBT rights, including Mista Majah P (based in California) and Tanya Stephens.²⁴

²⁰ "History & News-Recent News," post to "Murder inna Dancehall" (blog), http://www.soulrebels.org/dancehall/d_history.htm (accessed May 2, 2014).

²¹ J. Lester Feder, "Jamaican Dancehall Star Sizzla Banned From Music Festival For Anti-Gay Lyrics," *Buzzfeed*, January 2, 2014, <http://www.buzzfeed.com/lesterfeder/jamaican-dancehall-star-sizzla-banned-from-music-festival-fo> (accessed July 17, 2014).

²² "Apology," post to "Murder Inna Dancehall" (blog), http://www.soulrebels.org/dancehall/f_apology.htm (accessed June 29, 2014).

²³ "Beenie Man video statement," video clip, YouTube, <https://www.youtube.com/watch?v=KlJtjgnzypQ> (accessed June 29, 2014).

²⁴ "Tanya Stephens – Fearless Lyricist," *The Jamaica Online Star*, <http://jamaica-star.com/thestar/20120718/ent/ent4.html> (accessed October 5, 2014); Mista Majah P website, <http://www.mistamajahp.com/> (accessed July 16, 2014). Additionally, Diana King, a Florida-based Jamaican singer, came out as a lesbian in 2012, being the first Jamaican reggae artist to do so. Mona Elyafi, "Diana King, the First Jamaican Music Artist to Come Out Publicly, Proposes After the Supreme Court Strikes Down DOMA," *Huffington Post*, July 22, 2013, http://www.huffingtonpost.com/mona-elyafi/diana-king-doma_b_3617707.html (accessed July 16, 2014).

Politics

Homophobic rhetoric is not limited to the cultural sector. During his term as prime minister from 2007 to 2011, Bruce Golding of the Jamaica Labour Party (JLP) publicly expressed homophobic views on several occasions. For example, in a 2008 BBC interview, Golding said he would not allow gays in his cabinet.²⁵ In 2010, Golding stated, “The encouragement or recognition of the appropriateness of the homosexual lifestyle is going to undermine the effectiveness of family ... and, in that process, undermine the basic fabric of a society.”²⁶

A year earlier, in 2009, Ernest Smith, a JLP member of parliament (MP), claimed that LGBT people are merely “seeking publicity” when they report cases of violence. He said:

We’re not saying that gay people should be obliterated from the face of the earth ... but because your behavioral pattern is in breach of all decency ... do not try to impose your filth on others, don’t force others to accept you and your filth.²⁷

In August 2013, Education Minister Ronald Thwaites said at a press conference to launch the new *Health and Family Life Education Teachers’ Manual* that while the manual promotes tolerance on all grounds, “We will not be grooming Jamaican children for homosexual behavior.... [W]holesome joyous relationships are between men and women.”²⁸

These negative attitudes towards LGBT individuals are reflected in the findings of a 2011 national survey of attitudes towards same-sex relationships in Jamaica, conducted by a University of the West Indies research team, which found that 85.2 percent of participants were opposed to legalizing homosexuality among consenting adults.²⁹

²⁵ “Bruce Golding,” video report, *BBC HARDtalk*, May 20, 2008, <http://news.bbc.co.uk/2/hi/programmes/hardtalk/7410382.stm> (accessed July 17, 2014).

²⁶ “Is Jamaica Homophobic?” *Big Think*, September 25, 2010, <http://bigthink.com/videos/is-jamaica-homophobic> (accessed July 17, 2014).

²⁷ “Violence and venom force gay Jamaicans to hide,” video report, *World Focus*, November 10, 2009, https://www.youtube.com/watch?v=8uOqZkkj_bQ (accessed May 1 2014).

²⁸ “Tolerance added to new school curriculum,” video report, *Jamaica Observer*, August 26, 2013, <http://www.youtube.com/watch?v=yTWRoIWQD-U> (accessed July 17, 2014).

²⁹ University of the West Indies, Mona, Department of Sociology, Psychology and Social Work, “National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships,” January 2011, http://www.aidsfreeworld.org/Our-Issues/Homophobia/~/_media/Files/Homophobia/NATIONAL%20SURVEY%20OF%20ATTITUDES%20AND%20PERCEPTIONS%20OF%20JAMAICANS%20TOWARDS%20SAME%20SEX%20RELATIONSHIPS.pdf (accessed October 5, 2014). Similarly, 82.2

Political views toward homosexuality are not monolithic. Then-opposition leader Portia Simpson Miller disagreed with Golding's views on LGBT people in a 2011 debate, stating that no one should be discriminated against due to their sexual orientation.³⁰ Her opponent in that debate and the current opposition leader, Andrew Holness, said in a May 2014 interview that he, too, opposed discrimination based on sexual orientation and would allow gays in his cabinet.³¹ Despite his homophobic statement above, Minister Thwaites has also spoken in support of tolerance and non-discrimination (see Section VI).

Mistrust of Police

Most of the LGBT people we interviewed said they did not even report criminal acts to the police, fearing they would be unresponsive because of the victim's sexual orientation or gender identity.

"I've heard terrible things about gay people going to the police and police turning on them. I would never dare go to the police," said Jane, a transgender woman from Kingston.³²

Genie O., a potential murder witness, said he did not report the shooting of his friend in Greenpond in 2010 because he, too, feared the consequences:

I didn't call the police. I know much wouldn't be done and I didn't want to get involved. Once you are found to be associated [with gay men], your life would be at risk and you could be stigmatized as one of them. Most times you worry and cry about it and keep it to yourself and move on.³³

Winnie R. told Human Rights Watch of her complete distrust of the police after having been groped by a police officer, and on separate occasions, after trying to make criminal reports to the police after being raped and robbed. Winnie R. said:

percent of participants in the study said that male homosexuality was immoral, while 75.2 percent said that female homosexuality was immoral.

³⁰ Tristram Korten, "Jamaica's Portia Simpson-Miller and Gay Rights," *PRI's The World*, October 2, 2012, <http://www.pri.org/stories/2012-10-02/jamaicas-portia-simpson-miller-and-gay-rights> (accessed July 17, 2014).

³¹ "Holness has no problem with Gays," audio report, *Nationwide News Network*, May 1, 2014, <https://soundcloud.com/nationwide-newsnet/holness-has-no-problem-with-gays-may1-2014> (accessed June 29, 2014).

³² Human Rights Watch interview with Jane B., Kingston, April 5, 2013.

³³ Human Rights Watch interview with Genie O., Montego Bay, April 10, 2013.

Justice for all, that would be my motto. It doesn't matter about your sexual preferences, it's not about your color, it's not about how much money you make, everyone should be treated equally. When it comes to a crime, it should be dealt with in the correct manner. It shouldn't be that I should be made to [feel] less of a person because of who I sleep with. If I go to a police station and my initial report wasn't given the light of day, why would I ever go to the police station to report a crime? I'm not walking into a station with a gun but I am treated like a criminal. I'm told I deserve to be shot.³⁴

HIV and Homophobia

Jamaica has a high HIV prevalence rate: just under 2 percent of adult Jamaicans (approximately 32,000 people) are estimated to be infected with the virus.³⁵ Within the Caribbean, only the Bahamas and Haiti have comparable rates of HIV infection.

Jamaica has the highest HIV prevalence rate amongst MSM in the Caribbean.³⁶ Within the country, HIV prevalence among MSM remains considerably higher than general population rates—32 percent compared to just under 2 percent in the general population, according to recent data—and has not declined since 2007.³⁷

Among the factors that continue to drive the epidemic in Jamaica amongst MSM are:

- Unemployment: A 2007 survey of 201 MSM found that over 50 percent of these men were unemployed, nearly five times the rate among the general population.³⁸
- Homelessness and physical violence: The study found that MSM of low socioeconomic status, those who had been homeless, and those who had been

³⁴ Human Rights Watch interview with Winnie R., Kingston, April 3, 2013.

³⁵ Central Intelligence Agency, "County Comparisons: HIV/AIDS Adult Prevalence Rate," *The World Fact Book*, 2012, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2155rank.html> (accessed October 6, 2014).

³⁶ AVERT, "HIV & AIDS in the Caribbean," <http://www.avert.org/hiv-aids-caribbean.htm> (accessed July 22, 2014).

³⁷ HIV prevalence among women seeking antenatal care (a marker for HIV prevalence generally) has been slowly declining since 1996. *Ibid.*, pp. 17-18, 29. Female sex workers, another most at-risk population, also face high prevalence rates, but these have declined notably from 9 percent in 2005 to 4.1 percent in 2011 due to "decades of sustained interventions with this population." Homeless people, a population that may include a disproportionate number of LGBT people, also have a higher HIV prevalence rate than the general population, estimated at 8.2 percent in 2011.

³⁸ Ministry of Health, "Summary of Findings: Surveys of: Men who have Sex with Men in Jamaica & Women who Exchange Sex for Money; MEASURE Evaluation," July 2009; "High prices, low jobs," *Jamaica Observer*, January 19, 2011, http://www.jamaicaobserver.com/business/High-prices--low-jobs_8301407 (accessed July 17, 2014).

victims of physical violence were significantly more likely to be HIV-positive (Annex VI).³⁹

- Lack of funding: Only 1.4 percent of HIV spending in 2010–2011 was allocated to programs focused on key populations, including MSM, although Jamaica is set to increase the amount spent on key populations in the 2012 to 2016 period from 1.4 percent to 6.4 percent.⁴⁰

Stigma and discrimination are significant drivers of the epidemic, hampering the implementation of services for MSM, and the willingness of MSM to access health care services.⁴¹ “There is a fear that they might not be treated, might be looked down at and that people will label them,” Pascal G., an outreach worker with the Jamaican Network of Seropositive (JN+) said.⁴²

Young and homeless MSM are vulnerable to sexual violence, including rape, which increases the risk of infection.⁴³ One homeless male sex worker in Montego Bay told Human Rights Watch that clients pay significantly more for sex without condoms, making it difficult for economically vulnerable individuals to negotiate condom use.⁴⁴

The emergence and widespread availability of antiretroviral therapy (ART) since 2004 has reduced some of the HIV-related stigma and discrimination that was widespread when Human Rights Watch conducted research in Jamaica in 2004. The individuals we interviewed then emphasized the prejudice they experienced due to noticeable physical changes caused by the illness, and the contempt they endured when attempting to access HIV-related care.

³⁹ JP Figueroa et al., “High HIV prevalence among hard to reach gay men in Jamaica is associated with high social vulnerability,” *West Indian Medical Journal* 62(4) (2013): 286–291, accessed May 7, 2014, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4000540/>.

⁴⁰ UNAIDS, “Smart Investments,” 2013, p. 8, http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/20131130_smart-investments_en.pdf (accessed July 2, 2014).

⁴¹ Chris Beyrer and Stefan D. Baral, “MSM, HIV and the Law: The Case of Gay, Bisexual and other Men who have Sex with Men (MSM),” Working Paper for the third meeting of the technical advisory group of the Global Commission on HIV and the Law, July 7–9 2011.

⁴² Human Rights Watch interview with Pascal G., Kingston, June 6, 2013.

⁴³ Figueroa et al., “High HIV prevalence among hard to reach gay men in Jamaica is associated with high social vulnerability,” pp. 286–291; Ingrid Brown, “Homelessness, Rape and HIV,” *Jamaica Observer*, November 3, 2013, http://www.jamaicaobserver.com/news/Homelessness--rape-and-HIV_15363127 (accessed May 1, 2014).

⁴⁴ Human Rights Watch interview with Shane C., Kingston, April 8, 2013.

Major international donors and multilateral agencies—including the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund), the World Bank, and the US President's Emergency Plan for AIDS Relief (PEPFAR)—have invested millions of dollars in financial and technical assistance to address HIV among MSM in Jamaica, including efforts to address stigma.⁴⁵

However, since the World Bank reclassified Jamaica as an upper middle-income country in 2010, Jamaica is no longer eligible for significant funding and key donors may soon reduce or withdraw financial support. The Global Fund has already significantly reduced funding and is due to withdraw altogether by 2017.⁴⁶ Government officials, civil society, and donors have expressed concern about the loss of this funding and its impact on most at-risk populations, including MSM, as well as on the HIV response more broadly.

⁴⁵ Global Fund, “A Proposal to Scale Up HIV/AIDS Treatment, Prevention, and Policy Efforts in Jamaica,” <http://portfolio.theglobalfund.org/en/Grant/Index/JAM-708-Go2-H> (accessed August 7, 2014); PEPFAR, “Caribbean Regional HIV and AIDS Partnership Framework (June 2010),” June 2010, <http://www.pepfar.gov/countries/frameworks/caribbean/158884.htm> (accessed August 7, 2014); The World Bank, “Jamaica Responds to HIV/AIDS,” July 8, 2014, <http://www.worldbank.org/en/results/2014/07/08/jamaica-responds-to-hiv-aids-prevention-treatment-institutional-strengthening> (accessed August 7, 2014).

⁴⁶ UNAIDS, “Jamaica takes measures to ensure the sustainability of its response to HIV,” October 7, 2013, <http://www.unaids.org/en/resources/presscentre/featurestories/2013/october/20131007jamaica/> (accessed July 22, 2014). The Global Fund, Technical Evaluation Reference Group, “Sustainability Review of Global Fund Supported HIV, Tuberculosis and Malaria Programmes,” April 2013. UNAIDS finds the cost of Jamaica’s HIV program may double by 2030, but that Jamaica’s high public debt limits its ability to invest in HIV/AIDS.

II. Violence against LGBT People

Physical Abuse

Physical and sexual violence, including severe beatings and even murder, are part of the lived reality of many LGBT people in Jamaica. The level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed.

In many cases, perpetrators appear to have been private actors who felt that they had the moral authority to “rid the community” of LGBT people and had no fear of arrest from the authorities. In other cases, police were themselves the perpetrators.

Between April and June 2013, Human Rights Watch interviewed 71 self-identified LGBT people. These interviews elicited 56 accounts of physical violence that took place between 2006 and 2013 experienced by 44 LGBT people, the vast majority of which appeared to be directly as a result of their sexual orientation or gender identity.

Some of the individuals we interviewed had more than one experience of physical violence. These reported acts of violence included rape; being chopped with a machete; being choked; being stabbed with a knife; being shot with a gun; being hit with boards, pipes, sticks, chairs, or brooms; being attacked by groups ranging from 5 to 40 individuals; and being slapped in the face with hands or with guns.

J-FLAG recorded 231 incidents of attacks against LGBT people between 2009 and 2012, including home invasions, physical assaults, and mob attacks.⁴⁷ This number of homophobic attacks is likely to be underreported. In terms of the types of physical assaults documented, the information that we garnered closely paralleled the yearly incident reports collated by J-FLAG.⁴⁸

⁴⁷ See J-FLAG incident reports, Annex V, and J-FLAG, “Homophobia and Violence in Jamaica,” December 2013, <http://jflag.org/wp-content/uploads/2014/07/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf> (accessed July 21, 2014).

⁴⁸ J-FLAG documented 28 homophobic incidents in 2009, 49 incidents in 2010, 71 incidents in 2011, and 66 incidents in 2012. (See J-FLAG incident reports, Annex V. These reports document verbal assaults as well as physical assaults. Among the incidents reported in 2012, thirty-six gay men were attacked by mobs, two transgender people were beaten, five bisexual males were beaten and stabbed, eight lesbians were beaten and forced to leave their homes, and two gay men were murdered.) See also: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, “2012 Country Reports on Human Rights Practices: Jamaica,” <http://www.state.gov/documents/organization/204673.pdf> (accessed July 17, 2014).

The following incidents of violence and alleged attacks, reported during a four-month period in 2013, illustrate the regularity with which such violence occurs:⁴⁹

- **On July 22**, 16-year-old Dwayne Jones, wearing female attire, was stabbed and shot to death and thrown into nearby bushes at a public street-dance near the resort city of Montego Bay (see Summary). At time of writing, no one had been arrested.⁵⁰
- **On August 1**, an angry mob surrounded the home of two gay men in the parish of St. Catherine, “intent on getting rid of the men.” The crowd was yelling, “Dem fi cum out a ya (they must leave our community).” The police intervened to rescue them.⁵¹
- **On August 22**, community members barricaded five gay men inside their home in the parish of Manchester and threatened them with bats and sticks. The police had to rescue the men.⁵²
- **On August 26**, two gay men in the town of Old Harbour had to flee the scene of a car accident and seek shelter at a police station when onlookers realized they were gay and demanded they leave their community.⁵³
- **On September 16**, Edwin M., a young gay Jamaican man from Hanover parish, was chased with his friend and stoned by a mob shouting homophobic insults. He suffered head injuries.⁵⁴
- **On October 25**, Keshema Tulloch, a Jamaican lesbian, was punched in the face by a man who called her a “sodomite.” When Tulloch chased her attacker with a knife, police shot her in the arm and chest.⁵⁵ J-FLAG, which has followed the case, told

⁴⁹ Email communication from Maurice Tomlinson to SOGI listserv, September 3, 2013, on file with Human Rights Watch.

⁵⁰ “Cross dressing teen killed by mob,” *Irie FM*, July 22, 2013, <http://www.iriefm.net/news/headline/cross-dressing-teen-killed-mob>; “Police Probe St James Teen Murder,” *The Gleaner*, July 23, 2013, <http://jamaica-gleaner.com/latest/article.php?id=46680>; “JFJ Condemns Mob Killing of Cross-Dresser,” *The Gleaner*, July 27, 2013, <http://jamaica-gleaner.com/gleaner/20130727/news/news3.html> (all accessed July 17, 2014).

⁵¹ “Two Gay Men Mobbed on Emancipation Day,” video report, *CMV TV*, August 8, 2013, <http://www.youtube.com/watch?v=d3AyRwOqTpo> (accessed March 12, 2014); Human Rights Watch telephone interview with Damien Phillips, CMV TV journalist, February 19, 2014; Human Rights Watch email correspondence with J-FLAG, February 18, 2014.

