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Jamaica



Colour Pink Group



J-FLAG



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GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM

Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report

**Submitted for consideration at the 116th Session of the
Human Rights Committee
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I. Introduction

This shadow report on violations of the rights of lesbian, gay, bisexual, and transgender (LGBT) people in Jamaica was prepared by the following organizations: J-FLAG;¹ Women's Empowerment for Change (WE-Change)²; Colour Pink Group³; Aphrodite's PRIDE Jamaica⁴; Faculty of Law, the University of the West Indies, Mona Campus; the Center for International Human Rights of Northwestern University School of Law; and the Global Initiatives for Human Rights of Heartland Alliance for Human Needs & Human Rights.

In anticipation of the Human Rights Committee's adoption of the List of Issues for its upcoming review of Jamaica's compliance with the International Covenant on Civil and Political Rights ("Covenant"), we submit this report to draw the Committee's attention to the ongoing violations of the Covenant rights of LGBT individuals in Jamaica. We ask that these violations be addressed in the List of Issues adopted for Jamaica.

These violations include, in particular, the following:

- ** Jamaica has not done enough to prevent, prosecute and punish violent attacks, including mob violence and sexual assault against LGBT individuals, and including cases where the police themselves have stood by or been the perpetrators;
- ** Jamaica has not taken sufficient measures to respect and ensure the rights of individuals to equality and non-discrimination regardless of their real or perceived sexual orientation and gender identity; and
- ** Jamaica has failed to repeal laws criminalizing male same-sex sexual conduct.

¹ J-FLAG is the foremost organisation in Jamaica advocating for, and working to improve the human rights situation of, lesbian, gay, bisexual and transgender (LGBT) persons. The organisation promotes social change by empowering the LGBT community, building tolerance for, and acceptance of, LGBT people, and creating a foundation for policy and legislative reform.

² Women's Empowerment for Change (WE-Change) is a rights-based, women-led, community-based advocacy group committed to increasing the participation of lesbian, bisexual and transgender [LBT] women in social justice advocacy in Jamaica and the Caribbean.

³ Colour Pink Group (CPG) is a nongovernmental organization in Jamaica, focused on reaching Gay, bisexual men, and other Men who have sex with men (MSM), and Transgender persons, who are homeless or displaced. CPG focuses on providing education, life skills, and linkages with healthcare providers in order to provide clients with the necessary tools, and empower them, to rise out of poverty and to positively contribute to the Jamaica society

⁴ Aphrodite's PRIDE Jamaica (APJ) provides psychosocial support resources and encourages AGENCY & positive intra/inter LBT community relations. APJ was founded in 2010 and officially launched on February 14, 2012.

In its November 2011 Concluding Observations following its review of Jamaica's third periodic report, this Committee made the following observations and recommendations:

8. While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of 'being male or female', failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalises consensual same-sex relationships, thus promoting discrimination against homosexuals. The Committee further regrets reports of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26)

The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.⁵

Regrettably, as our report will show, Jamaica has not amended its laws to prohibit discrimination on the basis of sex, sexual orientation and gender identity. Nor has Jamaica repealed its laws which criminalize same-sex sexual relations between consenting adult males. While, as will be noted, the State has taken some measures to promote tolerance and respect for sexual minorities, much more needs to be done.

Our report will conclude with proposed questions for the Committee's consideration for inclusion in the List of Issues.

II. Failure to adequately prevent, prosecute and punish violent attacks, including mob violence and sexual assault against LGBT individuals, and including cases where the police themselves have stood by or been the perpetrators

Violent attacks and threats of violence perpetrated against sexual and gender minorities have been all too frequent in Jamaica. LGBT individuals have been attacked, and sometimes killed, by mobs. Lesbians have been raped in what is perversely viewed as "corrective rape," in the belief that intercourse with a man will "cure" the lesbian of her sexual orientation. Frequent

⁵ UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee: Jamaica*, 17 November 2011, UN DOC. CCPR/C/JAM/CO/3, para. 8.

threats of violence have led LGBT individuals to live in fear and, in some cases, to flee their homes. The State has failed in its obligation to take appropriate measures to prevent these attacks and to vigorously investigate and prosecute the attackers. On some occasions the police themselves have attacked victims or have stood by during attacks by private actors.

These attacks and threats, examples of which are provided below, violate rights protected by Articles 6 (life), 7, (torture and cruel, inhuman, or degrading treatment), and 9 (security of person). Jamaica's failure to take adequate measures to respect and ensure these rights additionally violates its obligations under Article 2(1) (obligation to respect and ensure, without discrimination) and 26 (equal protection of the law). The attacks on teens under the age of 18 additionally violate article 24, which recognizes that every child has the right, without discrimination, to special measures of protection on the part of the child's family, society and the State. The sexual attacks against lesbians additionally violate Article 3 (equality of women and men).

The following incidents are examples of the kinds of violent attacks and threats experienced by LGBT Jamaicans, sometimes at the hands of the police themselves, and of the failure of law enforcement to adequately respond.

A. Violent attacks

During interviews conducted by Human Rights Watch in April and June 2013 with 71 self-identified LGBT Jamaicans,⁶ 12 of the people interviewed reported that "they knew of a friend, partner, lover, or associate who had been murdered because of their real or perceived sexual orientation or gender identity."⁷

Moreover, a 2015 J-FLAG survey of 316 LGBT people in Jamaica indicates that 43% of those surveyed reported being threatened with physical violence in the last 5 years. Eighteen per cent reported being threatened with sexual violence. The study indicates that "on average, these persons reported being threatened with physical violence and experience such violence three times each. They received threats of sexual violence an average of three times, and were sexually attacked an average of two times."⁸

Dwayne Jones, a sixteen-year-old teen, was murdered by a mob in Irwin, a town in St James on 21 July 2013. Dwayne had attended a dance party wearing women's clothing. The teen was viciously attacked when people at the party realized that Dwayne was biologically male. Dwayne was stabbed, beaten, shot and run over by a car before his body was dumped in the

⁶ Human Rights Watch (HRW), *Not Safe at Home. Violence and Discrimination against LGBT People in Jamaica* (report), 21 October 2014, at 8, available at: https://www.hrw.org/sites/default/files/reports/jamaica1014_ForUpload_1.pdf [hereinafter HRW 2014].

