

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

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PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF MR. GARETH HENRY AND REQUEST FOR A DECLARATION THAT JAMAICA IS IN BREACH OF ITS OBLIGATIONS UNDER THE AMERICAN CONVENTION ON HUMAN RIGHTS AND THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Case No. P-1850-11

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BRIEF OF AMICUS CURIAE

HUMAN RIGHTS WATCH

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## **I. INTRODUCTION**

1. Human Rights Watch (“*HRW*” or “*Amicus*”) respectfully submits this brief to the Inter-American Commission on Human Rights (“*Commission*”) as *amicus curiae* in support of the Petition filed by Mr. Gareth Henry (“*Petitioner*”), seeking a declaration, *inter alia*, that the maintenance of Sections 76, 77, and 79 (together, “*Sodomy Laws*”) of the Offences Against Persons Act by the State of Jamaica (“*Jamaica*”) and Jamaica’s failure to take adequate steps to protect the rights and well-being of its lesbian, gay, bisexual, and transgender (“*LGBT*”) citizens are contrary to the American Convention on Human Rights (“*American Convention*”) and the American Declaration of the Rights and Duties of Man (“*American Declaration*”).

## **II. STATEMENT OF INTEREST**

### **A. History and Mandate of Human Rights Watch**

2. HRW is a nonprofit, nongovernmental organization that investigates and reports on violations of fundamental human rights in over 70 countries worldwide with the goal of securing the respect of those rights for all persons. By exposing and calling attention to human rights abuses committed by both state and non-state actors, the *Amicus* seeks to bring international public opinion to bear upon offending governments and others to end abusive practices. HRW has previously filed *amicus* briefs before various international tribunals and human rights bodies, including the Commission.
3. HRW is known for accurate and impartial fact-finding. To ensure its independence, the group does not accept government funding, directly or indirectly, or support from any private funder that could compromise its objectivity in reporting on human rights violations.

## **B. HRW's Work on Lesbian, Gay, Bisexual, and Transgender Rights**

4. In 2004, HRW created its own LGBT Rights Program, which seeks to document and highlight the violence and inequality that lesbian, gay, bisexual, and transgender people around the world face based on their sexual orientation or gender identity.
5. Under the pretext of archaic sodomy laws, like those that remain in force in Jamaica, various States around the world subject LGBT people to human rights violations including executions, torture, arrests, unequal treatment, discrimination in health, jobs, housing and education, and denial of the freedom of association, expression and assembly. Over the past several years, HRW has conducted field research and interviewed LGBT persons living in a number of jurisdictions that criminalize same-sex conduct including Malawi,<sup>1</sup> the Eastern Caribbean (including the States of Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines),<sup>2</sup> Ghana,<sup>3</sup> Malaysia,<sup>4</sup> Lebanon,<sup>5</sup> and Tanzania.<sup>6</sup>
6. HRW's LGBT Rights Program aims to integrate LGBT rights into the broader rubric of human rights. To that end, HRW advocates for laws and policies that will protect the dignity of all people by allowing LGBT individuals to enjoy their fundamental human rights.

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<sup>1</sup> Human Rights Watch, *Let Posterity Judge* (Oct. 26, 2018), <https://www.hrw.org/report/2018/10/26/let-posterity-judge/violence-and-discrimination-against-lgbt-people-malawi>.

<sup>2</sup> Human Rights Watch, *I Have to Leave to Be Me* (Mar. 21, 2018), <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

<sup>3</sup> Human Rights Watch, *No Choice but to Deny Who I Am* (Jan. 8, 2018), <https://www.hrw.org/report/2018/01/08/no-choice-deny-who-i-am/violence-and-discrimination-against-lgbt-people-ghana>.

<sup>4</sup> Human Rights Watch, *I'm Scared to Be a Woman* (Sept. 24, 2014), <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>.

<sup>5</sup> Human Rights Watch, *It's Part of the Job* (June 26, 2013), <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>.

<sup>6</sup> Human Rights Watch, *Treat Us Like Human Beings* (June 18, 2013), <https://www.hrw.org/report/2013/06/18/treat-us-human-beings/discrimination-against-sex-workers-sexual-and-gender#>.

### C. HRW in Jamaica

7. HRW has conducted extensive research in Jamaica on the subject of LGBT rights. In November 2004, HRW released “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic” (“2004 HRW Report”).<sup>7</sup> The 2004 HRW Report was based primarily on research conducted during a three-week field visit to Jamaica in June 2004. Two HRW staff members conducted detailed interviews with more than 75 people living with, or at high risk of, HIV/AIDS including sex workers, gay men and women, and people who had been incarcerated.<sup>8</sup>
8. HRW has continued its research and reporting on Jamaica’s LGBT population in more recent years and, in October 2014, published “Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica” (“2014 HRW Report”).<sup>9</sup> The 2014 HRW Report was based primarily on five weeks of field research conducted in Jamaica in April and June 2013,<sup>10</sup> during which two HRW researchers interviewed 71 self-identified LGBT people in Jamaica.<sup>11</sup> Most of these individuals were identified with the help of Jamaican nongovernmental organizations (“NGOs”).<sup>12</sup> All interviewees were given pseudonyms to protect their safety.<sup>13</sup> None was compensated for participating.<sup>14</sup>
9. In addition to LGBT Jamaicans, HRW interviewed Jamaican Government officials, United Nations (“UN”) officials, representatives of NGOs specializing in HIV/AIDS or human rights, academics, health-care workers and members of the Jamaican police

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<sup>7</sup> Human Rights Watch, *Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic* (Nov. 15, 2004), <https://www.hrw.org/report/2004/11/15/hated-death/homophobia-violence-and-jamaicas-hiv/aids-epidemic>.

<sup>8</sup> *Id.* at Part III.

<sup>9</sup> Human Rights Watch, *Not Safe at Home: Violence and Discrimination Against LGBT People in Jamaica* (Oct. 21, 2014), <https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica> (hereinafter, “2014 HRW Report”).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

force.<sup>15</sup> HRW made various requests for information related to the treatment of sexual minorities to the Commission of Police. These queries remained unanswered at the time the 2014 HRW Report was completed.<sup>16</sup>

10. Many LGBT Jamaicans interviewed by HRW explained that they were victims of violence based on their sexual orientation or gender identity.<sup>17</sup> HRW sought to independently verify all of the incidents the interviewees reported using police reports, court documents, public records, and incident reports from the LGBT rights NGO the Jamaican Forum for Lesbians, All-Sexuals, and Gays (“*J-FLAG*”).<sup>18</sup> Many of the interviewee’s accounts were not easily verifiable due to a lack of witnesses and the fact that many victims did not file police reports. As discussed below, underreporting of crimes is tragically common among LGBT individuals because of the perceived and experienced bias of law enforcement officers.<sup>19</sup> HRW was able to independently verify 11 of the 56 incidents described.
11. In addition to the “intolerable level of violence, physical and sexual, perpetrated” against LGBT Jamaicans,<sup>20</sup> the 2014 HRW Report describes “discrimination LGBT people face from government institutions, including health care facilities, as well as in the private sector.”<sup>21</sup> Finally, the 2014 HRW Report examines Jamaica’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.”<sup>22</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.*

<sup>19</sup> *See infra* Section III.C.

<sup>20</sup> 2014 HRW Report, *supra* note 9, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1-2.

12. To assist the Commission in its consideration of the issues raised by the Petitioner in this case, the *Amicus* respectfully submits this account of the profound impact of Jamaica’s sodomy laws on its LGBT citizens, based on HRW’s thorough in-country research,<sup>23</sup> and supplemented by witness statements submitted specifically in support of this *amicus* brief.<sup>24</sup>

**III. HRW’S REPORTS AND WITNESS INTERVIEWS DOCUMENT PERVASIVE ABUSE AND DISCRIMINATION AGAINST LGBT JAMAICANS ACROSS ALL AREAS OF LIFE**

13. As described in the 29 July 2013 Petition Alleging Violations of the Human Rights of Mr. Gareth Henry (the “*Petition*”) and the 26 November 2018 Submission of Additional Observations on the Merits by the Petitioner (the “*Additional Observations*”), Jamaica’s statutory and constitutionally enshrined sodomy laws legitimize widespread anti-LGBT attitudes and discriminatory conduct, and they sanction indifference to these abuses by Jamaican Government officials and police officers.<sup>25</sup>
14. In short, Jamaica’s sodomy laws facilitate and encourage discrimination and abuse against LGBT Jamaicans. According to data compiled by J-FLAG in 2015, 89 percent of respondents from the general public in Jamaica agreed with the statement that “[t]o be gay is wrong,” and 93 percent agreed with the statement that “[h]omosexuality is a sin.”<sup>26</sup> More recently, the U.S. State Department’s 2017 Country Report on Human Rights in Jamaica observed that the “most significant human rights issues included . . . societal violence against [LGBT] persons.”<sup>27</sup> As the report noted, although there were no criminal prosecutions of consensual same-sex sexual conduct between men in 2017, “[h]omophobia was widespread in the country.”<sup>28</sup>

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<sup>23</sup> See *infra* Section III.

<sup>24</sup> See *infra* Section III.

<sup>25</sup> Petition, ¶¶ 4.11-4.30; Additional Observations, ¶¶ 3.5-3.12.

<sup>26</sup> J-FLAG, *Awareness, Attitude & Perception Survey About Issues Related to Same Sex Relationships* 16 (Aug. 2015), <http://jflag.org/wp-content/uploads/2018/06/Jamaica-National-Survey-on-Homophobia-2016.pdf>.

<sup>27</sup> U.S. State Department, Jamaica 2017 Human Rights Report 1, <https://www.state.gov/documents/organization/277587.pdf>.

<sup>28</sup> *Id.* at 13.

15. Countless interviews and first-hand reports, many conducted or compiled directly by HRW, demonstrate the gross human rights violations that LGBT Jamaicans suffer.<sup>29</sup> They also demonstrate the serious effects that sodomy laws, even if not regularly enforced, have on the lives of LGBT individuals. As a 2008 Human Rights Watch report described, sodomy laws “invade privacy and create inequality” in many ways:

They relegate people to inferior status because of how they look or who they love. They degrade people’s dignity by declaring their most intimate feelings “unnatural” or illegal. They can be used to discredit enemies and destroy careers and lives. They promote violence and give it impunity. They hand police and others the power to arrest, blackmail, and abuse. They drive people underground to live in invisibility and fear.<sup>30</sup>

16. For LGBT Jamaicans, there is simply no respite from the constant attacks upon their dignity. They suffer regular and widespread harassment and discrimination at school, at work, at home, and in their communities.
17. The following section relies, in part, on firsthand witness accounts collected during HRW’s field visits to Jamaica in 2013 to describe the incredible indignity suffered by LGBT Jamaicans as a result of their identity or orientation. It also relies on the lived experiences of four witnesses, interviewed by HRW’s counsel in 2017 and 2018, who agreed to submit statements specifically in support of this *amicus* brief. Three of these four witnesses have concerns about their identities becoming public and are therefore identified only by their initials. HRW can provide the names of these witnesses to the Commission should it determine that such disclosure is necessary, but respectfully

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<sup>29</sup> Other human rights organizations have likewise reported on the widespread homophobia in Jamaica. See Amnesty Int’l, *Amnesty International Report 2017/18: The State of the World’s Human Rights* 35 (2018), <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF> (“LGBT people faced persistent discrimination, harassment and violence in . . . Jamaica,” attributing this to the fact that there “remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity.”); Human Rights First, *The World as it Should Be: Advancing the Human Rights of LGBT People in Jamaica* 1 (July 2015), <http://www.humanrightsfirst.org/sites/default/files/HRF-Jamaica-Report-final.pdf>. (reporting on “climate of generalized societal homophobia” in Jamaica, noting that “LGBT Jamaicans often face serious violence and discrimination because of their sexual orientation or gender identity”).