⁵² “Gay Men Trapped by Angry Mob in Jamaica,” video report, *CMV news*, August 24, 2013, <http://www.youtube.com/watch?v=F1XxeqOIBao> (accessed March 12, 2014); Human Rights Watch telephone interview with Damien Phillips, CMV TV journalist, February 19, 2014. Phillips told Human Rights Watch he was physically present during the incident.

⁵³ “2 Gay Men Mobbed After Car Crash,” video report, *CMV news*, August 28, 2013, <http://www.youtube.com/watch?v=oOXejWVuj4U> (accessed March 12, 2014). “Downtown” is known to be a more impoverished part of the capital, Kingston, and is well known to be a high crime area, whereas “uptown” refers to a wealthier part of Kingston where LGBT people might have a better welcome.

⁵⁴ Human Rights Watch telephone interview with Edwin M., September 20, 2013.

⁵⁵ Dwayne Brown, “Lesbian Harassed And Then Shot by Jamaican Police,” *Minority-Insight*, October 25, 2013, <http://www.minority-insight.org/2013/10/lesbian-harassed-and-then-shot-by.html> (accessed October 5, 2014). On February

Human Rights Watch that Tulloch has since been charged with assault. Her male attacker has not been charged.⁵⁶

Human Rights Watch interviewed 12 LGBT people who said they knew of a friend, partner, lover, or associate who had been murdered because of their real or perceived sexual orientation or gender identity. Other forms of violence described to Human Rights Watch include arson attacks; mob violence; and sexual, physical, and verbal abuse.

Among the cases that victims described to Human Rights Watch were:

- Ten cases of sexual assault against eight lesbian women, one transgender woman, and one gay man, including cases of rape at knife or gunpoint;
- Ten mob attacks;
- Eighteen cases of serious injuries that included:
 - Shooting injuries, including one that resulted in paralysis;
 - Stabbing injuries;
 - Bruises, cuts, swollen arms, and scars;
 - Broken bones.

In the 56 incidents, the victims themselves told us of the violence they had suffered, and with respect to the experiences of 11 individuals, we were able to examine police receipts documenting the incident, court proceedings, or letters and incident reports from J-FLAG.

In at least two prominent cases, the “gay panic” defense—when a perpetrator claims that an unwarranted homosexual sexual advance resulted in murder—has been used to justify a killing. For example, on November 7, 2010, Kevon Martin was charged with killing Steve Lindo, a gay man, by stabbing him with scissors. The magistrate granted Martin bail, despite his not having a known address, on the grounds that Martin had appeared to be acting in self-defense in response to Lindo’s demands for sex.⁵⁷ The case was still in progress at time of writing.⁵⁸

18, 2014, J-Flag told Human Rights Watch, “We have been following up with this case, and the young woman have gone to court three times already but the police officer was absent on all occasions.”

⁵⁶ Human Rights Watch email correspondence with J-FLAG, February 18, 2014.

⁵⁷ “Man before court for killing alleged homo,” *Jamaica Observer*, March 21, 2011, http://m.jamaicaobserver.com/mobile/news/Man-before-court-for-killing-alleged-homo_8541388 (accessed July 17, 2014).

Human Rights Watch spoke with LGBT individuals who said that their socioeconomic status was an important determinant in either shielding them or making them more susceptible to physical and verbal attacks. Although no one is immune to negative attitudes or behavior towards LGBT people that permeates Jamaican society, middle-class LGBT people explained that they could afford to live in safer, more affluent areas, drive private vehicles, and access social networks more tolerant of LGBT people than poor and working class Jamaicans, many of whom spoke of being vulnerable to verbal attacks and physical abuse.

Faith M. and Denise C. have been together for over four years. Faith M. told Human Rights Watch that their middle-class backgrounds “protect and insulate” them from attack,⁵⁹ while Raheem D., a 20-year-old gay man from a lower-income area in Montego Bay, told Human Rights Watch:

I don’t feel safe walking down the street because people on the street, my neighbors say, “Fish, battyman,” and that I should get out of the community. I am always afraid they could attract a crowd and hurt me.⁶⁰

Among the various types of physical abuses endured, interviewees identified two forms—mob attacks and arson—as notable for being both extreme and targeted at LGBT people.

Mob Attacks

Human Rights Watch interviewed 10 people who reported suffering mob attacks because of their sexual orientation. All the accounts involved gay men that were set upon by groups ranging from 5 to 40 men. In some cases, police intervened and saved these individuals from further harm. However, none of the individuals that we interviewed were aware of any investigation or arrests that were made in relation to the mob attacks.

Rahim Q. told Human Rights Watch that in March 2013 at approximately 6 p.m., he and a group of about 14 friends were attacked by a violent mob of about 10 men:

⁵⁸ Human Rights Watch telephone conversation with Tamara Walker-Dewar, court administrator, Resident Magistrates Court, October 1, 2014. According to Tamara Walker-Dewar, if the case is found to have merit at a hearing scheduled for December 4, 2014, it will be referred to the Supreme Court for trial.

⁵⁹ Human Rights Watch interview with Faith M. and Denise C., April 8, 2013.

⁶⁰ Human Rights Watch interview with Raheem D., Montego Bay, April 10, 2013.

We were there under the tree socializing and some men came with machetes, stones, [and] other weapons trying to beat us. They called out, “Battyman fi dead.” We saw them coming, so we had a chance to escape.... We had to jump into a pool of water in order to escape.

One of his friends who had his nose broken went to the Cornwall Regional Hospital.

He went by himself because if he went with one of us he would have been stigmatized. Persons would say things, “Those guys are gay,” “Look at those battymen there.” Most of the time we go alone [to avoid this]. Later that evening, I saw him. He went to the police, but the police didn’t make any effort, he told me.⁶¹

Arson

Human Rights Watch interviewed one gay man and one transgender woman whose homes were set on fire in attacks apparently motivated by a desire to force them from the community. Three other victims told us that perpetrators threatened to set them ablaze or torch their homes.

Carol C., a 30-year-old transgender woman, told Human Rights Watch that community members had warned her she would be “dead before the year end.”⁶² Soon after, her aunt called to say her house was on fire.

When I went to the area, I could see from quite a distance the smoke in the air. By the time I got to the house the fire brigade were busy putting out the fire. People were standing outside, some seemed happy. I left and came back the next day and there was still smoke, the older [wooden] part of the house burnt to the ground and the concrete sections remained standing.

⁶¹ Human Rights Watch interview with Rahim Q., Montego Bay, April 4, 2013.

⁶² Human Rights Watch interview with Carol C., Kingston, April 5, 2013.

Marcello T., a resident of Ocho Rios, told Human Rights Watch that a gay man's shop in his neighborhood was burned down. He said, "I think it was done on purpose because they were saying he was a funny man and they don't want no funniness there...."⁶³

Silroy N. and his male partner of 18 years, who had lived in Westmoreland for a year-and-a-half with their 9-year-old daughter, left the area after locals began to speculate they were gay. Silroy told Human Rights Watch:

The physical and verbal threats became unbearable and unavoidable. We even received threats that they [members of the community] would burn down our house: People would say, "Batty boy, why don't you leave the community. We don't support them thing. We're going to burn your house down."

"That was enough for me to move," Silroy said. "We have a daughter."⁶⁴

Verbal Abuse

At least 48 physical assaults that interviewees described to Human Rights Watch were accompanied by slurs that referred to the victim's perceived or real sexual orientation or gender identity.

Sexual assaults on LGBT people are frequently accompanied by verbal abuse that suggests the assaults are motivated by homophobia and justified by the perpetrators as an attempt to "convert" the victims to heterosexuality.

In one such case, Patsy B., a 25-year-old college student in Kingston, told Human Rights Watch that a male friend raped her in his house in March 2013:

All of a sudden he jumped on me, "Do you want to know what a real fuck feel like?" He attacked me and raped me. He did what he had to do. I was screaming.... I saw him recently at Half Way Tree (a neighborhood in Kingston). I heard him yelling, "Yo, I fucked that girl, I fucked that girl."⁶⁵

⁶³ Human Rights Watch interview with Marcello T., Montego Bay, April 10, 2013.

⁶⁴ Human Rights Watch interview with Silroy N., Montego Bay, April 9, 2013.

⁶⁵ Human Rights Watch interview with Patsy B., Kingston, April 6, 2013.

III. Police Failures to Act

The JCF Policy on Diversity, launched in 2011, established “operating protocols ... to be strictly adhered to as soon as it is established that any individual or group was victimized because of their religion, ethnicity, sexual orientation, class, colour, creed or political ideology”—and has resulted in some progress.⁶⁶

But it was clear from the series of interviews we conducted that, often, policy and practice are far apart. Human Rights Watch interviewed LGBT people who said that when they tried to report a crime, police made derogatory comments and failed or refused to take a report, even well after the Policy on Diversity was established.

The fact that police themselves are sometimes perpetrators of violence and extortion against LGBT people makes LGBT victims even more unlikely to seek police assistance.

Failure to Intervene, Investigate, and Arrest

In some cases, police appear to have failed to intervene, even as attacks were happening.

According to Devon O., in January 2013, police stood by and watched while a crowd of about 30 people—shouting insults regarding his sexual orientation and armed with knives, machetes, and sticks—beat him for about 20 minutes. He said police finally removed him from the crowd and placed him in a police van to protect him from the mob but then handcuffed and beat him (see Section IV).⁶⁷

In many cases, interviewees described police failing to arrest suspects or investigate homophobic incidents: in only 4 of the 56 cases of violence documented by Human Rights Watch were victims aware of any arrests of suspects by the police.

⁶⁶ Jamaica Constabulary Force Orders, Serial No. 3351, August 25, 2011, <http://library.jcsc.edu.jm/xmlui/bitstream/handle/1/116/Force%20Orders%203351A%20dated%202011-08-25.pdf?sequence=1> (accessed July 16, 2014).

⁶⁷ Human Rights Watch interview with Devon O., Kingston, April 2, 2013.

Such inaction is not unique to LGBT cases: Jamaica has one of the highest violent crime rates in the world, and police response is often seen to be lacking.⁶⁸ Indeed, a majority of Jamaicans believe that the justice system is corrupt and that “powerful criminals go free”;⁶⁹ only 9 percent of Jamaicans believe police “treat people equally”; and only 12 percent believe they show “courtesy to ordinary civilians.”⁷⁰

However, Human Rights Watch research shows that for LGBT crime victims, bias based specifically on gender identity or sexual orientation directly contributes to the inadequate police response.

Anne I., a 35-year-old transgender woman who does sex work, experienced an attempted rape in December 2008 by two men at knifepoint who propositioned her for sexual services. The exchange turned violent when the men realized Anne had male genitals. She told Human Rights Watch:

They placed a cardboard down [on the ground] to feel me up. One of the guys came behind me, while the other man started to take off my pants. He yelled, “You are a batty man.” One of the guys started to choke me, while the other guy started to stab me up. They broke my nose and slashed my throat.

Anne managed to run away, and found a sex worker outside a club who called the police on her behalf. The police took her to Kingston public hospital and recorded her testimony, but to Anne’s knowledge, there was no follow-up.⁷¹ Police did not respond to an inquiry from Human Rights Watch as to whether there had been any progress in the case.⁷²

In an extreme case documented by Human Rights Watch, armed men in 2007 attacked Tanasha G. as she sat in her car, shooting her three times in the chest, buttocks, and leg as they called her a “sodomite gal.” Police never followed up.

⁶⁸ Martin Henry, “We don’t feel safe. We are not safe,” *The Gleaner*, October 21, 2012, <http://jamaica-gleaner.com/gleaner/20121021/focus/focus2.html> (accessed July 23, 2014).

⁶⁹ UNDP, “Caribbean Human Development Report 2012,” http://www.undp.org/content/dam/undp/library/corporate/HDR/Latin%20America%20and%20Caribbean%20HDR/C_beau_HDR_Jan25_2012_3MB.pdf (accessed July 21, 2014), pp. 21, 78.

⁷⁰ *Ibid.*, p. 103.

⁷¹ Human Rights Watch interview with Anne I., Kingston, April 5, 2013.

⁷² See Annex I.

She spent a month-and-a-half in Mandeville hospital, and another month-and-a-half in a rehabilitation center and remains disabled and wheelchair-bound due to the attack. “The police came [to the hospital] the next day and spoke to my mother,” she said. “I never spoke to the police and they never followed up.”⁷³

Police also do not appear to have followed up adequately on the June 2013 murder of Dwayne Jones, a gender non-conforming 16-year-old, who was beaten, stabbed, and shot to death in St. James by partygoers when they discovered her biological sex.⁷⁴ Although police interviewed witnesses and provided information about the murder investigations to J-FLAG, no one had been arrested for the attack at time of writing.

Human Rights Watch interviewed seven lesbian women, one transgender woman, and one gay man who told us that they were raped or threatened with rape as a result of their sexual orientation or gender identity, in some cases at knife- or gunpoint. Only one of these cases resulted in a police investigation that eventually led to an arrest, prosecution, and conviction, but even then, the accused was ultimately acquitted on appeal.⁷⁵

FAILURE TO INVESTIGATE: WINNIE AND NADINE’S STORY

On August 10, 2012, Winnie R. and Nadine B.—two lesbians—returned home after a party around midnight. As they got out of the car, two men disguised with bandanas across their faces ambushed them and forced them inside their house at gunpoint. Initially they thought it was a robbery. Winnie R. told Human Rights Watch, “I said that they could take whatever they want. One of the gunmen said, “We’re not here to take your stuff.” The other gunman said, “You not with nuh man [You aren’t with guys].”

⁷³ Human Rights Watch interview with Tanisha G., April 8 2013.

⁷⁴ “Cross dressing teen killed by mob,” *Irie FM*, July 22, 2013, <http://www.iriefm.net/news/headline/cross-dressing-teen-killed-mob>; “Police Probe St James Teen Murder,” *The Gleaner*, July 23, 2013, <http://jamaica-gleaner.com/latest/article.php?id=46680>; “JFJ Condemns Mob Killing of Cross-Dresser,” *The Gleaner*, July 27, 2013, <http://jamaica-gleaner.com/gleaner/20130727/news/news3.html> (all accessed July 17, 2014).

⁷⁵ Court of Appeal, Supreme Court Criminal Appeal No. 20/2010, *Ronique Raymond v R*, 2012, [http://www.courtofappeal.gov.jm/sites/default/files/judgments/Raymond%20\(Ronique\)%20v%20R.pdf](http://www.courtofappeal.gov.jm/sites/default/files/judgments/Raymond%20(Ronique)%20v%20R.pdf) (accessed June 30, 2014).

Nadine B. said that after raping her, the gunmen forced her to watch them rape Winnie:

He made [Winnie] lie on the bed face down. I realized that he was going to have sex, so I said, "You know, I have condoms, to make sure that she doesn't get AIDS or get pregnant." I thought they were just trying to prove a point because she doesn't dress like a girl. The other guy was there with a gun to my head. He didn't take his clothes off. He just unzipped his pants and just had sex with her [without a condom].

Afterwards, the men left and threatened to kill the women if they informed the police. Winnie and Nadine did so anyway. But when they went to Greater Portmore police station, Nadine said the police verbally abused them and failed to act. She said:

The police officer [asked] us if we were related, and I said we were just friends, sharing the place. The officer then responded, "You're sodomites, look at her, a sodomite them, why did you come to the police station? A fuck you want, a fuck you get." I said, "When I want sex, I know where to get it and who to get it from. I came here to report the crime." He said, "Look at that one there. She is so pretty. And she a suck pussy?"

I was so upset that I started to walk out.... I was there saying, "This is how you treat people. What if I were your sister? What if I were your mother?"

Those men were in our house for four hours. Imagine having to go through that for four hours and then you go to the police officer and he says, "Sex you want sex is what you get. Dirty lesbian girl deserve what you get." This is what I get from a police officer who took an oath to serve, protect, and reassure. How was he protecting me? How did he serve me? How did he reassure me?

Winnie and Nadine left the station without being able to file a police report.

Although police are instructed to record hate crimes, they lack a clear definition of what constitutes such a crime, and documenting these incidents appears to be under-prioritized. As one senior police official told Human Rights Watch:

Jamaica doesn't have a well-developed crime recording system, murder and other crimes. There is a significant underreporting of crime.... Reports are not transmitted [from local police posts] to the central recording/statistics branch. Almost nothing on hate crime is recorded.... Hate crime is not high up on the agenda, guns and other crimes such as domestic violence are.⁷⁶

Only one case that Human Rights Watch reviewed—that of Kingston University student Jolly K.—resulted in a police investigation and arrest.

Jolly K. told Human Rights Watch that she had agreed to an in-person meeting after chatting online with someone who presented herself as a woman. She soon realized it was a set-up: when she reached the agreed meeting place with a friend, a man wearing a handkerchief across his face held her at gunpoint:

He cursed at us, “Pussyhole.” He put the gun at the back of my head and directed us to hold our hands up and walk.

After robbing them us of about J\$30,000 (about US\$270) and a camera, he forced her to perform oral sex, and to watch as he raped her friend. “She is a butch lesbian and has never been with a man.”⁷⁷

Jolly K.'s father contacted a senior police officer at Twickenham police training center [Jamaican Constabulary Force Training Branch Twickenham Park], who directed her to the Spanish Town Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), where she reported the assault to the head of CISOCA. “When she read what happened, she put down the paper,” Jolly K. said, “and looked up, and said ‘Jesus Christ, another one.’”

⁷⁶ Human Rights Watch interview with senior police officer, Kingston, April 16, 2013.

⁷⁷ Human Rights Watch interview with Jolly K., Kingston, April 5, 2013.

