

# UNIVERSAL PERIODIC REVIEW OF JAMAICA

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## SUBMISSION BY J-FLAG FOR THE UNIVERSAL PERIODIC REVIEW UN HUMAN RIGHTS COUNCIL TWENTY SECOND SESSION (APRIL/MAY 2015)

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### EXECUTIVE SUMMARY

This report is submitted by J-FLAG<sup>1</sup> to highlight violations of the rights of LGBT people in Jamaica and the Government of Jamaica's efforts to protect and promote their human rights and dignity. The report has been divided into three main sections: Right to Shelter, Right to Peace and Security and Equality and Non-Discrimination and Right to Health, and includes recommendations to the Government on how to further protect and promote the rights of LGBT people in Jamaica.

### METHODOLOGY

This submission was prepared by conducting a desk review of reports made to J-FLAG by LGBT persons, published research such as the Jamaica National Crime and Victimisation Survey and National Survey on Attitudes and Perceptions of Jamaicans towards Same-sex Relationships, and position papers from a variety of sources including the Ministry of National Security, J-FLAG and the Jamaica Constabulary Force (JCF) on issues related to violence and human rights violations.. A number of newspaper articles were also reviewed as part of the data collection process.

### BACKGROUND AND FRAMEWORK

#### Scope of International Obligations

1. Jamaica is party to the following conventions that are of relevance to LGBT issues/rights:
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social and Cultural Rights
  - Convention on the Elimination of All Forms of Discrimination Against Women
  - Conventions on the Rights of the Child
  - American Convention on Human Rights
  - Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Pará"
  - Universal Declaration
  - American Declaration

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<sup>1</sup> This non-profit, non-partisan organization was established in December 1998 to engender social change and human rights protection for LGBT people. J-FLAG helps to create an environment that is enabling to LGBT identity and where violation of the rights of LGBT people can be recorded and addressed.

## Constitutional and Legislative Framework

2. Jamaica's Constitution was enacted in 1962, the same year the country gained independence. Citizens' rights are protected under the Charter of Fundamental Rights and Freedoms, which was passed in April 2011 (to replace Chapter Three of the Constitution)<sup>2</sup>. While the Charter of Rights stipulates grounds for the prohibition of discrimination, it does not offer protection on the basis of one's sexual orientation or gender identity.
3. Sections 76 through 79 of The Offences Against the Person Act 1864 criminalise anal intercourse as well as all forms of male same-sex intimacy.<sup>3</sup> Summary conviction for the 'abominable crime of buggery' attracts a maximum sentence of 10 years imprisonment with or without hard labour.<sup>4</sup>
4. The Sexual Offences Act<sup>5</sup> 2009 narrowly defines sexual intercourse as the penetration of a vagina by a penis. Consequently, rape is described as non-consensual vaginal penetration by a penis. The maximum penalty for rape is life imprisonment. By contrast, forced penetration of the anus by a penis is dealt with under the Offences Against the Person Act as 'buggery'. This gender and orifice specific definition and description of sexual intercourse and rape do not account for male rape and results in a disparity in the punitive measures available for offenders, which sometimes results in injustice for victims of sexual violence.

## Institutional and Human Rights Structure

5. Jamaica is equipped with several institutions such as The Independent Commission of Investigations (INDECOM), the Office of the Public Defender, the Bureau of Gender Affairs and the Child Development Agency (CDA) mandated to protect and promote the human rights of citizens. These institutions actively work to address the vertical and horizontal application of rights on issues related to, *inter alia*, children's rights, women's rights, and violence.
6. Although there has been notable progress<sup>6</sup> towards engendering a more hospitable place for LGBT persons, intense cultural antipathy toward sexual and gender minorities continues to be prevalent.<sup>7</sup> Many LGBT Jamaicans continue to report the violation of their human rights relating to, *inter alia*, the right to shelter, and peace and security. In 2013, J-FLAG received eight reports of displacement; sixteen reports of physical attack; eight reports of sexual violence; and ten reports of threats/intimidation.<sup>8</sup>
7. Research suggests that almost two in every five Jamaicans believe the government is not doing enough to protect and promote the rights of lesbian, gay, bisexual and transgender (LGBT) persons to freedom from discrimination, violence and other forms of harassment.<sup>9</sup> One in every five Jamaicans is tolerant of lesbian, gay, bisexual and transgender (LGBT) people. Similarly,