<sup>30</sup> Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* 5 (Dec. 17, 2008), <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>.

requests that, in order to protect their identities, only their initials be included in any document that is made public or communicated to Jamaica.

**A. LGBT Jamaicans Are Regularly Subjected to Harassment and Discrimination.**

18. As described in the Petition, anti-LGBT discrimination is “deeply embedded” in Jamaican culture, fueled by “elements of the religious, media, music, and political establishments.”<sup>31</sup> These social factors condone and encourage discrimination against LGBT Jamaicans in everyday activities, and thus continue to influence the treatment of LGBT Jamaicans to this day.<sup>32</sup>
19. As part of its field research conducted in 2013, “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.”<sup>33</sup> Such confrontations and discrimination occur everywhere—in the street, at work, at hospitals and doctors’ offices, and even in LGBT persons’ own homes.
20. Indeed, for LGBT Jamaicans, discrimination and abuse become facts of life at an early age. Multiple witnesses reported that they were harassed and bullied as a result of

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<sup>31</sup> Pet. Alleging Violations of the Human Rights of Mr. Gareth Henry, ¶¶ 4.31–4.45 (hereinafter, “Petition”); 2014 HRW Report, *supra* note 9, at 11.

<sup>32</sup> For example, though international backlash and calls for reform have led many popular Jamaican musicians to avoid explicitly anti-LGBT lyrics in dancehall music, “virulently homophobic ‘murder music’” is a lasting part of Jamaica’s cultural legacy and some popular artists have failed to repudiate it. See Erin MacLeod & Kate Chappell, “*Man Is a King*”: *Controversial Star Buju Banton Comes Home to Jamaica*, Guardian (Dec. 7, 2018) (noting the return to Jamaica of Buju Banton, singer of the anti-LGBT song “Boom Bye Bye”; human rights activist Peter Tatchell stated he was “confident that Banton will continue to put the past behind him” but that “it would be even better if he could acknowledge and apologise for those violently homophobic lyrics”), <https://www.theguardian.com/music/2018/dec/07/buju-banton-return-jamaica-long-walk-to-freedom-tour>. Widespread anti-LGBT rhetoric also continues to be disseminated in Jamaican media. For example, as recently as October 2018, the Jamaica Observer—one of Jamaica’s four national newspapers—published online a cartoon depicting an offensively stereotyped gay man wearing a purple outfit and carrying a purse, smirking as he heads through a doorway marked “US/Canada.” A man with an “Inter-American Commission on Human Rights” shirt states “we will examine Jamaica’s homophobic law to see how it threatens gay rights!” as he lifts a velvet rope and allows the man in purple to pass through the doorway. A third person in a shirt labeled “common sense” remarks: “What a corrupt way to enter the USA an’ Canada!” Clovis Brown, *Thursday, October 18, 2018* [cartoon], Jamaica Observer: Clovis Toons (Oct. 18, 2018), <http://www.jamaicaobserver.com/tools/cartoons/20181018?profile=1566>.

<sup>33</sup> 2014 HRW Report, *supra* note 9, at 39.

perceived differences or a failure to conform to expected gender norms as children.<sup>34</sup> J.J., for example, stated that he “endured ridicule from the community due to my perceived lack of masculinity” starting from the age of six. He explained: “I was known as ‘he-she’ and ‘gyal-bwoy’ (girl-boy) just to name a few.”<sup>35</sup>

21. Many witnesses also reported that they grew up hearing negative statements about LGBT persons, both in their community generally and within their own families. N.C., for example, remembers individuals in her community referring to a lesbian woman at the supermarket as “nasty,” and “was afraid people would talk about [her] the same way if they knew about the feelings [she] was having.”<sup>36</sup> N.C. also heard homophobic messages at Church, and knew that “people who engaged in behaviors condemned by the Church became outcasts.”<sup>37</sup> Similarly, S.M.’s father used to read her passages from scripture that “he claimed proved God hates homosexuals.”<sup>38</sup> J.J.’s grandmother was also religious, and used to say that if she found out any of her grandchildren was gay, “mi cook the sweetest food gi dem and poison dem” (I will cook the sweetest food for them and poison them).<sup>39</sup> Most of the witnesses interviewed reported that such homophobic messaging resulted in an intense fear that they would be turned away by their families or otherwise face negative consequences if they revealed their sexual orientation.
  
22. In fact, LGBT individuals in Jamaica often do experience severe harmful consequences once others learn that they are LGBT. For example, J.J. described violence perpetrated against boys who were suspected to be gay at his school, including beatings and mob attacks. He recalls one incident in around 2009 in which a student was accused of being gay: “The news spread like wildfire: ‘A battyman deh pon campus and we a guh beat him!’” (there is a gay man on campus and we are going to beat him!).<sup>40</sup> A mob of

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<sup>34</sup> See generally App. 1, Statement of J.J.; App. 2, Statement of Ricardo Rodney.

<sup>35</sup> App. 1, Statement of J.J., ¶ 5.

<sup>36</sup> App. 3, Statement of N.C., ¶ 4.

<sup>37</sup> *Id.* ¶ 3.

<sup>38</sup> App. 4, Statement of S.M., ¶ 12.

<sup>39</sup> App. 1, Statement of J.J., ¶ 24.

<sup>40</sup> *Id.* ¶ 15.

students formed and, carrying any weapons they could find, attacked the student suspected of being gay when he arrived at school. When the student took shelter in the school bursar's office, members of the mob demanded that the administrators send him out so they could "kill the batty bwoy!"<sup>41</sup> Though the police came to break up the mob, to J.J.'s knowledge, no one was ever punished for the attack.

23. Similarly, Ricardo Rodney experienced severe mistreatment when his foster mother found out that he was gay. As he reported:

She told members of our Church that I was gay and tried to "pray the gay away." Eventually she became verbally and physically abusive toward me. She refused to feed me and told all of our neighbors not to give me food . . . . [N]o one ever intervened when she mistreated me.<sup>42</sup>

24. The four witnesses interviewed for this *amicus* brief further described how anti-LGBT discrimination permeated every aspect of their lives, well into adulthood. Ricardo Rodney, who worked at the Ministry of Health in Manchester, reported that his co-workers "were often homophobic and regularly discriminated against LGBT people."<sup>43</sup> Although he and his colleagues at the Ministry were responsible for administering HIV-related health programs on a nondiscriminatory basis, Ricardo stated that "internally [my colleagues] would voice their disdain for gay people. Some would refuse to even be in the same room with a gay person."<sup>44</sup>

## **B. LGBT Jamaicans Face Constant Threats of Physical Violence.**

25. The socially accepted homophobia and anti-LGBT discrimination that permeates Jamaican culture encourages physical and sexual violence against LGBT individuals. As the 2014 HRW Report explains, "[i]n many cases, perpetrators appear to have been private actors who felt that they had the moral authority to 'rid the community' of LGBT

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<sup>41</sup> *Id.* ¶ 16.

<sup>42</sup> App. 2, Statement of Ricardo Rodney, ¶ 4.

<sup>43</sup> *Id.* ¶ 14.

<sup>44</sup> *Id.*

people and had no fear of arrest from the authorities.”<sup>45</sup> Violence, including beatings and murder, and the constant threat of violence, are thus part of many LGBT Jamaicans’ daily lives.<sup>46</sup>

26. All four recently interviewed witnesses described regular experiences of homophobic discrimination and abuse and the threat of violence including at school, at work, or when going about their lives in the community. As N.C. stated, “[b]eing openly gay in Jamaica invites such harassment and abuse.”<sup>47</sup> For example, N.C. stated that she was fearful of being seen with her friends in public because of the harassment they regularly faced:

[W]hen my friends and I left the house together, we were always stared at or confronted with threats of violence. Walking around together in public, my friends and I would often hear people yelling things like “dyke bitch” or “duttu” (dirty) or “sodomite” at us. Once, my friend was walking on campus at a performing arts school and someone yelled “lesbian” and threw stones at her . . . . There were so many times that I decided to just stay home because I was afraid. It really wore me down mentally.<sup>48</sup>

27. J.J. and S.M. also described the constant fear of being verbally or physically abused for being lesbian or gay while out in public. In 2006, S.M. was walking down the street with her girlfriend when a man shouted “sodomite” at them and yelled that “battymen” should die. S.M. stated: “my girlfriend and I were completely terrified and felt like we were in real danger . . . . This type of verbal abuse occurred on a daily basis.”<sup>49</sup> Once, when J.J. was walking along Eastwood Park Road in Kingston, a man walked up to him, made his fingers into a gun and pointed it at J.J.’s head. “He mimed pulling the trigger and made the sound of a gunshot. Everywhere I went, I was always on edge and constantly afraid for my safety.”<sup>50</sup>

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<sup>45</sup> 2014 HRW Report, *supra* note 9, at 21.

<sup>46</sup> *See generally id.*

<sup>47</sup> App. 3, Statement of N.C., ¶ 13.

<sup>48</sup> *Id.* ¶ 14.

<sup>49</sup> App. 4, Statement of S.M., ¶ 17.

<sup>50</sup> App. 1, Statement of J.J., ¶ 27.

28. Such fear is well founded. In interviews held between April and June 2013, HRW heard 56 accounts of physical violence experienced by LGBT individuals, “the vast majority of which appeared to be directly as a result of their sexual orientation or gender identity.”<sup>51</sup> For example, Rahim Q. described an attack that took place in March 2013, wherein he and a group of approximately 14 friends were attacked by a violent mob of about ten men. He told HRW:

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.<sup>52</sup>

29. Brutal sexual assaults of LGBT people are horrifyingly common in Jamaica and have been documented by HRW.<sup>53</sup> For example, two lesbian women, Winnie R. and Nadine G., reported that in 2012, they were raped at gunpoint while returning home from a party by two men disguised with bandanas. As reported in the 2014 HRW Report,<sup>54</sup>

[the men] 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].’”

30. The men raped both women and then threatened to kill them if they reported the violent, four-hour attack to the police. The women went to the police anyway, but the police verbally abused them and refused to help. Officers told them, “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,” and, “Dirty lesbian girl deserve what you get.”<sup>55</sup> These same women had been

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<sup>51</sup> 2014 HRW Report, *supra* note 9, at 21.

<sup>52</sup> *Id.* at 25.

<sup>53</sup> *See generally id.*

<sup>54</sup> *Id.* at 29.

<sup>55</sup> *Id.* at 30.

previously evicted by a homophobic landlord in 2011.<sup>56</sup> Another woman, a twenty-five-year-old college student in Kingston, reported to HRW that she was raped by a male friend. He jumped on her and said, “Do you want to know what a real fuck feel like?” and attacked and raped her. Later, she saw him in Half Way Tree, a busy and often crowded commercial neighborhood in the Greater Kingston area, where he displayed no remorse or fear of being punished; instead, he yelled, “Yo, I fucked that girl, I fucked that girl.”<sup>57</sup>

31. In addition to sexual violence, LGBT people also suffer cruel physical attacks. One transgender woman who does sex work reported to HRW that she was propositioned for sexual services at knifepoint by two men. They first attempted to sexually assault her, but, when they discovered that she had male genitals, one yelled, “You are a batty man.” While one of the men choked her, the other stabbed her. They broke her nose and slashed her throat. She escaped and told the police, who recorded an interview but did nothing else to follow up on the incident.<sup>58</sup> Another woman was attacked by armed men while she was sitting in her car. She was shot three times in the chest, buttocks and legs while her assailants called her a “sodomite gal.” Again, the police never followed up. The attack left her disabled and wheelchair bound.<sup>59</sup>
32. LGBT people have also been victims of arson or threats of arson in attacks apparently motivated by a desire to force them from their communities. Neighbors warned one thirty-year-old transgender woman that she would be “dead before the year end.” Shortly thereafter, her house caught fire. She told HRW that by the time she arrived at the house, “the fire brigade were busy putting out the fire. People were standing outside, some seemed happy.”<sup>60</sup>

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<sup>56</sup> See *infra* ¶ 43.