Jolly K. accompanied CISOCA officials to show them where the incident occurred. Several days later, police arrested a suspect, who was found with Jolly K.'s phone and other stolen items. Jolly K. and her friend returned to the station to provide a positive identification for the suspect, and to identify their stolen items. Tried and convicted, the suspect was sentenced to 29 years in prison on rape, theft, and arms possession charges. However, he was subsequently acquitted on appeal for reasons related to the identification process.⁷⁸

⁷⁸ Court of Appeal, Supreme Court Criminal Appeal No. 20/2010, *Ronique Raymond v R*, 2012, [http://www.courtsofappeal.gov.jm/sites/default/files/judgments/Raymond%20\(Ronique\)%20v%20R.pdf](http://www.courtsofappeal.gov.jm/sites/default/files/judgments/Raymond%20(Ronique)%20v%20R.pdf) (accessed June 30, 2014).

IV. Police as Perpetrators

While the cases in the previous chapter dealt with police response to violence carried out by private citizens, in some cases the police also directly victimize LGBT people.

Cases of police violence toward LGBT people appear to have decreased in the decade since Human Rights Watch documented such violence in our 2004 report, *Hated to Death*. However, the persistence of even isolated cases is of great concern given the police's role as a source of protection.

At the root of much police abuse appears to be the same intolerance and homophobia found in Jamaican society more broadly.

For example, Human Rights Watch interviewed a foot patrol police officer in Montego Bay who said LGBT people were criminals, and deserved the violence they experienced.⁷⁹ A detective corporal from CISOCA, also in Montego Bay, told Human Rights Watch: "Gay men need to just stop being gay.... They are just greedy. I even think that the Police Force Order on Diversity should stop."⁸⁰

Verbal Abuse

In a homophobic environment, LGBT people are particularly susceptible to verbal abuse from members of the broader public. Police also perpetrate verbal abuse. In several cases, police expressed sympathy for the attackers and support for their homophobic beliefs, and further verbally abused victims who turned to them for help.

After Kevin G., an HIV-positive 17-year-old from Montego Bay, was severely beaten by his brother in February 2013 for being gay, he went to Montego Hills police station to report what had happened to him. "I waited four hours," he said. "They didn't do anything. The police said, 'That's the reason he is being beaten. He's a battyman, a fish.'"⁸¹

⁷⁹ Human Rights Watch interview with police officer, Montego Bay, April 10, 2013.

⁸⁰ Human Rights Watch interview with CISOCA police officer, Montego Bay, April 18, 2013.

⁸¹ Human Rights Watch interview with Kevin G., Kingston, April 4, 2013.

One young homeless gay man, Bryan T., said that New Kingston police promised to investigate an incident in which construction workers chased him in February 2013—but then appear to have failed to do so. He added that he and a friend were told they could not use the police officer’s pen to sign the complaint: “He said, ‘You are a battyman. We don’t want battyman to use our pen.’”⁸²

Cutie G., 18, who had been living on the streets for four years after leaving home, described both physical (including pepper spraying and being hit by batons) and verbal assaults by police. In one incident, he said, he was being chased and ran to the police station for help. “Come out of the station,” he recalled them saying. “We don’t want to help you. Go kill yourself.”⁸³

Physical Abuse

Devon O. told Human Rights Watch that after a large crowd beat him in January 2013, police handcuffed and physically assaulted him in the police car and station:

The policeman in front hit me three times with his baton, and said: “Hey, you’re a fish, and you are a battyman.” There were two policemen in the car, one in the front and one beside me. They were hitting me with their elbows. Then, they stopped the van and they continued to hit me. I feel the licks come from the front and the side.

When they arrived at the station, a policeman kicked him out of the car. “Fish don’t last long in St. Ann,” one policeman said inside. “Everyone who comes in comes out dead.”

He was handcuffed the whole night, released the next morning, and told he “should go to church.”⁸⁴

Michael B., a 20-year-old homeless gay man, told Human Rights Watch that abuse at the hands of the police is a regular occurrence. He recalled that one day in the summer of 2011, at around 5 a.m.,

⁸² Human Rights Watch interview with Bryan T., Kingston, April 4, 2013.

⁸³ Human Rights Watch interview with Cutie G., April 4, 2013.

⁸⁴ Human Rights Watch interview with Devon O., Kingston, April 2, 2013.

...The police surrounded us and told us to leave the street because we were loitering. One police officer took out his baton and started beating us one by one. We were up against the wall. Four cops, one beating us, the others standing to make sure we couldn't leave.⁸⁵

Michael said that on other occasions, police had used tear gas and pepper spray against him and his friends:

The police would come over and tell us to leave the road, and they would run us with pepper spray, throw stones, and chase us down like dogs. The police don't like homosexuals.⁸⁶

Carlton J., 25, told Human Rights Watch that in 2006, he was confronted by a policeman while on the street in Kingston:

The police beat me with a gun in my back, called me battyman. The policeman said "How come mi so nice and turn homosexual [how can someone so good-looking become a homosexual]?" He beat me so that it left a gun mark in my back.⁸⁷

Sexual Abuse

In a small number of cases victims described sexual abuse at the hands of police.

John B., a 23-year-old gay man, recalled how a policeman kidnapped and raped him at gunpoint in 2007, when he was 17 and homeless. John B. said:

One Sunday evening he called me over, handcuffed me, and told me that I was arrested for loitering. He drove me to a field, pulled my pants down, removed my handcuffs, put his gun to my head, and raped me. I grunted

⁸⁵ Human Rights Watch interview with Michael B., Kingston, April 4, 2013.

⁸⁶ Ibid.

⁸⁷ Human Rights Watch interview with Carlton J., Kingston, April 3, 2013.

and screamed. When he was finished the police officer said, “If you tell anyone, you’re dead.”⁸⁸

Extortion

Another form of victimization is through extortion. Human Rights Watch interviewed five LGBT people who were subjected to police extortion. All were threatened with arrest, and asked to pay a significant sum to avoid imprisonment or the risk of having their sexual orientation or gender identity revealed to media, friends, family, or the broader community.

Sean T. recalled:

In September 2012 I was in a car with a friend by Emancipation Park. The car was off and the lights were off. The police ordered us out of the car. The guy was married, so he didn’t want it to go too far. The police asked for money. The guy found the money and paid them J\$50,000 (about \$445). Then they demanded more, [and] in the interest of protecting his marriage, he paid more.⁸⁹

On April 9, 2013, police stopped and threatened to arrest Stephen V., a Jamaican man who lives in Canada and was visiting Jamaica. He told Human Rights Watch:

I was driving to Port Royal to have lunch with my friend. On our way, he wanted to stop to go to the bathroom. I pulled over to the side of the road, close to the bushes so people passing by wouldn’t see him.

My friend came out of the bushes and was pulling his pants up. A police car blocked us, and two police jumped out the car. One of the police officers said to me, “You guys are battymen.... You two were having sex.”

Stephen said that after warning him, “It’s my word against yours,” the policeman threatened to arrest and charge him with buggery, and expose him to media and his

⁸⁸ Human Rights Watch interview with John B., Mandeville, June 14, 2013.

⁸⁹ Human Rights Watch interview with Sean T., Kingston, April 9, 2013.

family. “In Canada it may be ok to be gay,” he recalled the policeman saying. “In Jamaica it is not okay.”⁹⁰

When the police officer threatened to take away Stephen V.’s passport and hold him in custody, preventing his return to Canada, Stephen asked the police officer how much money was needed to prevent the arrest. The police officer demanded J\$20,000 (about \$180). He then escorted Stephen and his friend to an ATM to retrieve the money.

Jolly K. also said that police officers bribed her to avoid arrest when they found her in a parked vehicle with a female friend around midday, in Greater Portmore, in early 2010:

I thought that they were going to drag us into the police station. I wasn’t scared about what the police would do, but what would happen afterward. At that time, I was living with my grandparents.⁹¹

The police let the two women go after Jolly K.’s girlfriend paid them a bribe of J\$5,000 (about \$45).

⁹⁰ Human Rights Watch telephone interview with Stephen V., August 9, 2013.

⁹¹ Human Rights Watch interview with Jolly K., Kingston, April 5, 2013.

EXTORTION: LUIS'S STORY

Luis M., the only person whom Human Rights Watch interviewed who was jailed for being gay, was arrested and charged with gross indecency and buggery in Kingston in October 2011. Police extorted him and his partner, Robert U., after they found them parked in a secluded area, where they had been kissing and having sex. Luis told Human Rights Watch that both he and his boyfriend were fully dressed and sitting in the car when three police officers approached and said, “Ah two men in there. It must be battymen them.”

As one police officer pointed his flashlight at them, another began videotaping them with his phone. When Luis and Robert turned their faces away, the policemen ordered them to look at the camera. The officers searched around the vehicle and found two used condoms. They then ordered them out of the car, and according to Luis, said:

“You have money? Because you’re going to need money to get out of this.”

The police ordered Luis and Robert to drive to the police station in their own car as the police officers said they didn’t “want no fish in their vehicle.” The officers continued to demand money from them, asking for J\$100,000 (about \$890) for each police officer.

Luis and Robert were charged with buggery and gross indecency. J-FLAG secured the services of a lawyer, who came to the police station and recorded their statements. Other inmates verbally and physically attacked them: on one occasion, four men pushed them towards the grill of the cell and punched them. Luis and Robert shouted for help for over 15 minutes, but no one came.

They were released on bail after two weeks in detention and given a court date three months later. The lawyer explained they could either go to trial or accept a plea bargain for gross indecency. They accepted the latter and were offered a choice of a fine of J\$250,000 (about \$2,225) or six months in prison. Luis took a loan from his mother to pay the fine, which he was still repaying when we interviewed him in April 2013.

V. Public and Private Sector Discrimination

The stigma and discrimination that LGBT people face in Jamaica seeps into everyday activities, such as accessing health care, attending school, going to the movies, shopping, or riding a bus. Human Rights Watch talked to LGBT people who were verbally abused and confronted in public and private spaces about their real or perceived sexual orientation or gender identity.

Health Care Discrimination

LGBT patients faced a combination of ignorance and discrimination in accessing health care, including incidences of homophobia and transphobia among health workers. In some cases, the fear of negative responses from health care providers keeps LGBT individuals from accessing care.

When they do access care, many told Human Rights Watch they are not comfortable sharing information about their sexual orientation or HIV status. Several LGBT people told Human Rights Watch that nurses, doctors, and other staff had disclosed their confidential information to others—a lack of privacy not confined to LGBT people.⁹²

Anne I., a transgender woman, described the level of hostility that she received at Kingston Public Hospital when she tried to access treatment for the knife wounds she received after a vicious attack by two men in 2008:

The doctor asked me what happened. I told him the story. He called the porter and said, “You have to look at this.” He called various people to look at me. He pulled down my pants to look at my sex organ. He said, “You should not let man [men] sex you.” He called about three porters and another man [a patient] to look at me.

⁹² Violations of confidentiality do not affect LGBT people alone. An investigation by *The Gleaner* newspaper revealed that the confidential medical history of patients at state-run facilities is often open to public access. The health ministry is conducting an audit of the security procedures at medical records filing rooms at all government-run health facilities. Tyrone Reid, “Still No Privacy For Patients - Medical Records At State-Run Facilities Not Being Secured Despite Promised Changes More Than One Year Ago,” *The Gleaner*, December 1, 2013, <http://jamaica-gleaner.com/gleaner/20131201/lead/lead4.html> (accessed June 29, 2014).

When Anne I. returned to the hospital for follow-up treatment, she was physically assaulted by one of the porters to whom she had been exposed. “The porter recognized me and said ‘Who you a look pan [Who are you looking at]?’ He took out a knife and he cut me in my face.”⁹³

Two nurses locked Anne into a room, apparently to protect her, and she went without treatment through the night. The next morning, she received treatment for her knife wounds, but was also subjected to further humiliation. Anne explained, “Some guys [auxiliary staff] wanted to know if I was a woman, and for me to let them see my breasts.”⁹⁴

A senior Ministry of Health official shared the case of a gay man who had Human papillomavirus (HPV) that remained untreated until his health seriously deteriorated:

They can’t officially turn away people, so what would happen is that he would come in with fever and drainage problems related to HPV lesions [on his anus]. I sent him to dermatology [at a public hospital] but they don’t do large lesions. I sent him to surgery with a referral for HPV lesion removal. They gave him medication for fever, and antibiotics, and then ... instead of taking care of him, they discharged him and said to return. This happened six or seven times throughout the year from 2011-2012.

By the time he got surgery at the end of 2012, the official said, the cancer was well established and he had to have almost a total colostomy.⁹⁵

Stigmatizing treatment from health workers can dissuade LGBT people from seeking critical services including HIV testing, as Florio P.’s story demonstrates. Florio said he normally goes for testing every six months at Red Cross or Cornwall Regional, but in 2009, he tried to get an HIV test at St. James Health Department “Type V” Clinic in Montego Bay. He said:

⁹³ Human Rights Watch interview with Anne I., Kingston, April 5, 2013.

⁹⁴ Ibid.

⁹⁵ Human Rights Watch interview with senior Ministry of Health official, Kingston, June 19, 2013. Human papillomavirus (HPV) is a common virus that affects both men and women. There are more than 40 types of HPV that are passed on through sexual contact and that can infect the genital areas of men, including the skin on and around the penis or anus. They can also infect the mouth and throat.

I went to make an appointment for an HIV test. The reception asked, “Why are you here? Are you having sex with a man?” [I responded] “Do I have to answer the question?” The receptionist said “Bwoy, do you fuck men? Either you fuck men or not?” I felt so uncomfortable that I left. Other people could hear this. People who were in the front row laughed.⁹⁶

To avoid the real or perceived stigma and discrimination associated with being identified as gay or HIV positive at a public hospital, they chose to go to pharmacies outside the public health system, or to access services through Jamaica AIDS Support for Life (JASL) or the Red Cross. Even seeing private physicians can pose problems. David M., a psychologist who volunteers with JASL, told Human Rights Watch:

There are some physicians [that] are wary of LGBT in their [private] practice ... my clients have told me this. They [doctors] have no problem seeing them outside of their private practice, [but] they fear that LGBT coming to their practice might turn normal patients away and would rather see them in the public health system or at JASL. The discrimination has to be considered as fear of association.⁹⁷

Genie O., a 28-year-old gay man from Westmoreland, told Human Rights Watch that he had gone for an HIV test at St. James Health Department “Type V” clinic, but was afraid to disclose his sexual orientation to health workers, whom he saw discussing clients’ confidential information:

Most men who are MSM go to Type V. There is a section that does the HIV test. As soon as you go there you are assumed to be gay.... If you are effeminate there are whispers and shuffling [away from people who are perceived to be gay].

⁹⁶ Human Rights Watch interview with Florio P., Montego Bay, April 20, 2013.

⁹⁷ Human Rights Watch interview with David M., psychologist at JASL, Montego Bay, April 10, 2013.

The information is easily accessible and the staff talk, and they would say, “I didn’t know that person had AIDS.” The staff would discuss it in earshot. There is no confidentiality.⁹⁸

Employment Discrimination

The 2004 Staff Orders for the Public Service, which bans discrimination on the grounds of sexual orientation in civil service, is the only legal protection in Jamaica against employment discrimination on the basis of sexual orientation or gender identity.⁹⁹ There is no equivalent protection for workers in the private sector.

LGBT people in Jamaica face discrimination when seeking and maintaining employment. We interviewed five LGBT people who had lost employment primarily because of their assumed sexuality. Others said they move regularly to protect themselves from violence; the constant movement of homes, or homelessness, also hampers their ability to find and hold a job.

Charles B. told Human Rights Watch he was fired because of his sexuality:

In 2008 there was rumor going around that I was gay and that the supervisor caught me in the bushes with a guy. The rumors escalated at work. I was later fired based on the fact that I was gay. My manager said that I was bringing the organization disrepute. That incident caused me to become homeless, and I have been living on the street for about three years now.¹⁰⁰

Devon O. had a job as a security guard at a large business in Montego Bay. He told Human Rights Watch that in December 2010 his manager called him into a meeting and told him he had to look for a new job. “I heard that you are gay, that you are a battyman,” Devon O. recalled him saying. “We don’t tolerate these things in the company.”¹⁰¹

⁹⁸ Human Rights Watch interview with Genie O., Montego Bay, April 10, 2013.

⁹⁹ Government of Jamaica, Staff Orders for the Public Service, 2004, <http://jis.gov.jm/media/Staff-Orders-for-Public-Service.pdf> (accessed August 7, 2014), p. 65.

¹⁰⁰ Human Rights Watch interview with Charles B., Ocho Rios, April 18, 2013.

¹⁰¹ Human Rights Watch interview with Devon O., Kingston, April 2, 2013.

Marsha J., a single bisexual mother living in Ocho Rios, told Human Rights Watch that her sister, who is also bisexual, argued with a colleague in February 2012 because of her sexual orientation. Marsha, who witnessed the argument, recalled: “They were up in my sister’s face. They eventually suspended her from work.”

Marsha J. said the father of her baby also lost his job because of his perceived sexual orientation. “People are saying that he is a battyman,” she said.¹⁰²

None of the individuals we interviewed had attempted to file a complaint or seek redress for wrongful dismissal, stating that there is no legal protection for them.

Housing Discrimination

Eviction and homelessness shape the lives of many LGBT Jamaicans. Human Rights Watch interviewed LGBT people who had been forced to move: kicked out of their homes by family members, driven from home by community members who threatened to kill them, and in some cases violently attacked and forced to flee. Some had moved many times, often with short notice.

Winnie R. and Nadine G. were evicted by a homophobic landlord in 2011. Nadine recounted:

A week after Winnie R. began living with me, I began to experience problems with my landlord. Initially, he would make negative comments when he saw Winnie, such as that she was “too harsh” in appearance, and would complain whenever Winnie parked her car at the house. As time passed, my landlord only became increasingly more hostile, and on multiple occasions he called us “abominations”; told us he did not want “this nasty thing” in his house; and said that he wanted us to leave, claiming that we would bring destruction to his house.