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<sup>2</sup> Charter of Fundamental Rights & Freedoms

<sup>3</sup> This Act makes it illegal for persons (whether males or females) to engage in anal intercourse in private or public spaces. This Act also prevents adults from consenting to anal intercourse. The Ministry of Justice Jamaica [http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act\\_0.pdf](http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf)

<sup>4</sup> S. 76; Offences Against the Person Act

<sup>5</sup> The Ministry of Justice Jamaica <http://moj.gov.jm/sites/default/files/laws/Sexual%20Offences%20Act.pdf>

<sup>6</sup> J-FLAG Top 10 in 2013 Report

<sup>7</sup> National Survey on Attitudes & Perceptions Towards Same-Sex Relationship (2012 & 2013)

<sup>8</sup> J-FLAG Summary of Incidents Reported in 2013

<sup>9</sup> National Survey on the Attitudes and Perceptions of Jamaicans Towards same-sex Relationships: <http://jflag.org/wp-content/uploads/2013/11/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf>

one in every five Jamaicans would support an addendum to the Charter of Rights that explicitly protects the rights of LGBT persons.

8. There is no statutory institution that has specific responsibility to address issues affecting LGBT persons. The government is yet to establish an independent human rights commission as stipulated under the Paris Principles by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993.

## **IMPLEMENTATION OF SPECIFIC UPR RECOMMENDATIONS**

9. During the UPR in January 2011, Jamaica received several recommendations regarding the need to repeal or make amendments to all provisions of the law that criminalize same-sex activities between consenting adults. These recommendations did not enjoy support from Jamaica.<sup>10</sup> In response to recommendations that seek to tackle discrimination, the Government declared that it would take the necessary steps to address discrimination based on sexual orientation and gender identity. Jamaica also accepted a recommendation to provide law enforcement officials with adequate and comprehensive sensitisation training in relation to sexual orientation, gender identity, HIV and AIDS.
10. On November 21, 2012, Jamaica voted<sup>11</sup> against Resolution A/C.3/67/L.36 condemning extrajudicial, summary or arbitrary executions which urges States "to investigate promptly and thoroughly all killings, including...killings committed for any discriminatory reason, including sexual orientation."<sup>12</sup>

## **PROMOTION AND PROTECTION OF HUMAN RIGHTS**

### **RIGHT TO PEACE AND SECURITY; AND EQUALITY AND NON-DISCRIMINATION**

11. Crime and violence is a major problem in Jamaica and is one of the main concerns of many Jamaicans.<sup>13</sup> In 2000, there were 887 homicides and in 2010, there 1,428 homicides. This is more than three times the rate recorded by Trinidad which follows Jamaica as the second most volatile country in the Caribbean.<sup>14</sup>
12. LGBT Jamaicans are not excluded from this prevalence of violence. Between January 2012 and June 2014, there were 198 reports of human rights violations to J-FLAG and at least 48 requests for support from LGBT Jamaicans seeking asylum. It is important to point out that these incidents do not represent every incident of violence or discrimination against members of Jamaica's LGBT community. Although more LGBT people are reporting acts of violence and discrimination to J-FLAG and the police<sup>15</sup>, many incidents still go unreported. This is due to the hostile social and cultural environment, which results in LGBT Jamaicans fearing further discrimination or persecution based on their sexual orientation or (non-conforming) gender

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<sup>10</sup> 101.18 to 101.25

<sup>11</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/67/L.36](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/67/L.36)

