

Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Jamaica For the 22nd Session of the Universal Periodic Review – April / May 2015

This report is submitted by **J-FLAG**¹ and the **Sexual Rights Initiative (SRI)**² to highlight violations of the rights of LGBT people in Jamaica. The report includes recommendations to the State on how to further protect and promote rights of LGBT people in Jamaica.

Key Words: LGBT People – Sexual Orientation - Gender Identity and Expression – Discrimination based on SOGIE – Criminalization – Hatred crimes.

International Obligations and Discrimination

1. Jamaica is party to the following conventions that are of relevance to LGBT issues/rights: The International Covenant on Civil and Political Rights, The Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights, The Convention on the Elimination of All Forms of Discrimination Against Women, and The Convention on the Rights of the Child. Despite, the country systematically has failed to guarantee and protect LGBT's human rights. As a consequence of this, daily, LGBT people suffer discrimination and violence practically in all areas of their lives, supported by a long rooted cultural homophobia.
2. Jamaica's Constitution was enacted in 1962, the same year the country gained independence. In the local framework, citizens' rights are protected under the Charter of Fundamental Rights and Freedoms, passed in 2011³. While the Charter articulates grounds for the prohibition of discrimination, it does not offer protection on the basis of one's sexual orientation or gender identity/expression.
3. During the last UPR Review of the country in January 2011, Jamaica received recommendations calling for actions to combat discrimination based on sexual orientation and gender identity. On one hand, the State responded that it endeavour to take the necessary steps to address the concerns of all individuals⁴ and also accepted a recommendation to provide all law enforcement officials with proper sensitivity training in relation to sexual orientation, gender identity and HIV/AIDS, but considering that this last measure was in process of implementation⁵. On the other hand, the State rejected to protect and include LGBT people among the groups that have been historically discriminated in the country⁶.

Recommendations

The state of Jamaica should

¹ **J-FLAG** is a non-profit, non-partisan organization that 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.

² **The Sexual Rights Initiative** is a coalition including Akahata– Latin American team work on sexualities and genders-; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others.

³ Chapter Three of the Constitution, [Fundamental Rights & Freedoms](#)

⁴ A/HRC/16/14/Add.1

⁵ A/HRC/16/14, 99.34

⁶ A/HRC/16/14, 98.37

4. Enact an anti-discrimination law that explicitly reflects non-discrimination based on sexual orientation and gender identity/expression to provide effective protection for LGBT people, and establishes anti-discrimination measures through specifically assigned and mandated offices in accordance with universal human rights standards.
5. Amend The Charter of Fundamental Rights and Freedoms to prevent discrimination based on sexual orientation, gender identity/ expression, or any other category.
6. Implement awareness-raising campaigns all along the country to eliminate discrimination based on sexual orientation and gender identity/expression, to promote the full inclusion of LGBT people in society.

Criminalization of sexual practices

7. Jamaica's legislation does not criminalize the status of being LGBT but condemns certain sexual practices by The Offences Against the Person Act⁷. This Act makes it illegal for any person (whether males or females) to engage in anal intercourse in private or public spaces. This Act also prevents adults from consenting to anal intercourse. Sections 76 through 80 criminalise anal intercourse as well as all forms of male same-sex intimacy. Summary conviction for the “abominable crime of buggery” attracts a maximum sentence of 10 years imprisonment with or without hard labour.
8. The Sexual Offences Act 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” as mentioned above. 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.
9. Although Jamaica received several recommendations during its first UPR mentioning about the need to repeal all provisions that criminalize same-sex activities between consenting adults according to international standards, they did not enjoy the support of Jamaica.⁸
10. Persons who are suspected of having sexual practices that are not in accordance with heteronormative traditions are victims of discrimination and physical or psychological violence.

⁷ Section 76. Unnatural crime. Whosoever shall be convicted of the abominable crime of buggery ... shall be liable to be imprisoned and kept to hard labor for a term not exceeding ten years.

Section 77. Attempt. 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 labor

Section 79. Outrages on decency. 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 misdemeanor, 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.

Section 80. Other matters. Any constable may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, that is to say the interval between 7 o'clock in the evening and 6 o'clock in the morning of the next succeeding day, and whom he shall have good cause to suspect of having committed, or being about to commit any felony in this Act mentioned, and shall take such person, as soon as reasonably may be, before a Justice, to be dealt with according to law.

<http://moj.gov.jm/sites/default/files/laws/Sexual%20Offences%20Act.pdf>

⁸ A/HRC/16/14, 101.18 to 101.25

Male persons are the most harmed, as they could be victims of defamation, extortion, work dismissal and all class of injuries, including hate crimes.

Recommendations

The state of Jamaica should

11. Decriminalize consensual non-procreative sexual relations and sexuality between adults, including same sex adults, by repealing The Offences Against the Person Act.
12. Enacts anti-hate crime legislation to protect the lives and integrity of LGBT people, ensure privacy and confidentiality of information, and provide for speed and effective criminal, administrative and civil remedies.
13. Implement awareness-raising campaigns and open a dialogue about culture and human rights to guarantee that no human rights violations will be perpetrated against anyone –including LGBT people- under the name of culture, tradition or nature.