⁷ HRW 2014, *supra* note 6, at 23.

bushes by the side of a road.⁹ At least as of August 2015, no one has been brought to justice for this crime.¹⁰

According to a gay man from Montego Bay, he and a group of his gay male friends were attacked around 6:00 p.m. one evening in March 2013 by a mob of about ten men. The attackers, armed with machetes, stones and other weapons, came at them yelling “Battyman fi dead.”¹¹ “Battyman” is a derogatory term for a man who has sex with men, and “fi dead,” in Jamaican, means “should be dead” or “must die.”¹² While the victims saw the mob coming and were able to escape, one had his nose broken by the mob. The man whose nose was broken went to the police that evening, but he later told his friend that “the police didn’t make any effort.”¹³

Another example of mob violence occurred on 6 October 2013 in New Kingston. A gay man was severely beaten in the parking lot at his place of employment by three male co-workers. This attack continued for fifteen minutes in the presence of the company’s security guard. Despite several cries for help, the guard made no effort to assist the abused victim. The attackers also taunted the individual with homophobic slurs, such as “*Battyboy fi dead!*” As a result of this violent attack, the individual suffered severe muscle damage in his right eye, and his vision was significantly deteriorated. Because of his fear of further public shaming and ridicule, the victim has never reported this incident to the police.¹⁴

Another attack occurred on 15 June 2014 when a transgender teen, who was in the process of transitioning her appearance, attempted to purchase lip gloss at a clothing store in May Pen, Clarendon. People in the town had become suspicious because of the individual’s androgynous appearance. When she was seen in the store, a rumor went around that “*There is a Battyman in the store.*” An aggressive mob gained momentum outside the store entrance, chanting “*Kill her, mek wi kill her! Mek wi light har on fire!*” (*Kill her and light her on fire*). Even after the police arrived, the violent mob was unstoppable. The teen narrowly escaped from the store with the help of workers at the clothing store and the police (two of whom went beyond the call of duty to make sure she is safe).¹⁵

B. Sexual Assault

On 22 August 2014, two men broke into the home of a 37-year old lesbian living in Portmore and raped, beat, and stabbed her. Prior to the night of the attack, many people living in the victim’s neighborhood, having seen her female partner visiting her home, had yelled “sodomite” and had threatened her. On the night of the attack, the woman was awakened by the intruders’ shouts of “sodomite, lesbian, dirty girl, we have come for you.” The men took turns raping her.

⁹ HRW 2014 *supra* note 6, at 1.

¹⁰ The Guardian, *Jamaica’s first public gay pride event a symbol of change: ‘It felt liberating’*, 10 August 2015, available at: <http://www.theguardian.com/world/2015/aug/10/jamaica-first-gay-pride-celebration-symbol-change>.

¹¹ HRW 2014, *supra* note 6, at 25.

¹² HRW 2014, *supra* note 6, Note on Jamaican Language, at III.

¹³ HRW 2014, *supra* note 6, at 25.

¹⁴ Incident reported to J-FLAG on 30 September 2014.

¹⁵ Incident reported to J-FLAG on 27 March 2015.

They beat her severely, breaking her arm, and stabbed her in the stomach with a 12-inch knife. As a result of her injuries, she was hospitalized in critical condition.¹⁶

On 15 July 2015, in Rockfort, Kingston, a group of men approached a lesbian and threatened to rape her, telling her that after sexual intercourse with a man, a lesbian would be “cured” of her homosexuality. The woman also received several death threats such as “lesbian fi dead” from people in her neighborhood. As a result of these ongoing threats, the woman felt compelled to move away from Kingston to another part of Jamaica.¹⁷

On 20 September 2015, a lesbian reported being continually subjected to rape threats by neighborhood men. The woman lived with her female partner in a small community in St. Andrew. Men in her neighborhood perceived her as being more masculine and “edgy,” because she dressed like a man and had a short buzz cut hairstyle. She was repeatedly subjected to homophobic slurs and threats of rape, such as: “You Sodomite, we will straighten you out. All you need is a big cocky in you. Sodomite fi dead.” These threats and insults were directed at the woman as she tried to go about her life, including while she stood at her bus stop and even when she was at her own home. These threats were so harrowing that the woman kept a knife with her every night, for fear that her abusers would break into her home and rape her.¹⁸

A 26-year-old lesbian, who was subjected to “corrective rape” as a child, continues to face death threats and threats of rape even today. At the age of twelve, she was raped by her own relatives and other men from her neighborhood to “cure” her of her homosexuality. After facing continuous abuse, threats and remarks because of her sexual orientation, she left her neighborhood to live “in the bushes,” *i.e.*, in the undeveloped areas of rural Jamaica. As a result of these ongoing abuses, she is currently trying to leave Jamaica and obtain asylum in the Netherlands.¹⁹

This woman is not the only lesbian who is being forced by threats of rape and death to seek asylum outside of Jamaica. An increasing number of LGBT persons flee Jamaica to escape repeated threats of rape and murder.

The above documented attacks against lesbian women also constitute violations of article 3 of the Covenant because of the aggravating circumstance of the sexual nature of the aggressions perpetrated by men based on the basis of the victims’ sexual orientation and gender.

C. Attacks and Inaction by Police

1. Police as perpetrators

On some occasions, the police themselves have been perpetrators. For example:

¹⁶ Incident reported to J-FLAG on 4 November 2015.

¹⁷ Incident reported to both J-FLAG and Aphrodite’s P.R.I.D.E Jamaica on 20 August 2015.

¹⁸ Incident reported to J-FLAG on 24 September 2015.

¹⁹ Incident reported to J-FLAG on 7 May 2015.