Around January 2011, the landlord called the police, telling them that Winnie and Nadine were abusing their sons. She said:

¹⁰² Human Rights Watch interview with Marsha J., Ocho Rios, April 18, 2013.

We were visited the following day by a “child care officer,” who confirmed that the allegations were false after speaking with the children. When we mentioned the problems we faced from the landlord, [the police] said that we should find a new place to live.

Two days later, the landlord padlocked the house.

On the day we moved out, our landlord began yelling outside that we were lesbians, that this was why we were leaving, that we had been there too long, that we were bringing destruction to his house and business.¹⁰³

Errol S. and his boyfriend had to abandon their home in 2011 due to threats from neighbors. On one occasion he was confronted by neighbors as he walked down the street in his Old Harbour neighborhood. He said:

As I turned the corner, one of the guys said, “Me no want a battyman go by my shop.” He got up and started to flick his knife open. When I ignored him, he said, “You a battyman?” I started to back away and then I just turned and go back by my avenue. The guy yelled, “Leave the community within 24 hours, or else.”¹⁰⁴

The next day, members of the community stoned his house for 20 to 30 minutes. “[I] heard them yelling, ‘Battyman them there so. Come out of the community,’” Errol said. He left a week later.

Anne, the transgender woman whose experiences with violence are described in Section III, had to flee her home in St. Mary in 2007:

They surrounded the house—I saw the crowd from 5 p.m. until I left there from 9 to 10 p.m. I called the police, told them that there was a crowd of people at my gate and around the back. The police came with two jeeps. The crowd would say “Jesus God, Jesus God” as they wanted to see what I

¹⁰³ Human Rights Watch interview with Nadine G., Kingston, April 3, 2013.

¹⁰⁴ Human Rights Watch interview with Errol S., Kingston, April 2, 2013.

looked like. [The police] asked me where I could go, and I said I have a sister that lives in the district. I stayed with her for two months before moving again.¹⁰⁵

Homelessness

According to Ivan Cruickshank of Caribbean Vulnerable Communities, LGBT-identified youth comprise up to 40 percent of the nation's homeless youth population.¹⁰⁶ These young men tend to fall through the cracks, as neither government services nor civil society organizations have developed services that can fully address their health or psychosocial needs.¹⁰⁷ Both in New Kingston and Montego Bay, police evict them from their squatted or makeshift homes.¹⁰⁸ Living at the margins of Jamaican society, they are vulnerable to rape, violence, and disease.

Human Rights Watch found that many young LGBT people were almost entirely uprooted, having been expelled by their families and forced to move on from each place that briefly became home.

We interviewed 13 gay, homeless youth, including 3 boys under 18 that had been kicked out of their homes in Kingston and Montego Bay. At the time, they were squatting at the former offices of J-FLAG and Jamaican AIDS Support for Life, located in New Kingston. They have few skills and limited access to resources or social support and face constant threat of attacks from both private citizens and the police.

Cutie G., 18, had been living on the streets for four years after leaving home and school due to constant teasing, bullying, and attacks. He lived with grandparents until they chased him away, and was living mostly in a sewer when we interviewed him. Cutie G.

¹⁰⁵ Human Rights Watch interview with Anne I., Kingston, April 5, 2013.

¹⁰⁶ Ivan Cruickshank, "A Place to stay, But not a home: Homelessness and HIV in Jamaica," *The Robert Carr Human Rights Agenda*, November 2011, <http://www.focusright.org/newsletter/articles/Gay%20and%20Homeless%20in%20Jamaica.html> (accessed May 3, 2014).

¹⁰⁷ In a December 2013 interview with *The Gleaner*, both the Child Development Agency (CDA) and the Centre for Investigation of Sexual Offences and Child Abuse (CISOCA) deny having any knowledge or any reports of homosexual children under the age of 18 living on the streets. Jermaine Francis, "Group Urges More State Support For Homosexual Teens Living On Streets," *The Gleaner*, December 5, 2013, <http://jamaica-gleaner.com/gleaner/20131205/lead/lead2.html> (accessed April 15, 2014).

¹⁰⁸ Yvonne McCalla Sobers, "Defying judge, Jamaican police evict LGBT youth," post to "Erasing 76 Crimes" (blog), March 31, 2014, <http://76crimes.com/2014/03/31/defying-judge-jamaican-police-evict-lgbt-youth/> (accessed August 7, 2014).

survives by selling sex in New Kingston. “Sometime we go to a hotel, their houses, on the street,” he said. “If I don’t go on the road to sell my body, I don’t eat.”

Carlton J., 25, said he also began to live on the streets of Kingston after his mother and his aunt cursed him because of his sexuality, which he revealed to them when he was 18:

[My mother] wanted me to be straight, go to church, all that stuff. [She said] “If you can’t change you must leave,” and eventually she kicked me out of the house. I left to stay with friends in Mandeville and then I eventually made it to Kingston to live on the streets.¹⁰⁹

In June 30, 2012, Carlton said a car slammed into him on a New Kingston street and dragged him down the road for about a minute as the driver yelled “homosexuals.” Police from New Kingston picked him up and took him to the hospital, but Carlton did not file a complaint and police did not investigate the incident. After a week in the hospital, Carlton returned to his mother’s house, but fled to the streets again after seven months because of constant arguments with her over his sexual orientation. He now does sex work to survive.¹¹⁰

Wayne P. has been living on the streets of Kingston since the age of 16. He told Human Rights Watch that he was kicked out of his home in March 2009 after his mother and aunt found out about his sexual orientation. He went to stay with an uncle, who then forced him into sex: He told me that if I didn’t have sex with him I would have to leave the house.¹¹² After giving in to his uncle’s demands twice, Wayne left his



Scars that Carlton J. says he sustained as a result of being knocked over and dragged by a car in June 2012.¹¹¹

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¹⁰⁹ Human Rights Watch interview with Carlton J., Kingston, April 3, 2013.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Human Rights Watch interview with Wayne P., Kingston, April 5, 2013.

uncle's house in May 2009 and moved to New Kingston because, he explained, "A friend told me that is where the gays live." He started to beg and do sex work to survive:

I had no money. I had to hustle, beg many people, sell sex ... on the street, in a car or on the road or in an apartment. I always used condoms, [but] not always lubricant.¹¹³

Kevin G., age 17, was raised from age 6 to 15 in a children's home in St. Elizabeth, where he said he was regularly sexually abused by older boys. When he was 15, he said, staff at the children's home "run me off. They say that I'm acting like a little girl. 'This is not a girls' home, it's a boys' home.' They strike me with a bottle." He now lives on the streets.¹¹⁴

Non-governmental organizations such as JASL and J-FLAG have made attempts at developing programs to address the needs of homeless gay and transgender young people. A Safe House pilot project operated briefly in 2009, supported by the Jamaican Red Cross and the Ministry of Health and hosting 11 young gay men and one woman, but it subsequently closed.¹¹⁵

Since 2013, New Kingston MP Julian Robinson and the police have organized a series of town hall meetings, in which LGBT organizations have participated, focused on addressing the needs of homeless gay youth. Participants have called for a project to be established that would provide homeless gay youth with shelter, counseling, and food.¹¹⁶ The project had failed to materialize at time of writing.

In April 2014 Minister of Youth and Culture Lisa Hanna announced that her ministry is developing new services to address the challenges, concerns, and needs of the different types of youth the ministry serves, including LGBT youth.¹¹⁷

¹¹³ Ibid.

¹¹⁴ Human Rights Watch interview with Kevin G., Kingston, April 4, 2014.

¹¹⁵ Yvonne Sobers, "Homeless Gay Youth in New Kingston," Dwayne's House, February 6, 2014, unpublished article on file with Human Rights Watch.

¹¹⁶ Kimberly Hibbert, "Cop proposes shelter for gay homeless men," *Jamaica Observer*, July 27, 2014, http://www.jamaicaobserver.com/news/Cop-proposes-shelter-for-gay-homeless-men_17238821 (accessed August 7, 2014).

¹¹⁷ Ministry of Youth and Culture, "Youth Ministry to develop programmes to address LGBT youth, homeless, destitute and vulnerable children," April 16, 2014, <https://www.facebook.com/notes/ministry-of-youth-and-culture-jamaica/youth-ministry-to-develop-programmes-to-address-lgbt-youth-homeless-destitute-an/721181891237686> (accessed June 29, 2014).

VI. Government and Police Response

There has been a groundswell of change in Jamaica in the way it is responding to human rights abuses against LGBT people. Senior representatives of the government, including the prime minister and government ministers, have articulated a willingness to partner with civil society, donors, multilateral agencies, and others to push for the legislative and social changes necessary to ensure that LGBT Jamaicans can live free from harm.

Prior to her election in 2011, Prime Minister Portia Simpson Miller called for the legislature to revisit Jamaica's buggery laws, which criminalize same-sex conduct between men. In June 2013, she indicated that she would call for a parliamentary conscience vote on the buggery laws.¹¹⁸ However, on April 3, 2014, she stated in an interview that "repealing the law would have to be based on the will of the constituents," and that such a repeal was not a priority for government.¹¹⁹

Public opinion appears to be deeply entrenched against legal reform that would uphold the rights of LGBT people: a 2012 opinion poll indicated that the perception of the government would be negatively impacted if the buggery law were to be reviewed or changed.¹²⁰

Police

Jamaica Constabulary Force Policy on Diversity

In August 2011, the JCF published the Jamaica Constabulary Force Policy on Diversity (JCF Order # 3351).¹²¹ The policy dictates that police, in their professional dealings with members of "diverse communities," are to treat them with the highest standard of dignity

¹¹⁸ Colin Stewart, "Jamaica: Vote coming soon on repeal of anti-gay law," post tp "Erasing 76 Crimes" (blog), June 7, 2013, <http://76crimes.com/2013/06/07/jamaica-vote-coming-soon-on-repeal-of-anti-gay-law/>; Gary Younge, "Troubled island," *The Guardian*, April 26, 2006, <http://www.theguardian.com/world/2006/apr/27/gayrights.comment>; "Golding talks about policing, gays on BBC," *The Gleaner*, May 21, 2008, <http://jamaica-gleaner.com/gleaner/20080521/lead/lead3.html> (all accessed May 3, 2014).

¹¹⁹ "PM on Buggery Vote," video report, *TV*, April 4, 2014, <http://televisionjamaica.com/Programmes/PrimeTimeNews.aspx/Videos/33905> (accessed May 3, 2014).

¹²⁰ "CVM's Don Anderson 2012 Poll on Buggery Review 07.03.12," March 7, 2012, video clip, YouTube, <http://www.youtube.com/watch?v=EdDpgkPsezs> (accessed May 3, 2014).

¹²¹ According to the policy, "The divisional commanders will cause a record to be made for statistical purposes of all diversity cases reported, the nature of the reports and the outcome of investigations. This data is to be forwarded to the Statistics Unit on a monthly basis."

and human rights, with the aim of eliminating discrimination and standardizing the treatment people receive regardless of their identity or background. The policy prohibits discrimination and establishes specific protections on the grounds of sexual orientation, as well as religion, ethnicity, class, color, creed or political ideology, physical or mental challenges, and “any other feature that adds variety to mainstream society.” It requires divisional commanders to compile data on cases in which anyone is victimized on the aforementioned grounds.¹²²

In its response to the Inter-American Commission on Human Rights report on Jamaica in 2012, which criticizes Jamaica’s treatment of its LGBT citizens, the Jamaican government highlighted the Policy on Diversity, and its development in partnership with J-FLAG, as an indication of its effort to protect the human rights of LGBT people.¹²³

Human Rights Watch interviewed eight members of the JCF of different levels, including staff from headquarters and local police stations in Kingston, Mandeville, and Montego Bay, all of whom mentioned the Policy on Diversity. They explained the policy was issued as guidance and was distributed to all officers, but that they had not received any formal training regarding the policy or its implementation.

The policy states that diversity must be taught at all levels of the police academy and staff college, but it is not clear that any provisions are in place for officers who have already completed police academy to participate in these trainings. Further, Assistant Police Commissioner John McLean told Human Rights Watch with reference to the Policy on Diversity: “The organization is very weak on follow-up and accountability.”¹²⁴

Human Rights Watch wrote to Police Commissioner Owen Ellington on October 29, 2013 for additional information regarding the policy’s implementation, impact, and how it is being monitored, as well as the outcomes of any investigations into cases of non-compliance (see Annex I). The commissioner had not responded at time of writing.

¹²² Jamaica Constabulary Force Orders, Serial No. 3351, August 25, 2011, <http://library.jcsc.edu.jm/xmlui/bitstream/handle/1/116/Force%20Orders%203351A%20dated%202011-08-25.pdf?sequence=1> (accessed July 17, 2014).

¹²³ Inter-American Commission on Human Rights, “Report on the Situation of Human Rights in Jamaica,” August 10, 2012, <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (accessed May 3, 2014), p. 100.

¹²⁴ Human Rights Watch interview with John McLean, Assistant Police Commissioner, April 12, 2013.

Independent Commission of Investigations

In August 2010, in response to public frustration over the judicial system's failure to investigate and prosecute abusive police officers, the Jamaican government established the Independent Commission of Investigations (INDECOM), tasked with investigating human rights violations or other abuses committed by members of the JCF.¹²⁵

While the establishment of INDECOM is a welcome step, the IACHR has criticized it for not having sufficient "power and authority" to be truly effective.¹²⁶ Michael B. of Kingston was beaten and teargassed by police in mid-2011:

I've been teargassed. Police have beaten me with batons. I remember fifteen of us were on the road one evening. We were taking a rest; the police came unannounced and told us to leave the street because we were loitering. One police officer took out his baton and started beating us one by one. We were up against the wall. There were four cops, and one beating us; the others were just standing there to make sure we didn't leave. This was early in the morning, 5 or 6 a.m. There were no charges.¹²⁷

Michael told Human Rights Watch he reported the crime to INDECOM and that there was no follow-up, although Human Rights Watch has been unable to confirm whether such a report was formally submitted. A spokesperson for INDECOM explained that it receives complaints from "persons of alternative sexual orientations," but the complaint form does not include an option to specify sexual orientation. As a result, no formal record is available of the number of SOGI-based complaints.¹²⁸

Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA)

The establishment of CISOCA, a branch of the JCF with specialized and skilled staff trained to tackle and address sexual offenses, is a positive development in a country where rape is rampant. However, the needs of young homeless MSM, lesbian and bisexual women, and

¹²⁵ See website of the Independent Commission of Investigation, Government of Jamaica, at http://indecom.gov.jm/about_us.htm (accessed July 17, 2014).

¹²⁶ Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Jamaica," August 10, 2012, <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (accessed July 17, 2014), pp. 30, 52-55.

¹²⁷ Human Rights Watch interview with Michael B., Kingston, April 4, 2013.

¹²⁸ Human Rights Watch telephone conversation with INDECOM, September 10, 2014.

transgender people who have been victims of rape and sexual violence need particular attention by CISOCA.

Human Rights Watch interviewed CISOCA officers in Kingston who were surprised about the fact that LBT women are raped based on their sexual orientation or gender identity, which is a clear indication that the staff employed aren't sensitized or aware of the needs of LBT women who have been raped based on their sexual orientation or gender identity.¹²⁹ The executive director of Quality Citizenship Jamaica shared her experience of reporting an attack to CISOCA in a recent blog: "The first policewomen from CISOCA I reported it to told me that I 'should leave this lifestyle and go back to church.'" ¹³⁰

Similarly, despite news reports of young homeless men living on the streets, the newly appointed deputy superintendent of CISOCA, Veronica Gilzene, claimed in an interview with *The Gleaner* that she was unaware of the problem.¹³¹

CISOCA has a unique role to raise awareness, to encourage LGBT victims of rape and violence to come forward, and to ensure that they receive the necessary counseling and these crimes are investigated.

Other Police Policies/Steps

Police have made other notable strides to address the security needs of LGBT people in Jamaica, aided at times by productive working relationships between human rights activists, organizations such as J-FLAG, and individual police officers who are either sympathetic or have become sensitized as a result of human rights training.¹³²

Positive steps in recent years include the following.¹³³

¹²⁹ Human Rights Watch interview with Marcia Garrick, CISOCA Inspector, Kingston, June 21, 2013.

¹³⁰ Angeline Jackson, "Quality of Citizenship Jamaica: Offering Support for a Neglected Community," post to "Petchary's Blog" (blog), March 27, 2014, <https://petchary.wordpress.com/tag/angeline-jackson/> (accessed April 16, 2014).

¹³¹ Jermaine Francis, "Group Urges More State Support For Homosexual Teens Living On Streets," *The Gleaner*, December 5, 2013, <http://jamaica-gleaner.com/gleaner/20131205/lead/lead2.html> (accessed May 3, 2014).

¹³² Human Rights Watch interview with J-FLAG crisis intervention officer, Kingston, April 3, 2013.

¹³³ J-FLAG, "Top 10 LGBT achievement 2012," January 10, 2013, http://gojamaica.com/pressrelease/pdfs/pdf_20131209_33083.pdf (accessed May 3, 2014); J-FLAG, "Top 10 LGBT Accomplishments in 2013," http://go-jamaica.com/pressrelease/pdfs/pdf_20131209_33083.pdf (accessed April 15, 2014).

- In 2013, the Ministry of National Security expanded the Jamaica National Crime Victimization Survey (JNCVS) to include questions about crimes believed to result from assumptions about the sexual orientation of victims.¹³⁴
- The JCF has named sexual orientation as a protected identity in the Police Ethics and Integrity Policy, as part of its effort to raise standards and to comply with the JCF's code of ethics.¹³⁵
- Since January 2011 the JCF murder/shooting incident assessment form had included a section on probable cause, in which “hate crimes” can be indicated as a probable cause (Annex IV). The form explicitly states that hate crimes may be crimes based on identities such as ethnicity or sexual orientation.
- Some police stations are now separating detainees to protect those who might be prone to abuse and violence, including LGBT people, according to police and J-FLAG staff interviewed by Human Rights Watch.¹³⁶
- CISOCA, according to some LGBT victims of sexual assault interviewed by Human Rights Watch, has adequately tended to their needs.