<sup>12</sup> <http://ilga.org/ilga/en/article/nPu0m8O1eL>

<sup>13</sup> *Gleaner/Bill Johnson Poll*: 2006, 2007, 2008, 2009, 2010, 2011; *Don Anderson Poll*: 2004, 2005, 2008, 2010, 2011

<sup>14</sup> The 2012-2013 Jamaica National Crime Victimization Survey Final Report-Ministry of National Security Pg 35

<sup>15</sup> <http://jamaica-gleaner.com/latest/article.php?id=51228>

identity. Some LGBT persons also express fear of their identity becoming public in the process of seeking justice.<sup>16</sup>

13. While all Jamaicans have equal access to the law and the justice system, there are significant barriers, which prevent LGBT persons from seeking redress in instances where their rights have been infringed. It is unclear how current efforts to reform the legal and justice systems include the issues faced by, and how they will impact LGBT persons in Jamaica.
14. J-FLAG has developed, and continues to improve its relationship with the Jamaica Constabulary Force (JCF) and commends the Office of the Police Commissioner for proceeding with the recommendation to promote greater respect for LGBT persons through the Police Diversity Policy, which was adopted in 2012. Police officers in Kingston & St Andrew, St. James and St. Ann have, continue to participate in a series of sensitization training around HIV and AIDS, human rights, sex work and policing. J-FLAG, the LGBT community and allies have identified key police officers at a number of police stations who have made themselves available to respond to homophobic crimes and other incidents of violence such as domestic and intimate partner violence that affect persons who are LGBT. Notwithstanding, some LGBT persons continue to report that they experience antagonism from some police officers and at some police stations, which accounts for hesitation to report incidents of crime and violence against their person. For example, in 2013, police at a station in St Catherine refused to take a report from a lesbian couple and expressed negative sentiments about their sexuality.<sup>17</sup> While we acknowledge the incremental progress being made, we must also acknowledge that LGBT persons have a general fear of reporting because of discrimination.
15. Many incidents are not always reported to J-FLAG immediately. The analysis of the reports shows that a significant number of incidents are reported several months after they were perpetrated. Between January 2012 and August 2013, for example, a total of 87 incidents were reported to J-FLAG, however, only 64.37% of them were perpetrated in that period. There were also instances of incidents which occurred in previous years and reported in the period. Access to justice and redress is therefore a major problem for LGBT Jamaicans.
16. Two human rights violations documented by J-FLAG are:
  - A. The July 2013 brutal killing of a 16 year old - Dwayne Jones who is considered to be a transgender person. This murder is still unresolved.<sup>18</sup>
  - B. The attempted lynching of a gender non-conforming young person in May Pen in June 2014 who had to seek refuge in a boutique while a mob converged outside demanding the person's release. The person was rescued by the police and taken to safety.<sup>19</sup>

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<sup>16</sup> <http://jflag.org/wp-content/uploads/2014/07/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf>

<sup>17</sup> J-FLAG (2013): Human Rights Violation Report

<sup>18</sup> Jamaica Gleaner August 2013, Government Should Not let Dwayne's Death Go in Vain <http://jamaica-gleaner.com/gleaner/20130813/cleisure/cleisure3.html>

<sup>19</sup> Pink News (June, 2014) Jamaica: Man attacked by homophobic mob for 'wearing lipstick'

## **Recommendations:**

- I. The Charter of Fundamental Rights and Freedoms should be amended to prevent discrimination on the basis of one's sexual orientation, gender identity, gender expression, or any other relevant trepidation.
- II. There needs to be additional training of law enforcement officers who are already in service on human rights, including LGBT rights around the Police Diversity Policy.
- III. The government should address homophobic discrimination with the use of public information sessions.
- IV. The government should take urgent action to strengthen the investigative arm(s) of the JCF and ensure that efforts are made to improve the relationship between the police and citizenry to reduce underreporting in the LGBT community.