In January 2013, a gay man who had been beaten by a large crowd was handcuffed by the police and placed in a police car. While he was handcuffed in the car, a police officer hit the man with his baton, saying, “Hey, you’re a fish [a pejorative term in Jamaica for men who have sex with men], and you are a battyman.” At one point the police stopped the car and the two officers continued to hit him. At the station, another police officer told him, “Fish don’t last long in St. Ann,” and “Everyone who comes in comes out dead.” He was held in handcuffs overnight, and released in the morning with the admonition that he should go to church.²⁰

Late in the night on 21 July 2015, a young woman was walking to her home in Kingston. A police officer came up to her and told her to take another route instead of walking the way she was going. She said no, and told the police officer that the other way was not safe for a woman walking by herself. The officer pulled her pants and pepper sprayed her three times. He then told her, “You’re acting like a man so he’s going to treat her like a man.” The officer also popped off her chain and broke her phone during the interaction. The woman believed she was targeted by the police officer because she was perceived to be dressed like a tomboy, which made the police officer assume she was gay.²¹

2. Police failure to intervene to stop an attack

The Jamaican police have made efforts to encourage reporting of crimes against LGBT persons and to intervene when such crimes occurred.²² For example, on August 22, 2013, five allegedly gay men were trapped in their house in Green Mountain because of a mob attack until the police escorted them to safety.²³ However, there have been other occasions when the police have refused to intervene when a crime against an LGBT individual was in progress. For example:

In January 2013, the police watched and did nothing for about twenty minutes while a mob of about 30 people attacked a gay man. Armed with knives, machetes and sticks, the attackers shouted homophobic insults as they beat the man. When the police finally intervened and placed the victim in a police car to separate him from the mob, they handcuffed and beat him.²⁴ (This is the same incident referred to in the preceding subsection of this report.)

3. Inaction and abuse by police when LGBT individuals attempt to report crimes

On still other occasions, the police refuse to take action when LGBT individuals attempt to report crimes, and instead subject the LGBT crime victims to verbal abuse. For example:

When, in August 2012, a lesbian couple went to the Greater Portmore police station to report that they had been raped, they were verbally abused by the police. When the women returned home one night from a party, two men accosted them, forced them inside their house at gunpoint, and

²⁰ HRW 2014, *supra* note 6, at 34.

²¹ Incident reported to Aphrodite’s PRIDE Jamaica.

²² J-FLAG, *Homophobia and Violence in Jamaica* (report), 2013, available at: <http://jflag.org/wp-content/uploads/2014/07/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf> [hereinafter J-FLAG 2013].

²³ Affidavit of Javed Saunja Jaghai indicating reasons for withdrawal of claim, The Supreme Court of Judicature of Jamaica, August 2014, available at:

http://ufdcimages.uflib.ufl.edu/AA/00/02/56/31/00001/Affidavit_javed_jaghai_ROTATED.pdf.

²⁴ HRW 2014, *supra* note 6, at 27. This incident is also referred to earlier

raped them, saying “You not with nuh man. [You aren’t with guys.]” When the women reported the crime, the police officer asked if they were related. The women said that they were “just friends, sharing the place.” The police officer responded, “You’re sodomites, look at her, a sodomite them, why did you come to the police station? A fuck you want, a fuck you get.” According to the women, the police did not take any action.²⁵

In February 2013, a gay 17-year-old was severely beaten by his brother because of his sexual orientation. When he went to the Montego Hills police station to report the crime, he was unsuccessful. According to this young man, although he waited for four hours, “They didn’t do anything. The police said, ‘That’s the reason he is being beaten. He’s a battyman, a fish.’”²⁶

In another February 2013 incident, when a homeless gay youth went to the New Kingston police to report that he had been chased by a mob of construction workers, the police on duty would not let him use their pen to sign the complaint: “You are battyman. We don’t want battyman to use our pen.”²⁷

Moreover, it is noteworthy that the perception of a significant number of common Jamaicans is that the police treat LGBT persons worse than heterosexual persons. According to the 2012-2013 Jamaica National Crime Victimization Survey, 46.5% residents in Kingston report that they feel that the police treat homosexuals worse than heterosexuals.²⁸ The percentages in other parishes are: St Andrew (16.5%), St Thomas (19.1%), St Mary (31.8%), St James (32.3%), Clarendon (28.2%), St Catherine (22.3%) and Trelawney (32.3%).²⁹

4. Failure by LGBT crime victims to report crimes against them, due to police attitudes

It is important to note that in an effort to improve public confidence in the police, in 2011 the Jamaica Constabulary Force issued a Policy on Diversity with the aim to “effectively transform the negative aspects of police culture manifested in the scant regards paid to reports made by members of diverse groups, as it relate to the incidence of crimes committed against them.”³⁰ According to the policy definitions, diverse groups comprise, among others, persons of various sexual orientation.³¹ In addition, the police have undergone a number of human rights-related capacity building and sensitization workshops. For example, in September 2015, two-hundred and thirty (230) police officers participated in a two-day training which ‘focused on the safety and security of women and girls, persons living with disabilities, marginalised youth, and members of

²⁵ HRW 2014, *supra* note 6, at 29-30.

²⁶ HRW 2014, *supra* note 6, at 33. “Fish” is another pejorative term used in Jamaica for men who have sex with men. *Id.* at III.

²⁷ HRW 2014, *supra* note 6, at 34.

²⁸ Jamaica Ministry of National Security, *The 2012-2013 Jamaica National Crime Victimization Survey. Final Report*, 2013, at 259, available at:

<https://www.mns.gov.jm/sites/default/files/documents/files/JNCVS%20FINAL%20REPORT.pdf>.

²⁹ Jamaica Ministry of National Security 2013, at 262.

³⁰ Jamaica Constabulary Force Orders Serial No. 3351, Part I Sub. No. 1, Policy on Diversity, Purpose, 25 August 2011.