Positive Police Behavior

Such steps have helped to increase awareness about discrimination and violence that LGBT people experience in Jamaica, and resulted in positive behavior on the ground.

Human Rights Watch met with seasoned police officers who said police response to hate-related crimes had improved, and recommended more training and awareness across the JCF. Several LGBT people we interviewed confirmed that they had encountered positive responses from the police.

Ted C. and his boyfriend owned a club that catered to LGBT people, and operated without police interference. While the police “weren’t pleased with the club,” he said, “they aren’t

¹³⁴ Ibid.

¹³⁵ Jamaica Constabulary Force, Ethics and Integrity Policy, April 2011, <http://www.acb.gov.jm/pdf/JCF%20Ethics%20and%20Integrity%20Policy%20-%20Final.pdf> (accessed October 11, 2014). The policy states in its “Conduct Towards the Public” section: “Members in dealing with members of the public must act fairly and impartially at all times regardless of race, colour, sex, language, religion, political or other opinion, national or social origin / class, association with a national minority, disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.”

¹³⁶ Human Rights Watch interview with Christopher Murdoch, Island Constabulary Force Commander, Kingston, April 12, 2013.

going to bother us as long as we are complying [with the law].” He recalled that on one occasion the commander called him to say police had received information that an attack was planned on the club and would be patrolling regularly to ensure the club’s safety.¹³⁷

When, following a fight with a rival club promoter, armed men in police uniforms came to his club and threatened him, Ted C. said he called the commander, who advised him to call if anything happened.¹³⁸ The next day, when he went to file a report at the police station, he overheard the commander say:

I know they’re homosexuals, but that is not relevant to why I’m meeting with them.

Ted added that the commander said while some members of staff did not agree with his club, he would do his best to protect our rights as Jamaican citizens, as long as we complied with the law. “Clearly he was not going to wave a rainbow flag,” Ted C. said, “but as long as we followed the rules for operating a club, we would not have any problems.”¹³⁹

Glenroy R., a 25-year-old gay homeless man who occasionally has sex for money, was one of the few LGBT people we interviewed who was satisfied with the police response when in October 2011 he reported an attack by four men who had offered him a ride—which he took to be a solicitation for sex—and then abused him.¹⁴⁰ The men put a knife to Glenroy’s throat and forced him to perform oral sex on one of them. “They were going to stab me, and I ran away and they said ‘Find him and kill him,’” Glenroy said. He hid, and later walked to New Kingston police station in his wet, torn clothes. When he arrived, police asked him to write a statement. They called his family, drove him around the area of the incident, and referred him to CISOCA for testing and counseling with a police clinical psychiatrist.¹⁴¹

Despite the positive steps that police have taken in recent years, there is room for improvement.

¹³⁷ Human Rights Watch interview with Ted C., Kingston, June 17, 2013.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch interview with Glenroy R., Kingston, April 8, 2013.

¹⁴¹ Ibid.

For example, CISOCA leadership and staff need to be trained to better understand and address the needs of LGBT people in order to assist and promote their right to be free from violence and sexual assault (see above).

In addition, at present, the human rights training of the JCF—part of the basic training of police recruits, supervisors, and corporals¹⁴²—does not specifically address sexual orientation or gender identity, according to police sources.¹⁴³ “There is no open discussion [on sexual orientation and gender identity],” Assistant Commissioner of Police Clifford Blake (now deputy commissioner) told Human Rights Watch. “The diversity policy is how it is dealt with in the force.”¹⁴⁴

Ongoing Challenges

One challenge to facilitating relationships between police and the LGBT community—such as the town hall meetings that police have convened since 2012 with LGBT activists, faith leaders, business community members, the child development agency, and homeless youth to address the growing number of homeless youth in New Kingston—is a lack of consistency, because police force members are often redeployed to other areas.¹⁴⁵

Commander Christopher Murdoch of the New Kingston police told Human Rights Watch that these relationships are too often fleeting due to personnel moving to other positions, often elsewhere in the country.¹⁴⁶ Ivan Cruickshank, policy and advocacy coordinator at Caribbean Vulnerable Communities (CVC), concurred:

A lot of work has been done in Kingston [and] Ocho Rios. The unfortunate thing we face is that police are very mobile in Jamaica. So you’re always going to have a group of people who are on the move.¹⁴⁷

¹⁴² Human Rights Watch interview with Kenneth Chin, JCF Police Academy trainer on the Policy on Diversity, 2013.

¹⁴³ Ibid.

¹⁴⁴ Human Rights Watch interview with Clifford Blake, Assistant Commissioner of Police, Spanish Town, April 13, 2013.

¹⁴⁵ Ibid.

¹⁴⁶ Human Rights Watch interview with Christopher Murdoch, Island Constabulary Force Commander, Kingston, April 12, 2013.

¹⁴⁷ Human Rights Watch interview with Ivan Cruickshank, Caribbean Vulnerable Communities policy and advocacy coordinator, Kingston, April 2, 2013.

Lack of transparency may prove to be another obstacle to progress. Human Rights Watch submitted a request to Deputy Commissioner of Police Delworth Heath in April 2013, asking to visit police stations around the country in order to assess implementation of the Policy on Diversity. After initially agreeing to the request, Heath stonewalled at the last minute, stating that such a request should be made through the Ministry of Foreign Affairs.¹⁴⁸

Government Ministries

Some government ministries have been constructive in their actions and responses to LGBT rights, although these have often been inconsistent, and there continues to be considerable room for improvement when it comes to legal reform and ensuring non-discrimination and equal access to social services, including health and education.

Ministry of Justice

Minister of Justice Mark Golding has issued positive verbal responses to calls for stronger legal and legislative protections of the rights of Jamaican LGBT people, but his statements have not been matched by significant action.

In January 2013, in response to the IACHR report on human rights in Jamaica, which included abuses against LGBT people in Jamaica, Minister Golding hinted that “legislative intervention” might be required to address discrimination against “minority groups,” but in the year following this statement, he has not introduced comprehensive anti-discrimination legislation.¹⁴⁹

In July the same year, Golding eloquently condemned the murder of Dwayne Jones (see Summary)—although Jones’ killers had not been brought to justice at time of writing:

Given our country’s history of brutality and the pluralistic nature of our society, all well-thinking Jamaicans must embrace the principle of respect for the basic human rights of all persons. This principle requires tolerance towards minority groups and non-violence in our dealings with

¹⁴⁸ Human Rights Watch email correspondence with Delworth Heath, Deputy Commissioner of Police, Kingston, April 18, 2013 (see Annex II).

¹⁴⁹ “Specific laws needed to target discrimination – Golding,” *R/R News*, January 4, 2013, <http://rjmewsonline.com/local/specific-laws-needed-to-target-discrimination-golding> (accessed February 10, 2014).

those who manifest a lifestyle that differs from the majority of us. Depraved acts of violence against individuals such as Dwayne Jones have to cease. The police must spare no effort in bringing the perpetrators to justice, so that any persons who may be inclined to indulge in such vile brutality will know that they cannot do so with impunity.¹⁵⁰

At the end of 2013, in December, Golding told a Jamaicans for Justice forum that his ministry was working with the United Nations Development Program (UNDP) to formulate the case for legal reform “in relation to acts of intimacy in private among consenting adults” with a particular focus on the “public health disadvantages of the current law in the fight against HIV/AIDS.” However, he noted public opposition to homosexuality:

The government is interested in the protection of the rights of all Jamaicans including sexual minorities. However the fact is the majority of Jamaicans do not approve of the homosexual lifestyle especially where it is expressed publicly and modifying the law would therefore be controversial and we have to acknowledge this.¹⁵¹

And in January 2014, Golding told Reuters, following up on Prime Minister Simpson Miller’s commitment to hold a non-binding “conscience vote” in parliament on the possibility of ending Jamaica’s sodomy laws, that such a vote would be held before the legislative year in March 2014, opening the door for the laws to be reviewed.¹⁵² Simpson Miller retracted her promise in April 2014 to review the sodomy laws, stating it was not a “priority.”¹⁵³

¹⁵⁰ “Justice Minister condemns the killing of St. James cross dresser,” *Jamaican Observer*, July 29, 2013, <http://www.jamaicaobserver.com/news/Justice-Minister-condemns-killing-of-St-James-cross-dresser> (accessed October 11, 2014).

¹⁵¹ “Jamaica’s Sexual Offences Act to be reviewed in 2014, Buggery Conscience Vote No More?,” video report, *TV*, December 13, 2013, <https://www.youtube.com/watch?v=xUBYL0UyROQ> (accessed April 15, 2014).

¹⁵² Aileen Torres-Bennett, “LGBT tolerance growing in Jamaica, push to repeal of anti-gay law,” *Reuters*, January 18, 2014, <http://www.reuters.com/article/2014/01/18/us-jamaica-lgbt-idUSBREAoHoBI20140118> (accessed February 10, 2014).

¹⁵³ “PM on Buggery Vote,” video report, *TV*, April 4, 2014, <http://televisionjamaica.com/Programmes/PrimeTimeNews.aspx/Videos/33905> (accessed May 3, 2014).

Ministry of Youth and Culture

On August 6, 2013, reggae musician Queen Ifrica used her performance at a taxpayer-funded national independence celebration to condemn gays, telling a live and televised audience: “No gays around here. Man to woman I say. Where are the straight people?”¹⁵⁴

The Ministry of Youth and Culture, which organized the event, issued a statement expressing its “regret” that Queen Ifrica had used the event to express “her personal opinions and views on matters that may be considered controversial.” It called her comments “inappropriate in the setting of a national, state-funded event” with more than 20,000 persons watching in person and online.¹⁵⁵

In April 2014, Minister of Youth and Culture Lisa Hanna announced that her ministry would develop projects, programs, and services to address the complex needs of Jamaica’s children and youth who are at the margins of society, including LGBT youth.¹⁵⁶ However, at time of writing she had not elaborated on these plans.

Ministry of Health

Jamaica’s health minister, Dr. Fenton Ferguson, publicly spoke out in support of scrapping Jamaica’s sodomy laws in a televised interview in November 2012:

Whatever might be our past in terms of tradition, culture and views, the rest of the world is moving and the Caribbean must also move in relation to recognition of human rights issues...

Jamaicans, he said, must “take decisions that will take us forwards” regardless of their personal opinions.¹⁵⁷

¹⁵⁴ Maurice Tomlinson, “Jamaica: No tax money for reggae singers’ homophobia,” post to “Erasing 76 Crimes” (blog), August 9, 2013, <http://76crimes.com/2013/08/09/jamaica-no-tax-money-for-reggae-singers-homophobia/> (accessed February 10, 2014); Adrian Frater, “Queen Ifrica Stands Her Ground,” *The Gleaner*, January 21, 2014, <http://jamaica-gleaner.com/gleaner/20140121/ent/ent2.html> (accessed July 4, 2014).

¹⁵⁵ “Culture Minister Regrets Queen Ifrica’s Gala Gay Comments,” *The Gleaner*, August 9, 2013, <http://jamaica-gleaner.com/latest/article.php?id=47073> (accessed February 10, 2014).

¹⁵⁶ Facebook post by the Ministry of Youth and Culture, Lisa Hanna, April 16, 2014, <https://www.facebook.com/notes/ministry-of-youth-and-culture-jamaica/youth-ministry-to-develop-programmes-to-address-lgbt-youth-homeless-destitute-an/721181891237686> (accessed July 4, 2014).

¹⁵⁷ “Jamaican Minister backs repeal of anti-gay law,” *Mambaonline*, December 5, 2012, <http://www.mambaonline.com/article.asp?artid=7687> (accessed February 10, 2014).

In 2012 the Ministry of Health collaborated with Children First Agency, J-FLAG, and other organizations on the Youth MSM Empowerment Project (YMEP), which aimed to tackle homophobia and its impact on HIV vulnerability through interactive drama presentations in high schools, focus group discussions, and training of both health personnel and MSM peer educators.¹⁵⁸ The ministry is also working with J-FLAG on an initiative to further train health personnel in order to make health facilities more welcoming to LGBT people.¹⁵⁹

While the Ministry of Health has illustrated its leadership by expressing the importance of addressing discrimination and its effects on the HIV response, in particular as it relates to MSM and other LGBT people, it has achieved little political buy-in from other government sectors.

Criminalization of private, consensual, same-sex sexual acts makes it more difficult for key populations to access HIV services, while the absence of needed protections—such as a comprehensive HIV and AIDS law, a general anti-discrimination law, or any legally enforceable laws or policies protecting against HIV-related discrimination—serves as a further impediment to access.

The ministry also needs to address serious gaps in its own service provision—including breaches of confidentiality—and to take further steps to reduce the high rate of HIV among MSM (and, likely, among transgender people). The ministry should articulate how the needs of LGBT people will be addressed systematically in its policy and programmatic responses inclusive of and beyond HIV. It should develop treatment protocols on dealing with victims of sexual violence, including LGBT victims.

The ministry should also publicize and ensure the accessibility of its complaints procedure: its Client's Charter sets forth a complaints mechanism for victims of abuses within the

¹⁵⁸ Children First Agency, "Narrative Report for the Period: 15 Nov 2012 to 28 Feb 2013, Youth MSM Empowerment Project," submitted to UNESCO, March 6, 2013, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/temp/LINKS/sc_yv-JamaicaFinal.pdf; see also Youth Visioning for Island Living, "Jamaica - Youth MSM Empowerment Project (YMEP)," <http://youthvisioning.org/fr/projets/vihsida/caraibes/116-jamaica-youth-msm-empowerment.html> (both accessed March 10, 2014).

¹⁵⁹ "Ministry Training Health Care Staff To Deal With Sexually Diverse Groups," *The Gleaner*, November 16, 2013, <http://jamaica-gleaner.com/latest/article.php?id=49296> (accessed October 11, 2014).

health care system, but few Jamaicans are aware of its existence, and none of the LGBT people we interviewed had sought redress for discrimination in the health sector.¹⁶⁰

Ministry of Education

In a 2011 documentary on homophobia in Jamaica, Education Minister Ronald Thwaites said he looked “forward to a day when ... we guarantee the rights of every person, that we don’t discriminate on the basis of gender or sexual orientation or religion....”¹⁶¹ There was no principle of acceptable behavior, he said, which could accommodate violence against people with whom others disagreed. He said:

Where there are persons who are homosexuals largely by virtue of how they have been made up, there is no reason and there is no right in prejudicing them, either in terms of their status, their employment, their rights and least of all by violation of their person.¹⁶²

Thwaites continued to press positive messages on LGBT issues in May 2012, when he participated as keynote speaker in a public forum on homophobic bullying and human rights, organized by J-FLAG. He stated in his remarks, “Persons, whatever their sexual orientation, whatever their race, religion or class must be treated as if made in the image and likeness of the Creator.... The policy of the Ministry of Education is to provide a safe place for all to be educated.”¹⁶³

But completely contradicting these statements the following May, Minister Thwaites told journalists after a parliamentary debate that the nationally implemented Health and Family Life Education Program (HFLEP) curriculum contained sections that “were grooming people towards homosexual behavior. That does not represent the mood of our people and it does

¹⁶⁰ “Users of Public Health Facilities Urged to Make Use of Complaints Process,” *Jamaica Information Service*, May 22, 2010, <http://jis.gov.jm/users-of-public-health-facilities-urged-to-make-use-of-complaints-process/> (accessed July 16, 2014).

¹⁶¹ Dwayne Brown, “Minister Ronald G Thwaites Hypocrisy: Jamaica’s Ministry Of Education Anti-Gay Agenda,” *Minority-Insight*, May 16, 2013, <http://www.minority-insight.org/2013/05/minister-ronald-g-thwaites-hypocrisy.html> (accessed October 11, 2014).

¹⁶² *Ibid.*

¹⁶³ Donna Hussey-Whyte, “Groups call for end to homophobic bullying,” *Jamaica Observer*, May 18, 2012, http://www.jamaicaobserver.com/news/Groups-call-for-end-to-homophobic-bullying_11494272 (accessed October 11, 2014).

not reflect the common sense of what is right and moral in Jamaica.”¹⁶⁴ He also said that “wholesome, joyous relationships are between men and women.”¹⁶⁵

The ministry’s mixed messages on LGBT rights is also demonstrated by its hesitation to embrace an Anti-Bullying Initiative, proposed in 2011 by the Child Development Agency in partnership with J-FLAG and UNICEF to tackle bullying in schools. The campaign has been significantly delayed as a result of the ministry’s hesitation to fully come on board because of the project’s focus on homophobic bullying.¹⁶⁶

¹⁶⁴ Daraine Luton, “Minister stands firm against Gay grooming,” *Jamaica Observer*, May 17, 2013, <http://jamaica-gleaner.com/gleaner/20130517/lead/lead6.html> (accessed March 28, 2014).

¹⁶⁵ “Tolerance added to new school curriculum,” video report, *Jamaica Observer*, August 26, 2013, <http://www.youtube.com/watch?v=yTWRoIWQD-U> (accessed July 17, 2014).

¹⁶⁶ J-FLAG, “Comments on the Interim Report by the Government of Jamaica to Paragraph 27 of the Concluding Observations of the Human Rights Committee in Respect of Jamaica’s Third Periodic Report to International Covenant on Civil and political rights,” 2012, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/J-FLAG_Jamaica_HRC103.pdf (accessed July 18, 2014).