<sup>57</sup> 2014 HRW Report, *supra* note 9, at 26.

<sup>58</sup> *Id.* at 28.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 25.

33. Other incidents described to HRW included cases of injuries caused by shooting and stabbing.<sup>61</sup> Further, 12 LGBT individuals interviewed by HRW 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.”<sup>62</sup>

### **C. Inadequate Help from Police**

34. In many cases, the police in Jamaica fail to respond to violent anti-LGBT conduct. All four of HRW’s witnesses reported that the police in Jamaica did nothing to investigate homophobic crimes, and that they and others were hesitant to report such crimes as a result. While working at the Ministry of Health, Ricardo Rodney experienced first-hand police officers’ refusal to protect gay victims of violence. He explained:

I recall visiting the home of a gay couple one night to do a crisis intervention with them . . . . While I was inside, several men wearing masks kicked down the front door and invaded the house . . . . The men assaulted us viciously, punching and kicking us . . . . They said: “we’ve been watching you guys. Batty man been here too long, trying to mess up the community.” They threatened to come back and kill us if we did not leave . . . . We decided to report the incident to the police.

When the police arrived they initially refused to make a report. They finally agreed to take statements from us when I threatened to report them to a human rights group called Jamaicans for Justice. They gave us copies of the police reports. As far as we know, the police never actually conducted an investigation and the masked men were never apprehended. That was the last time we ever heard from [the police]; there was no follow up.<sup>63</sup>

35. Further, S.M. reported that, in her experience, the police themselves engage in discriminatory homophobic conduct. In 2007, she was brought into the police station and questioned for a crime she had no involvement in. During the questioning, the police made derogatory comments about her appearance:

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<sup>61</sup> *Id.* at 23.

<sup>62</sup> *Id.*

<sup>63</sup> App. 2, Statement of Ricardo Rodney, ¶¶ 31–32.

They asked whether I was a boy and why I dressed the way I did. The interrogation quickly turned to questions related to the nature of my girlfriend's and my relationship. The police asked whether I was a lesbian and whether we were a couple. They asked us more humiliating questions like how we had sex. I felt totally violated.<sup>64</sup>

36. Indeed, as detailed in the HRW 2014 Report, the police themselves are sometimes perpetrators of “violence and extortion against LGBT people.”<sup>65</sup> For example, Devon O. told HRW that 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.<sup>66</sup>

37. HRW also interviewed several witnesses who stated that the police did not follow up on crimes they had reported. In fact, in only 4 of the 56 cases of violence documented by HRW were the victims aware of any arrests of suspects by the police.<sup>67</sup> The likelihood that police will decline to investigate and may even engage in further abuse contributes to extremely low levels of reporting by the victims of such crimes.

#### **D. Access to Health Care**

38. HRW reported that LGBT patients faced discrimination in accessing health care, including incidences of homophobia and transphobia among health workers. One individual interviewed by HRW, a transgender woman named Anne I., described the cruelty she experienced at Kingston Public Hospital while seeking treatment for a vicious knife attack:

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 . . . . He

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<sup>64</sup> App. 4, Statement of S.M., ¶ 25.

<sup>65</sup> HRW 2014 Report, *supra* note 9, at 27.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

said, “You should not let [men] sex you.” He called about three porters and another man [a patient] to look at me.<sup>68</sup>

39. Health-care workers in Jamaica have also been found to divulge LGBT patients’ confidential information, a practice that inhibits access to and confidence in the health-care system for this at-risk population. HRW brought to light the story of Genie O., a twenty-eight-year-old gay man who went “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.”<sup>69</sup>
40. Fear of such treatment by medical personnel leads many LGBT Jamaicans to withhold information about their sexual orientation—even when it relates to their health—and may prevent them from accessing health services altogether.<sup>70</sup> In some cases, access to treatment is further limited by health practitioners who fail to provide adequate care. HRW reported the story of a gay man who was not given proper treatment for human papillomavirus (“HPV”). As told to HRW by a senior Ministry of Health official:

They can’t officially turn away people . . . . 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.<sup>71</sup>

41. Similarly, 33-year-old Leroy J. was refused treatment by a private doctor’s office that told him “we don’t work with gay people here.”<sup>72</sup> Health-care workers, including nurses and HIV service providers, have reported many such refusals of treatment by health-care professionals at public health centers in Jamaica.<sup>73</sup>

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<sup>68</sup> *Id.* ¶ 39.

<sup>69</sup> *Id.* ¶ 41.

<sup>70</sup> *Id.* ¶¶ 39–41.

<sup>71</sup> *Id.* ¶ 40.

<sup>72</sup> *Id.* ¶ 38.

<sup>73</sup> *See generally id.*

## **E. Employment Discrimination**

42. As detailed in the Additional Submission, LGBT people in Jamaica face discrimination in their efforts to find and maintain employment.<sup>74</sup> Once employed, LGBT Jamaicans also experience harassment and discrimination in the workplace. HRW has documented numerous such instances of workplace discrimination. For example, Devon O. was working as a security guard in Montego Bay when his manager told him to look for a new job because he was gay and because “[w]e don’t tolerate these things in the company.”<sup>75</sup> Similarly, Charles B. told HRW that he was fired because of his sexuality after his “manager said that [he] was bringing the organization [into] disrepute.”<sup>76</sup> In 2013, HRW interviewed three other individuals “who had lost employment primarily because of their assumed sexuality.”<sup>77</sup> Still others told HRW that 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.”<sup>78</sup>

## **F. Homelessness, Housing Discrimination, and Exile**

43. Finding and maintaining housing can also be a challenge for LGBT Jamaicans. Two individuals interviewed by HRW, Winnie R. and Nadine G., were forcibly evicted by a landlord who on multiple occasions had called them “abominations” and stated that “he did not want ‘this nasty thing’ in his house.”<sup>79</sup> Winnie and Nadine reported that, on the day that they moved out, the landlord “began yelling 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.”<sup>80</sup> Errol S. and his boyfriend also had to abandon their home due to constant threats from neighbors. Errol told HRW that on one occasion, a man with a knife approached him and asked, “You a battyman?” When Errol tried to back away,

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<sup>74</sup> Submission of Additional Observations on the Merits by the Pet’r, ¶ 3.21(d) (hereinafter, “Additional Observations”).

<sup>75</sup> 2014 HRW Report, *supra* note 9, at 42.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 43.

<sup>80</sup> *Id.* at 44.

the man yelled that he must “leave the community within 24 hours, or else.” The next day, members of the community threw stones at Errol’s house for 20 to 30 minutes, yelling “Battyman them there so. Come out of the community.”<sup>81</sup>

44. LGBT Jamaicans are also commonly turned out of their homes by their own families. HRW interviewed 13 gay homeless youth, including three boys under the age of 18, who had been kicked out of their homes in Kingston and Montego Bay. One eighteen-year-old Jamaican interviewed by HRW, Cutie G., “had been living on the streets for four years after leaving home and school due to constant teasing, bullying, and attacks.” Cutie G. had lived with his grandparents until they kicked him out and was forced to live “mostly in a sewer when [HRW] interviewed him.”<sup>82</sup> Cutie G.’s experience is not an isolated one. As documented in a 2014 report by VICE News, large numbers of LGBT Jamaicans had “found refuge” in the storm drainage systems of Kingston after being forced out of their homes.<sup>83</sup> A follow-up report published in 2016 indicated that LGBT individuals made up at least 40 percent of Jamaica’s overall homeless youth population and that “[d]espite widespread media attention in the wake of VICE News’s [2014] report, the very same group of homeless youth [were] still on the streets[.]”<sup>84</sup>
45. The constant harassment, abuse and violence, coupled with a lack of support from public officials, cause LGBT Jamaicans to fear for their lives, and many choose to leave Jamaica as a result. J.J. described the moment he realized he needed to leave, after witnessing a large crowd rallying in support of the sodomy laws:

[In 2013], I was leaving chorale rehearsal when I encountered an anti-buggery rally. The rally had been staged by a number of churches from all over Jamaica in response to the then-Prime Minister’s election promise that she would revisit the anti-buggery law. . . . I was disgusted, ashamed, scared, and completely destroyed to see so many people opposing my lifestyle—opposing

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> “*Jamaica’s Gully Queens*,” Vice.com (July 28, 2014), [https://www.vice.com/en\\_us/article/kwpm4n/young-and-gay-jamaicas-gully-queens-288](https://www.vice.com/en_us/article/kwpm4n/young-and-gay-jamaicas-gully-queens-288).

<sup>84</sup> Roxy Rezvany, *The Challenges of Running a Queer Homeless Shelter in Jamaica*, Vice.com (Mar. 22, 2016), [https://www.vice.com/en\\_us/article/yvx7bk/the-struggle-for-queer-shelters-in-jamaica](https://www.vice.com/en_us/article/yvx7bk/the-struggle-for-queer-shelters-in-jamaica).

me as an individual. I had to walk through that crowd that night holding my head down, terrified that someone would notice me. . . . I could hear people shouting about how gay people were an abomination. When I made it home, my grandmother was watching news about the rally and shouting fervent approval at the screen. I knew at that moment that I needed to leave Jamaica.<sup>85</sup>

J.J. subsequently fled to the United States, where he was granted asylum in late 2017.

46. The intense anti-LGBT hatred experienced by LGBT Jamaicans also has long-term and devastating effects on their mental and emotional well-being. J.J., for example, has described the severe depression and anxiety which he still struggles with to this day.<sup>86</sup> Likewise, N.C. reported that she is still in therapy years after leaving Jamaica. As she explained, the constant harassment and abuse, and the fear that develops as a result, “breaks you mentally, emotionally, and physically.”<sup>87</sup>

#### **IV. JAMAICA’S SODOMY LAWS VIOLATE THE AMERICAN CONVENTION ON HUMAN RIGHTS AND THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN**

47. Jamaica’s sodomy laws and the public and private conduct they encourage and facilitate constitute multiple independent, separate breaches of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. Taken together, moreover, the impact of these laws and Jamaica’s conduct is to deny LGBT Jamaicans recognition as human beings with full rights and dignities, and to force them—too often literally—into the gutters and away from public life. Indeed, Jamaica’s laws and policies forcibly segregate and denigrate LGBT citizens from other Jamaicans by failing to recognize them as deserving of fundamental human rights, thereby driving the marginalized out of their jobs, homes, schools, and even out of their country.

##### **A. Jamaica’s Laws and Conduct Violate the Right to Nondiscrimination (Articles 1 and 24 of the American Convention)**

48. As Petitioner has set out in the Petition and Additional Observations, the Inter-American Court on Human Rights (“*Inter-American Court*”) has ruled that “sexual orientation” is a

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<sup>85</sup> App. 1, Statement of J.J., ¶ 28.

<sup>86</sup> *Id.* ¶ 33.