³¹ Jamaica Constabulary Force Orders Serial No. 3351, Part I Sub. No. 1, Policy on Diversity, Definitions, 25 August 2011.

the lesbian, gay, bisexual or Transgendered (LGBT) community.’³² However, as J-FLAG stresses, “much more work needs to be done to ensure that all Jamaicans are protected and where their rights are infringed, they are treated equally before the law.”³³

Negative police attitudes towards LGBT persons persist and as a consequence, many LGBT crime victims do not even attempt to report crimes to the police. For example:

In August 2014, a young man rented two rooms for himself and his partner in St. Catherine. He told the landlady that the partner was his cousin. The landlady would watch them and peep through the door. Once, when the young man was traveling, upon his return home he found his partner sitting outside crying and shaking. The partner told the man that their landlady had brought someone with a gun and had threatened them and said they had to get out, saying that the Holy Spirit had told her that they were gay. The couple did not report any of this to law enforcement authorities because, in their view, “it doesn’t go anywhere.”³⁴

This attitude is widespread among LGBT individuals. After interviewing 71 LGBT individuals during April and June 2013, Human Rights Watch reported that “[m]ost of the LGBT people we interviewed said they did not even report criminal acts to the police, fearing they would be unresponsive because of the victim’s sexual orientation or gender identity.”³⁵ This same view was widely expressed at a focus group held in Kingston in October 2015 with a group of ten homeless gay and transgender individuals.³⁶ LGBT NGOs in Jamaica report the same, based on their extensive work with LGBT victims of hate crimes.

A 2013 J-FLAG report titled “Homophobia and Violence in Jamaica” indicates that a significant number of incidents perpetrated against LGBT persons were not reported until several months after they occurred.³⁷ Among the reasons for this late reporting was the fear to be known as part of the LGBT community.³⁸

A 2015 study entitled the Developmental Cost of Homophobia which was commissioned by J-FLAG indicates that a large number of LGBT people did not report the last incident of physical or sexual assault that was perpetrated against them to the police. 30.1% of the persons did not report because they felt the incident was too minor to be reported, while 40.5% did not report because they felt the police would not do anything to address the matter. About 1 in 4 (25.5%) feared a homophobic response from the police, and about 1 in 5 (22.9%) did not report because they felt too ashamed or embarrassed and did not want anyone to know what had happened to them.³⁹

³² Jamaica Observer, *Cops urged to use diversity training to make a difference*, 14 October 2015, available at: <http://www.jamaicaobserver.com/news/Cops-urged-to-use-diversity-training-to-make-a-difference>

³³ J-FLAG 2013, *supra* note 22, at 4.

³⁴ Interview with victim, 30 October 2015.

³⁵ HRW 2014, *supra* note 6, at 17.

³⁶ Focus group discussion, 28 October 2015.

³⁷ J-FLAG 2013, *supra* note 22, at 3.

³⁸ *Id.*

³⁹ J-FLAG, *The Developmental Cost of Homophobia. The Case of Jamaica (study)*, 4 November 2015, at 59 [hereinafter J-FLAG 2015].

Figure 1:⁴⁰

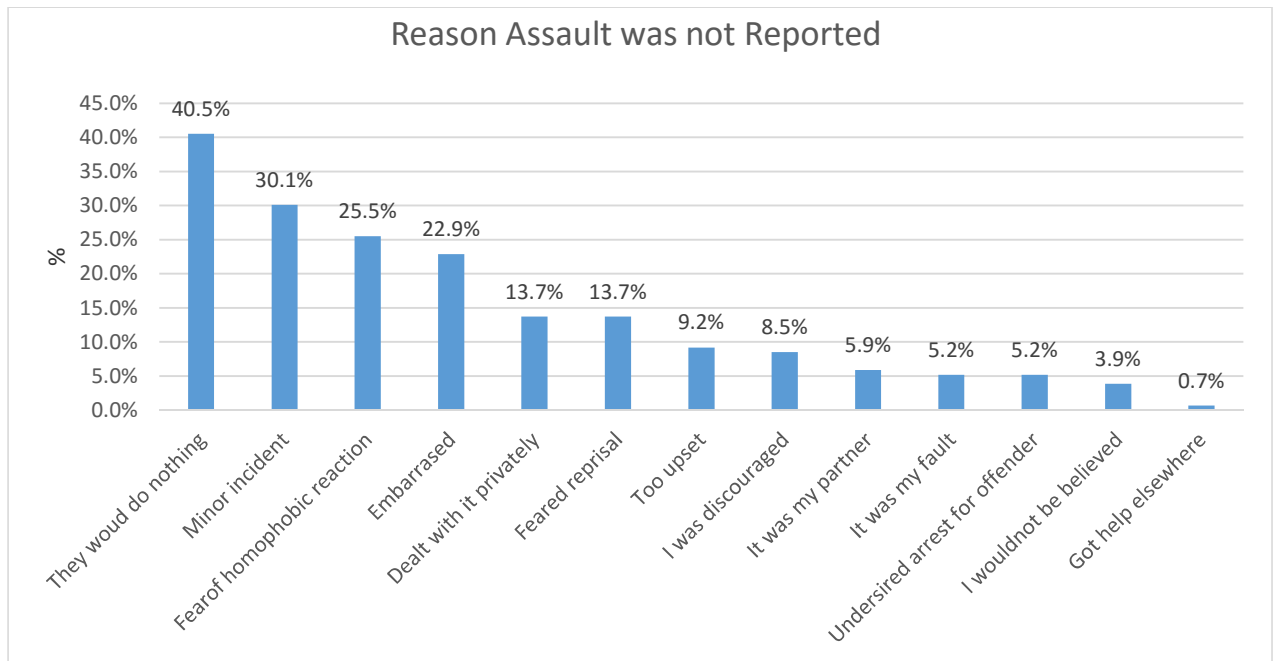
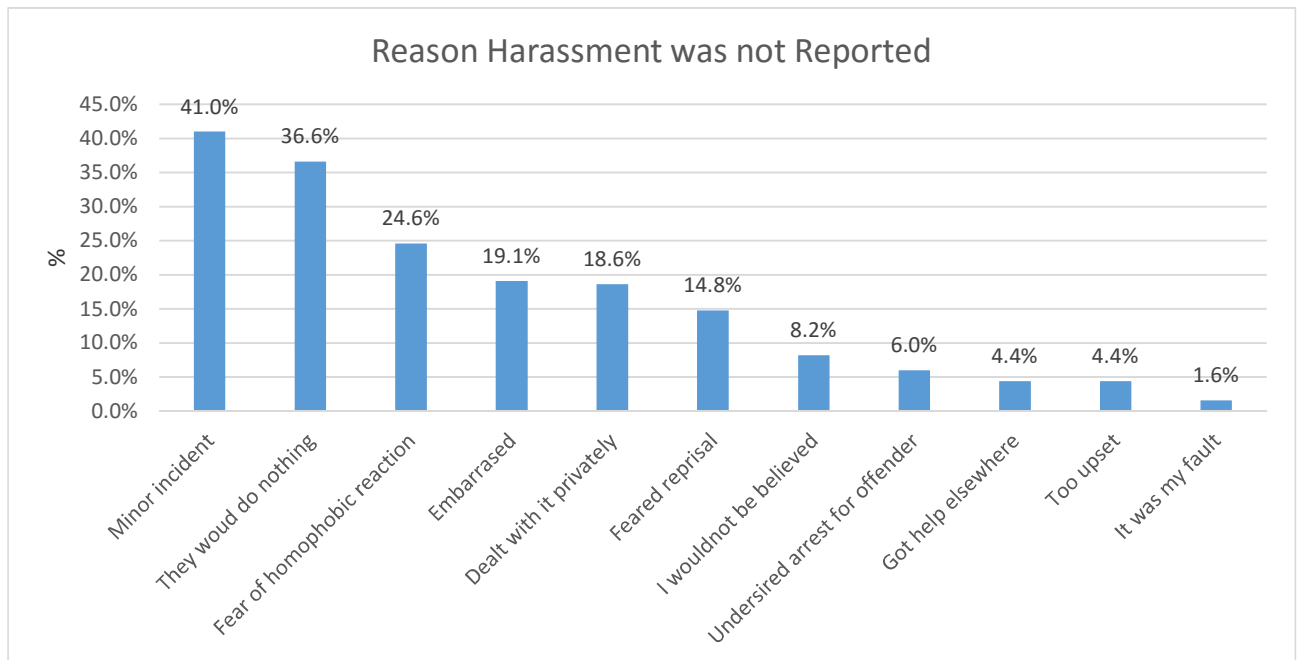