VII. Civil Society

In 2004, Human Rights Watch published a report, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, that documented how the legal, social, and cultural environment drove stigma and discrimination and contributed to a climate of violence against LGBT people. The report showed how these factors led to increased vulnerability and fueled the HIV epidemic among MSM in Jamaica.¹⁶⁷

The 10 years since the report's publication have been marked by increased efforts by Jamaican civil society organizations—including J-FLAG, Quality of Citizenship Jamaica, and Women for Women—to challenge government actions (and omissions) that continue to foster a climate of discrimination and violence. J-FLAG's "We Are Jamaicans" campaign shares the experiences and perspectives of everyday Jamaicans of all sexual orientations and gender identities regarding LGBT human rights.¹⁶⁸

Jamaica AIDS Support for Life led a "Walk for Tolerance" in April 2010 to raise awareness about HIV and LGBT rights.¹⁶⁹ Jamaicans for Justice, a human rights organization, has taken a lead role in advocacy efforts to combat specific acts of homophobic violence and systemic deficiencies, such as submitting shadow reports on human rights violations against LGBT people in Jamaica to the UN Human Rights Committee.¹⁷⁰

In many cases, activists combine their work combatting homophobic violence and discrimination against marginalized populations (MSM, as well as sex workers and people who use drugs) and efforts to address the HIV epidemic in the region. The Caribbean Vulnerable Communities Coalition, a network of frontline service providers working on rights-based programming with marginalized groups across the Caribbean, has played a key role in initiating, sustaining, and supporting advocacy efforts on HIV and human rights in Jamaica and throughout the region.

¹⁶⁷ Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, vol. 16, no. 6(B), November 2004, <http://www.hrw.org/sites/default/files/reports/jamaica1104.pdf>.

¹⁶⁸ J-FLAG, "We are Jamaicans," <http://jflag.org/programmes/we-are-jamaicans/> (accessed July 17, 2014).

¹⁶⁹ AIDS-Free World, "'Walk for Tolerance' Calls for End to Bigotry in Jamaica," April 8, 2010, <https://iglhr.org/content/walk-tolerance-calls-end-bigotry-jamaica> (accessed July 17, 2014).

¹⁷⁰ Submission from Jamaicans for Justice (JFJ), "State of Jamaica: NGO Report on the implementation of the ICCPR (prior to the adoption of the List of issues)," UN Human Rights Committee, 100th session, Geneva, Switzerland, October 2010, http://jamaicansforjustice.org/download/human_rights_jamaica/110921H934.pdf (accessed October 6, 2014).

Jamaicans have also brought legal challenges in Jamaica and before the IACHR challenging Jamaica's anti-sodomy laws. For example:

- On February 6, 2013, AIDS-Free World, an international advocacy organization, commenced an action before the Jamaica Supreme Court on behalf of Javed Jaghai, a gay Jamaican man who experienced discrimination and hostility in Jamaica and sought to challenge Jamaica's anti-gay laws on the basis that they foment such hostility and are unconstitutional.¹⁷¹ It was the first-ever domestic legal challenge to Jamaica's anti-sodomy law. On September 3, 2013 J-FLAG was added to the action as an added claimant. Jaghai discontinued the case in August 2014 citing (in an affidavit dated August 28, 2014) fears for his safety and that of his family as the main reason for his decision.¹⁷²
- AIDS-Free World is also challenging Jamaica's sodomy laws before the IACHR on behalf of two gay Jamaicans.¹⁷³ The organization sees these regional challenges as essential because Jamaica's Charter of Fundamental Rights and Freedoms contains a provision that laws relating to sexual offenses (including anti-sodomy laws) that were in force before the charter came into effect and acts carried out under them cannot be deemed to be "inconsistent with or in contravention of" the charter.¹⁷⁴ This so-called savings clause¹⁷⁵ makes it difficult, if not impossible, to reverse homophobic legislation through Jamaica's courts.¹⁷⁶

¹⁷¹ Michael Lavers, "Gay Jamaican man challenges country's anti-sodomy law," *Washington Blade*, February 12, 2013, <http://www.washingtonblade.com/2013/02/12/gay-jamaican-man-challenges-countrys-anti-sodomy-law/#sthash.p35fL2qT.dpuf> (accessed July 17, 2014).

¹⁷² AIDS-Free World and J-FLAG, "Fears for family's safety force claimant to close lawsuit against anti-gay laws," August 29, 2014, <http://jflag.org/wp-content/uploads/2014/08/Javed-Jaghahi-withdraws-from-Constitutional-Challenge.pdf> (accessed October 6, 2014).

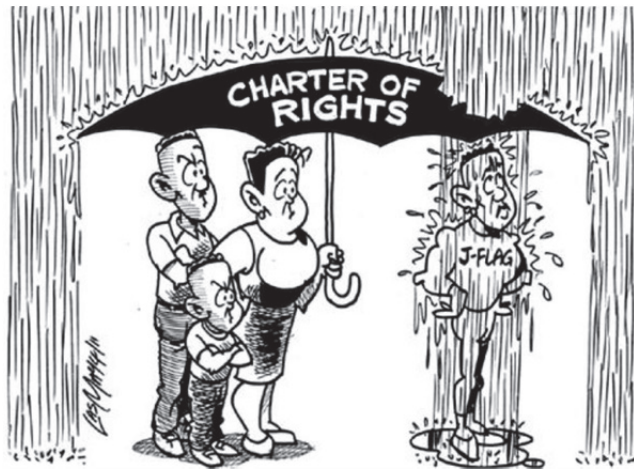
¹⁷³ Inter-American Commission on Human Rights, *A.B., S.H. v. Jamaica*, P-1249-11; "The first ever legal challenge to Jamaica's anti-gay law," AIDS-Free World press release, October 26, 2011, <http://aids-freeworld.org/Our-Issues/Homophobia/~media/Files/Press%20Releases/2011-10-26%20Press%20Release%20IACHR%20Global.pdf> (accessed October 6, 2014).

¹⁷⁴ Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, art. 2, amending Chapter 3, section 13(12) of the constitution.

¹⁷⁵ The text of the "savings clause" reads: "(12) Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2001, relating to – (a) sexual offences; (b) obscene publications; or (c) offences regarding the life of the unborn, shall be held to be inconsistent with or in contravention of the provisions of this Chapter."

¹⁷⁶ AIDS-Free World, "Q&A: AIDS-Free World's Challenge of Jamaica's Anti-Gay Law," October 26, 2011, http://www.aidsfreeworld.org/Our-Issues/Homophobia/%7E/link.aspx?_id=92298DB5679F4BDF9146149FE5F2A2CA&_z=z#6 (accessed October 6, 2014).

- The Human Dignity Trust, an organization of international human rights lawyers that provides *pro bono* technical legal assistance to people seeking to challenge laws that criminalize homosexuality, has brought a similar case to the IACHR on behalf of Gareth Henry, an LGBT activist from Jamaica and a former program manager with J-FLAG. Henry was forced to flee Jamaica and was granted asylum in



The Gleaner, March 4, 2011 cartoon¹⁷⁷ showing the Charter of Fundamental Rights and Freedoms as a flawed umbrella offering no protection to LGBT people, represented here by J-FLAG. © *The Gleaner*, March 4, 2011

- Canada in 2008 based on the persecution he experienced in Jamaica due to his sexual orientation and LGBT activism. Several members of his family also faced threats and intimidation and were granted asylum in Canada. In his submission to the IACHR, Henry argues that Jamaica's laws that render private consensual sexual intimacy between adult males a criminal offense directly enabled the discrimination, threats, violence, and lack of state protection that he faced. Henry has sought a declaration that these laws and the savings clause in the charter violate Jamaica's legal obligations under the American Convention on Human Rights, to which Jamaica is a party.¹⁷⁸
- In a third case, also initiated by AIDS-Free World, Jamaican activist and lawyer Maurice Tomlinson filed a legal challenge in 2011 against three Jamaican broadcasters who refused to air a paid 30-second public service announcement

¹⁷⁷ "End discrimination towards Gays Now," Editorial, *The Gleaner*, April 1, 2011, <http://jamaica-gleaner.com/gleaner/20110401/cleisure/cleisure1.html> (accessed March 3, 2014). The editorial states, "We understand why the various commissions, committees and legislators who drafted the charter failed to expressly declare people's rights to freedom from discrimination based on sexual orientation. It has do with the receding, but still-entrenched homophobia in Jamaica that caused Mr Golding to declare, more than three years ago, that gays would not be welcome in his Cabinet. Politicians fear that any perception that they embrace or are soft on homosexuality will cost them votes and open them to discrimination and stigma. The attitude, we insist, is cowardly, retrogressive, socially dangerous and offensive to human rights."

¹⁷⁸ Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 22, 1969. Jamaica ratified the treaty on July 19, 1978.

called “Love and Respect,” advocating tolerance for LGBT people.¹⁷⁹ Tomlinson argued this violated his freedom of expression and the right to “seek, receive, distribute, or disseminate information, opinions and ideas through any media,” which the Charter of Fundamental Rights and Freedoms protects.¹⁸⁰ On November 15, 2013, the Supreme Court ruled in favor of the three television stations, Public Broadcasting Corporation of Jamaica (PBCJ), CVM Jamaica, and Television Jamaica (TVJ). The judges said the defendants have the right to determine what they broadcast.¹⁸¹ In a silver lining to the judgment, the Supreme Court did note that the charter is broad enough to protect against discrimination for all Jamaicans irrespective of sexual orientation, although discrimination on grounds of sexual orientation is not specifically mentioned as a protected category that can be used to ground a charter claim.¹⁸²

¹⁷⁹ “Love and Respect,” AIDS-Free World public service announcement, October 20, 2012, http://www.youtube.com/watch?v=_nLwxK9R9gk (accessed July 17, 2014).

¹⁸⁰ Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, sections 13(3)(c)-(d).

¹⁸¹ “The duty of broadcasters, who are granted license to operate, is to cover public issues fairly and accurately but that does not mean they are under a legal obligation to provide anyone who wishes to speak on an issue access to the airwaves.” In the Supreme Court of Judicature of Jamaica, Civil Division, Claim No. 2012 HCV 05676, In the matter of the Constitution of Jamaica and In the matter of an application by Maurice Arnold Tomlinson alleging a breach of his rights under sections 13(3)(c)-(d) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, between Maurice Arnold Tomlinson and Television Jamaica Ltd, CVM Television Ltd and the Public Broadcasting Corporation of Jamaica, <http://www.supremecourt.gov.jm/sites/default/files/judgments/Tomlinson,%20Maurice%20Arnold%20v%20Television%20Jamaica%20Ltd.,%20CVM%20Television%20Ltd%20and%20the%20Public%20Broadcasting%20Corporation%20of%20Jamaica.pdf> (accessed July 17, 2014).

¹⁸² Paragraph 28 of the ruling states: “It is perhaps to be recognized that the claimant cannot seek redress for any allegations of discrimination on the grounds of his sexual orientation as the Charter does not afford that protection specifically. This may be viewed as a significant deficiency in this Charter but it is to be noted that the first paragraph of the Charter is comprehensive enough to point to a view that it be interpreted to embrace all the rights and responsibilities of all Jamaicans.”

VIII. Regional and International Stakeholders

Jamaica is part of several regional bodies, including the Caribbean Community (CARICOM), a body aimed at bolstering the economic integration of 15 Caribbean nations, and the Organization of American States (OAS), a larger body of 35 states throughout North America, Central America, the Caribbean, and South America, which has a mandate to promote democracy, human rights, security, and development in the region.¹⁸³

Twelve of the 15 CARICOM member states still criminalize homosexual conduct; the OAS, on the other hand, has become an outspoken proponent of equality.¹⁸⁴ Since 2008 the OAS has adopted an annual resolution on sexual orientation and gender identity. These resolutions, which have been endorsed by every Caribbean state, include calls to adopt public policies against discrimination on the basis of sexual orientation and gender identity.¹⁸⁵

In failing to adequately address violence and discrimination against LGBT people, Jamaica is failing to uphold its commitments as an OAS member.

The IACHR, the human rights organ of the OAS, has been particularly vocal in condemning violence and abuse based on sexual orientation or gender identity, and has urged states to eradicate discriminatory laws and policies—noting that not only do these laws and policies constitute human rights violations, they also fuel HIV in the region. In its report the IACHR stated that LGBT Jamaicans “face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.”¹⁸⁶

Coincidentally, in February 2014, when the IACHR rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons became fully operational, the IACHR designated Commissioner Tracy Robinson, a Jamaican lawyer, as the first rapporteur.

¹⁸³ See <http://www.caricom.org/> and <http://www.oas.org/en/default.asp>, respectively.

¹⁸⁴ Sean Macleish, “The costs of homophobia in CARICOM,” *I-Witness News*, April 29, 2014, <http://www.iwnsvg.com/2014/04/29/the-costs-of-homophobia-in-caricom/> (accessed October 11, 2014).

¹⁸⁵ “To encourage member states to consider, within the parameters of the legal institutions of their domestic systems, adopting public policies against discrimination by reason of sexual orientation and gender identity.” Organization of American States (OAS), General Assembly Resolution, AG/doc.5265/12, June 3-5, 2012.

¹⁸⁶ Inter-American Commission on Human Rights, “Report on the Situation of Human Rights in Jamaica,” August 10, 2012, <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (accessed July 17, 2014), Chapter VII.

On October 3, 2013, the Pan American Health Organization (PAHO) supported a resolution that called for states to combat and overcome discrimination against LGBT people in the health sector, given its impact on access to health services. The resolution also calls for greater awareness of the diversity of gender expression and gender identity.¹⁸⁷

Key donors, such as the United States and the United Kingdom, have identified violence and discrimination based on sexual orientation or gender identity as a serious concern.¹⁸⁸ Other donors have undertaken efforts to address human rights abuses against LGBT Jamaicans as part of initiatives to confront the HIV/AIDS epidemic, as discussed in Section I.

¹⁸⁷ PAHO/WHO, “Addressing the causes of the disparities in health services and utilization for Lesbian, Gay, Bisexual and Trans (LGBT) Persons,” October 2013, 52nd Directing Council, 65th Session of the Regional Committee, http://www.who.int/hiv/pub/populations/lgbt_paper/en/ (accessed July 18, 2014).

¹⁸⁸ See, for instance, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, “2012 Country Reports on Human Rights Practices: Jamaica,” <http://www.state.gov/documents/organization/204673.pdf> (accessed July 17, 2014), pp. 20-22; Tony Grew, “Exclusive: UK government minister challenged Jamaican PM about homophobia,” *Pink News*, November 9, 2008, <http://www.pinknews.co.uk/2008/11/09/exclusive-uk-government-minister-challenges-jamaican-pm-about-homophobia/> (accessed July 31, 2014).

IX. International Human Rights Law

The protection of LGBT people is part of Jamaica's binding obligations under international law and standards, which prohibit discrimination on the basis of sexual orientation.¹⁸⁹ Jamaica's sodomy laws violate these international obligations, as do the abuses documented in this report, including police failure to address violence against LGBT people.

The OAS, of which Jamaica is a member, adopted seven resolutions between 2008 and 2014 condemning "acts of violence and human rights violations perpetrated against individuals because of their sexual orientation and gender identity," and urging states "to adopt the necessary measures to prevent, punish, and eradicate" discrimination.¹⁹⁰

The International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR), amongst other human rights treaties to which Jamaica is a party, both place obligations on Jamaican authorities to protect and promote various fundamental rights as well as provide the conditions necessary for the realization of these rights.¹⁹¹

Non-Discrimination

Jamaica has ratified international and regional treaties requiring it to protect human rights without discrimination based on sexual orientation and gender identity, including the ICCPR, the ACHR, and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁹²

¹⁸⁹ For authoritative guidance on the protection afforded by international human rights law against discrimination based on sexual orientation and gender identity, see: *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*: http://www.yogyakartaprinciples.org/principles_en.htm.

¹⁹⁰ Human Rights, Sexual Orientation and Gender Identity, adopted June 4, 2012, AG/RES.2721 (XLII-O/12).

¹⁹¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Jamaica on October 3, 1975; American Convention on Human Rights ("Pact of San José, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Jamaica on July 19, 1978.

¹⁹² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Jamaica on October 3, 1975; UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination and economic, social and cultural rights (Article 2, paragraph 2 of the International Covenant on Economic,

The UN Committee on the Rights of the Child, the international body of experts that monitors compliance with the Convention on the Rights of the Child (CRC), to which Jamaica has been a party since 1991, has also affirmed that all children are entitled to protection against discrimination on any grounds, including sexual orientation.¹⁹³

Discrimination on the basis of sexual orientation also violates the right to equality and non-discrimination contained in the ACHR. Article 1.1 of the ACHR states that the parties to the convention "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." In 2012 the Inter-American Court was very firm in making clear that sexual orientation and gender identity are grounds that fall within "other social condition." The court stated:

Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, ... the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. *Therefore, any regulation, act, or practice considered discriminatory based on a person's sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.*¹⁹⁴ (Emphasis added)

Social and Cultural Rights), E/C.12/GC/20 (2009), <http://www.refworld.org/docid/4a60961f2.html> (accessed October 11, 2014), para. 32 ("Other status' as recognized in article 2, paragraph 2, includes sexual orientation").

¹⁹³ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, acceded to by Jamaica on May 14, 1991; UN Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, (Thirty-third session, 2003), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/Gen/1/Rev.9 (Vol.II) 2008), para. 2. "States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. These grounds also cover adolescents' sexual orientation and health status (including HIV/AIDS and mental health.)"