<sup>87</sup> App. 4, Statement of S.M., ¶ 23.

protected category under Article 1(1) of the Convention.<sup>88</sup> In contravention of Articles 1 and 24 of the Convention, the maintenance of the sodomy laws singles out LGBT Jamaicans for denial of numerous rights guaranteed by the Convention, including the rights to life, health, humane treatment, privacy, freedom of movement, family life, freedom of expression and of association, and the right to judicial protection. Additionally, Section 79 of the Offences Against Persons Act violates Article 24 by discriminating against gay Jamaicans with respect to rights that are otherwise guaranteed under Jamaican law.<sup>89</sup>

49. Moreover, a growing consensus amongst international, regional and national legal authorities confirms that the very existence of Jamaica's sodomy laws is a *per se* violation of the equal protection guarantee contained in Article 24 of the American Convention, which encompasses protection against discrimination on the basis of sexual orientation.
50. Over 20 years ago, for example, the United Nations Human Rights Committee (“UNHRC”) established in *Toonen v. Australia* that discrimination on the basis of sexual orientation is prohibited under Articles 26(1) and 2(1) of the International Covenant on Civil and Political Rights (“ICCPR”).<sup>90</sup> Notably, like the sodomy laws in Jamaica, the impugned legislation in Tasmania was rarely enforced, confirming that the existence of sodomy legislation may in itself violate the nondiscrimination guarantees in a human rights treaty. Likewise, in its March 2015 report to the UNHRC, the OHCHR explicitly stated that sodomy laws, by their very existence, violate the fundamental human right to nondiscrimination. As such, the OHCHR called on Member States of the UN to repeal such laws and “refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”<sup>91</sup> A 2012 OHCHR publication, “Born

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<sup>88</sup> Petition, ¶¶ 5.75–5.86.

<sup>89</sup> American Convention on Human Rights art. 24, Nov. 22, 1969.

<sup>90</sup> U.N. Human Rights Comm., *Toonen v. Australia*, Comm. No. 488/1992, ¶ 8.7 U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994); *see also* Petition, ¶ 5.79.

<sup>91</sup> U.N. High Comm’r for Human Rights, *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, ¶¶ 15-16, 43, U.N. Doc. A/HRC/29/23 (May 4, 2015) (hereinafter, “*Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*”).

Free and Equal,” also advanced the decriminalization of homosexuality as one of the “five core legal obligations of States” for protecting LGBT persons.<sup>92</sup>

51. National legal authorities have also increasingly held that discrimination on the basis of sexual orientation violates fundamental equal protection and nondiscrimination principles. For example, relying on constitutional proscriptions on discrimination, high courts in Belize,<sup>93</sup> Trinidad and Tobago,<sup>94</sup> India,<sup>95</sup> Ecuador,<sup>96</sup> South Africa,<sup>97</sup> the United States,<sup>98</sup> and Fiji<sup>99</sup> have struck down legislation criminalizing consensual same-sex intimate conduct. In its recent September 2018 judgment, for example, the High Court of Justice in Trinidad and Tobago found that the sections 13 and 16 of the country’s Sexual Offenses Act, which “creates the criminal offence of buggery . . . [and] stipulates that a person is liable to imprisonment for five years if they commit an act of serious indecency,” violated fundamental human rights, “especially [the claimant’s] right to respect for his private and family life.”<sup>100</sup> High courts in Israel,<sup>101</sup> Canada,<sup>102</sup> Colombia,<sup>103</sup> and Nepal<sup>104</sup> have also interpreted constitutional equal protection provisions as prohibiting discrimination on the grounds of sexual orientation in other contexts. Consistent with global legal trends proscribing discrimination based on sexual orientation, various countries that have relatively recently adopted new constitutions—

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<sup>92</sup> U.N. High Comm’r for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, p. 5, U.N. Doc. HR/PUB/12/06 (Sept. 14, 2012).

<sup>93</sup> *Orozco v. Attorney Gen.*, (2016) No. 668 (Belize).

<sup>94</sup> *Jones v. Attorney Gen.*, (Sept. 20, 2018) No. CV2017-00720 (Trinidad and Tobago).

<sup>95</sup> *Johar v. India*, (2018) No. 76/2016 (India).

<sup>96</sup> Constitutional Tribunal, (Nov. 27, 1997) Sentencia No. 111-97-TC, Registro Oficial (Official Registry), Supp., No. 203, at 6-8 (Ecuador) (decided before Ecuador explicitly included sexual orientation in the equality provision of its new constitution).

<sup>97</sup> *National Coalition I*, 1998 (12) BCLR 1517 (CC) ¶ 26 (S. Afr.).

<sup>98</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>99</sup> *McCoskar v. State*, (Aug. 26, 2005) Criminal Appeal Case Nos.: haa0085 & 86 of 2005 (Fiji).

<sup>100</sup> *Jones v. Attorney Gen.*, (April 12, 2018) No. CV2017-00720 ¶¶ 4, 6, 7 (Trinidad and Tobago).

<sup>101</sup> HCJ 721/94 *Danilowitz* 48(5) P.D. 749 ¶ 17 (1994) (Isr.).

<sup>102</sup> *Egan v. Canada*, [1995] 2 S.C.R. 513, 603.

<sup>103</sup> Corte Constitucional [C.C.] [Constitutional Court] Julio 14, 1999 Sentencia C-507/99 ¶ 5.4 (Colom.).

<sup>104</sup> *Pant. v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD), translated in 2008 Nat’l Jud. Acad. L.J., at 262.

including South Africa,<sup>105</sup> Fiji,<sup>106</sup> Ecuador,<sup>107</sup> Switzerland,<sup>108</sup> Sweden,<sup>109</sup> Portugal,<sup>110</sup> Nepal,<sup>111</sup> and Kosovo<sup>112</sup>—have included equal protection clauses that expressly forbid such discrimination. Finally, UN member states have increasingly adopted legislation prohibiting discrimination on grounds of sexual orientation.<sup>113</sup> The European Union’s Charter of Fundamental Rights in Article 21 prohibits any discrimination on sexual orientation, and at least 72 countries,<sup>114</sup> including Canada, Australia, Israel, New Zealand, South Africa, Costa Rica, Namibia, and Botswana, in addition to various countries in Europe, have adopted national legislation forbidding discrimination based on sexual orientation (and, in some cases, gender identity) in various arenas—including employment, education, health care, housing or the provision of services in the public or private sector.<sup>115</sup>

**B. Jamaica’s Laws and Conduct Violate the Right to Privacy  
(Article 11 of the American Convention)**

52. As noted in the Petition and Additional Observations, Jamaica has committed and continues to commit violations of LGBT individuals’ right to privacy under Article 11 of the American Convention, both by maintaining the sodomy laws and shielding them from

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<sup>105</sup> The Constitution of South Africa provides: “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, . . . colour, sexual orientation, . . . religion . . .” S. Afr. Const., 1996, ch. 2, 9(3).

<sup>106</sup> See Fiji Const. (Constitution Act, 1997 (Amended, 2013)), sec. 26.

<sup>107</sup> Constitución de 1998 [Constitution] art. 23, § 3 (Ecuador).

<sup>108</sup> In 1999, Switzerland adopted a new Federal Constitution that included a prohibition on discrimination based on the broader ground of “way of life.” Bundesverfassung [BV] [Constitution] Apr. 18, 1999, art. 8, ¶ 2 (Switz.).

<sup>109</sup> The Instrument of Government [Constitution], 2016, art. 13 (Sweden).

<sup>110</sup> Regeringsformen [RF] [Constitution] 2:12 (Swed.).

<sup>111</sup> The Constitution of Nepal, pt. 3, ¶ 18.

<sup>112</sup> Constitution of the Republic of Kosovo, art. 24.

<sup>113</sup> Aengus Carroll & Lucas Ramón Mendos, Int’l Lesbian, Gay, Bisexual, Trans & Intersex Ass’n, *State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws* 8 (10th ed. 2017), [http://old.ilga.org/Statehomophobia/ILGA\\_SSHR\\_2015\\_Eng.pdf](http://old.ilga.org/Statehomophobia/ILGA_SSHR_2015_Eng.pdf) (hereinafter, “ILGA Report”).

<sup>114</sup> *Sexual Orientation Laws in the World—Overview*, Int’l Lesbian, Gay, Bisexual, Trans & Intersex Ass’n (Oct. 2017), [https://ilga.org/downloads/2017/ILGA\\_WorldMap\\_ENGLISH\\_Overview\\_2017.pdf](https://ilga.org/downloads/2017/ILGA_WorldMap_ENGLISH_Overview_2017.pdf).

<sup>115</sup> Br. for Mary Robinson, et al. as Amici Curiae Supporting Petitioners, *Lawrence v. Texas*, 539 U.S. 558 (2003) (No. 02-102) at 29; see also ILGA Report, *supra* note 113, at 37–40.

constitutional challenge, and by deliberately failing to protect LGBT individuals from a plethora of violations of their rights to privacy.<sup>116</sup>

53. Article 11 recognizes that every individual is entitled to a personal sphere of privacy that is “exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities.”<sup>117</sup> In addition to indicating that, “in principle,” the right to private life could encompass a person’s sexual life,<sup>118</sup> the Inter-American Court has also emphasized that “[t]he protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own personality and aspirations, to determine his or her own identity and to define his or her own personal relationships.”<sup>119</sup>
54. In accordance with this broad interpretation, all individuals in Jamaica, including LGBT individuals, are entitled to a protected sphere of privacy—not only in terms of their sexual lives and choices but also in terms of their freedom to develop their identities and define their personal relationships. The sodomy laws in Jamaica directly interfere with this protected sphere by legitimizing widespread societal prejudice on the basis of an individual’s sexual orientation or gender identity. These prejudices lead to rampant violations by nongovernment actors of LGBT individuals’ rights to privacy. As detailed in Section III.B.3 above, for example, they influence the manner in which healthcare providers treat the private medical information of LGBT Jamaicans, which can result in such information becoming public in spite of the patient’s wishes to keep it confidential. These prejudices also lead to regular and repeated violations of LGBT individuals’ rights to reside in their communities and to enjoy privacy in their homes. These violations have

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<sup>116</sup> Petition, ¶¶ 5.75–5.86; Additional Observations, ¶ 3.21(a).

<sup>117</sup> *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 193–194. (July 1, 2006) (referring to American Convention on Human Rights art. 11).

<sup>118</sup> Petition, ¶¶ 5.78.

<sup>119</sup> *Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 143 (Nov. 28, 2012).

included home invasions often accompanied by physical violence, mob violence, and arson targeting LGBT Jamaicans and seeking to drive them from their homes.<sup>120</sup>

55. Further, as detailed in the Petition, “in certain circumstances the right to privacy will require *active* steps to be taken by States to protect individuals from interference by public and private bodies.”<sup>121</sup> Far from protecting LGBT individuals against arbitrary interferences in their private sexual lives, however, Jamaica legally sanctions these intrusions. It does so, in part, through the reliance of the Jamaican Constabulary Force (the “JCF”) on the sodomy laws to legitimize abuses against LGBT individuals. Although prosecutions under Jamaica’s sodomy laws are rarely pursued, members of the Jamaican police force have relied on the laws to extort money from adults engaged in consensual homosexual sex, to “out” gay men to their communities by arresting them, and to arbitrarily intrude into LGBT individuals’ private lives and homes<sup>122</sup>—which the Commission considers to be “intrinsically connected” to private life and “the space in which private life can evolve freely.”<sup>123</sup>
56. Relying on the decisions of international and regional judicial bodies, Petitioner rightly states that “public morality alone lacks sufficient weight to justify infringing the right to privacy.”<sup>124</sup> Beyond that, international and regional human rights courts have consistently found, including in cases cited by the Commission, that states that criminalize consensual homosexual acts are in breach of international human rights law because, by their mere existence, sodomy laws violate the right to privacy.<sup>125</sup>

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<sup>120</sup> See, e.g., 2014 HRW Report, *supra* note 9, at 23, 26-27, 44 (Carol C. had her home burned down; Silroy N. and family fled home due to arson threats; incident where mob surrounded home of two gay men in St. Catherine yelling “they must leave our community”); Jamaica Forum for Lesbians, All-Sexuals, & Gays, et al., Human Rights Violations of Lesbian, Gay, Bisexual, and Transgenders (LGBT) in Jamaica: A Shadow Report 7 (2011) (Kenneth Parchment was forced out of his sister’s home by men who believed him to be gay).