Figure 2:⁴¹



⁴⁰ J-FLAG 2015, *supra* note 39, at 59.

⁴¹ J-FLAG 2015, *supra* note 39, at 60.

III. Failure to take appropriate measures to respect and ensure the right of LGBT individuals to equality and non-discrimination

Notwithstanding measures undertaken to address the abuse and reduce stigma against the LGBT population, such as the above mentioned Jamaica Constabulary Force Policy on Diversity and human rights-related capacity building and sensitization workshops for the police,⁴² homophobia and transphobia are widespread in Jamaica, leading to frequent acts of discrimination based on sexual orientation and gender identity. Regrettably, Jamaica has failed to enact laws to outlaw and sanction discrimination on the basis of sexual orientation and gender identity by private actors. Indeed, by continuing to criminalize male same-sex sexual conduct, Jamaica gives seeming legitimacy to the stigmatization of, and discrimination against, LGBT individuals.

Article 2(1) of the Covenant requires States parties to “ensure” as well as “respect” Covenant rights. As this Committee has noted:

[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights . . .⁴³

By failing to protect LGBT individuals from stigmatization and discrimination based on their sexual orientation and gender identity, Jamaica has violated its obligations under Articles 2(1) and 26 to respect and ensure the rights to equality and non-discrimination.

In cases affecting teens below the age of 18, there is an additional violation of the Article 24 obligation to provide special measures of protection to children.

A. Failure to prohibit by law discrimination on the basis of sexual orientation and gender identity

Although Jamaica’s 2011 Charter of Fundamental Rights and Freedoms (Chapter III of the Jamaican Constitution) includes “the right to equality before the law,”⁴⁴ this broadly-worded provision is followed by a narrower one on “the right to freedom from discrimination.”⁴⁵ By its terms, this latter provision applies only to discrimination based on certain enumerated grounds.⁴⁶

⁴² See Section C “Attacks and Inaction by Police”, sub-section 4 “Failure by LGBT crime victims to report crimes against them, due to police attitudes” of this report.

⁴³ UN Human Rights Committee (HRC), *General Comment No. 31*, para. 8, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, CCPR/C/21/Rev.1/Add.13, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>, General Comments.

⁴⁴ The Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), Section 13 (3) (g) (i), available at: [http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf).

⁴⁵ The Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), Section 13 (3) (i).

⁴⁶ The Jamaican Charter of Fundamental Rights and Freedoms (Chapter III of the Jamaican Constitution) prohibits “the right to freedom from discrimination on the ground of – (i) being male or female; [and] (ii) race, place of origin,

There is no catch-all category of “other status,” and neither sexual orientation nor gender identity are among the grounds on which discrimination is prohibited.⁴⁷ Indeed, instead of prohibiting discrimination on the basis of “sex” – a form of discrimination that this Committee found in 1994 to include discrimination based on sexual orientation⁴⁸ – the 2011 Jamaican constitutional provision prohibits discrimination on the ground of “being male or female.”⁴⁹

B. Pervasive Homophobia and Transphobia

The examples set out above of mob attacks, rapes, and other acts and threats of violence motivated by the victim’s actual or perceived sexual orientation or gender identity attest to the homophobia and transphobia present in Jamaican society. So, too, do the examples of discrimination discussed below.