¹⁹⁴ Inter-American Court Of Human Rights, *Atala Riffo And Daughters v. Chile*, Judgment of February 24, 2012, Inter-Am. Ct. H.R., (Ser. C) No. 239 (2012), para 91. "Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, ... the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory

Right to Privacy

International human rights law has long identified that matters of sexual orientation, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one's private and family life and one's reputation or dignity.¹⁹⁵

In *Toonen v Australia*, the Human Rights Committee held that laws in Tasmania outlawing adult consensual sexual activity based on sexual orientation or gender identity violated the ICCPR's guarantee to the right to privacy.¹⁹⁶ In *Atala Riffo and Daughters v Chile*, the Inter-American Court confirmed that sexual orientation is part of the right to privacy protected under the ACHR, and therefore any interference in it must meet the standards of "suitability, necessity, and proportionality" and cannot be discriminatory.¹⁹⁷

The criminalization of same-sex conduct between consenting adults and the failure to protect against discrimination based on sexual orientation therefore violate the right to freedom from discrimination and the right to privacy guaranteed under the ICCPR and the ACHR. The continued existence of Jamaica's sodomy laws, and the failure to protect in law against arbitrary interference with an individual's private life based on their sexual orientation, are incompatible with Jamaica's international obligations.

Right to Protection against Violence

Lesbian, gay, bisexual, and transgender persons in Jamaica continue to be killed, attacked, and threatened with violence. All too often, the police have been complacent, failing to prevent, punish, or even investigate many instances of targeted violence. In so doing, Jamaica has failed to protect the right to life and freedom from cruel, inhuman, and degrading treatment of LGBT people in Jamaica.

based on a person's sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation."

¹⁹⁵ ICCPR, art. 17; ACHR, art. 11.

¹⁹⁶ UN Human Rights Committee, Decision: *Toonen v. Australia*, CCPR/C/50/D/488/1992, March 31, 1994, <http://www1.umn.edu/humanrts/undocs/html/vws488.htm> (accessed October 11, 2014), para. 8.6.

¹⁹⁷ *Atala Riffo And Daughters v. Chile*, paras. 165, 170.

The right to life is guaranteed under article 4 of the ACHR, as well as article 6 of the ICCPR which states that “[e]very human being has the inherent right to life. This right shall be protected by law.” Likewise articles 5 and 7 of the ACHR and ICCPR, respectively, prohibit inhuman and degrading treatment, with the ACHR explicitly providing that “[e]very person has the right to have his physical, mental, and moral integrity respected.”

Jamaica has positive duties to prevent physical, mental, and, in particular, life-threatening violence against LGBT people, to investigate such incidents when they do happen, and to hold responsible those who committed them—whether they are state agents or private individuals. The UN Human Rights Committee, in overseeing states’ compliance with the ICCPR, has been very clear to states that their positive obligations

...will only be fully discharged if individuals are protected by the State, not just against violations of ... rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights in so far as they are amenable to application between private persons or entities.¹⁹⁸

The UN Office of the High Commissioner on Human Rights has noted that:

Hate-motivated violence against LGBT people is typically perpetrated by non- State actors—whether private individuals, organized groups, or extremist organizations. Nevertheless, failure by State authorities to investigate and punish this kind of violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by article 3 of the Universal Declaration of Human Rights and articles 6 and 9 of the International Covenant on Civil and Political Rights.¹⁹⁹

¹⁹⁸ UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8.

¹⁹⁹ UN Office of the High Commissioner, “Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law,” October 2012, <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> (accessed May 3, 2014), p. 14.

Economic and Social Rights, including the Rights to Health and Housing

The Committee on Economic, Social and Cultural Rights has explicitly stated that article 2.2 of the ICESCR, which prohibits discrimination in the exercise and enjoyment of the rights guaranteed under the covenant, includes discrimination based on sexual orientation.²⁰⁰ It has also emphasized this in its general comments in relation to the rights to health, work, and water.²⁰¹

Health

In addition to the ICESCR, the right to the highest attainable standard of health is guaranteed under the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁰² Access to the right to health must be on a non-discriminatory basis and discrimination on the basis of sexual orientation and gender identity is prohibited.²⁰³

This right imposes an obligation on Jamaica to take necessary steps for the prevention, treatment, and control of epidemics and other diseases. In meeting this obligation, the government should ensure that appropriate goods, services, and information to prevent and treat STDs, including HIV/AIDS, are available and accessible to all Jamaicans.

Housing and Work

The Committee on Economic, Social and Cultural Rights recognizes that discrimination often occurs in the private sphere, and in particular in the private housing sector. It noted that “actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages

²⁰⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 32.

²⁰¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” The Right to the Highest Attainable Standard of Health (art. 12), UN Doc. E/C.12/2000/4 (2000), para. 18; General Comment No. 15, The Right to Water (arts. 11 and 12 of the Covenant), UN Doc. E/C.12/2002/11 (2002), para. 13; General Comment No. 18, The Right to Work (art. 6), UN Doc. E/C.12/GC/18 (2006), para. 12.

²⁰² ICESCR, art. 12; CRC, art. 24; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Jamaica on October 19, 1984, art. 12.

²⁰³ For example, UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 18; UN Committee on the Rights of the Child, General Comment No. 3, HIV/AIDS and the Rights of the Children, UN Doc. CRC/GC/2003/3 (2003), para. 8; General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 6.

on the basis of ... sexual orientation...”²⁰⁴ Similar discrimination may take place in the work place, as has been the experience of LGBT employees and workers in Jamaica.

The committee therefore emphasized that states parties had to “adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”²⁰⁵

²⁰⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 11.

²⁰⁵ Ibid.

Recommendations

To the Prime Minister

- Uphold your election campaign pledge that “no one should be discriminated against because of their sexual orientation,” and translate it into concrete policy by proposing comprehensive anti-discrimination legislation that prohibits all forms of discrimination, including on the grounds of sexual orientation and gender identity, in all areas of life governed by law.
- Publicly and consistently condemn violence against LGBT people.

To the Ministry of National Security

- Closely monitor the implementation of the JCF Policy on Diversity and issue regular, public reports on its implementation.
- Until Parliament passes comprehensive hate crimes legislation, develop a clear definition of “hate crime” for the purpose of the Violence Attribution Assessment Form, which includes sexual orientation and gender identity, as well as other possible motives of hate crimes such as religion, gender, race, disability, or ethnicity.
- Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

To the Jamaican Constabulary Force

- Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.
- Build a stronger working relationship with Jamaica’s leading LGBT organizations, including J-FLAG and Quality of Citizenship Jamaica. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

- Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.
- Broaden access to information and training on the JCF Policy on Diversity to ensure that all staff has full understanding of the policy and the consequences for its violation.

To the Ministry of Health

- Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff—not only medical professionals, but receptionists, janitors, and others—are adequately trained and sensitized.
- Scale up training for health care practitioners to understand the health needs and risks for LGBT people in Jamaica, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.
- Conduct outreach to LGBT people and to the general public to explain the Client’s Charter, under which victims of discrimination in the health care sector may file complaints and have them independently investigated.

To the Ministry of Justice

- Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people in Jamaica, regardless of sexual orientation or gender identity.
- Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Education

- Further develop and expand the Anti-Bullying initiative in partnership with the Child Development Agency and J-FLAG to combat discrimination and violence in schools based on sexual orientation or gender identity.

- Ensure that sexuality and sexual health, including LGBT sexual health, are included in Jamaica's Health and Family Life Education program.

To the Ministry of Youth and Culture

- Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.
- Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.
- Establish funding streams to provide housing options for all homeless youth.
- Permit dedicated shelter space and housing for LGBT youth.
- Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.
- Mandate LGBT awareness training for all Child Development Agency staff who work in child welfare or juvenile justice issues.

To the Ministry of Local Government and Community Development

- Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.
- Develop shelter space and psychosocial support programs for LGBT homeless people.

To Parliament

- Repeal Sections 76, 77, and 79 of the Offences against the Person Act, which criminalize consensual adult same-sex conduct.
- Amend Section 13(12) of the Charter of Fundamental Rights and Freedoms in Jamaica's Constitution, which preempts judicial challenge to pre-existing laws relating to sexual offences, including the anti-sodomy law.

- Repeal Section 18 of the Charter of Fundamental Rights and Freedoms, which bans any recognition of non-heterosexual relationships.
- Amend the Charter of Fundamental Rights and Freedoms to include a specific prohibition of discrimination due to sexual orientation and gender identity.
- Amend the Sexual Offences Act 2009 to remove the gender-specific definitions of sexual intercourse and rape, and to include oral rape and other forms of penetration. Ensure that punishments for sexual offenses are equal regardless of perpetrator's or victim's sex, gender, sexual orientation, or gender identity.
- Adopt legislation to establish a National Human Rights Institution, mandated to promote and protect human rights of all Jamaicans including LGBT individuals.
- Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define "hate crimes," and ensure that any rape or sexual assault motivated in part by the victim's sexual orientation or gender identity be included in that definition.

To International Donors

- In funding public health efforts in Jamaica, ensure that programs aimed at HIV prevention and treatment, particularly those targeting men who have sex with men and transgender people, are adequately funded. Ensure that adequate services are available for victims of sexual and gender-based violence and that they are accessible to LGBT people.
- Fund and implement training for Jamaican police, judges, lawyers, health care professionals, and media professionals on sexual orientation and gender identity.
- Ensure that funding to Jamaican LGBT organizations extends beyond those working on HIV and public health, so that organizations addressing other human rights issues affecting LGBT people are also supported.

Annex I: Information Request Regarding the JCF's Policy on Diversity

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300; 917-591-3452

TRANS GENDER RIGHTS PROGRAM

Graeme Reid, *Director*
Boris Dittich, *Advocacy Director*
Neela Ghoshal, *Senior Researcher*
Anna Kirey, *Researcher*
Monica Tabengwa, *Researcher*
José Luis Hernández, *Senior Associate*

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Carole Vance
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Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*
Carnell Bugeat, *Deputy Executive Director, External Relations*
Iain Levine, *Deputy Executive Director, Program*
Chuck Lussig, *Deputy Executive Director, Operations*

Dinah Pollakmeyer, *General Counsel*
James Ross, *Legal & Policy Director*
Hassan Elmassry, *Co-Chair*
Joel Matley, *Co-Chair*

HUMAN
RIGHTS
WATCH

HRW.org

October 29, 2013

Mr. Owen Ellington, Commissioner of Police
Office of the Commissioner
101-103 Old Hope Rd, Kingston 6
Jamaica, W.I.

Sent via email: cpsecretariat@jcf.gov.jm

Dear Commissioner Ellington:

I hope that this letter finds you well.

I am writing on behalf of Human Rights Watch following our previous communication dated May 10, 2013. We continue to be keen to learn more about the work and progress being made by the Jamaican Constabulary Force in protecting the rights of Jamaica's most marginalized populations.

The JCF's Diversity Policy has been hailed as a significant achievement in ensuring that members of Jamaica's varied population receives equal treatment and service from the police. As such, we would like to learn more about the diversity policy. **Would you kindly provide us with information regarding the Diversity Policy's implementation, its impact, and how it is being monitored, as well as the outcomes of any investigations from the implementation of the policy from August 2011 to the present?**

In addition to the Diversity Policy, we have learned that there has been significant progress in ensuring that police officers work within a human rights framework. We were pleased to hear of the JCF's partnership with Jamaicans for Justice in training new recruits in order to ensure that they understand and respect the rights of the Jamaican citizens the force serves. **As such, we would like to learn more about how the JCF has been able to document and investigate crimes against members of minority populations.**

During our five-week visit to Jamaica we interviewed dozens of crime victims. These individuals shared with us the reporting date and receipt numbers, and we want to understand how these cases have been handled by the JCF. We are attaching the relevant names, dates, and copies of the receipts. **In each case, we would appreciate if you could provide us with a short description of the outcome of the**

work of the JCF following the report and documentation of these incidences.

Should your colleagues need further information in order to inquire into the outcomes of these cases, or if you wish to provide us with contacts for specific station commanders to follow up with them directly, please let me know.

We would appreciate if you could respond by November 12, 2013, in order to allow us to integrate your responses into our forthcoming report. If you have additional questions or if you would like to schedule a conference call, I can be reached by phone at +31-681-78-77-11 or by email at rhonreynolds@yahoo.com.

I look forward to hearing from you and working together to ensure the rights of persons from diverse populations in Jamaica.

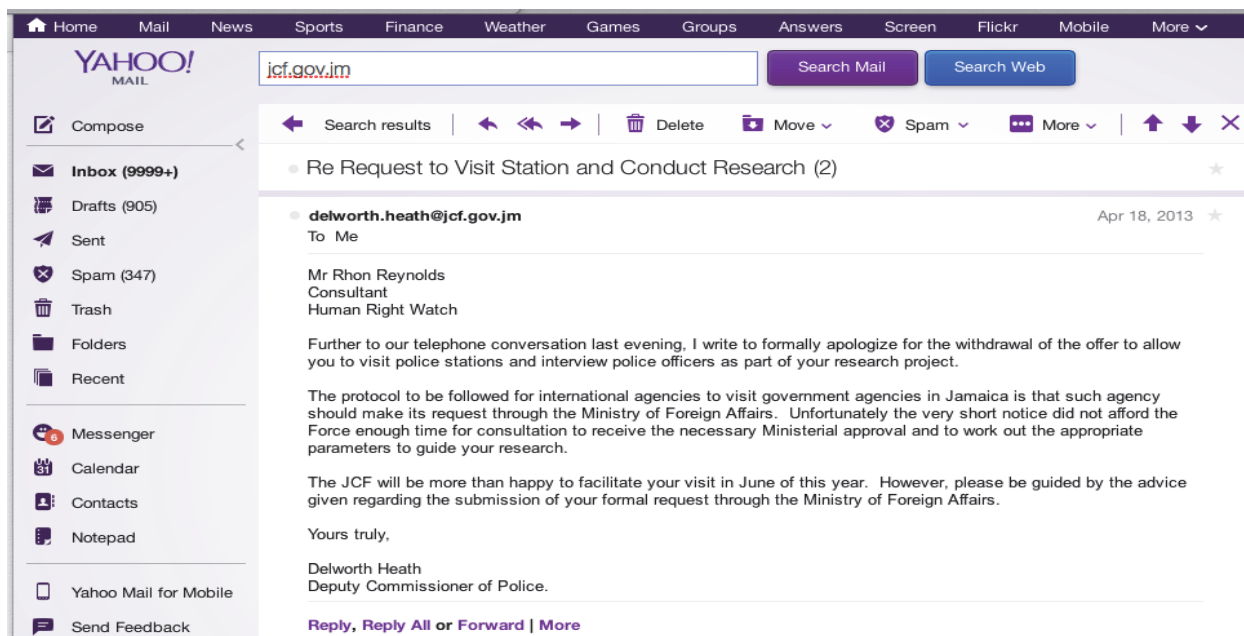
Thank you for your kind cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rhon Reynolds". The signature is fluid and cursive, with the first name "Rhon" being more prominent than the last name "Reynolds".

Rhon Reynolds, MPA
Research Consultant, Human Rights Watch

Annex II: Correspondence with the JCF Regarding Site Visits to Police Stations around the Country



Annex III: Information Request – JCF’s Violence Attribution Assessment Form

Reply-To: kevin.blake@jcf.gov.jm
Re: Information request

Hi Rhon,

I am currently on vacation leave overseas but will try and have the information you require prepared. I have also copied Messrs Norman Heywood, Assistant Commissioner of Police and Bertland O'Connor, Attorney-at-law, Senior Superintendent of Police whose Department is responsible for the drafting of the policy and recording the data. I trust that your request may be facilitated in a timely manner.

Yours Sincerely,

Kevin Blake
Assistant Commissioner of Police
Intelligence

Disclaimer: The contents of this e-mail are intended only for the person(s) or entity(ies) to which it is addressed. If you are not the intended recipient of this message - any use, review, retransmission, dissemination, distribution, reproduction whether orally or through any other media, and/or any action taken upon this message is prohibited. If you received this message in error, please contact the sender and delete the material from any computer on which it may reside.

Sent from my BlackBerry® wireless device from LIME.

[See More from rhon reynolds](#)

rhon reynolds
To: john.mclean@jcf.gov.jm john.mclean@jcf.gov.jm
Cc: kevin.blake@jcf.gov.jm
Re: Information request

November 3, 2013 8:40 PM
[Hide Details](#)
Sent Messages (Yahoo!)

Dear Kevin

I am writing on behalf of Human Rights Watch following our previous communication dated May 10, 2013. We continue to be keen to learn more about the work and progress being made by the Jamaican Constabulary Force in protecting the rights of Jamaica's most marginalized populations.

The JCF's Diversity Policy has been hailed as a significant achievement in ensuring that members of Jamaica's varied population receives equal treatment and service from the police. As such, I would like to learn more about the diversity policy. Would you kindly be able to provide some information regarding the Diversity Policy's implementation, its impact, and how it is being monitored, as well as the outcomes of any investigations from the implementation of the policy from August 2011 to the present?

In addition to the Diversity Policy, we have learned that there has been significant progress in ensuring that police officers work within a human rights framework. I am pleased to hear of the JCF's partnership with Jamaicans for Justice in training new recruits in order to ensure that they understand and respect the rights of the Jamaican citizens the force serves.

During my five-week visit to Jamaica I learned that the JCF records hate related crime in the violence attribution forum. I am keen to learn more about the data that has been collated thus far and if it could be shared. If you have additional questions or if you would like to schedule a conference call, I can be reached by phone at +31-681-78-77-11 or by email at rhonreynolds@yahoo.com.

I look forward to hearing from you and working together to ensure the rights of persons from diverse populations in Jamaica.