<sup>121</sup> Petition, ¶ 5.82.

<sup>122</sup> 2014 HRW Report, *supra* note 9, at 36–37.

<sup>123</sup> *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 193–4. (July 1, 2006).

<sup>124</sup> Petition, ¶ 5.82.

<sup>125</sup> See Yogyakarta Principles at 14 (calling on states to “[r]epeal all laws that criminalise consensual sexual activity among persons . . . who are over the age of consent” and ensure that “each person, regardless of sexual

57. In *Toonen*, for example, the UNHRC unanimously concluded that a sodomy statute maintained in the Australian State of Tasmania violated the right to privacy.<sup>126</sup> As noted above, the statute, which condemned consensual sexual activity between adults, was very similar to the Jamaican laws at issue in this case, and was likewise rarely enforced. In fact, even though the law was never directly enforced against Toonen, the UNHRC found that the “continued existence of the challenged provisions . . . continuously and directly ‘interfere[d]’ with [Toonen’s] privacy,” because there was no guarantee that actions would not be brought against homosexuals in the future.<sup>127</sup> Since *Toonen*, the UNHRC has consistently reaffirmed that the criminalization of private, consensual sexual conduct between adults infringes on LGBT individuals’ right to privacy.<sup>128</sup> The UNHRC has thus called upon many member States to repeal these laws in order to bring themselves into compliance with their obligations under the ICCPR.<sup>129</sup>
58. The European Court of Human Rights (“*ECtHR*”) has likewise long held that the criminalization of private homosexual acts constitutes a violation of human rights, and in particular, the right to privacy enshrined within Article 8 of the European Convention on Human Rights (“*ECHR*”). As early as 1981, in *Dudgeon v. United Kingdom*, the ECtHR determined that the sodomy laws in force in Northern Ireland constituted an unjustified interference with the right to privacy to the extent that it generally criminalized private homosexual relations between adult males capable of valid consent.<sup>130</sup> Following its decision in *Dudgeon*, the ECtHR further held that laws in Cyprus, Ireland and Austria that criminalize private homosexual relations between consenting adults constituted

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orientation or gender identity, [may] enjoy the private sphere, intimate decisions, and human relations . . . without arbitrary interference”).

<sup>126</sup> U.N. Human Rights Comm., *Toonen v. Australia*, Comm. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994).

<sup>127</sup> *Toonen*, Comm. No. 488/1992, ¶ 8.2.

<sup>128</sup> Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 2, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010); *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, *supra* note 91, ¶ 15.

<sup>129</sup> *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, *supra* note 91, ¶ 15.

<sup>130</sup> *Dudgeon v. United Kingdom*, App. No. 7525/76, 4 Eur. H.R. Rep. 149 (1981), ¶ 63; *see also* Petition, ¶ 5.80.

unjustified and arbitrary violations of LGBT individuals' right to privacy. This was the case regardless of whether the petitioner was himself prosecuted under those laws.<sup>131</sup>

**C. Jamaica's Laws and Conduct Violate the Right to Family  
(Article 17 of the American Convention)**

59. As explained in the Petition and Additional Observations, and as set out above and in the accompanying witness statements, Jamaica's sodomy laws perpetuate a culture of stigma and persecution within Jamaican society that pervasively and severely interferes with the family lives of LGBT individuals.<sup>132</sup> The noxious culture forces LGBT individuals to flee their homes and separate from their families, and it prevents them from developing and strengthening their family units. As the Petition notes, this constitutes a violation of Article 17 of the Convention, because under the Convention "it is the responsibility of Jamaica to ensure that families, including those of homosexuals, are not split up, separated or uprooted."<sup>133</sup> Indeed, the Commission has consistently affirmed that the right to family, enshrined in Article 17(1) and supported by Article 11(2) of the American Convention, entitles every individual to protection from arbitrary or illegal interferences with her or his family. Further, the right to family also requires the State, *inter alia*, to "facilitate[e], in the broadest possible terms, the development and strength of the family unit."<sup>134</sup>
60. The Petition rightly notes that the right to family is not limited to heterosexual married couples and their children. Rather, the Commission has interpreted the concept of family broadly, noting that under international human rights law more generally, "there is no single model for a family, which may have many variations."<sup>135</sup> That conclusion is

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<sup>131</sup> *Norris v. Ireland*, App. No. 10581/83, 142 Eur. Ct. H.R. 186 (1988), ¶ 38; *Modinos v. Cyprus*, App. No. 15070/89, 16 Eur. H. Rep. 485 (1993), ¶ 20-24; *H.G. & G.B. v. Austria*, Eur. Ct. H.R., App. Nos. 11084/02, 15306/02 (2005).

<sup>132</sup> Petition, ¶¶ 5.87–5.99; Additional Observations, ¶ 3.21(a); *see also supra* ¶¶ 17–46.

<sup>133</sup> Petition, ¶ 5.92.

<sup>134</sup> *Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 145 (Nov. 28, 2012); *see also* Juridical Condition and Human Rights of the Child, Advisory Opinion, Inter-Am. Ct. H.R. (ser. A) No. 17, ¶¶ 66, 71 (Aug. 28, 2002).

<sup>135</sup> *Riffo v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 172 (Feb. 24, 2012).

supported by the rulings of other human rights bodies. For example, the UNHRC noted in its General Comment No. 19 on right to family contained in Article 23 of the ICCPR that “the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition.”<sup>136</sup> In several decisions, the UNHRC’s findings recognize that the concept of family includes same-sex partners in stable *de facto* relationships.<sup>137</sup> Since the 2010 case of *Schalk and Kopf v. Austria*, cited by Petitioner for the point that “a cohabiting same-sex couple living in a stable *de facto* partnership falls within the notion of ‘family life,’”<sup>138</sup> the ECtHR has consistently found that whether a relationship can amount to “‘family life’ does not depend on whether the relationship is homosexual or heterosexual, whether the children were born in or out of wedlock, etc., but rather, *inter alia*, whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means.”<sup>139</sup>

61. As described above, there have been numerous instances in which same-sex couples in Jamaica were forced to flee their homes or distance themselves from their children in order to protect themselves or the safety of their children.<sup>140</sup> Even under a narrower definition of family, LGBT individuals’ rights are violated when they are forced to flee

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<sup>136</sup> U.N. Human Rights Committee, General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 2 (Jul. 27, 1990); *see also* Petition, ¶ 5.92.

<sup>137</sup> *See* U.N. Human Rights Comm., *Young v. Australia*, Comm. No. 941/2000, ¶ 10.4, U.N. Doc. CCPR/C/78/D/941/2000 (Sep. 18, 2003) (finding that Australia discriminated against Young by refusing to recognize him as his deceased same-sex partner’s dependent for the purposes of pension benefits); U.N. Human Rights Comm., *X v. Colombia*, Comm. No. 1361/2005, ¶ 7.2, U.N. Doc. CCPR/C/89/D/1361/2005 (Mar. 30, 2007) (finding that Colombia discriminated against the author and his permanent same sex partner by denying him the right to his partner’s pension benefits).

<sup>138</sup> Petition, ¶ 5.92 (citing *Schalk & Kopf v. Austria*, App. No. 30141/04, Eur. Ct. H.R. (2010), ¶ 94); *see also* *X. v. Austria*, App. No. 19010/07, Eur. Ct. H.R. (Feb. 19, 2013), ¶ 95.

<sup>139</sup> *X, Y & Z v. United Kingdom*, App. No. 21830/93, 24 Eur. H.R. Rep. 143 (Apr. 22, 1997), ¶ 36.

<sup>140</sup> *See supra* ¶¶ 43–46; *see also* 2014 HRW Report, *supra* note 9, at 27 (Silroy N. and his male partner of 18 years had to flee their neighborhood after arson threats because they feared for the safety of their 9-year old daughter).

their homes and separate from their parents or their siblings.<sup>141</sup> These instances constitute serious violations of the right to family under the American Convention.

**D. Jamaica’s Laws and Conduct Violate the Rights to Life, Health and Humane Treatment (Articles 4, 5 and 26 of the Convention and Article XI of the Declaration)**

62. The Inter-American Court has recognized that Article 4(1) of the American Convention, which protects the right to life, contains a derivative right to health which ensures that no person is “prevented from having access to conditions that guarantee a dignified existence.”<sup>142</sup> This includes the right to be free from the fear of life-threatening violence. The right to health and humane treatment is further protected by Article 5 of the American Convention, which guarantees every person respect for their “physical, mental, and moral integrity,” as well as Article 26 of the American Convention and Article XI of the American Declaration, which obligate States parties to ensure well-being through the adequate provision of healthcare services.<sup>143</sup>
63. HRW has documented several cases in which, on account of their sexual orientation or gender identity, Jamaican citizens have been raped, beaten, choked, stabbed, chopped with machetes, shot, and killed.<sup>144</sup> HRW has also documented multiple instances in which LGBT Jamaicans either faced degrading treatment at the hands of medical providers or were prevented from accessing adequate health care services, in violation of the aforementioned rights. There can be no clearer violation of the rights to life, health, and humane treatment.
64. The evidence collected by HRW also clearly demonstrates that Jamaica’s maintenance of sodomy laws contributes to the systematic denial of such rights. The Commission itself has recognized that Jamaica’s “laws criminalizing sex between consenting adult males . . . may contribute to an environment that . . . condones . . . violence against the

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<sup>141</sup> See *supra* ¶¶ 17–46.

<sup>142</sup> *Yakye Axa Indigenous Community v. Paraguay*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125, Partly Concurring and Partly Dissenting Opinion of Judge Ramon Fogel, ¶ 26 (June 17, 2005) (citing “Street Children” Case, *Villagrán-Morales v. Guatemala*, 1999 Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999)).

<sup>143</sup> See Petition, ¶¶ 5.100–5.103.

<sup>144</sup> 2014 HRW Report, *supra* note 9, at 23.

LGBT community.”<sup>145</sup> As HRW’s reports and the accompanying witness statements confirm, LGBT Jamaicans live under the constant threat of extreme violence and brutality stemming solely from their sexual orientation or gender identity. In some cases, violent acts are directly perpetrated by law enforcement authorities; in many others, while the perpetrators of violent anti-LGBT acts may be private actors, the sodomy laws lend imprimatur to these heinous acts and serve as a source of authority sanctioning violence.

**E. Jamaica’s Laws and Conduct Violate the Right to Freedom of Movement and Residence (Article 22 of the American Convention)**

65. Jamaica is in violation of Article 22 of the American Convention, as detailed in the Petition and Additional Observations.<sup>146</sup> The Inter-American Court has established that Article 22 of the American Convention protects a “person’s right not to be forcibly displaced within a State Party, and not to be expelled from the territory of the State in which he or she is lawfully present.”<sup>147</sup> According to the Inter-American Court, the “freedom of movement is an essential condition for the free development of a person.”<sup>148</sup>
66. As the Petition explains, the Inter-American Court has stated that “even though there might not exist formal restrictions on a person’s right to move and reside freely within the State, that person’s rights under Article 22 may be violated by *de facto* restrictions . . . .”<sup>149</sup> In this regard, the Inter-American Court has considered that the United Nations Guiding Principles on Internal Displacement<sup>150</sup> are particularly relevant

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<sup>145</sup> Inter-Am. Comm’n on Human Rights, Report on the Situation of Human Rights in Jamaica ¶ 271 (2012).

<sup>146</sup> Petition, ¶¶ 5.116–5.125; Additional Observations, ¶¶ 3.19–3.20.