J-FLAG’s 2015 study on *The Developmental Cost of Homophobia: The Case of Jamaica* noted as follows about the levels of homophobia in Jamaica:

“The Latin American Public Opinion Project [LAPOP] (2012) found that Jamaica was particularly unsupportive of the basic rights of homosexuals. They found that persons with a higher level of schooling, those of a higher economic standing and persons who were more aware of current affairs issues were more likely to be supportive of the notion of equal rights for LGBT people (p. xxxv). The Department of Sociology, Psychology and Social Work at the University of the West Indies (UWI) in 2012 in the National Survey on attitudes and Perceptions towards Same-sex Relationships found that males; persons “who listen mostly to reggae and dancehall music”; and persons who attended church frequently were more likely to have negative attitudes towards homosexuals.”⁵⁰

In June 2014, an estimated 25,000 Jamaicans rallied in the heart of Kingston to “resist the homosexual agenda” and oppose repeal of the laws criminalizing male same-sex sex. The mass rally was organized by Jamaica CAUSE (Churches Action Uniting Society for Emancipation), a coalition of religious groups formed in 2012 and followed a series of small protests outside of the University of the West Indies, Mona Campus. The crowd shouted its approval when the chairman of the rally, Alvin Bailey, proclaimed that “our emancipation means standing against

social class, colour, religion or political opinions.” The Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), Section 13 (3) (i).

⁴⁷ *Id.*

⁴⁸ HRC Communication No. 488/1992, *Toonen v. Australia*, U.N. Doc CCPR/C/50/D/488/1992, 1994, at 8.7.

⁴⁹ The Jamaican Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), Section 13 (3) (i) (i). The *Report of the Joint Select Committee on its Deliberations on the Bill entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters* shows that this Joint Select Committee advised on the word “sex” be used as meaning male or female in order to ensure that “sex” is not interpreted to include “sexual orientation”. See *Report of the Joint Select Committee on its Deliberations on the Bill entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters* at Section 13(2)(j) Freedom from Discrimination, available at: <http://jis.gov.jm/media/charter-of-rights1.pdf>

⁵⁰ J-FLAG 2015, *supra* note 39, at 57.

the homosexual agenda, emancipation for us means standing up against the repealing of the buggery law.”⁵¹

Jamaica CAUSE held another mass rally in Kingston on 27 September 2015, ahead of a visit to Jamaica by British Prime Minister David Cameron, to urge the Jamaican government not to give in to international pressure on Jamaica to decriminalize same-sex sex and to allow same-sex marriage.⁵² It was estimated that nearly 20,000 supporters attended the rally.⁵³ Dr. Everett Brown, president of Jamaica’s largest religious denomination, the Seventh Day Adventists, characterized “same-sex marriages and homosexuality” as “evil” and an “abomination,” and as the “product of minds void of understanding.” Roman Catholic Father Richard Ho Lung “urged attendants at the rally to resist the LGBT agenda, which he said is from the devil.”⁵⁴

A 2015 survey of LGBT individuals in Jamaica found high rates of harassment and discrimination against LGBT people. The survey was conducted among 316 LGBT persons in Jamaica – 63% of whom were assigned the male biological sex at birth and 34% assigned the female biological sex at birth. 58% of persons surveyed were under 25 years old and 32% were between 25 and 39 years. Most of the persons surveyed came from urban (28%), suburban (25%), rural (24%) and inner-city (20%) areas. The survey found that 71% of males who identify as gay have experienced some form of harassment or discrimination in the last 12 months compared to 59% of lesbians, 35% of bisexuals and 29% of those who identified as transgender. It is important to note that while there has been considerable progress towards improving the human rights situation of LGBT people in Jamaica, 43% reported being threatened with physical violence in the last five years. While threats might be more frequent than actual occurrence of violence, they create a culture of hostility and fear among LGBT people in the country. Consequently, many LGBT people report avoiding public places like squares and roadways and public transportation, public establishments, and faith-based organizations.⁵⁵

C. Discrimination in Access to Health Care

The 2015 survey of 316 LGBT Jamaicans found that “the experience with healthcare service providers was varied. The majority of the respondents (52.5%) reported being forced to undergo seemingly unnecessary medical or psychological testing. A third (32.2%) also experienced inappropriate curiosity regarding their identity. Approximately 17% felt they had not received equal treatment, and 15% declined treatment because they felt fear or discrimination or intolerance, and 15% also felt the need to change their general practitioner or specialist because of negative reaction.”⁵⁶

⁵¹ Jamaica Observer, *Thousands rally against tossing out buggery act; shout out for clean, righteous living*, 30 June 2014, available at: http://www.jamaicaobserver.com/news/No-to-homo-agenda_17050490.

⁵² Jamaica Observer, *Government warned! Urged to resist pressure from British PM to support gay agenda*, 29 September 2015, available at: http://www.jamaicaobserver.com/news/Government-warned-_19231117.

⁵³ New York Times, *On Being Queer in the Caribbean*, , 31 October 2015, available at http://www.nytimes.com/2015/11/01/opinion/sunday/on-being-queer-in-the-caribbean.html?_r=0.

⁵⁴ Jamaica Observer, *Government warned! Urged to resist pressure from British PM to support gay agenda*, 29 September 2015.

⁵⁵ J-FLAG 2015, *supra* note 39, at 34, 43, 47.

⁵⁶ J-FLAG 2015, *supra* note 39, at 55

Transgender individuals do not have access in Jamaica to hormonal and surgical treatments for their transition process.⁵⁷ Some, in their desperation, have begun buying hormones online and self-medicating.⁵⁸ Without the supervision of a trained medical professional these individuals may overdose or underdose, leading to medical complications.⁵⁹

A second problem in accessing healthcare is the discriminatory treatment LGBT individuals too often receive at hospitals and health centers. While doctors and nurses sometimes discriminate against LGBT patients, more often the problem lies with non-medical staff such as security guards, janitors, and reception staff. Non-medical staff have turned LGBT patients away or treated them in a humiliating manner. On occasion, they have violated patient confidentiality by disclosing to others the person's sexual orientation or gender identity. The following examples illustrate these problems.