Annex IV: JCF's Incident Assessment Form

Send to Statistics Dept. **JCF Murder/Shooting Incident Assessment Form**

Incident	#	Context (circle)	Source evaluation A, B, C, D or X	Probable Cause (circle)	Source evaluation A, B, C, D or X	Risk of retaliation or tension (circle)	Operational response (circle)	Source – Context/Cause
Murder victims		A: Gang-related		1: Revenge or Reprisal		High	1: Reassign local patrols	Specify action
		B: Domestic		2: Jealousy or Crime of Passion				
Shooting victims		C: Criminal, <u>not gang-related</u>		3: Control Territory/space		Medium	2: Inform patrols and task for attention	
				4: Political				
Larceny/Robbery/sex crime occurred?	YES	D: Mob Killing		5: Monetary gain		Low	3: Additional resources required	
	or			7: Self-defence				
	NO	E: Not yet established		8: Impatience with Crim. Just. system			4: Monitor and review	
				9: Hate crime- e.g ethnic/ sexual orientation				
				10: Trafficking drugs				
				11: Trafficking weapons				

Source – Context/Cause
A: Certain/reliable
B: Most likely
C: Possible
D: Untested
X: Unreliable/unknown

that is being conducted by a known member of a gang, or a person who is actively associated with such gang members through their habits, lifestyle or criminal activities. This will also include victims, or intended victims, if such a person is a member or associated through criminal conduct with gang members. Note: it does not matter whether the 'gang' victim is present or not - it is the relationship with them or the involvement of gang members that we need to count. Attacks on 'gang operated' premises by a rival group or by an internal feud would still be gang related.

related (including by marriage) or living in the same household (co-habiting, lodger, tenant etc)

Send to Statistics Dept.

CIMS Incident Number:

Date of incident:

Time of incident:

Location of incident:

Crime reference:

Division:

Station:

GPS reference for the main incident (supplied by SOC or DIU):

Overall grading of incident:

Context	Cause	Risks	Operational Response	Source – Context A, B, C, D or X	Source - Cause A, B, C, D or X

Reporting Officer

Name and rank:

Date:

Time:

Signature:

Explanation

AIM – to more effectively identify risks and minimize harm, replacing the old 'motive' classification for murders, which was often unknown and open to misunderstanding. This new process will identify **FROM ALL AVAILABLE KNOWLEDGE/INFORMATION** the risks posed from such an incident and ensure an appropriate policing response is put in place.

- This form is used to categorize murder/shooting incidents and make a rapid determination of the appropriate policing response. **It must be completed and submitted within 1 hour of the incident. It can then be updated as required by the Divisional Commander.**
- Please note - two factors **CONTEXT** and **PROBABLE CAUSE** - require you to give an indication of how reliable the **SOURCE** of the information is. Use the codes listed in the **SOURCE** box above. All other factors just require a Circle in the appropriate box. The overall grading of the incident will be a 4 digit reference and this will have an additional two letter **SOURCE** evaluation for reference purposes **ONLY** and not for passing onto Statistics and this will assist local reviews, by the Divisional Commander.
- The Divisional Commander is responsible for managing and reviewing this assessment.
- Any **'Not Yet Established'** MUST be reviewed by the next Tasking & Coordination meeting and the assessment updated – Statistics MUST be informed of the new assessment grading.
- The CR2 and information supplied to the JCF Statistics unit and Operations must include the 4 character reference for each incident (i.e A2H3) and each crime record must have the same assessment recorded against the individual crime reference.
- A copy will be retained within the DIU for dissemination to NIB and inclusion in divisional threat assessments and strategic assessments

Annex V: JFLAG Record of Homophobic Discrimination and Violence, 2009-2012

Homophobic Discrimination & Violent Incidents as reported to J-FLAG (January - December 2009)												
												
Total Number of Cases					28 [Males (23) Females (4) Transgender (1)]							
Assaults/Attacks (28)					Displacement (5)				Police related (3)			
Case #	Location	Month	Gender	Age	Perpetrator/s	Assaults/Attacks	Displacement	Police Related	Discrimination (Services)	Further Details		
1	Kingston	January	M	32	Community	* Verbal						
2	Kingston	August	F	29	Workplace Staff	* Verbal						Harassment
3	Kingston	October	M	31	Community	* Verbal						Harassment/Intimidation
4	Kingston	November	M	32	Police	* Verbal		*		Harassment		
5	Kingston	July	M	24	Community	* Verbal	*	Community				
6	Kingston	April	M	22	Community	* Verbal	*	Home				
7	Kingston	November	M	22	School Peers	* Verbal/Physical						Assault with weapon
8	Kingston	February	M	21	Family	* Verbal/Physical	*	Home				
9	Kingston	July	M	29	Individual (Male)	* Verbal/Physical						Assault with weapon
10	Kingston	October	M	26	Police	* Verbal		*		Extortion/Blackmail		
11	Kingston	August	M	21	Individual (Male)	* Verbal/Physical	*	Displacement				Stabbed
12	Kingston	August	F	29	Community	* Verbal	*	Displacement				
13	Kingston	Unk.	M	27	Individual (Male)	* Verbal/Physical						
14	Manchester	July	M	20	Community	* Verbal						Extortion/Intimidation
15	St. Catherine	February	F	25	Community	* Verbal						
16	St. Catherine	November	M	29	Mob	* Physical						Assault with weapon
17	St. Catherine	February	M	34	Community	* Verbal						
18	St. Catherine	December	M	19	Family	* Verbal			*	Home		
19	St. Catherine	August	F	21	Two Men	* Physical/Sexual						Rape/Assault with weapon
20	St. Catherine	October	F	20	Individual (Male)	* Verbal						Sex worker
21	St. Catherine	May	M	20	Individual (Male)	* Verbal						
22	St. James	May	M	Unk.	Community	* Verbal						Harassment/Intimidation
23	St. James	September	M	31	Mob	* Verbal/Physical						
24	St. James	August	M	28	Mob	* Physical						
25	St. Mary	February	M	19	Mob	* Physical						
26	St. Mary	February	M	21	Group of Men	* Physical/Sexual						Cross-dresser/Transsexual
27	St. Thomas	April	M	16	Police	* Verbal/Physical		*				Assault with weapon
28	Westmoreland	May	M	25	Workplace Staff	* Harassment						Intimidation
29	Westmoreland	January	M	21	Community Mob	* Verbal/Physical						

Homophobic Discrimination & Violent Incidents as reported to J-FLAG (January - December 2010)												
												
Total Number of Cases					53 [Males (39) Females (10) Transgender (4)]							
Assaults/Attacks (49)					Displacement (15)				Police related (2)		Discrimination (3)	
Case #	Location	Month	Gender	Age	Perpetrator/s	Assaults/Attacks	Displacement	Police Related	Discrimination (Services)	Further Details		
1	Clarendon	September	M	19	Community	* Verbal	* Displacement					Extortion/Intimidation
2	Clarendon	April	M	24	Community	* Verbal	Home					Intimidation
3	Clarendon	August	M	22	Family	* Verbal/Physical						
4	Kingston	September	M	15	Family	* Verbal	Home					
5	Kingston	September	M	33	Individual (Male)	* Verbal						Intimidation
6	Kingston	November	M	23	Individual (Male)	* Physical/Sexual						
7	Kingston	September	M	23	Police Mob	* Verbal/Physical		*		Harassment		Physically Harmed
8	Kingston	August	M	24	Security Officers (Hawkeve)	* Verbal/Physical						
9	Kingston	October	M	23	Community	* Verbal						Intimidation
10	Kingston	August	M	25	Hospital Staff				*		Health care	
11	Kingston	September	M	20	Community	* Verbal/Physical						Assault with weapon
12	Kingston	May	M	23	Bikers	* Verbal/Physical						Assault with weapon
13	Kingston	January	F	38	Community	* Verbal/Physical						Assault with weapon
14	Kingston	October	F	Unk.	Individual (Male)	* Verbal/Physical						
15	Kingston	Unk.	F	Unk.	Community	* Verbal	Home					Partner was murdered
16	Kingston	August	M	20	Family	* Verbal						Threatened to leave home
17	Kingston	April	M	22	Individual (Male)	* Verbal/Physical						Attacked by brother
18	Kingston	June	M	32	Mob	* Verbal/Physical						Multiple stab wounds
19	Kingston	May	T	32	Community	* Verbal/Physical						Assault with weapon
20	Kingston	August	M	29	Community/Mob	* Verbal/Physical	Home					
21	Kingston	September	F	31	Hospital Staff				*		Health care	Denied visitation rights
22	Kingston	October	M	34	Landlord	* Verbal	Home					
23	Kingston	September	T	15	Community	* Verbal/Physical						
24	Kingston	May	M	41	Mob	* Verbal/Physical						Subsequently died
25	Kingston	August	T	13	Individual (Male)	* Physical						Rape
26	Kingston	January	T	19	Group of Men	* Verbal		*		Harassment		
27	Kingston	July	M	33	Police	* Verbal						
28	Kingston	September	M	34	Group of Men	* Verbal/Physical						
29	Kingston	January	M	22	Individual (Male)	* Verbal/Physical						
30	Kingston	August	M	22	Two Men	* Verbal						
31	Kingston	August	M	15	Family	* Verbal						
32	Kingston	April	M	27	Family	* Verbal	Home like					Intimidation
33	Manchester	September	M	26	Community	* Verbal						
34	Manchester	October	M	24	Community	* Verbal						
35	Manchester	November	M	30	Unknown	* Verbal	Home					Theft/Robbery
36	St Ann	July	M	39	Landlord	* Verbal	Home					



Homophobic Discrimination & Violent Incidents as reported to J-FLAG (January - December 2011)

Total Number of Cases
Assaults/Attacks (71)

84 [Males (72) Females (12)]
Displacement (21)

Police related (12)

Case #	Location	Month	Gender	Age	Perpetrator	Discrimination (Services)	Assaults/Attacks	Displacement	Police Related	Other	Further Details
1	Clarendon	March	M	23	Mob		*	Verbal			
2	KSA	March	M	45	Co-tenants	*	HIV	Physical			
3	KSA	May	M	25	Group of Men		*	Verbal			
4	KSA	January	M	29	Group of Men		*	Verbal			
5	KSA	January	M	25	Family		*	Physical			
6	KSA	April	M	20	Family		*	Physical	*	Home	
7	KSA	March	M		Landlord				*	Home	
8	KSA	January	M	24	Police		*	Physical		*	
9	KSA	April	M	22	Individual		*	Verbal			
10	KSA	February	M	19	Family/Friends		*	Verbal			
11	KSA	May	M	36	Community		*	Verbal			
12	KSA	February	F	37	Individual		*	Verbal			
13	KSA	February	M	16	Family		*	Verbal	*	Home	
14	KSA	June	M	29	Group of Men		*	Verbal			
15	KSA	January	M	19	Community/Mob		*	Physical			
16	KSA	March	M	23	Landlord				*	Home	
17	KSA	May	M	22	Family		*	Verbal	*	Home	
18	KSA	June	M	18	Family		*	Verbal	*	Home	
19	KSA		M	35	Individual					*	Blackmail
20	KSA	August	M	44	Individual		*	Verbal		*	Intimidation
21	KSA	August	M	24	Family		*	Verbal	*	Home	
22	KSA	August	M	28	Individual		*	Verbal		*	Intimidation
23	KSA	August	M	28	Individual		*	Verbal		*	Intimidation
24	KSA	August	M	25	Individual		*	Verbal		*	Intimidation
25	KSA	October	M	40	Individual (2)		*	Physical Attack			
26	KSA	August	F	27	Individual (2)		*	Physical Attack (Murder)			
27	KSA	September	F	25	Group					*	Threat/intimidation
28	KSA	October	M	25	Individual (2)		*	Physical Attack			
29	KSA	April	M	33	Mob		*	Physical Attack	*	Home	
30	KSA	November	M	25	Mob		*	Physical Attack			
31	KSA	July	M	45	Family		*	Verbal Assault			



Jamaica Forum for Lesbians, All-Sexuals & Gays

Summary of Incidents of Reported

January - December 2012

In 2012, there were sixty-six reports of incidents of violence, displacement, discrimination, harassment and other forms of abuse perpetrated on the basis of an individuals (real or perceived) sexual orientation or gender identity.

Approximately 50% occurred in Kingston and St. Andrew; 20% in St James and St. Catharine respectively and 10% between Clarendon, Manchester, St. Ann and Trelawny.

The following is a breakdown of the incidents reported:

Type of Incident	Number	Victim
Mob Violence	36	Adult Males
Ostracized by Family and Community	15	Males Under 18 Years
Beating	2	Transgender Persons
Beating and Stabbing	5	Bisexual Males
Beating and Displacement	8	Lesbians

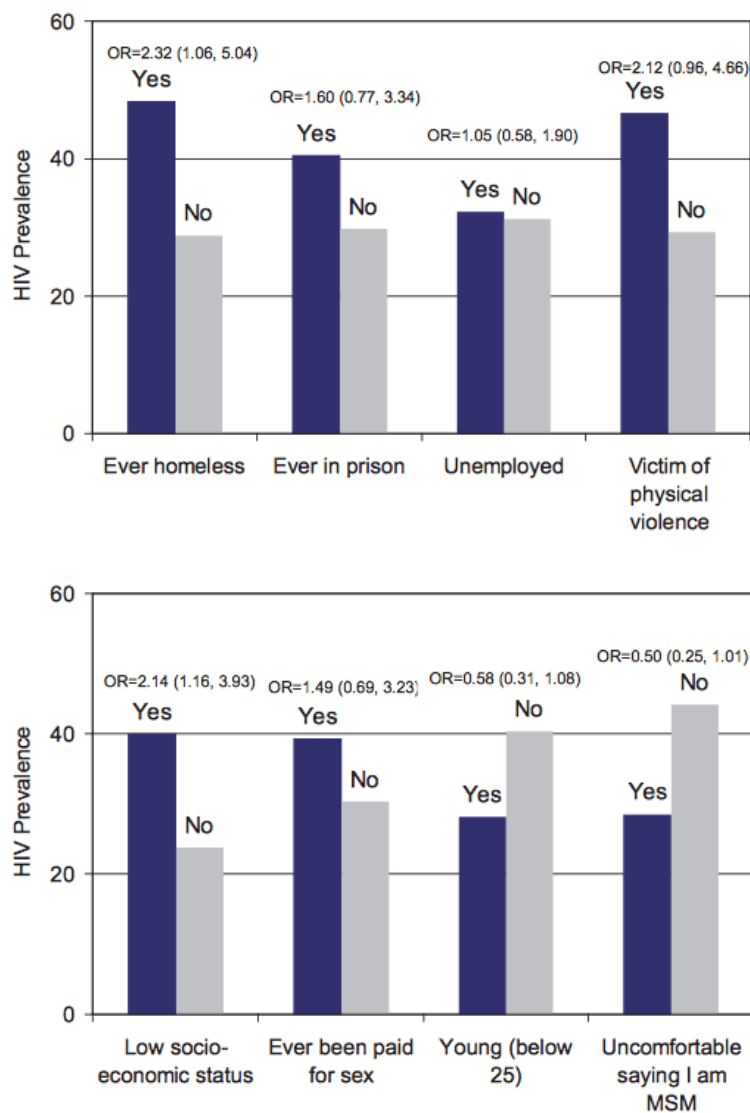
Dane Lewis
Executive Director

© J-FLAG January 2013
Modified July 2013

Jamaica Forum for Lesbians, All-Sexuals & Gays (J-FLAG)

P.O. Box 1152, Kingston 8, Jamaica
Tel: (876) 754-2130 | Fax: (876) 754-2113
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Annex VI: Association between HIV and Vulnerability among 201 MSM in 4 Parishes, Jamaica, 2007²⁰⁶



²⁰⁶ Figueroa et al., "High HIV prevalence among hard to reach gay men in Jamaica is associated with high social vulnerability," pp. 286-291.

Acknowledgements

This report was researched by Rhon Reynolds, consultant for Human Rights Watch, and Rebecca Schleifer, former advocacy director of the Health and Human Rights Division, and written by Rhon Reynolds, with significant contributions from Neela Ghoshal, senior researcher in the Lesbian, Gay, Bisexual, and Transgender (LGBT) Rights Program at Human Rights Watch. The report was edited by Neela Ghoshal; Danielle Haas, senior editor at Human Rights Watch; and Graeme Reid, director of the LGBT Rights Program.

It was reviewed by Graeme Reid; Daniel Wilkinson, managing director of the Americas division at Human Rights Watch; Joseph Amon, director of the Health and Human Rights Division; Bede Sheppard, deputy director Children's Rights Division; Amanda Klasing, researcher in the Women's Rights Division; Aisling Reidy, senior legal advisor; and Danielle Haas.

Adam Frankel, associate in the LGBT Rights Program at Human Rights Watch, provided editorial and production coordination and formatted the report. Kate Segal, Americas associate at Human Rights Watch, proofread the report. Additional production assistance was provided by Kathy Mills, publications specialist; Grace Choi, publications director; and Fitzroy Hepkins, mail manager.

A number of experts and nongovernmental organizations in Jamaica and elsewhere assisted with this research. Human Rights Watch gratefully acknowledges the invaluable role of J-FLAG, Quality of Citizenship Jamaica, Caribbean Vulnerable Communities, Dwayne's House and Women for Women.

We extend sincere thanks to everyone who shared their experiences with us and made this report possible, and regret that we cannot mention all of them by name.

NOT SAFE AT HOME

Violence and Discrimination against LGBT people in Jamaica

Lesbian, gay, bisexual and transgender (LGBT) Jamaicans face an intolerable level of violence, both physical and sexual, perpetrated on the basis of actual or perceived sexual orientation or gender identity. The July 2013 murder of 16-year-old Dwayne Jones, who was brutally killed for wearing women's clothing, lies at the extreme end of this spectrum. Police investigations into such violence are often inadequate or lacking altogether, in some cases due to homophobia or transphobia within the police force. This report documents 56 cases of such violence, in addition to cases of discrimination from government institutions, including healthcare facilities, as well as in the private sector. The report recognizes recent efforts by police to establish protocols for addressing hate crimes, but calls for improved protection and non-discrimination mechanisms as well as an end to legislation that facilitates abuses, such as the "buggery laws."



A homeless youth from the LGBT community sits in the sewer where he lives in Kingston, Jamaica. Rejected by their families and communities, many LGBT Jamaicans live on the streets, where they face violence and harassment. Gay and transgender children and young adults are particularly vulnerable.