<sup>147</sup> *Human Rights Defs. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 165 (Aug. 28, 2014); *see also Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 219 (Nov. 20, 2013); *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 172 (Sept. 4, 2012); *Mapiripan Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 188 (Sept. 15, 2005); *Ituango Massacre v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 207 (July 1, 2006); *Chitay Nech v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 139 (May 25, 2010).

<sup>148</sup> *Human Rights Defs.*, No. 283, ¶ 165.

<sup>149</sup> Petition, ¶ 5.119.

<sup>150</sup> Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11 1998).

to determining the content and scope of Article 22 of the Convention.<sup>151</sup> The Guiding Principles state that “internally displaced persons are persons or groups of persons who have been forced *or obliged* to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid . . . situations of generalized violence [or] violations of human rights . . . and who have not crossed an internationally recognized State border.”<sup>152</sup>

67. Jamaica’s failure to protect LGBT individuals from threats and attacks on their homes, which has directly and significantly contributed to the homelessness of LGBT individuals,<sup>153</sup> is a *de facto* restriction of their right to freedom of movement and residence. This constitutes a violation of Article 22 of the American Convention, even—as the Petition notes—when threats and harassment originate from non-State actors.<sup>154</sup>
68. Moreover, as held by the Inter-American Court, the “failure to effectively investigate acts of violence can propitiate or perpetuate exile or enforced displacement.”<sup>155</sup> By not providing effective criminal investigations to end impunity for attacks against LGBT people, Jamaica has failed, and continues to fail, to ensure the rights of LGBT people to move freely within its borders and to choose their places of residence.

**F. Jamaica’s Laws and Conduct Violate the Rights to Freedom of Thought and Expression and Freedom of Association (Articles 13 and 16 of the American Convention)**

69. Jamaica is also in violation of Articles 13 and 16 of the American Convention, which provide that “[e]veryone has a right to freedom of thought and expression” and that

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<sup>151</sup> *Río Negro Massacres*, No. 250, ¶ 173; *Moiwana Community v. Suriname*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 111 (June 15, 2005); *Chitay Nech*, No. 212, ¶ 140.

<sup>152</sup> *United Nations Guiding Principles on Internal Displacement*, Introduction ¶ 2.

<sup>153</sup> *See supra* ¶¶ 17–46.

<sup>154</sup> Petition, ¶ 5.119; *Human Rights Defs.*, No. 283, ¶ 166; *Barrios Family v. Venezuela*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 162 (Nov. 24, 2011).

<sup>155</sup> *Human Rights Defs.*, No. 283, ¶ 166; IACHR, *Moiwana Community*, No. 124, ¶¶ 119–120; *Vélez Restrepo v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 220 (Sept. 3, 2012).

“[e]veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”<sup>156</sup>

70. In breach of these obligations, Jamaica has maintained sodomy laws that instill a culture of fear and prevent LGBT Jamaicans from exercising their rights to freely express their sexual identities and to associate with other LGBT Jamaicans and LGBT groups.<sup>157</sup> Indeed, LGBT Jamaicans live in fear of being identified as LGBT, and often repress characteristics—such as preferred dress<sup>158</sup> or manner of speech<sup>159</sup>—that might cause others to perceive them as LGBT.
71. International and regional courts have recognized that freedom of expression encompasses the right to live a life free of such repression. As noted in the Petition, the Inter-American Court has explained that the right to freedom of expression encompasses both individual and collective dimensions, which both have the same importance and must be guaranteed by the State to give full effect to the freedom of thought and expression set forth under Article 13 of the Convention.<sup>160</sup> In addition, the Inter-American Court has held that Article 16(1) of the American Convention establishes that “those who are subject to the jurisdiction of the States Parties have the right to associate freely with other persons, without the intervention of the public authorities limiting or obstructing the exercise of this right.”<sup>161</sup> Further, such individuals have the right and the freedom to associate in order to seek together a “lawful purpose, without pressure or interference that can alter or denature this purpose.”<sup>162</sup> The Inter-American Court has also held that the freedom of association “gives rise to positive obligations to prevent

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<sup>156</sup> Petition, ¶¶ 5.126–5.135.

<sup>157</sup> See App. 1, Statement of J.J.; App. 4, Statement of S.M.

<sup>158</sup> See App. 3, Statement of N.C.

<sup>159</sup> See App. 1, Statement of J.J.

<sup>160</sup> Petition, ¶ 5.143; *Granier v. Venezuela*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 135 (June 22, 2015); *Huilca Tecse v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶¶ 70-72 (Mar. 5, 2005); *Cantoral Huamaní v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶ 148 (July 10, 2007); *Vélez Restrepo*, No. 248, ¶ 137.

<sup>161</sup> *Cantoral Huamaní*, No. 167, ¶ 144.

<sup>162</sup> *Id.*

attacks on it, to protect those who exercise it, and to investigate violations of this freedom.”<sup>163</sup>

72. The Caribbean Court of Justice has also recognized that “freedom of expression is rightly regarded as the cornerstone of any democracy,” and in November 2018 explained that “[h]ow individuals choose to dress and present themselves is integral to their right of freedom of expression. This choice . . . is an expressive statement protected under the right to freedom of expression.”<sup>164</sup>

## V. COMPARISONS WITH OTHER JURISDICTIONS CONFIRM THAT SODOMY LAWS INHERENTLY VIOLATE HUMAN RIGHTS

73. As Ryan Goodman recognized in his study of the social effects of unenforced sodomy laws throughout the world, “the state apparatus does not exclusively exercise the function of surveillance and control; instead this power and its processes are channeled through individual actors throughout the social body.”<sup>165</sup> In his case study of South Africa, Goodman found that even though South Africa’s sodomy laws were rarely enforced before they were repealed, the laws nevertheless “operate[d] as a symbolic, if not direct, threat of state-sponsored violence.”<sup>166</sup> He observed that the sodomy laws had a “far-reaching and self-reinforcing effect” whereby LGBT individuals became “subjects of continued victimization” by both the police and society itself because they “stood outside the law.”<sup>167</sup> In other words, the existence of sodomy laws in a country can have a very real social effect in terms of encouraging violence and inhumane behavior against LGBT individuals, even if they are not actively enforced.

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<sup>163</sup> *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 507, ¶ 144 (April 3, 2009); *Cantoral Huamaní*, No. 167, ¶ 144; *Fleury v. Haiti*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 236, ¶ 100 (Nov. 23, 2011).

<sup>164</sup> *McEwan v. Attorney Gen.*, CCJ Appeal No. GYCV2017/015 (Nov. 13, 2018); *see also Nat’l Legal Servs. Auth. v. Union of India & Ors.*, [2014] 4 LRC 629 [India] (holding that expression of one’s identity through words, dress, action or behavior is included in the right to freedom of expression).

<sup>165</sup> Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 Calif. L. Rev. 643, 688 (2001).

<sup>166</sup> *Id.* at 733.

<sup>167</sup> *Id.*

74. Similarly, the UNHRC has acknowledged the “link between criminalization and homophobic hate crimes, police abuse, torture, and family and community violence, as well as constraints that criminalization places on work of human rights defenders working to protect the rights of LGBT persons.”<sup>168</sup>
75. At least 75 States retain laws that criminalize consensual, adult same-sex relationships.<sup>169</sup> In these countries, sodomy laws are generally “used to harass and prosecute individuals because of their actual or perceived sexuality or gender identity.”<sup>170</sup>

#### A. Tanzania

76. In Tanzania, consensual sex between men is punishable by 30 years to life in prison.<sup>171</sup> Human rights violations perpetrated against LGBT persons in Tanzania are pervasive. Research by HRW documents grave human rights violations by law enforcement officials, who operate with impunity. Their anti-LGBT conduct includes torture, rape, assault, arbitrary arrest, extortion, and refusal to accept complaints where LGBT persons are victims of a crime.<sup>172</sup> One gay university student reported being threatened by the police at gunpoint to call his gay friends, who were then stripped naked, beaten with belts and sticks by the police, and repeatedly raped while in police custody. The police refused to prevent the attacks by other detainees. The victim was released after four days upon payment of a bribe.<sup>173</sup> These incidents, among the many documented cases of community violence and police brutality directed at LGBT persons, prevent the realization of rights to life, humane treatment, and nondiscrimination.<sup>174</sup>

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<sup>168</sup> U.N. High Comm’r for Human Rights, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, ¶ 42, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011) (hereinafter, “*Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*”).

<sup>169</sup> ILGA Report, *supra* note 113, at 47.

<sup>170</sup> *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, *supra* note 168, ¶ 41.

<sup>171</sup> ILGA Report, *supra* note 113, at 64.

<sup>172</sup> Human Rights Watch, Tanzania Events of 2018, <https://www.hrw.org/world-report/2019/country-chapters/tanzania-and-zanzibar#>.

<sup>173</sup> Human Rights Watch, *supra* note 6, at 28.

<sup>174</sup> *See generally id.*

77. Criminalization and a widespread culture of homophobia in Tanzania also prevent LGBT persons from obtaining access to essential services, including HIV prevention and treatment services. In 2011, a gay man died after being turned away from the hospital, where he was told, “Go away! There’s no service for people like you.” The man was suffering from malaria and died less than one week later.<sup>175</sup>

## **B. Cameroon**

78. In Cameroon, many cases of arrest and prosecution are marked by other heinous human rights violations—including torture, denial of access to legal counsel, violations of privacy, and discriminatory treatment by judicial and law enforcement officials.<sup>176</sup> A significant number of cases also documented torture or cruel, inhumane, or degrading treatment by law enforcement officials.<sup>177</sup> In one case, a man was taken into custody at a military camp where he was tortured, beaten with an iron belt and had plastic bags burned on his chest. He was released on payment of a bribe to law enforcement officials. His friend stopped him from filing a complaint because he felt “there are no rights. We gays don’t have any backup.”<sup>178</sup> Another victim reported being repeatedly raped in prison where prison guards made no attempt to stop the gang rape and assaults.<sup>179</sup>

79. LGBT persons in Cameroon also face severe discrimination and violence from non-State actors. In 2013, prominent gay rights activist Eric Ohena Lembembe was murdered in his home. According to a witness, Ohena Lembembe’s neck and feet appeared to have been broken, and his face, hands, and feet had been burned with an iron.<sup>180</sup> The police allegedly did not take photos at the crime scene and instead focused the investigation on the sexual orientation of Ohena Lembembe and his colleagues, some of whom were held

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<sup>175</sup> *Id.* at 71.

<sup>176</sup> Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon’s Anti-Homosexuality Law 8 (2013)* (hereinafter, “Human Rights Watch, *Guilty by Association*”), <https://www.hrw.org/report/2013/03/21/guilty-association/human-rights-violations-enforcement-cameroons-anti>.

<sup>177</sup> *Id.* at 41–44.

<sup>178</sup> *Id.* at 39, 42.

<sup>179</sup> *Id.* at 50.