In one case in 2014, the staff member in charge of medical docketing at the Comprehensive Health Clinic disclosed, without permission, the HIV status of a transgender woman to local community members. The woman had to change her healthcare service provider, to avoid further public shaming and ridicule.⁶⁰

On 24 October 2015, a gay man and an ally were attacked by a violent mob in the Cholera Cemetery area of Kingston. Both men were severely beaten and the gay man's face was cut and his chest was slashed. When he was taken to Kingston Public Hospital, though he was admitted in critical condition, the non-medical staff refused to assist him, because he identified as a gay man.⁶¹

In another case, a homeless gay man who was experiencing extreme pain from a sexually transmitted infection was denied entry to the Comprehensive Health Clinic on Slipe Pen Road in Kingston. A friend of his had arranged financing for the treatment and had offered to accompany him to the clinic, but the man initially refused to go, saying he would rather die than risk his life by going to the hospital. He was afraid of being publicly shamed and ridiculed because of his sexual orientation. His friend persisted and took him to the hospital. Due to his homeless status, the individual was wearing a marina (a vest) and shorts. Although the hospital's policy is to provide such patients with plastic overalls, the security officer refused him entry into the hospital, unless fully dressed.⁶²

D. Discrimination in Employment

In November 2012, a gay man who was employed at the rank of Lieutenant was dismissed from the Jamaica Defence Force after fifteen years of service because of his sexual orientation. His superior was made aware of his sexual orientation and requested a meeting with the man. The Lieutenant was asked if he was gay, and upon answering in the affirmative, he was asked to

⁵⁷ Interview with representative of Colour Pink Group, 28 October 2015.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Incident reported to J-FLAG on 3 November 2015.

⁶² Interview with the friend who had taken the gay man to the hospital, 28 October 2015. Although the friend who was interviewed could not recall the date of this incident, she indicated that it occurred sometime after 2012.

leave the force. He became extremely depressed, feeling anger, helplessness and hopelessness, and attempted to commit suicide.⁶³

A transgender woman reported that because of repeated past experiences with employment discrimination, she has stopped trying to find a steady job and only works when she can obtain freelance work for British or American businesses, with the result that she is unable to obtain a steady income. She related multiple examples of being let go from jobs due to her gender identity.⁶⁴

In 2012, a gay man was severely beaten by three of his male coworkers in the bathroom of his workplace. The victim's tooth was broken during the attack. The victim believes he was attacked because he was viewed as effeminate or flamboyant.⁶⁵

It is noteworthy that data from the J-FLAG 2015 study indicate that the persons who tend to be more open about their LGBT status are more likely to be denied a job.⁶⁶

E. Discrimination in Housing and Homelessness

LGBT individuals have experienced discrimination by landlords and landladies who do not want to rent to them or force them out of their home because of their sexual orientation or gender identity. In one case, a young man had rented two separate rooms in St. Catherine in 2014 for himself and his partner, telling the landlady that the other man was his cousin. They did not actually need two rooms, but they paid the extra money to rent a second room to maintain the fiction that they were living separately. But his landlady watched them, suspecting they were gay. The men moved out when their landlady, accompanied by someone with a gun, threatened the men and told them they had to get out.⁶⁷

In another case, in 2012, a human rights defender and their friend sought to rent a two-bedroom apartment in New Kingston. They report being asked intrusive questions by the individual responsible for the property about whether or not they were certain they were just friends and about why they wanted to rent the apartment. Their attempt to rent the property failed because, the caretaker reported, the property owner is a Christian and does not desire to rent to homosexuals.⁶⁸

Homelessness is a very serious problem for many LGBT Jamaicans. LGBT individuals have been forced to leave their homes and communities and live on the streets due to lack of tolerance, violence and threats of violence. Between January 2012 and July 2014, J-FLAG received 61 reports from LGBT persons, including children, who were displaced and denied their right to shelter and a family.⁶⁹ All of the twelve reports received in 2012 were from boys under 18 years of age.⁷⁰

⁶³ Interview with J-FLAG staff, 30 October 2015.

⁶⁴ Interview with victim, 28 October 2015.

⁶⁵ Interview with J-FLAG staff, 30 October 2015.

⁶⁶ J-FLAG 2015, *supra* note 39, at 66.

⁶⁷ Interview with victim, 30 October 2015 (this incident was also referenced in earlier section on violence).

⁶⁸ Interview with the human rights defender who was denied the apartment, 28 October 2015.

⁶⁹ J-FLAG, Recommendations for the 22nd UPR Session of Jamaica.

⁷⁰ J-FLAG, Presentation for Recommendations for the 22nd UPR Pre-Session of Jamaica.

One homeless gay man recounted his experience as follows:

“They couldn’t take my ‘lifestyle’. . . . I had to leave from a very tender age. Well I was threatened because of my lifestyle because as I stated that’s the road I chose to travel and they always speak about stuff that they would do and I see them do stuff so I felt threatened about my life and since 14 so I left. My mom has a farm in Golden Spring and so on and off I would go there and I really don’t stay there a lot because I am not originally from there and if where I am from persons will hurt me what strangers would do to me . . . I’ve seen them beat guys, I saw them beat a guy who was not gay but who performs oral sex. I saw them torture him and that is when I left because they would always hit-out against boys like me. They tried to beat me already because of an incident where I got caught with a boy ...”⁷¹

Another homeless individual said the following:

“I couldn’t walk on certain road because they started throwing stones at me. I had to be hiding from stones at me and sometimes I said I won’t hide I had to defend myself. I have to walk with my acid and cutlass . . . a guy threw stones at me whilst I was in the dance ... [T]hen some men came in ... They started firing guns [and] dem say ‘dem waa kill the battyman’ [they want to kill the gay man]. . . I then told myself that I have to leave this community, I went on the road...”⁷²

Life for homeless LGBT individuals is extremely hard.⁷³ As one gay man put it, “[L]iving on the road for a gay man is very very hard, hard.”⁷⁴ Another agreed: “[I]t tough out there, it really tough out there.”⁷⁵ Homeless LGBT individuals live in abandoned buildings, open lots and gullies. They are forced to move frequently, both to avoid the threat of violence and because the authorities constantly chase them away from the places where they have settled. Those who are homeless do not have access to such basic necessities as running water, proper bathroom facilities, a place to shower and facilities for ironing their clothes, with the result that their appearance impedes their ability to get or keep a job.⁷⁶

Homeless LGBT individuals are at great risk of violence. For example, a homeless individual recounted the following incident from early October, 2015:

“[Name] fell asleep in New Kingston and when he woke up he was covered in blood. Someone dropped something on his head. Dropped a stone on his head. He doesn’t know who did it. He didn’t even know what happened. . . . [S]omeone pointed out to him that blood was on his clothes and then he said “wah do me, wah do me, wah do me?”⁷⁷ He didn’t know that he was sleeping and

⁷¹ Focus Group Discussion, 28 October 2015.