Violence against LGBT people

14. Jamaica is equipped with numerous institutions mandated to protect the human rights of citizens⁹, but there are no statutory institutions that have specific responsibility to address LGBT issues. Though there has been notable progress¹⁰ towards engendering a more equal place for LGBT community, intense cultural prejudices and antipathy toward LGBT people continues to be prevalent.¹¹ Many LGBT persons continue to report human rights violations relating to, inter alia, displacement, physical attack, sexual violence and threats/intimidation.
15. Crime and violence is one of the main concerns of LGBT Jamaicans¹². Between January 2012 and June 2014, there were 198 reports of human rights violations to J-FLAG and at least in 48 cases LGBT people were seeking support to obtain asylum. In addition, though in the last years more LGBT people are reporting acts of violence and discrimination to the police¹³ and to J-FLAG, it is suspected that a great number of incidents still go unreported or they are not reported immediately¹⁴.
16. Access to justice and redress is therefore a major problem for LGBT Jamaicans. This is due to the hostile social and cultural environment, which results in LGBT Jamaicans fearing further discrimination or persecution and their sexual orientation or “non-conforming” gender identity becoming public¹⁵ if they report such human rights violation’s acts.

⁹ The Independent Commission of Investigations (INDECOM), the Office of the Public Defender, the Bureau of Gender Affairs and the Child Development Agency (CDA) 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, among others.

¹⁰ J-FLAG Top 10 in 2013 Report

¹¹ National Survey on Attitudes & Perceptions Towards Same-Sex Relationship (2012 & 2013)

¹² Some of the human rights violations documented by J-FLAG are a) The brutal killing of a 16 year old Dwayne Jones who was considered to be transgender, in July 2013. This murder is still unresolved. <http://jamaica-gleaner.com/gleaner/20130813/cleisure/cleisure3.html>; and b) the attempted lynching of a gender non-conforming young person in May Pen in June 2014 who had to seek refuge while a mob converged outside demanding the person’s release. The person was rescued by the police and taken to safety.

¹³ <http://jamaica-gleaner.com/latest/article.php?id=51228>

¹⁴ Between January 2012 and August 201, 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 reported in that period which were perpetrated in previous years.

¹⁵ <http://jflag.org/wp-content/uploads/2014/07/Homophobia-Violence-in-Jamaica-JFLAG-2013.pdf>

17. Violence and discrimination has resulted in LGBT persons being forced to flee communities and seek refuge in sometimes desperate conditions¹⁶. Males are the most affected by displacement as a result of their sexual orientation or identity¹⁷
18. Civil society has provided most of the response to the increasing numbers of homeless LGBT youth living in deplorable conditions. The State has indicated that it will address the matter, given the urgency of the situation. However, no concrete actions have been taken up to date.

Recommendations

The state of Jamaica should

19. Amend its legal system to guarantee every citizen, and particularly LGBT people, access to justice, inter alia by strengthening judicial capacity and infrastructure; and providing sensitization on sexual orientation and gender issues.
20. Implement as soon as possible a national plan to provide training and sensitization on human rights issues, including LGBT rights, to judiciary, law enforcement officers and police in order to eradicate homophobia, discrimination and violence in these institutions.
21. 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.
22. Take special measures –including legislation- to guarantee economic, social and cultural rights in a full scope to LGBT people, promoting their access to education, health and work in equity conditions.
23. Implement mechanisms to improve and accelerate the enjoyment of human rights to LGBT people, including plans for temporary housing facilities, promoting their access to education and employment and taking the necessary steps to eliminate all the obstacles that limit their access to those rights.
24. Make efforts to implement education campaigns to encourage families, public agents and the community in general to reflect on the general prejudices about LGBT issues, in order to promote the integration of LGBT community in society and to reduce the increasing number of displaced and refugee LGBT persons.

Access to public health system

25. Access to healthcare also affects LGBT community. This is partly as a result of the lack of a health policy that include LGBT people and –on the other side- of the poor health seeking behaviours and financial difficulties among the population. Their realities are sometimes exacerbated by homophobia and discrimination within the healthcare system.

¹⁶ J-FLAG logged 61¹⁶ reports between January 2012 and July 2014 from LGBT persons, including children who were displaced and denied their right to shelter and a family. It is to note that a large group of at least thirty gay and transgender persons, mostly youth who reside in a storm drain located in New Kingston 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. Their right to shelter, food, health, work, and safety is compromised by the State.

¹⁷ Of the 61 persons who reported displacement 58 were males.

26. As a result, many LGBT persons do not seek health services out of fear of having to disclose their sexual orientation or sexual practices to health professionals and to be rejected and mistreated by them. Furthermore, most of public health professionals have never been trained in providing services to LGBT people¹⁸.
27. One of the few measures that can be outlined are the initiatives taken by the Ministry of Health through the National HIV Programme and National Family Planning Board (NFPB), in partnership with stakeholders, to build the capacity of public health workers and promote the right to health, especially for populations such as men who have sex with men and sex workers that are at risk of HIV infection.

Recommendations

The state of Jamaica should

28. Develop nation-wide health policies –equipped with the necessary technical and human resources- to attend the needs and requirements of LGBT people, including assessment, treatment, on the basis of free and informed consent.
29. Provide HIV, sexual and reproductive health services to LGBT people with the same range of quality and accessibility as the rest of the population.
30. Continue to collaborate with NGOs to conduct human rights sensitivity 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.

¹⁸ In a survey conducted by J-FLAG in a training programme among more than sixty persons who work in the HIV response in Jamaica, 65% of them had never been trained about MSM-related health issues and 93% had never been trained to offer counseling about anal sex.