<sup>180</sup> *Cameroon: LGBT Rights Activist Found Dead, Tortured*, Human Rights Watch (July 13, 2013 7:52 AM), <https://www.hrw.org/news/2013/07/16/cameroon-lgbti-rights-activist-found-dead-tortured>.

in prison for several days. The investigation of the brutal attack has been at a standstill.<sup>181</sup>

### C. Uganda

80. Uganda ranks as one of the States least tolerant of homosexuality according to a Pew Research Center global survey of thirty-nine nations.<sup>182</sup> In 2014, Uganda enacted the Anti-Homosexuality Act, which imposed harsher criminal penalties for homosexual conduct as well as criminalizing the “promotion of homosexuality.”<sup>183</sup> The Act was annulled by the Supreme Court in August 2014, but the penal code maintains a sentence of up to life in prison for consensual same-sex conduct, and LGBT people and human rights activists working on LGBT issues in Uganda continue to face widespread, institutionalized discrimination and violence. The Special Rapporteur on the situation of human rights defenders has repeatedly reported on and expressed concern over the harassment of human rights defenders of LGBT rights in Uganda.<sup>184</sup>
81. Human rights violations significantly increased following Uganda’s passage of the Anti-Homosexuality Act. LGBT human rights organizations in Uganda reported 162 incidents in the four-month period following the passage of the bill—more than eight times the number of cases reported in the same period in 2012.<sup>185</sup> The Act resulted in “homelessness and joblessness, restrict[ed] life-saving HIV work, and bloat[ed] the

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<sup>181</sup> See, e.g., Int’l Fed’n for Human Rights & World Org. Against Torture, Cameroon Homophobia and Violence Against Defenders of the Rights of LGBT Persons: International Fact-Finding Mission Report, 24-25, 27-28 (2015), [http://www.omct.org/files/2015/02/23011/rapport\\_obs\\_cameroun\\_eng\\_12\\_fv\\_2015.pdf](http://www.omct.org/files/2015/02/23011/rapport_obs_cameroun_eng_12_fv_2015.pdf).

<sup>182</sup> Pew Research Ctr., *The Global Divide on Homosexuality* 3 (2013). In the 2013 study, 96 percent of Ugandans believed homosexuality should not be accepted by society. Notably, younger respondents in Uganda were less likely than older respondents to say homosexuality should be accepted: 7 percent of people ages 50 and older believed homosexuality should be accepted whereas only 3 percent of those ages 18 to 29 agreed. *Id.* at 6.

<sup>183</sup> ILGA Report, *supra* note 113, at 48–49.

<sup>184</sup> See, e.g., Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Observations on Communications Transmitted to Governments and Replies Received*, ¶ 437, U.N. Doc. A/HRC/22/47/Add.4 (Feb. 27, 2013); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Observations on Communications Transmitted to Governments and Replies Received*, ¶ 376, U.N. Doc. A/HRC/19/55/Add.2 (Feb. 23, 2012).

<sup>185</sup> Sexual Minorities Uganda & Nat’l LGBT Sec. Team, *From Torment to Tyranny: Enhanced Persecution in Uganda Following the Passage of the Anti-Homosexuality Act 2014* (20 December 2013 - 1 May 2014), at 2 (2014), <http://www.sexualminoritiesuganda.com/wp-content/uploads/2014/11/SMUG-From-Torment-to-Tyranny.pdf> (reporting an average of 19 cases during the same period in 2012).

pockets of corrupt police officers who extort money from victims of arrest” in violation of the rights to health, humane treatment, non-discrimination, and privacy, among others.<sup>186</sup> Media outlets have continued to publicize hundreds of names of alleged LGBT individuals, leaving them vulnerable to further violence and discrimination.

#### **D. Iran**

82. Iran, in accordance with its interpretation of Shari’a, prescribes the death penalty for same-sex conduct. Although it is difficult to determine the frequency of executions for same-sex conduct, Iranian newspapers have reported on executions by public hanging for sodomy charges. HRW has also documented cases of individuals convicted of sodomy and awaiting execution.<sup>187</sup> LGBT persons in Iran reported a common pattern of abuse by family members including threats, violence, constant monitoring, and forced dangerous or ineffective treatments in attempts to correct their sexual orientation.<sup>188</sup> The parents of one gay interviewee checked him into a psychiatric hospital against his will when he was 20 years old. He was repeatedly subjected to shock therapy during his involuntary hospitalization.<sup>189</sup>
83. Criminalization of same-sex conduct also exposes LGBT persons to harassment and abuse by law enforcement and other security officials. In 2013, around 50 members of the Revolutionary Guard raided a private birthday function, allegedly in order to disband a “homosexual and Satan-worshipping network.” According to witnesses, the armed members of the security forces assaulted and beat many of the 80 or so party attendees with electric batons. Seventeen individuals were taken into custody and held at a secret detention center where they were beaten and abused in an effort to force confessions of

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<sup>186</sup> Human Rights Watch, *Uganda: Anti-Homosexuality Act’s Heavy Toll: Discriminatory Law Prompts Arrests, Attacks, Evictions, Flight* (May 15, 2014), <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>; see also Mark Gevisser, *Love’s Runaways: The Gay Ugandans Forced into Exile*, *Guardian* (May 18, 2016 1:00 PM), <https://www.theguardian.com/world/2016/may/18/loves-runaways-gay-ugandans-forced-into-exile>.

<sup>187</sup> Human Rights Watch, *We Are a Buried Generation: Discrimination and Violence Against Sexual Minorities in Iran 27-32* (2010) (hereinafter, “Human Rights Watch, We Are a Buried Generation”) [https://www.hrw.org/sites/default/files/reports/iran1210webwcover\\_1.pdf](https://www.hrw.org/sites/default/files/reports/iran1210webwcover_1.pdf).

<sup>188</sup> *Id.* at 36, 38–40.

<sup>189</sup> *Id.* at 40.

unlawful conduct. Accounts included stripping the individuals naked to film them, beating them, and preparing them for a mock execution.<sup>190</sup> Prior raids on private parties of men suspected of being gay and mass arrests have been similarly characterized as severe human rights violations—such raids have included physical abuse, degrading treatment, torture, arbitrary detention, denial of due process, and denial of rights to freedom of association.<sup>191</sup> Individuals also described arbitrary arrests based on uncorroborated suspicions of their sexuality, prolonged detention, beatings, and torture by the police.

## E. Nigeria

84. Nigeria contains several states, primarily in the north, that have adopted an interpretation of Shari'a that renders sodomy a capital offense.<sup>192</sup> The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions has explained that:

In relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria's international obligations. . . . [T]he "mere possibility" that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as a law justifies persecution by vigilante groups, and invites abuse.<sup>193</sup>

85. In 2014, Nigeria enacted new laws prohibiting participation in gay organizations, an offense punishable by ten years in prison.<sup>194</sup> Violent attacks targeting LGBT persons

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<sup>190</sup> Int'l Gay & Lesbian Human Rights Comm'n & Iranian Queer Org., Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity 5–6 (2014), <https://www.outrightinternational.org/sites/default/files/UPRSubmission.pdf>.

<sup>191</sup> Joint Open Letter from Philip Luther, Dir. of Middle E. & N. Afr. Program, Amnesty Int'l, Sarah Leah Whitson, Dir. of Middle E. & N. Afr. Div., Human Rights Watch, Jessica Stern, Exec. Dir. of the Int'l Gay & Lesbian Human Rights Comm'n & Saghie Ghahreman, President of Iranian Queer Org., to His Excellency Dr. Hassan Rouhani, President of the Islamic Republic of Iran (Dec. 20, 2013), <http://iglhrc.org/content/iran-joint-open-letter-iranian-president-rouhani>.

<sup>192</sup> ILGA Report, *supra* note 113, at 42–43.

<sup>193</sup> *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, *supra* note 168, ¶ 35 (quoting Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 76, U.N. Doc. A/HRC/8/3/Add.3 (May 14, 2008), and then quoting Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Civil and Political Rights, Including the Question of Disappearances and Summary Executions*, ¶ 37, U.N. Doc. E/CN.4/2006/53/Add.4 (Jan. 7, 2006)).

<sup>194</sup> ILGA Report, *supra* note 113, at 42–43; *see also* 2014 HRW Report, *supra* note 9, at 80.

followed the enactment of the new anti-gay legislation. Activists in Nigeria have reported cases of mob violence against people believed to be homosexual.<sup>195</sup> Reported human rights violations include violent attacks, torture, arbitrary detention, denial of rights of freedom of association, and discrimination in health care, employment, housing, and police treatment. In February 2014, a mob of 40 people broke down doors and dragged 14 young men outside their homes. They were beaten on the street with broken furniture, machete handles, sticks, and a garden rake, and the mob vowed to kill them if they did not leave the neighborhood. Law enforcement agents did not respond to the distress calls. Instead, when four of the victims were marched to a police station, they were allegedly kicked and punched by police officers who yelled pejoratives at them. The walls of houses where the men lived were painted with graffiti reading, “Homosexuals, pack and leave.” All the victims became homeless and some subsequently lost their jobs after their employers discovered their sexuality.<sup>196</sup>

86. Anti-LGBT laws in Nigeria also violate LGBT Nigerians’ right to health. Fear of criminal sanctions, violence, and discrimination prevent LGBT persons from accessing adequate health care, including, critically, HIV/AIDS treatment and services. Organizations have also discontinued HIV outreach and education programs due to fear of prosecution under the new laws that criminalize organizations serving the LGBT community. The new laws have already led to a sharp decline in HIV/AIDS treatment in Nigeria.<sup>197</sup>

## **VI. THE REPEAL OF SODOMY LAWS HAS A POSITIVE IMPACT ON PROTECTION AND RESPECT FOR HUMAN RIGHTS**

87. In addition to the irrefutable evidence that sodomy laws consistently lead to pervasive violations of human rights, the experience of countries that have repealed such laws

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<sup>195</sup> 2014 HRW Report, *supra* note 9, at 80.

<sup>196</sup> Michelle Faul, *Men Attacked by Anti-Gay Mob in Nigeria*, Wash. Post, (Feb. 15, 2014), [https://www.washingtonpost.com/world/africa/men-attacked-by-anti-gay-mob-in-nigeria/2014/02/15/1c313e5c-967e-11e3-9616-d367fa6ea99b\\_story.html](https://www.washingtonpost.com/world/africa/men-attacked-by-anti-gay-mob-in-nigeria/2014/02/15/1c313e5c-967e-11e3-9616-d367fa6ea99b_story.html); *see also* Adam Nossiter, *Mob Attacks More Than a Dozen Gay Men in Nigeria’s Capital*, N.Y. Times, (Feb. 15, 2014), [http://www.nytimes.com/2014/02/16/world/africa/mob-attacks-gay-men-in-nigerias-capital.html?\\_r=0](http://www.nytimes.com/2014/02/16/world/africa/mob-attacks-gay-men-in-nigerias-capital.html?_r=0).

<sup>197</sup> *See* Erika Eichelberger, *You Thought It Was Tough Being Gay in Uganda. “It’s Hell in Nigeria.”* Mother Jones (Mar. 13, 2014), <http://www.motherjones.com/politics/2014/03/nigeria-anti-gay-law-hiv>.

demonstrates significant improvements in their overall record of protecting and upholding the human rights of LGBT individuals. The list below contains illustrative examples of that experience.

88. On September 20, 2018, the High Court of Justice of **Trinidad and Tobago** (“*TT*”) decriminalized same-sex intimacy between consenting adults.<sup>198</sup> The same court had found the relevant law, Sections 13 and 16 of the Sexual Offenses Act, to be unconstitutional in April 2018.<sup>199</sup> In finding the statute unconstitutional, the Court found that such laws are not “reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual” and noted that the case “is one about the inalienable rights of a citizen under the Republican Constitution of Trinidad and Tobago.”<sup>200</sup> Following that initial decision, Trinidad and Tobago’s LGBT community held its first-ever Pride parade. TT Pride Arts Festival Committee Chairman Rudy Hanamji recognized that the decision “is something to be proud of and is recognition of human rights in TT.”<sup>201</sup> Trinidad and Tobago has also made progress in acknowledging discrimination against same-sex couples in business and inheritance matters.<sup>202</sup>
89. On September 6, 2018, the Supreme Court of **India** unanimously struck down a statutory ban on same-sex intimacy, finding Section 377 to be a violation of the fundamental rights of autonomy, intimacy, and identity.<sup>203</sup> Same-sex intimacy had been barred since 1860,

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<sup>198</sup> *Jones v. Attorney Gen.*, (Sept. 20, 2018) No. CV2017-00720 (Trinidad and Tobago); Derek Achong, *Rampersad Makes Historic Same-Sex Ruling*, Trinidad & Tobago Guardian (Sept. 21, 2018), <http://www.guardian.co.tt/news/rampersad-makes-historic-samesex-ruling-6.2.672550.a30a9d4a03>.