⁷² Focus Group Discussion, 28 October 2015.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Translation: What is wrong with me, what is wrong with me?

someone passed and dropped something on his head. So these are the things we are facing on the road.”⁷⁸

This creates an unending cycle of violence. LGBT individuals have been forced to leave their communities because of the fear and threat of violence, yet they are forced to live on the streets where they are equally faced with physical violence being perpetrated against them.

IV. Criminalization of male same-sex sexual conduct

Long after gaining its independence in 1962, Jamaica retains colonial-era laws that make male same-sex sexual conduct a criminal offence.⁷⁹ While these laws have hardly been used in recent years, their continuing existence helps to entrench and endorse a culture of heteronormativity, intolerance and homophobia toward lesbian, gay, bisexual and transgender Jamaicans and therefore legitimizes differential treatment, discrimination, harassment, violence and other forms of abuse which (as described above) remain pervasive in Jamaica despite progress over the last few years.⁸⁰ Unfortunately, as recently as May 2015 during the Universal Periodic Review (UPR) and September 2015 during the 30th Session of the Human Rights Council, the Government of Jamaica did not accept recommendations to repeal or amend “the buggery law.”

Sections 76 and 77 of the Jamaican Offences Against the Person Act characterize male same-sex sexual conduct as an “unnatural offence” and an “abominable crime.”⁸¹ These sections read as follows:

Unnatural Offences

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.⁸²

Under the heading “Outrages on Decency,” section 79 of the Offences Against the Person Act additionally criminalizes “any act of gross indecency” by one male with another, whether the conduct takes place “in public or private.”

⁷⁸ Focus Group Discussion, 28 October 2015.

⁷⁹ HRW 2014, *supra* note 6, at 10 (colonial origin); <http://www.nlj.gov.jm/Ja50/News.htm> (date of independence).

⁸⁰ J-FLAG 2013, *supra* note 22, at 3.

⁸¹ The Offences Against the Person Act (2010), Sections 76-77, available at:

http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf.

⁸² *Id.*

79. Any male person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.⁸³

These laws are specifically protected by the Constitution. In April 2011, Jamaica amended Chapter III of the Constitution with the adoption of a new Charter of Fundamental Rights and Freedoms (“Charter of Rights”).⁸⁴ The Charter of Rights declares that, with limited exceptions, “Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes” the rights enumerated in the Charter.⁸⁵ Among the enumerated rights are the following:

- (g) the right to equality before the law;
- (h) the right to equitable and humane treatment by any public authority in the exercise of any function;
- (i) the right to freedom from discrimination on the ground of –
 - (i) being male or female;
 - (ii) race, place of origin, social class, colour, religion or political opinions;
- (j) the right of everyone to –
 - * * *
 - (ii) respect for and protection of private and family life, and privacy of the home.⁸⁶

Unfortunately, section 13(12) of the Charter of Rights restricts the application of these rights to the LGBT community by sheltering Jamaica’s criminalization of same-sex intercourse from any constitutional challenge:

Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, relating to –

⁸³ *Id.* at 26.

⁸⁴ Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), Preamble and Sections 1-2.

⁸⁵ *Id.* Section 2, setting out the new Sub-section 13(2) of the Constitution.

⁸⁶ *Id.* Section 2, setting out the new Sub-section 13(3) of the Constitution.

(a) sexual offences;

* * *

shall be held to be inconsistent with or in contravention of the provisions of this Chapter.⁸⁷

These laws violate the Covenant rights to equality, non-discrimination, and privacy. As this Committee has repeatedly recognized, laws that criminalize private, adult, consensual same-sex sexual conduct violate the right to equality and non-discrimination enshrined in articles 2(1) and 26. Such laws also violated the article 17 right to protection against arbitrary or unlawful interference with privacy. It has long been the jurisprudence of this Committee that “adult consensual sexual activity in private is covered by the concept of ‘privacy.’”⁸⁸

V. Proposed Questions for the List of Issues for Jamaica

1. What measures has Jamaica taken, and what additional measures will it take, to prevent acts of violence motivated by the real or perceived sexual orientation or gender identity of the victims? What additional measures will Jamaica take to ensure that acts of violence against LGBT individuals are promptly and fully investigated, prosecuted, and punished, so that perpetrators are held accountable?
2. What additional measures will Jamaica take to stop police violence against and verbal abuse of LGBT individuals, and to ensure that police officers treat LGBT individuals with respect, including in situations when LGBT individuals report crimes that have been perpetrated against them?
3. What measures has Jamaica taken, and what additional measures will it take, to promote tolerance and respect among members of the Jamaican public for LGBT individuals? Will Jamaica, as one such measure, repeal the provisions of the Offences Against the Person Act that criminalize private, adult, consensual sex, including same-sex sexual conduct?
4. Will Jamaica amend its Charter of Fundamental Rights and Freedoms (Chapter III of the Jamaican Constitution) to include sexual orientation and gender identity among the grounds upon which discrimination is prohibited? What additional measures will Jamaica take to prevent discrimination based on sexual orientation and gender identity by State and private actors?

⁸⁷ *Id.* Section 2, setting out the new Sub-section 13(12) of the Constitution.

⁸⁸ HRC Communication No. 488/1992, *Toonen v. Australia*, U.N. Doc CCPR/C/50/D/488/1992, 1994, at 8.2.