## **RIGHT TO SHELTER**

17. Violence and discrimination has resulted in LGBT persons being forced to flee communities and seek refuge in sometimes less than ideal situations. J-FLAG logged 61<sup>20</sup> reports between January 2012 and July 2014 from LGBT persons, including children who were displaced and denied their right to shelter and a family.
18. Of note is a large group of at least thirty gay and transgender persons, mostly youth who reside in the Shoemaker Gully (which is a storm drain) located in New Kingston - one of the city's premier commercial districts, whose right to shelter, food, health, work, and safety is compromised. These young persons have gained the attention of the Jamaican Government and public because of their visibility and a series of local and international investigative journalistic pieces that highlighted their plight.
19. To date, civil society has provided most of the response to the increasing number of homeless LGBT youth living in these deplorable conditions. The Government of Jamaica has indicated that it will address the matter; given the urgency of the situation, however, to date no concrete actions have been taken.<sup>21</sup>

## **Recommendations**

The Government of Jamaica is urged to move expeditiously to implement mechanisms to improve the human dignity and access to justice for LGBT citizens. These include:

- I. Implementing temporary housing facilities that are LGBT friendly. This is necessary due to the high homophobic environment of Jamaica. Staff and others residing at this facility would need sensitisation training to enable them to foster an LGBT-friendly environment.

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<sup>20</sup> Males are most affected by displacement as a result of sexual orientation or identity. Of the 61 persons who reported displacement 58 were males. JFLAG reports complaint of human rights violation faced by LGBT. As a result the data collected by JFLAG is often more as a result of trepidation in the normal justice system.

<sup>21</sup> The Mayor of Kingston & St Andrew, Angela Brown Burke, Councillor for the Trafalgar Division, Kari Douglas and Member of Parliament for South East St. Andrew and Minister of State in the Ministry of Science, Technology, Energy and Mining, Hon. Julian Robinson have indicated plans are afoot to address the issue.

- II. Conducting public education campaigns to encourage the public to be more tolerant of LGBT persons. These should target families, employers and community members in an attempt to reduce the increasing number of displaced LGBT persons.
- III. Conducting research to ascertain the accurate number of LGBT persons who have been displaced as a result of discrimination on the basis of one's sexual orientation, gender identity and/or expression.

## **RIGHT TO HEALTH**

17. Access to healthcare is an issue affecting many Jamaicans. This is partly as a result of poor health-seeking behaviours and financial difficulties. These issues also affect members of the LGBT community, and are sometimes exacerbated by homophobic discrimination within the healthcare system. As a result, many LGBT persons do not seek health services out of fear of disclosing their sexual orientation or sexual practices to health professionals. Furthermore, many public health professionals have never been trained in providing services to LGBT people. For example, in a survey conducted by J-FLAG in a training programme among more than sixty healthcare workers who are a part of the Government's HIV response programme, 65% of them had never been trained to treat with MSM-related health issues and 93% had never been trained to offer counseling about anal sex.
18. The Ministry of Health, through the National HIV Programme and National Family Planning Board (NFPB) has, in partnership with stakeholders such as J-FLAG, undertaken a number of initiatives to build the capacity of public health workers and promote the right to health of all persons, especially for populations such as men who have sex with men and sex workers who are at high risk of HIV infection.

## **Recommendations**

- I. The Government should take steps to expand and increase the total funding allocated to the Enabling Environment and Human Rights Unit/Department of the National Family Planning Board.
- II. The Government of Jamaica should continue to collaborate with NGOs to conduct human rights sensitisation training among health workers, including frontline staff, to raise awareness about the health needs LGBT persons and build their capacity to provide non-discriminatory services to them.
- III. The Government should more robustly implement and promote the non-discriminatory HIV Workplace Policy to ensure compliance by all categories of staff
- IV. The Government should strengthen the Complaints Mechanism and increase efforts to promote its existence and functionality to ensure that health workers understand their obligation to provide non-discriminatory services and allow citizens to report confidentially when their rights have been infringed.