<sup>199</sup> *Trinidad and Tobago: Court Overturns Same-Sex Intimacy Ban*, Human Rights Watch (Apr. 13, 2018), <https://www.hrw.org/news/2018/04/13/trinidad-and-tobago-court-overturns-same-sex-intimacy-ban/>.

<sup>200</sup> *Jones v. Attorney Gen.*, (Apr. 12, 2018) No. CV2017-00720 (Trinidad and Tobago), ¶¶ 4.4, 14.

<sup>201</sup> Melissa Doughty, *LGBTQI Group Celebrate Pride*, Trinidad & Tobago Newsday (June 22, 2018), <https://newsday.co.tt/2018/06/22/lgbtqi-group-celebrates-pride/>.

<sup>202</sup> See Jada Loutoo, *Judge: Greater Equality for Same-Sex Couples*, Trinidad and Tobago News Day (June 29, 2018) (noting that, in June 2018, the San Fernando High Court found that same-sex couples are “denied the requisite degree of statutory protection which is afforded to heterosexual partners” in business and inheritance matters), <https://newsday.co.tt/2018/06/29/judge-greater-equality-for-same-sex-couples/>.

<sup>203</sup> *Johar v. India*, (2018) No. 76/2016 (India); Jeffrey Gettleman, Kai Schultz & Suhasini Raj, Opinion, *India Gay Sex Ban Is Struck Down. ‘Indefensible,’ Court Says.*, N.Y. Times (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/world/asia/india-gay-sex-377.html>.

when the British banned “carnal intercourse against the order of nature.”<sup>204</sup> The decision did not come easily: the first legal challenge came in the 1990s.<sup>205</sup> A 2009 decision by the Delhi high court overturning the law was reversed by the Supreme Court in 2013.<sup>206</sup> But in 2014, the Court ordered the government of India to declare transgender “a third gender,” and in 2017, it upheld the right to privacy as a fundamental right.<sup>207</sup> In the September 2018 decision the Court also found unconstitutional discrimination on the basis of sexual orientation. In the wake of the historic decision, petitions on same-sex marriage and adoption by same-sex couples are now pending in Indian courts.<sup>208</sup>

90. **Nicaragua** decriminalized homosexual relations in a new penal code that was enacted in May 2008. This same penal code criminalized discrimination based on sexual orientation, punishable by jail or fines.<sup>209</sup> In 2009, the Nicaraguan government appointed an ombudsperson for sexual diversity to advocate for and defend the rights of the LGBT people.<sup>210</sup>
91. **South Africa** has worked to reduce the effects of its prior sodomy laws on the equality of all of its citizens since it legalized homosexuality in 1998.<sup>211</sup> The South African constitution of 1996 guarantees equality and prohibits discrimination based on ‘sexual orientation.’ The path toward equality for all LGBT South Africans came on the heels of

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<sup>204</sup> Opinion, *A Win for L.G.B.T. Rights in India*, N.Y. Times (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/opinion/editorials/india-gay-rights-supreme-court.html>.

<sup>205</sup> Shashank Bengali & Niha Masih, “*We’re Not Criminals Anymore*,” L.A. Times (Sept. 6, 2018), <http://www.latimes.com/world/la-fg-india-gay-rights-20180906-story.html>.

<sup>206</sup> *Supreme Court Decriminalises Section 377*, Times of India (Sept. 6, 2018), <https://timesofindia.indiatimes.com/india/sc-verdict-on-section-377-all-you-need-to-know/articleshow/65695884.cms?from=mdr>.

<sup>207</sup> *Id.*

<sup>208</sup> Shaswati Das, *Historic Verdict Holds Hope for Same-Sex Marriages*, Adoption, LiveMint (Sept. 7, 2018), <https://www.livemint.com/Politics/fEiZSRM7ng7Ja4ssTyfl8J/Historic-verdict-holds-hope-for-samesex-marriages-adoption.html>.

<sup>209</sup> *Id.*

<sup>210</sup> José Adán Silva, *Rights-Nicaragua: An Ombudswoman for Sexual Diversity*, Inter Press Service News Agency (Dec. 15, 2009), <http://www.ipsnews.net/2009/12/rights-nicaragua-an-ombudswoman-for-sexual-diversity/>.

<sup>211</sup> *Id.*

South Africa's post-apartheid movement and the government now treats LGBT individuals as equal to all other citizens under its laws.<sup>212</sup>

92. The constitutional court of **Ecuador** declared unconstitutional in 1997 Article 516 of the Criminal Code, which criminalized same-sex acts.<sup>213</sup> Subsequently, in 1998, Ecuador became one of the first countries to adopt a Constitution prohibiting discrimination based on sexual orientation.<sup>214</sup> Ecuador's new constitution, which was passed in September 2008, also provides protections on the grounds of sexual orientation and was the first constitution in the world to expressly protect against discrimination based on gender identity.<sup>215</sup> Based on the provisions of the 1998 Constitution, Ecuador adopted an Operational Plan on Sexual Diversity, which was aimed at fostering Ecuadorian society's commitment, through specific measures and recommendations, to nondiscrimination on the grounds of sexual orientation.<sup>216</sup>
93. **Ireland** repealed its sodomy laws and legalized homosexual conduct with the enactment of the Criminal Law (Sexual Offences) Bill in June 1993, five years after the ECtHR ruled in *Norris v. Ireland* that the sodomy laws in Ireland violated the ECHR.<sup>217</sup> Since then, Ireland has been steadily improving its record with respect to LGBT rights, including providing legal protection against discrimination on grounds of sexual orientation. In 2010 Ireland adopted the Civil Partnership Act giving legal recognition

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<sup>212</sup> Michael Hollander, Note, *Gay Rights in Uganda: Seeking to Overturn Uganda's Anti-Sodomy Laws*, 50 Va. J. Int'l L. 219, 247 (2009).

<sup>213</sup> ILGA Report, *supra* note 113, at 27; *see also* Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fifth Periodic Report, Ecuador*, ¶ 428, U.N. Doc. CCPR/C/ECU/5 (May 26, 2008).

<sup>214</sup> Human Rights Comm., *supra* note 213, ¶¶ 426, 429.

<sup>215</sup> Glickhouse & Keller, *supra* note 220.

<sup>216</sup> Human Rights Comm., *supra* note 213, ¶¶ 432–433.

<sup>217</sup> Amy Goodman & Aaron Maté, *Ireland's Social Revolution: Traditionally Catholic Nation Makes History with Marriage Equality Vote*, Truthout (May 27, 2015), <http://www.truth-out.org/news/item/31014-ireland-s-social-revolution-traditionally-catholic-nation-makes-history-with-marriage-equality-vote>.

and rights to same-sex couples, and in 2015, Ireland voted in a referendum to support marriage equality, which became law later that year.<sup>218</sup>

94. **Cuba** overturned its sodomy laws and legalized homosexual conduct in 1979.<sup>219</sup> In doing so, then-President Fidel Castro apologized for his government's discrimination against homosexuals.<sup>220</sup> Beginning in 2008, Cuba began to grant free treatment to transgender individuals, including surgery.<sup>221</sup> In addition, Mariela Castro, Raul Castro's daughter, through her leadership of the National Centre for Sexual Education, has worked to advocate for the rights of LGBT individuals and help protect them from crimes and discrimination.<sup>222</sup>
95. In **Uruguay**, where homosexual sex was legalized in 1934, the nation passed an anti-discrimination law in 2004, under Article 149 of Law 17.677 of July 29, 2003.<sup>223</sup> The law included the prohibition against discrimination based on sexual orientation.<sup>224</sup> In 2009, it permitted gay individuals to serve in its armed forces.<sup>225</sup> In 2009, Uruguay passed a law that provided for changing one's name and gender marker on official documentation.<sup>226</sup>
96. **Mexico** legalized homosexuality in 1872.<sup>227</sup> Much later, in 2003, it became the second Latin American nation to protect lesbian, gay and bisexual individuals via legislation, under a federal law that forbids discrimination based on "sexual preference" in many

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<sup>218</sup> *Timeline: A History of Gay Rights in Ireland*, Journal (Jan. 19, 2015, 5:21 PM), <http://www.thejournal.ie/gay-rights-ireland-history-varadkar-history-1890129-Jan2015/>.

<sup>219</sup> ILGA Report, *supra* note 113, at 27.

<sup>220</sup> Rachel Glickhouse & Mark Keller, *Explainer: LGBT Rights in Latin America and the Caribbean*, *Americas Society / Council of the Americas* (May 24, 2012), <http://www.as-coa.org/articles/explainer-lgbt-rights-latin-america-and-caribbean>.

<sup>221</sup> *Id.*

<sup>222</sup> Megan Sweas, *Cuba's Gay Rights Revolution*, *Global Post* (June 29, 2012, 10 AM), <http://www.globalpost.com/dispatch/news/regions/americas/cuba/120628/cubas-gay-rights-revolution>.

<sup>223</sup> Glickhouse & Keller, *supra* note 220.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Mazhar Abbas, *Homosexuality Permitted in 113 Countries, Illegal in 76*, *News Int'l* (July 9, 2011), <https://www.thenews.com.pk/archive/print/310858-homosexuality-permitted-in-113-countries-illegal-in-76>.

situations and circumstances.<sup>228</sup> Various improvements have also been made in access to health care benefits and social security for same-sex couples.<sup>229</sup>

97. In **Peru**, homosexual sex was legalized between 1836 and 1837.<sup>230</sup> In 2000, the nation passed an anti-discrimination law that prohibits discrimination related to sexual orientation.<sup>231</sup> Later, in 2004, Peru's Constitutional Court overturned legislation that discriminated against homosexual relationships in the nation's military; in 2009, a court ruling held that gay individuals can serve in both the armed forces and the police force of Peru.<sup>232</sup>

## VII. CONCLUSION

98. Jamaica's sodomy laws and the conduct they encourage strip LGBT Jamaicans of the full rights and dignities to which all are entitled and forcibly exclude them from society, subjecting them to horrific violence and discrimination, and driving these marginalized citizens out of their jobs, schools, homes, and even out of their own country. In short, Jamaica's sodomy laws deny LGBT people basic recognition and protection as human beings.
99. Repeal of the sodomy laws in Jamaica would finally remove the cloak of law from anti-LGBT discrimination and the violence it encourages, and would signal that Jamaica is committed to upholding the fundamental human rights of all individuals, including its LGBT citizens. The experiences of other countries that have repealed similar laws further demonstrates that the rights and freedoms of LGBT Jamaicans—as enumerated in the American Convention and the American Declaration—can only be fully enjoyed if the sodomy laws in Jamaica are abolished.
100. The Inter-American human rights system was specifically designed to address violations like those set forth by the Petitioner and in this *amicus* brief: Jamaica's sodomy laws

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<sup>228</sup> Glickhouse & Keller, *supra* note 220.

<sup>229</sup> *Id.*

<sup>230</sup> Abbas, *supra* note 227.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

cannot be effectively challenged through local courts, and the evidence of their impact cannot be denied. The Commission should fulfill its mandate of protecting human rights and promoting access to justice by finding that these laws, and Jamaica's conduct in failing to protect the fundamental rights and freedoms of its homosexual citizens, violate its obligations under the American Convention and the American Declaration.

Respectfully submitted,



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